

General Terms and Conditions of Business.

Muller.

General Terms and Conditions of Business

Muller Groep B.V., Rederij T. Muller B.V. and Muller Zwaar Transport B.V.

1. Applicability

- 1.1 The company applying these General Terms and Conditions of Business shall hereinafter be referred to as 'Muller'.
- 1.2 Save where specifically agreed otherwise in writing, the General Terms and Conditions of Business shall apply to all tenders and/or order confirmations issued by Muller and to all agreements entered into by Muller, and furthermore to all actual and legal acts performed by Muller in the implementation thereof. Muller hereby stipulates the applicability of these General Terms and Conditions of Business to any work performed by another undertaking and/or company and/or any third party or parties affiliated to Muller.
- 1.3 To the extent that these General Terms and Conditions have been declared applicable to any single agreement, they shall continue to apply without exception to any and all future offers and order confirmations issued by Muller and to future contracts concluded with Muller.
- 1.4 Failure by Muller on any occasion to invoke the provisions of the General Terms and Conditions of Business shall not constitute a waiver by Muller of its right to invoke the said provisions of the General Terms and Conditions of Business in other circumstances.
- 1.5 The applicability of any general terms and conditions of the client or of a party which becomes party to an agreement concluded between Muller and the client (hereinafter referred to as the 'contracting party'), even if they are referred to in the contract awarded to Muller, is explicitly rejected.

2. Sectoral terms and conditions applied by Muller

Save as otherwise provided, the most recent version of the following general sectoral terms and conditions, with the exception of any choice of forum clause or arbitration clause, or any hereinafter mentioned statutory or convention law regulations shall apply in addition to the General Business Terms and Conditions:

2.1 Towage

1. 'Towage of seagoing vessels' shall be understood to mean the towage of and/or provision of assistance (including salvage) to seagoing ships on inland waterways and/or at sea.
In instances of 'towage of seagoing vessels' as described above: 'The Netherlands 1951 Towage Conditions' ['Nederlandse Sleepdienst Condiitiën 1951'];
2. 'Towage of inland waterway vessels' shall be understood to mean the towage of and/or provision of assistance (excluding salvage) to other ships, including floating cranes, cranes, elevators etc, other than seagoing vessels, on inland waterways and/or at sea.
In cases of 'towage of inland waterway vessels' as described above: the 1965 Towage Conditions ['Sleepconditiën 1965'];

2.2 Pushing

1. 'Pushing' is understood to mean pushing and/or provision of all other services to and/or on board of push barges and/or pontoons, other than salvage, dredging and/or contracting work.
In instances of 'pushing' as described above: the 2004 General Push Conditions ['Algemene Duwconditiën 2004'];

2.3 Client use of floating cranes

1. Where floating cranes are provided with crew: the Dutch 1967 Conditions for the Use of Floating Cranes ['Bokkengebruikvoorwaarden 1976'];

2.4 Client use of flat-bottomed boats, pontoons etc

1. Where flat bottomed boats, pontoons or barges are provided: the Dutch 1961 Conditions for the Use of Flat-Bottomed Boats ['Dekschuitengebruikvoorwaarden 1961'];

2.5 Carriage by inland waterways and by road

'Carriage' shall be understood to mean the carriage of goods on board of one or more means of transportation.

1. In instances of 'carriage' as described above by inland waterways:
 - (a) (national): the Dutch 1991 Chartering Conditions ['Bevrachtingsvoorwaarden 1991'] and where goods are carried within a harbour complex [vletwerk] the Rotterdam Conditions for Carriage of Goods within a Harbour Complex ['Rotterdamse Vletvoorwaarden 1970'], insofar as they do not conflict with the mandatory provisions of Section 8.10.2 of the Dutch Civil Code;
 - (b) (international): the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway ['Verdrag van Boedapest inzake de Overeenkomst voor het vervoer van goederen over de binnenwateren'] (CMNI) of 22 June 2001' provided that it is expressly stipulated that the carrier or sub-carrier is not liable for damages caused by the incidents listed in Article 25, paragraph 2 (a) ('error in navigation'), (b) ('fire or explosion') or (c) ('defects in the vessel');
2. In instances of 'carriage' as described above by road:
 - (a) (national): the Dutch 2002 General Conditions for Carriage ['Algemene Vervoercondities 2002'];
 - (b) (international): the Convention on the Contract for the International Carriage of Goods by Road (CMR Convention) ['CMR-verdrag'] supplemented, insofar as it does not conflict with the provisions of the aforementioned CMR Convention, by the 2002 General Conditions for Carriage ['AVC 2002'];

2.6 Loading and/or unloading

1. 'Loading and/or unloading' shall be understood to include loading, stowing, securing, unloading of goods and other typical stevedoring activities. In instances of 'loading and/or unloading' of goods: the Rotterdam Stevedoring Conditions ['Rotterdamse Stuwadoorscondities'] in the version as filed with the Registry of the District Court of Rotterdam on 12 August 1976, and specifically not the 2009 General Terms and Conditions of the Rotterdam Terminal Operators' Association [VRTO-condities 2009];

2.7 General average

1. in the case of a seagoing vessel: the 'York-Antwerp Rules 1994' and specifically not the York-Antwerp Rules 2004;
2. in the case of an inland waterway vessel: General Average Rules IVR (2006) ['Avarij-Grosse Regels IVR (2006)'];

2.8 Forwarding

1. The Dutch Forwarding Conditions 2004 ['Nederlandse Expeditievoorwaarden 2004'];

2.9 Storage

1. The Dutch Warehousing Terms and Conditions ['Nederlandse Opslagvoorwaarden'], filed by FENEX (the Netherlands Association for Forwarding and Logistics).

3. Applicability of the following provisions

Where Muller is performing work and/or acts which are not covered by the scope of application of the sectoral terms and conditions listed in Article 2 or by statutory or convention regulations, where any issue arises which does not fall under the general sectoral terms and conditions declared applicable in Article 2 of these General Terms and Conditions of Business or where, for any reason whatsoever, the provisions of the aforesaid sectoral terms and conditions are not applicable and/or are annulled, the provisions set out in the Articles below shall apply.

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4. Implementation of the agreement

- 4.1 The order of tasks in all contracts performed by Muller shall be determined by Muller, whereby the start and end dates for such work shall be determined, inter alia, by the capacity of the equipment and manning levels available to Muller. This will be a best efforts obligation and shall not constitute an obligation to perform or a guarantee commitment.
- 4.2 No guarantee shall be given in relation to dates and/or deadlines. Any information provided in advance or in the interim shall not be binding upon or impose any liability on Muller.
- 4.3 The client shall ensure that all data and documents it is required to supply are provided to Muller in a timely manner and that all appliances which it is obliged to provide are supplied in a timely manner with adequate capacity and equipment.
- 4.4 Save where specific agreements are made, Muller shall be free to determine the manner of implementing the contract. Muller shall be free to engage servants or agents to assist with the performance of the work.
- 4.5 In the event of temporary force majeure, the contract shall remain in force and Muller's obligations shall be suspended for the duration of the force majeure situation, subject to Muller's right (solely at its own discretion) to set aside the contract in such cases, if and insofar as it has not yet been implemented and to charge for any work already performed in proportion to the contract as a whole. Any costs arising as a result of the force majeure situation shall be charged to the client and/or contracting party.

5. Liability

- 5.1 Muller shall not be liable for any damage save where the client or the contracting party proves that the damage was caused as a result of an act or omission on the part of the board or management of Muller, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. The liability of Muller shall in any event never exceed a maximum of € 10,000.00 for each occurrence or series of occurrences with the same cause.
- 5.2 Where the material or goods provided to Muller for the purpose of implementing the agreement causes damage in any way (other than damage to or loss of the goods themselves), or where handling of that material those goods causes damage in any way to the property of the client, contracting party and/or third parties or where financial loss is suffered by that client, contracting party and/or those third parties, Muller shall not be liable for such damage except insofar as it is caused as a result of an act or omission on the part of the board or management of Muller, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. Damage shall also be understood to include damage to third parties which Muller is obliged to compensate; damage shall also be understood to include damage caused by death or injury and any form of financial loss.
- 5.3 The client and/or contracting party shall be obliged to compensate Muller for any damage caused to Muller by material or goods provided by the client and/or the contracting party to Muller for the purpose of implementing the agreement or caused as a result of handling that material or those goods, save where the damage was caused as a result of an act or omission on the part of the board or management of Muller, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. Damage shall also be understood to include damage to third parties which Muller is obliged to compensate; damage shall also be

understood to include damage caused by death or injury and any form of financial loss.

6. Dangerous goods

- 6.1 In the event that the goods are deemed to be dangerous pursuant to the relevant regulations for the carriage of dangerous substances on inland waterways, by road or by sea, such carriage shall be governed by the Regulations for the Carriage of Dangerous Goods on the Rhine (ADNR), the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and the International Maritime Dangerous Goods Code (IMDG Code) as well as the applicable national regulations with regard to carriage of dangerous goods.
- 6.2 Should Muller suffer damage as a result of failure by the client or contracting party to comply with the obligations laid down in any of these regulations on dangerous goods, the client and/or contracting party shall be obliged to compensate such damage to Muller in full.
- 6.3 The client and/or contracting party shall be obliged to compensate Muller for any damage caused to Muller by the dangerous goods or handling thereof, save where such damage is caused as a result of an act or omission on the part of the board or management of Muller, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. Damage shall also be understood to include damage to third parties which Muller is obliged to compensate; damage shall also be understood to include damage caused by death or injury and any form of financial loss.

7. Indemnification and Himalaya clause

- 7.1 Without prejudice to Article 7, paragraph 2, the client and/or contracting party shall be obliged to indemnify Muller for all third party claims relating to damage caused as a result of the performance of work by Muller, save where such damage is caused as a result of an act or omission on the part of the board or management of Muller, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. Damage shall also be understood to include damage to third parties which Muller is obliged to compensate; damage shall also be understood to include damage caused by death or injury and any form of financial loss.
- 7.2 The client and/or contracting party shall be obliged to indemnify Muller at all times and in all cases against the third-party claims referred to in Article 7, paragraph 1, to the extent that the total of those claims exceeds € 10,000.00 for each occurrence or series of occurrences with the same cause.
- 7.3 Should servants of Muller and/or persons whose services Muller employs for the purpose of implementing the agreement be held liable, such persons shall be entitled to invoke any limitation of and/or exemption from liability which Muller is entitled to invoke on the grounds of the General Terms and Conditions of Business (including the sectoral terms and conditions cited in Article 2) or any other statutory or contractual provision.

8. Tenders and prices

- 8.1 All offers are subject to confirmation.
- 8.2 Orders which are accepted by agents, representatives or other intermediaries or which originate from clients shall not be binding upon Muller until such time as they are confirmed by Muller in writing.
- 8.3 Pricing shall be based on the rates, wages etc., applicable on the date of the tender, the date on which the agreement is concluded or the date of actual performance.
- 8.4 Where the prices charged by its suppliers or wages, social and/or other charges, freights and/or import duties and/or insurance premiums and other costs, under whatever title, are subject to increases or surcharges after the date on which the

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order is accepted, Muller shall be entitled to apply such surcharges accordingly to the prices of ongoing orders; this shall be binding upon the client.

- 8.5 Where prices or rates are based on duration, for instance in the case of outsourcing personnel or leasing of goods or premises, the period in question shall begin when that the person or property is supplied from the Muller company (or from any other location designated by Muller) to the client and shall end when the person or property is once again available to the Muller company. However, the outsourcing or rental period shall be extended automatically by the amount of time required to repair damage caused during the aforementioned period, if the client is accountable for the damaging question on the grounds of these General Terms and Conditions of Business.
- 8.6 The costs shall be limited to wages for the performance undertaken by Muller, including the normal attendant costs. The prices do not include levies imposed by government or other authorities such as VAT, import duties, penalties etc. or guarantees or securities, to any party whatsoever, or the costs of police escorts or other obligations; such costs shall be calculated separately.
- 8.7 Furthermore, our prices are based on normal performance, within normal working hours and a normal duration. In the event of exceptional performance, unusual work or work which is especially time-consuming or requires extra effort, or in the event of disruptive influences affecting either the performance, duration or timing of the work, Muller shall be entitled to charge an additional fee, to be calculated by the standards of fairness, or to charge any resulting additional costs to the client.
- 8.8 Muller shall be entitled to apply a 100% surcharge for work performed on Saturdays, Sundays or recognised public holidays.
- 8.9 Furthermore, the prices shall be calculated on the basis of locations being easily accessible by land and/or by water. Should it subsequently emerge that this condition is not met, Muller shall be entitled to charge any additional resulting costs plus a reasonable profit margin on those costs.
- 8.10 Should it emerge that the contract cannot be performed for any reason without significant risk to personnel and/or material (to be determined at the sole discretion of Muller), Muller shall be entitled to terminate the contract without judicial intervention and to charge for any part of the contract already performed in proportion to the contract as a whole.

9. Payment and proof of delivery

- 9.1 The client shall pay the price invoiced by Muller to Muller within 14 days of invoice date. Muller shall not accept payment terms stipulated (unilaterally) by the client unless agreed specifically by Muller in writing.
- 9.2 If the client does not dispute or return the invoice within 14 days of receipt, Muller shall consider the said invoice to be undisputed.
- 9.3 The client shall not be entitled to invoke set off of the price against any claim it may consider it has on Muller and/or suspend payment thereof.
- 9.4 In the event of failure by the client to pay the invoice amount to Muller within the period for payment provided for in Article 9.1, the client shall become in default without the requirement of any prior notice of default.
- 9.5 Where the client is in default pursuant to Article 9.4, it shall owe statutory commercial interest on the grounds of Article 6:119a in conjunction with Article 6:120 of the Dutch Civil Code until such time as Muller receives payment of the amount in full. The client shall also owe Muller any judicial and extrajudicial costs incurred in order to secure the client's compliance with its (payment) obligations, whereby

extrajudicial costs shall be fixed at 12% of the amount of the claim.

10. Security

- 10.1 Muller shall be entitled at any time prior to, during and even after performance of services or delivery to require security for payment by the client to Muller's satisfaction; in the event of failure to provide the aforesaid security, Muller shall be entitled to terminate the agreement without judicial intervention and without any obligation upon Muller to pay any form of compensation.
- 10.2 Security shall be understood to include the obligation upon the client to assign as security to Muller, upon demand, any rights it may have in respect of its principal on whose behalf Muller is ultimately performing the contract. Muller shall be entitled to proceed, without notice, with the service and collection of claims assigned to Muller and to set off the funds obtained against its own claims on the client.

11. Right of pledge and right of retention

- 11.1 With regard to any party requesting their surrender, Muller shall have a right of pledge and a right of retention to all goods, documents and monies which it possesses now or in the future on the grounds of the agreement, irrespective of the purpose of such movable goods, for all claims Muller has against the client or the contracting party.
- 11.2 Muller shall also be entitled to exercise the rights vested in it pursuant to Article 11.1 in respect of any outstanding debts of the client or contracting party in relation to previous agreements.
- 11.3 In the event of failure by the client to pay the claim, the collateral shall be sold in the framework of the right of pledge invoked by Muller on the grounds of Article 11.1, in the manner prescribed by law or privately if so agreed by the parties.

12. Termination

In the event of negligence on the part of the client or contracting party and/or failure to comply with any obligation to Muller or in the event of bankruptcy, suspension of payments or liquidation, Muller shall have the right, at its own discretion, to terminate all or part of the agreement without the requirement of any notice of default or judicial intervention, without prejudice to its right to claim compensation.

13. Applicable law and competent court

- 13.1 The legal relationship between Muller and its client and/or contracting party shall be governed by the law of the Netherlands.
- 13.2 Any disputes which may arise between the parties shall be settled exclusively by the competent court in Rotterdam.

14. Authentic text

In the event of conflict between the Dutch language text of these General Terms and Conditions of Business and the sectoral terms and conditions cited therein and a translation thereof, the Dutch language text shall prevail.