

CTU INTERMODAL BARGE TRANSPORT  
TERMS AND CONDITIONS  
(CTU Intermodal barge conditions)

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## ARTICLE 1

### DEFINITIONS

In these terms and conditions, the following definitions shall apply:

1. CTU Intermodal barge terms and conditions: the present general terms and conditions as applied by members of the Inland Terminal Operators' Association.
2. CMNI: Convention on the Contract for the Carriage of Goods by Inland Waterway (Budapest 2001).
3. Terms of affreightment 1991, filed with the registrars of the courts of Amsterdam and Rotterdam, in the latest filed version.
4. AVC: Algemene Vervoercondities (general transport conditions) 2002, as last determined by sVa/Stichting Vervoeradres and filed at the registry of the courts of Amsterdam and Rotterdam, in the latest filed version.
5. BW: Burgerlijk Wetboek (civil code of the Netherlands)
6. CMR: Convention on the contract for the international carriage of goods by road (Geneva 1956) as amended by the protocol of 5 July 1978.
7. CIM: Uniform Rules concerning the Contract of International Carriage of Goods by Rail with the Convention concerning International Carriage by Rail (COTIF CIM – Appendix B) of 9 May 1980 as amended by the Protocol of 3 June 1999.
8. Container Handling: all services such as transport, transshipment, temporary storage and removal, with regard to one or more Containers, in as far as it has been agreed between the Customer and the Inland Terminal Operator.

9. Container Handling Contract: the contract whereby the Inland Terminal Operator is bound to the Customer to perform Container Handling.

10. Additional Services: all contracted services that do not fall under Container Handling, such as dispatching services, storage of goods, whether or not loaded into a Container, stock management, subcontracting, order picking, preparing for shipment, billing and distribution of goods, including the exchange of information pertaining thereto and the management thereof.

11. Container: a container that is the object of the Container Handling Contract and that fulfils the requirements stipulated in the International Convention for Safe Containers (Geneva, 2 December 1972), including any goods that may be transported therein.

12. Inland Terminal: loading, unloading, storage or transfer facility connected to a rail, road or inland shipping route, where Containers are received or delivered.

13. Customer: party ordering the Container Handling services and any Additional Services.

14. Inland Terminal Operator: the Customer's contracting partner that performs the Container Handling and any Additional Services.

15. Recipient: party or place to which the Inland Terminal Operator must deliver the Container in accordance with the Container Handling Contract.

16. Reception: the moment when the Inland Terminal Operator has accepted the Container.

17. Delivery: the moment when the Inland Terminal Operator makes the Container available to the Recipient.

18. Force majeure: circumstances that could not have been avoided by a diligent Inland Terminal Operator and of which the consequences could not have been prevented by an Inland Terminal Operator.

19. Workdays: all calendar days except Saturdays, Sundays, and generally recognised Dutch bank holidays.

## ARTICLE 2

### SCOPE

1. The CTU multimodal terms and conditions apply to the Container Handling Contract and Additional Services insofar as these are not in conflict with mandatory law.

2. Where no provision is made in these CTU multimodal terms and conditions, the following shall apply to Container Handling and Additional Services. In the case of:

transport by inland waterway:  
CMNI, also with respect to inland transport in accordance with article 8:889 BW, and Terms of Affreightment of 1991;

transport by rail:  
CIM;

transport by road:  
the CMR as well as AVC provisions that are not in conflict with the CMR;

multimodal transport:  
if the place where the damage occurred is known, the provisions described above, and if the place is unknown, articles 8:42 and 8:43 BW.

## ARTICLE 3

### DUTIES OF THE INLAND TERMINAL OPERATOR

The Inland Terminal Operator must:

1. Perform Container Handling and Additional Services.

2. Receive the Container, accompanied by the transport document and additional documents supplied by the Customer, at the agreed place, time and in the agreed manner, and deliver it in the same condition than that in which it was received, or in a condition as agreed by contract.

3. Upon reception of a Container, check whether the seal is present and intact. If it appears upon inspection that the seal is broken, the Inland Terminal Operator has the duty to inform the Customer and ask the latter for instructions. The Customer is aware and accepts that no physical inspection of a Container's seal or its content can be done when Containers are loaded onto a barge at a sea port.

4. Check the content of a Container only at the Customer's written request.

5. If there is no agreed deadline for Reception or Delivery, these services must be performed within the period that would be necessary for a reasonably acting and reasonably diligent Inland Terminal Operator to do so, calculating from the moment when Reception or Delivery is requested. This period will then be considered as the agreed deadline.

6. Assign one or more contacts and indicate these to the Customer.

7. In the scope of Container Handling and any Additional Services, ensure the storage of Containers at the Inland Terminal, or on agreed premises or in a suitable place.

8. With respect to the Container, take all reasonably necessary measures, including those that indirectly ensue from Container handling or Additional Services, at the Customer's expense, and consult with the Customer before taking such measures.

9. In accordance with the law and at written request from the Customer, on behalf of the Inland Terminal Operator, insure any liability ensuing from the CTU multimodal conditions with a reliable insurer and upon request supply a copy of the policy to the Customer.

10. Allow the Customer and people appointed by the latter to access the premises and place where the Container is kept, provide that: the Inland Terminal Operator is present; the latter was informed beforehand; the visit takes place in accordance with the Inland Terminal Operator's house rules.

11. Before accepting a Container with externally noticeable damage, ask for instructions from the Customer. If instructions cannot be obtained in time, the Inland Terminal Operator is entitled to refuse Reception of the damaged goods.

12. Be responsible for the material used by the Inland Terminal Operator for the execution of the Container Handling Contract and Additional Services.

13. Ensure non-disclosure towards third parties of facts and information known to the Inland Terminal Operator on the grounds of the Container Handling Contract and Additional Services.

## ARTICLE 4

### LIABILITY OF THE INLAND TERMINAL OPERATOR

1. If the Container received by the Inland Terminal Operator is not delivered to the destination in the agreed state, the Inland Terminal Operator will, except in the case of force majeure and other conditions stipulated here, be liable for the resulting property damage. The burden of proof of the property damage is on the Customer.

2. The Inland Terminal Operator will not be liable for damage to goods insofar as the damage is the result of inadequate packaging and/or stowage of the goods in a Container prior to transportation.

3. The Inland Terminal Operator's liability for property damage as intended in paragraph 1 shall be limited to 8 ½ special drawing rights (SDR) per kilogram of missing or damaged goods, except for enforceable liability in the case of transport by rail, barge or road as stipulated respectively in CIM, CMNI and CMR.

4. If and insofar as enforceable regulations are not opposed to it, the Inland Terminal Operator's liability is limited in absolute terms to a maximum further amount that is to be determined by the parties at the conclusion of the Container Handling Contract. If such an amount has not been determined for Container Handling or Additional Services, a maximum amount of €1,000,000.00 per event or series of events in a single cause of damage shall apply.

5. If the Inland Terminal Operator fails to perform the Container Handling and/or Additional Services at the agreed time or in the agreed period, manner and place, it shall, without prejudice to paragraph 1 of this article and except in cases of force majeure, be obliged to perform these tasks as soon as possible and at no extra cost for the Customer, in the agreed manner.

6. If there are demurrage and/or detention arrangements that apply between the Customer and a ship owner or depot holder, whereby costs due to the exceeding of a time limit for the collecting and/or return of Containers are charged to the Customer, the Inland Terminal Operator shall alone be liable for these costs if and insofar as the Inland Terminal Operator can be blamed for the exceeding of the time limit due to a defective execution of the Container

Handling Contract and provided that it has previously been informed in writing of this arrangement. Unless otherwise agreed, the Inland Terminal Operator's liability for these costs shall be limited to €10.00 per day and per Container, to be calculated over a period starting one week after the Container becomes available for transport, and limited to a maximum of 2 months.

7. If the Customer has incurred extra costs due to the fact that the Inland Terminal Operator did not perform the Container Handling and/or Additional Services in the agreed manner, time and place, the Inland Terminal Operator shall be liable for these additional costs to the limit of an amount to be agreed upon at the conclusion of the Container Handling Contract. If such an amount has not been agreed upon, the Inland Terminal Operator's liability for these costs shall not exceed €700.00 per event or series of events for a single cause.

8. If the Inland Terminal Operator fails to designate one or more contacts as referred to in article 3 paragraph 6, the person who signed or accepted the Container Handling Contract on behalf of the Inland Terminal Operator shall be considered as the contact.

9. The Inland Terminal Operator shall not be liable for damage or costs incurred through information and orders given by or to a person other than those referred to in paragraph 8 of this article.

10. If the Inland Terminal Operator repeatedly fails to meet its obligations, the Customer, without prejudice to its right to compensation for damage as defined in paragraphs 1, 3, 4, 6 and 7 of this article, may terminate the Container Handling Contract, after having indicated a deadline to the Inland Terminal Operator in writing, if by the end of this period the Inland Terminal Operator has still not met its obligations.

11. Except for the liability stipulated in this article, the Inland Terminal Operator shall not be liable for any damage or costs.

12. The liability limitations in favour of the Inland Terminal Operator also apply to its employees, assistants and subcontractors.

## ARTICLE 5

### DUTIES OF THE CUSTOMER

The Customer has the obligation to:

1. Designate one or more contacts and indicate these to the Inland Terminal Operator.

2. Provide the Inland Terminal Operator in a timely manner with all the information pertaining to the Container that it knows or should know is of interest to the Inland Terminal Operator with regard to the Container Handling Contract and Additional Services, unless the Inland Terminal Operator is aware or should be aware of this information. The Customer is responsible for the correctness of the information it provides.

3. The abovementioned information includes any commitments that the Customer may have made with a ship owner and/or depot holder regarding the deadline for the pickup and return of Containers and costs that will be added if it is exceeded.

4. Put the Container, together with a transport document and other documents required from the Customer by or pursuant to the law, at the disposal of the Inland Terminal Operator.

5. Besides the agreed price for Container Handling and Additional Services, also pay the costs referred to in article 3 paragraphs 1 and 8, within the set payment term. If the Customer is entitled to a reimbursement of costs as referred to in article 4 paragraph 6, the Customer must, under penalty of forfeiture of rights, specify and notify the Inland Terminal Operator of these costs within 2 months after the Customer became aware of such costs.

6. Indemnify the Inland Terminal Operator against claims from third parties regarding damage caused by an act or negligence of the Customer, its subordinates or any other person whose services the Customer has used.

7. Assume responsibility for any material it has received from the Inland Terminal Operator.

8. Upon termination of the Container Handling Contract or Additional Services, retrieve all property that is still in possession of the Inland Terminal Operator, no later than the last working day of the contract, after payment of all sums that are or will become due.

9. For any sums that are or will become due after termination of the Container Handling Contract, the Customer shall provide sufficient security at the first written request.

10. Ensure non-disclosure to third parties of any facts or information known from the Container Handling Contract.

## ARTICLE 6

### LIABILITY OF THE CUSTOMER

1. The Customer is liable for any damage caused by persons and/or property that the Inland Terminal Operator was required to allow on its premises on the Customer's behalf pursuant to article 3 paragraph 10 of these conditions.

2. If the Customer fails to designate one or more contacts as referred to in article 5 paragraph 1 of these conditions, the person who signed the Container Handling Contract on the Customer's behalf shall be considered as the contact.

3. If the Customer fails to provide information on the Container and what is to be done with it as referred to in article 5 paragraph 2 of these conditions, or fails to provide the Container, together with the required documents as referred to in article 5 paragraph 4 of these conditions, in the agreed time, manner and place, the Customer shall be obliged to perform these actions as quickly as possible, free of cost, and in the agreed manner. If the Inland Terminal Operator has incurred extra costs due to the fact that the Customer failed to perform its duties as referred to in article 5 paragraphs 2 and 4 of these conditions, the Customer shall be held liable for these additional costs to a maximum amount that shall be determined at the conclusion of the Container Handling Contract. If no such amount has been agreed upon, the Customer's liability for such costs shall be limited to a maximum of €700.00 per event.

4. The Customer shall be liable for all claims related to customs or other duties and charges, fines, costs and interest, including import duties, excise duties and costs for disposal and destruction pertaining to goods that are, have been or will be in the possession of the Inland Terminal Operator due to Container Handling. The Customer shall at first request indemnify the Inland Terminal Operator for the abovementioned claims and provide sufficient security in favour of the Inland Terminal Operator

or the relevant customs authorities, including for reasonable costs of defence.

5. If the Customer repeatedly fails to meet its obligations, the Inland Terminal Operator may, without prejudice to its right to compensation for damage, terminate the Container Handling Contract, after having given the Customer a final deadline in writing, if by the deadline the Customer still has not performed its duties.

6. The Customer shall at first request indemnify the Inland Terminal Operator against any claims from third parties that pertain either directly or indirectly to the Container Handling Contract insofar as such claims exceed the Inland Terminal Operator's liability in accordance with the Container Handling Contract and CTU multimodal terms and conditions.

## ARTICLE 7

### PRESCRIPTION

1. All claims under the Container Handling Contract shall lapse after twelve months.

2. Prescription is calculated from the day following the date on which the Container is delivered or was supposed to be delivered. In all other cases, prescription is calculated from the date on which the claim arose.

## ARTICLE 8

### TERMS OF PAYMENT

1. Any amounts due from the Inland Terminal Operator and the Customer, on any ground whatsoever, shall be paid within the agreed time limit, or if no time limit has been agreed upon, within fourteen days after the invoice date.

2. If the Customer or the Inland Terminal Operator fails to pay an amount within the agreed time limit or if there is no agreed time limit, within thirty days after the invoice date, it shall be liable to pay the statutory commercial interest in accordance with article 6: 119 a BW, calculated from the date on which the payments were due until the date of payment.

3. The Inland Terminal Operator or the Customer shall be liable to pay the extrajudicial costs actually incurred for the collection of the amounts, as referred to in paragraph 1 of this article, to the Customer or Inland Terminal Operator. Extrajudicial collection costs shall be due from the moment the Customer or the Inland

Terminal Operator is in default and the claim for collection has passed.

4. The set-off of claims is not allowed.

5. Any amounts referred to in paragraph 1 of this article shall immediately and notwithstanding paragraph 4 of this article become due for payment if:

a. one of the Parties is under a bankruptcy procedure, or if suspension of payment has been granted to one of the Parties;

b. one of the Parties:

1. has offered to enter into composition with creditors;

2. terminates the Container Handling Contract on the grounds of article 4 paragraph 7 or article 6 paragraph 5 of these conditions;

3. ceases its activity or – in the case of a legal person or company – if the latter is dissolved.

## ARTICLE 9

### SECURITIES

1. The Inland Terminal Operator has a right of lien on property and documents that are in its possession due to the Container Handling towards anyone who requests it. The Inland Terminal Operator is not entitled to this right if, at the time when it receives the Containers, it has reason to doubt the Customer's competence to release the Containers.

2. The Inland Terminal Operator may also exercise the right of lien towards the Customer for anything that is still due with regard to previous orders.

3. The Inland Terminal Operator may also exercise the right of lien towards a Recipient that in this capacity entered into previous Container Handling Contracts, for any amounts still due from previous contracts.

4. If at settlement a dispute arises over the amount due, or if it will take time to do the necessary calculation to determine the amount, the party that is requesting the Delivery must immediately settle the part over which the parties are not in agreement, and provide a security for the payment of the part that it is disputing, or of which the amount is still uncertain.

5. Any goods, documents or money that are in the Inland Terminal Operator's possession under the Container Handling Contract shall serve as

security for any claims that it has against the Customer.

6. Except for cases where the Customer is under a bankruptcy procedure, has been granted suspension of payment or has been declared subject to debt repayment procedures for natural persons, the Inland Terminal Operator shall not have the right to sell pledged property without permission from the judge, in accordance with article 3: 248 paragraph 2 BW.

## **ARTICLE 10**

### **APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

1. All agreements between parties shall be subject to Dutch law.

2. Any disputes arising between parties that cannot be settled through discussion shall be settled outside the ordinary courts through arbitration in Rotterdam in accordance with TAMARA Arbitration Rules. The arbitration body shall consist of three arbitrators unless the parties have agreed to only one arbitrator. The procedure shall be conducted in Dutch.

3. The Inland Terminal Operator is entitled to waive arbitration for the recovery of pecuniary claims and to bring it before an ordinary court.

## **ARTICLE 11**

### **SHORT TITLE AND AUTHORITATIVE TEXT**

1. The terms and conditions may be referred to as the "CTU multimodal Terms and Conditions".

2. In the event of differences between the Dutch text of the Terms and Conditions and a translation in a foreign language, the Dutch text shall prevail.