



GENERAL BUSINESS TERMS



Registered with the
Chamber of Commerce at Rotterdam,
01.02.2008, nr. 23030135

Article 1 General Provisions

- 1.1 These general business terms apply to all offers made and agreements concluded by ZHD, and to the performance thereof, and to any acts, whether intended or not intended to have legal effect, conducted in this context.
ZHD stands for:
- **B.V. Zeehavenbedrijf Dordrecht**
- **ZHD Staal Terminal B.V.**
- **ZHD Ahoy B.V.**
- 1.2 Unless expressly agreed otherwise in writing, the applicability of general business terms and conditions used by the principal is excluded.
- 1.3 The nullification or nullity of any provision of these general business terms shall not affect the validity of the other provisions.
- 1.4 Regardless of the form in which they were issued, all offers of ZHD are without any engagement and can be revoked by any means whatsoever, even after acceptance thereof by the principal. Revocation after acceptance of the principal must be effected immediately.
- 1.5 Any amendments or additions to any agreement shall only be binding upon ZHD after a written confirmation thereof by ZHD.

Article 2 Performance of the agreement

- 2.1 ZHD is free to choose the way in which the granted agreement is performed, unless ZHD has accepted specific instructions from the principal in this context. The wishes of the principal in respect of time and duration of the agreement will be taken into account as much as possible, however ZHD shall not provide any guarantee in this context.
- 2.2 In case of temporary force majeure, the agreement shall remain in force, but any obligations ZHD has under the agreement will be suspended for the duration of the force majeure, without prejudice to the right of ZHD to dissolve the agreement and to charge the principal for all activities carried out prior to dissolution. All costs arising from the force majeure are for the account of the principal. "Force majeure" shall be taken to include any circumstances ZHD is unable to avoid and the consequences of which it is unable to prevent. This shall include in any case, strikes, sickness(es), lack of raw materials, delay at suppliers, boycott of ZHD or its suppliers, transportation problems, acts and/or omissions or delays of third parties used by ZHD, unsuitability of goods ZHD uses in the performance of the agreement, breakdown of machinery and/or tools, restrictions arising from laws and regulations, government measures and/or measures in the context of any permit to be obtained from the government, any import, export or transport prohibitions, riots, fire, floods, natural and/or nuclear disasters, (imminent) war situations, etc.

- 2.3 Unless agreed otherwise in writing, ZHD is entitled to use third parties in performing the agreement.

If the subordinates or subcontractors are held liable directly outside the scope of the agreement in respect of the activities for which they were used by ZHD, it is hereby stipulated on their behalf that they can invoke all provisions contained in these general business terms – and in other conditions referred to below – concerning exclusions or restrictions of liability.

- 2.4 Only after an explicit written instruction will any form of insurance be provided. This will be effected at the expense and for the account of the principal. The risks to be insured must be clearly defined in this context. If ZHD has provided insurance in its own name, ZHD is obliged - upon request - to transfer its claims on the insurer to the principal. ZHD is not responsible for the choice of insurer and its solvency.

Article 3 Obligations of the principal

- 3.1 Without prejudice to the provisions of the applicable law or treaties, the principal shall in any case be obliged:
- to ensure that the goods in respect of which ZHD has instruction, are available at the agreed place and time;
 - to provide ZHD in a timely manner with all the information regarding the goods and the handling thereof, that the principal knows or should know is of importance to ZHD, unless the principal may assume ZHD is aware of this information; the principal shall guarantee for the correctness of the information it provides;
 - to ensure the presence of the proper documents required for the performance of the agreement, unless it was agreed in writing that ZHD would provide these documents;
 - with regard to dangerous goods, to inform ZHD in writing, in a timely manner, of the regulations that must be fulfilled according to the applicable legislation and/or other government regulations;
 - to ensure that the goods, taking into account the intended method of transportation and handling, are correctly and sufficiently packed.
- 3.2 If the principal fails to fulfill its obligations mentioned in paragraph 3.1, the principal is obliged to compensate ZHD for any damage which ZHD suffers as a consequence.
- 3.3 Any goods entrusted to ZHD for whatever reason, on any legal ground which ZHD would not have wanted to receive if it had known that receipt thereof could lead to any danger, can at any time and at any location be unloaded, destroyed or otherwise rendered harmless by ZHD.
- 3.4 Without prejudice to the above, the principal is liable in respect of ZHD for all damage caused by goods or materials it has entrusted or provided to ZHD, unless this damage has been caused by the fault of ZHD.
- 3.5 The principal is obliged to indemnify ZHD and/or its subordinates and/or subcontractors upon their first request, if ZHD and/or its subordinates and/or subcontractors are held liable directly outside the scope of the agreement, in respect of damage or another financial disadvantage, related to the performance of the agreement.

- 3.6 The principal is at all times obliged to reimburse ZHD for any amounts claimed or additionally claimed by any government or other institution in respect of ZHD or one of its subcontractors, explicitly including but not limited to taxes, levies etc. as well as any related penalties, regardless of whether the claim or additional claims are a consequence of faults attributable to ZHD in fulfilling its obligations under the agreement.

The principal is obliged, at the first request of ZHD, to provide security for whatever ZHD owes or will owe in this context.

Article 4 Applicable conditions

General:

- 4.1 In accordance with the nature of the agreement, the activities of ZHD are subject to the general terms and conditions referred to in articles 4.4–4.11, a copy of which will be sent upon request. Moreover, these general business terms apply in so far as they are not in conflict with or contrary to the general terms and conditions mentioned in the previous sentence.
- 4.2 If ZHD acts by virtue of a transport agreement, and ZHD has issued a transport document in respect of the specific transport that bears its name, then the transport conditions mentioned in the said transport document shall apply, in addition to which these general business terms shall apply. If no such transport document has been issued, all transport agreements shall be subject to these general business terms, in so far as they are not in conflict with or contrary to any mandatory provisions of law.
- 4.3 Notwithstanding the previous article, article 10 of these general business terms – regarding applicable law and competent court – shall apply in all cases.

Deposit:

- 4.4 If ZHD acts in the capacity of depository, the Dutch Storage Conditions 1996 of FENEX will apply, as filed at the court registry of the District Court of Rotterdam on 15 November 1995.

Stevedore activities:

- 4.5 If ZHD acts in the capacity of stevedore, the following conditions shall apply:
- in case of handling of general cargo: the General Terms of the Association of Rotterdam Stevedores, as filed at the court registry of the District Court of Rotterdam on 12 August 1976;
 - in case of handling of bulk cargo: the Bulk Cargo Conditions of Rotterdam Stevedores 1991, as filed at the court registry of the District Court of Rotterdam on 8 May 1991.

Shipbroker activities:

- 4.6 If ZHD acts in the capacity of shipping agent or shipbroker, the General Terms of the Association of Rotterdam Shipbrokers and Agents shall apply, as filed at the court registry of the District Court of Rotterdam on 1 December 1992.

Forwarding activities:

- 4.7 If ZHD acts in the capacity of forwarding agent, the Dutch Forwarding Conditions (FENEX) shall apply, as filed at the court registry of the Courts of Rotterdam, Amsterdam, Arnhem, and Breda on 1 July 2004.

Acting in the capacity of forwarding agent not only includes having goods transported for the account of the principal by third parties, but also includes all activities conducted by a forwarding agent, including but not limited to the fulfilling of customs formalities in the broadest sense of the word.

Physical Distribution:

- 4.8 If ZHD acts in the capacity of physical distributor, the Conditions for Logistic Activities of Fenex (FENEX) shall apply, as filed at the court registry of the Court of Rotterdam on 15 November 1995.

Lease of immovable property:

- 4.9 If ZHD acts in the capacity of lessor of immovable property (sites, warehouses, etc.), the General terms concerning lease agreements of office accommodation and other commercial accommodation (Real Estate Council) dated July 2003 shall apply, as filed at the court registry of the Court of Den Haag on 11 July 2003.

Operation of cranes:

- 4.10 If ZHD acts in the capacity of crane operator, the General conditions for the execution of assignments by crane operators shall apply, as filed at the court registry of the courts of Amsterdam and Rotterdam, on 1 January 1994.

Lease of barges:

- 4.11 If ZHD acts in the capacity of lessor of barges, then the General Pushed Barge Conditions 2004 shall apply, as filed at the court registry of the Court of Rotterdam on 11 November 2004.

- 4.12 If activities to which the liability relates could have been carried out in several capacities, or if there is a lack of clarity about it, then ZHD shall decide which of the aforementioned general terms and conditions shall apply. Upon a written request of the principal, ZHD will as the occasion arises inform the principal in this context with due haste.

Article 5 Liability

- 5.1 ZHD is only liable if and in so far as liability arises from mandatory rules of law or from a specific treaty, or if liability arises from the general terms and conditions that apply to the activities to which the liability relates, regardless of whether this liability is based on agreement or unlawful act.

- 5.2 Subject to the contents of articles 5.4 and 5.5, the damage to be compensated by ZHD will be established in accordance with the mandatory rules of law and treaties and, respectively, the liability provisions laid down in the general terms and conditions referred to in article 4 concerning the activities to which the liability relates and, if no mandatory rules apply or said terms and conditions do not apply, in accordance with articles 5.7 and 5.8 of these general business terms.

- 5.3 If the principal takes receipt of the goods without having established the condition thereof, or, if there are visible losses of or damages to the goods and the principal did not bring this to the attention of ZHD upon delivery, the principal is deemed to have taken receipt of the goods in the condition described in the transport document. If there are invisible losses of or damages to the goods, the principal must bring to the attention of ZHD within 24 hours after delivery an explicit reservation stating the general nature of the losses or the damages to the goods. Once the 24 hour period has expired following a delivery and ZHD has received no explicit reservation, the principal is deemed to have taken receipt of the goods in the condition described in the transport document.
- 5.4 ZHD shall never be liable for any loss of profit, consequential damage or non-physical damage and/or non-pecuniary damage, nor for any damages for delay.
- 5.5 Anybody present at sites, in warehouses, in means of transport, or at any other location of ZHD where activities are carried out, is considered to be there with all he/she has with him/her at his/her own risk, and must strictly observe the regulations and/or instructions given by the government or by ZHD. The principal will indemnify ZHD in this context against claims from third parties.
- 5.6 The following provisions of this article shall only apply if they are not in conflict with mandatory provisions of law or with liability provisions laid down in the general terms and conditions referred to in article 4 concerning the activities to which the liability relates and shall apply in all cases in which ZHD cannot invoke the said terms and conditions for any reason whatsoever.
- 5.7 Without prejudice to the contents of articles 5.4 and 5.5, ZHD shall only be liable for damage or personal injury in so far as it is the consequence of an act or omission, committed either with the intent to cause the said damage or injury, or recklessly and with the knowledge that the said damage or injury would probably arise from it.
- 5.8 The liability of ZHD shall in all cases be limited to 7,500 SDR per event or series of events with one and the same cause, except that in the case of damage, value decrease or loss of the goods that are part of the agreement, the liability is limited to 4 SDR per kg of damaged goods or lost weight to a maximum of 2,000 SDR per shipment, except in cases where the damage has arisen from any acts or omissions of ZHD - which is taken to mean the management or managers within ZHD - either with the intent to cause said damage or injury, or recklessly and with the knowledge that said damage or injury would probably arise from it.

Article 6 Prices

The prices of ZHD are based on the rates, wages and the like that apply at the moment of conclusion of the agreement. In case of an increase of one or more cost items after conclusion of the agreement, ZHD is entitled - after consulting with the principal - to increase the original price accordingly.

Article 7 Payment

- 7.2 Unless agreed otherwise, payment must be made within 14 days after delivery in Euros into a bank account to be designated by ZHD.

- 7.3 In case of late payment, the principal is in default by operation of the law, without any notice of default being required. As of the day subsequent to the day on which the payment term expires, the principal shall owe interest of 1% per month, including a part of a month, on the outstanding amount.
- 7.4 If the principal is in default, then, after a written notice of default, the principal shall furthermore owe all damages and costs, judicial and extrajudicial, related to the collection of the amount due. The extrajudicial collecting charges on the amount due are fixed at 15% of the principal sum, with a minimum of € 250,--.
- 7.5 ZHD is at all times entitled to demand advance payment or sufficient security from the principal for the fulfillment of its obligations. If the principal does not immediately comply with such a request, then ZHD is entitled to suspend and/or terminate its activities.
- 7.6 Offsetting invoices or withholding payment, either in full or in part, of invoices, for whatever reason, is not permitted.

Article 8 Right of retention and right of pledge

- 8.1 ZHD is entitled to retain all goods, documents and funds of the principal for the account and risk of the principal, until any and all claims in respect of the principal, have been paid in full.
- 8.2 All the goods, documents and funds which ZHD retains for whatever reason or will obtain, shall serve as security for any and all claims ZHD has or will have in respect of the principal.
- 8.3 ZHD is furthermore entitled to exercise the aforementioned right of pledge and/or retention for sums which the principal owes ZHD in respect of previous agreements.

Article 9 Period of limitation

In so far as not in conflict with mandatory law and subject to all that has been set out in the relevant provisions of the general terms and conditions in article 4.4 - 4.11, any claims of the principal for damages under this agreement or for any other reason, shall be barred after the lapse of one year, which term shall commence on the day subsequent to the day on which the claim first arose.

Article 10 Applicable law and competent court

- 10.1 Any agreement to which these general business terms apply and any further agreements that may arise from it shall be governed by Dutch law.
- 10.2 All disputes between the principal and ZHD, with the exception of appeal proceedings, will be submitted to the competent court in Dordrecht.

Article 11 Language

The general business terms are drawn up in the Dutch, English and German language. In case of any differences between the general business terms drawn up in the different languages, the Dutch text will prevail.