

**General conditions of Waterfront Shipping B.V.**

**I General**

(a) Unless it has been unambiguously agreed otherwise in writing, the following conditions apply to all offers or orders of, and all activities, agreements, services, performances and deliveries executed or to be executed by Waterfront Shipping B.V. (below: Waterfront) in the widest possible sense, regardless of whether these have been or will be made or performed or executed by or with the assistance of employees of Waterfront or by agents/intermediaries or subcontractors instructed by Waterfront.

(b) General conditions used by principals or contractual partners of Waterfront or third parties (regardless of whether they are contractually involved or not) will not be accepted by Waterfront and cannot be considered binding for Waterfront unless this has been agreed in writing, with express exclusion of any contradictory conditions of Waterfront.

(c) To the following specific activities, according to their nature, the following standard terms in their most recent version apply in addition to these conditions but only in so far as anything has not been covered in these conditions (including jurisdiction, which is always as per clause II hereof) and in so far as there are no discrepancies or contradictions, in which case these conditions prevail (except where compulsorily applicable statutory provisions do not permit this):

- to carriage of goods by sea; bill of lading conditions of the shipping line
- to carriage of goods by road (inland): the General Carriage Conditions AVC
- to carriage of goods by road (international): the CMR Convention
- to stevedoring (containers/general cargo): the Rotterdam Stevedoring Conditions
- to stevedoring (bulk cargo): the Conditions of Rotterdam Bulk Goods Stevedores
- to storage: The Warehousing Conditions Amsterdam-Rotterdam
- to owners representation/shipbroking: the General Dutch Shipbrokers' Conditions
- to forwarding: the General Dutch Forwarders Conditions 'FENEX'
- to terminal operations: the terms of the Rotterdam Terminal Operators Association 'VRTO'
- other logistics: the Terms and Conditions for Value Added Logistics 'FENEX'.

The texts of all these publicly available standard terms are available - like these conditions - on the website <[www.waterfrontshipping.nl](http://www.waterfrontshipping.nl)> as hyperlinks in the present conditions and will be sent free of charge on request.

(d) These conditions also apply to all documents issued by Waterfront, including bills of lading, warehouse receipts or other storage documents, booking notes, charter parties, waybills or consignment notes, receipts, delivery orders, arrival notices, mates receipts, customs declarations or any other document, everything in as far as this is not contrary to compulsory provisions of Dutch law or international Conventions which apply in The Netherlands and to Dutch legal entities or persons.

(e) Contractual partners and other parties involved who have not protested against these conditions after they have been able to take note of them will be deemed to have accepted their application, also for any future transactions, agreements or activities. Non-contractual partners who have given others the liberty to agree these conditions with Waterfront will be deemed to have accepted that the conditions can then also be invoked against them.



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## **II Applicable law and jurisdiction**

All agreements, activities, documents and legal relationships mentioned above will be governed by Dutch law. The Court of Rotterdam will have exclusive jurisdiction to hear claims of and against Waterfront unless it has been otherwise agreed in writing by means of a document that is validly signed by or on behalf of Waterfront itself; Waterfront however reserves the right to sue counterparts wherever they are established or domiciled or where claims can be enforced against them.

## **III Time bar**

Every claim right against Waterfront other than arising from forwarding activities is forfeited by the mere passing of twelve months from the moment on which the claim arose, unless the applicable law or the relevant contract entails a shorter term. Claims against Waterfront arising out of forwarding activities become time barred by the passing of nine months from the moment on which the claim arises. All incidents which can lead to the bringing of a claim against Waterfront must be reported to Waterfront in writing immediately, but ultimately ten working days after this has become known, under penalty of forfeiture of all claim rights.

## **IV Rates, invoices and payment**

(a) Rates are based on the price level, wages, costs of social security and/or laws, taxes, insurance and exchange rate notations existing at the time of the provision of the instruction or the conclusion of the agreement. In case of an increase of one or more of those costs, the customary or agreed rates can be amended by Waterfront with immediate effect.

(b) For special and/or unusual activities and/or unexpectedly time consuming services or services requiring unexpected effort, a reasonable remuneration can always be charged.

(c) Invoices must be paid within the term mentioned therein, or, in the absence of such term, within a term of 15 days from the invoice date. If the principal does not settle an invoice within the given term, the principal is due to pay the statutory (trade) interest from the date on which payment should have been made until the date of full payment. If non-payment leads to collection of the claim, the amount will be increased by 10% administration costs and moreover the in and out of Court costs can be charged. In case of Court proceedings the counterpart of Waterfront is bound to pay in full all the actual costs effectively spent in that connection (also if these exceed the costs allowed by the Court).

(d) Contrary to the above section of this article, a claim of Waterfront will become due and payable immediately if the principal is granted a (provisional or definite) suspension of payments or if it is declared bankrupt, or if it effectively ceases trading, or if an arrest is made against the principal or if the principal or his representative or subcontractor fails to comply with obligations under any agreement with Waterfront.

(e) The principal, counterpart or debtor of Waterfront will not be entitled to invoke any set off, on whatever ground, in respect of amounts charged or invoiced or claimed by Waterfront to such party.

(f) Disputes between Waterfront and the principal, counterpart, customer, subcontractor or representative thereof concerning any invoice or the performance of any agreement or activity or document of Waterfront as related under I will not suspend the payment obligation of the principal. Whenever on the basis of any compulsory statutory provision or judicial decision there would be a right to suspend payments, the counterpart of Waterfront will promptly provide security in the form of a guarantee of a first class Dutch bank, to cover the suspended obligations.

(g) Rights and/or claims against Waterfront cannot be assigned or transferred.

#### **V Lien and right of pledge**

(a) Waterfront will have a right of pledge and a lien/ a right of retention towards anyone who demands delivery of all objects, documents and funds (which right will be established by the mere handing over or putting at the disposal of such items) which it will have in its possession on whatever basis and to whatever purpose, in security of all claims which it has or will in the future obtain against the principal or his representative or subcontractor, and/or the owner or party otherwise entitled to such items.

(b) Waterfront is entitled to regard whoever brings the objects, documents or funds as meant in section I into its power or possession (or that of its subcontractor or intermediary or agent) as being entitled to do so, or to regard such person as the authorized representative of the owner of such items or the party entitled thereto.

(c) Waterfront is entitled to give notification of its right of pledge on the basis of this article to whoever, and whenever, it deems fit in its sole discretion.

(d) Waterfront will also be entitled to exercise the rights mentioned in this article for whatever is (or will become) payable by the principal or counterpart in connection with previous instructions of that principal or counterpart or its representatives or subcontractors.

(e) Nothing in these conditions (including applicable standard terms as per clause I(c) above) will be construed to deprive Waterfront of any statutory rights of lien or retention.

#### **VI Employees and subcontractors of Waterfront**

Waterfront shall be entitled to have any service performed by its own employees or by intermediaries or subcontractors, with its own materials or materials of third parties. All parties thus involved may invoke these conditions, and the applicable standard terms, regardless of whether any claim is brought in contract or in tort.

#### **VII Liability**

(a) All acts and services of Waterfront will be performed for account of, and at the risk of, the principal unless this would be contrary to the nature or the purpose of the agreement, taking into account the contents of these Conditions and the applicable standard terms.

(b) Waterfront binds itself to apply reasonable effort to comply with its obligations, but if in spite of this those obligations are not fulfilled, Waterfront will not be liable for any damage or loss, unless the principal or counterpart proves that the loss as was caused by the intent or gross negligence of Waterfront, in the sense of: the legal entity itself or statutory

directors thereof (or persons that can be identified with such directors).

(c) If Waterfront should still be liable in view of the provisions under (a) and (b), then that liability will in all cases be limited to the following amounts:

in case of damage to goods: 2 SDR per kilogram damaged or lost product;

for other losses: 10% of the value of the specific contract relating to the relevant incident or the part of such contract relating to such incident,

in all cases with an overall maximum of SDR 7,500 per incident or chain of incidents with the same cause, in as far as this is not contrary to compulsory law, in which case only the compulsory arrangement will apply. The indemnification payable by Waterfront shall in no event exceed the invoice value of the goods at the time they were received by Waterfront, respectively the invoice value for Waterfront of the relevant contract or service; liability for indirect loss, loss for delay or consequential loss is entirely excluded in all cases.

(d) Notwithstanding the provisions of article III, but exclusively to the extent that compulsory law does not provide otherwise, Waterfront must be notified in writing of all (threatening) damage or claims ultimately at the time of completion of the activities or the termination of the agreement. In the absence of such notification, Waterfront will merely be bound to transfer any rights it may have against third parties, even if the law does not oblige Waterfront to do so, against abandonment by the principal or counterpart of all its rights against Waterfront.

(e) Waterfront will furthermore not be liable for losses which are, or could have been, covered by insurance of the principal or counterpart, who undertake to exclude recovery and/or subrogation and to include Waterfront as a co-insured on any policy related to activities or obligations of Waterfront.

#### **VIII Liability of the principal**

The principal (which includes its representatives or subcontractors) is liable towards Waterfront for all losses which Waterfront suffers or may suffer from the acceptance and performance of the relevant agreement or relative activities, or from the nature or condition (possible radioactivity or danger for the environment or other hazards included) of the relevant goods and the packing thereof, the incorrectness, inaccuracy or incompleteness of instructions and data, any failure to put the goods at disposal at the agreed time and place, and the non-provision or untimely provision of documents and/or instructions, as well as any fault or negligence in general of the principal and his subordinates and third parties instructed by him or working for him. The principals undertakes to confirm or ratify on first request any act or deed performed by Waterfront on its behalf, whether by express instruction or as agent of necessity.

#### **IX Indemnity**

The principal will hold Waterfront and its employees, intermediaries or subcontractors or other persons working for or on behalf of Waterfront Shipping harmless in respect of all claims of third parties against whom Waterfront or the said persons will not be able to invoke these general conditions. For that purpose the principal shall on first demand provide security for, and will arrange and pay for the defence against, any claims notwithstanding the right of Waterfront to do this itself for account of the principal.



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The principal will hold Waterfront harmless in respect of all claims from customs or other authorities flowing from or related to activities or services of Waterfront and will on first demand settle such claims and/or provide sufficient security for their payment. Any protests or objections against such claims will be timely lodged by the principal but in the event that Waterfront incurs costs in that connection these will be reimbursed upon first request.

**X Insurance**

Insurance of whatever nature will only be arranged in the name and for account and risk of the principal on the basis of a written instruction to Waterfront if and to the extent that this has been explicitly accepted. Waterfront then is free in the choice of an insurer. In the absence of such instruction Waterfront is entitled to assume that the principal has arranged for insurance itself in respect of all risks for which insurance is possible, and has complied with its undertaking mentioned under VII(e) above.

**XI Language**

These conditions are in the Dutch language; no rights or defences can be derived by the principal from translations made available in English, Spanish or other languages. The Dutch text has been deposited with the Chamber of Commerce in Rotterdam under number 24196116.