

GENERAL CONDITIONS
OF THE
ASSOCIATION OF ROTTERDAM STEVEDORES

“ROTTERDAM STEVEDORING CONDITIONS”

Deposited at the registry of the
District Court at Rotterdam
August 12th 1976.

DEFINITIONS

Article 1

1. When reference is made in these General Conditions to *operations*, this covers all acts whether in fact or in law or omissions as well as the making and receiving of oral or written statements.
2. When reference is made in these General Conditions to the *premises* of the stevedore, this covers all sites, buildings (sheds and otherwise) and waterplots where the stevedore is situated or performs his operations, including quays, railway and crane tracks and roads, whether adjacent or not.
3. The titles of the articles in these General Conditions are for reference and are not an exact summary of the subject matter of the article.

GENERAL PROVISIONS

Article 2

1. These General Conditions apply to all orders to and all operations of the stevedore, irrespective of their nature and whether they are stevedoring operations in the strict sense or the stevedore is under an obligation to carry out the operations involved or they are carried out for payment.
2. In respect of orders and operations which do not belong to the operations of a stevedore in the strict sense, such as the provision of tug services, warehousing and the like, the stevedore shall be entitled to invoke also the standard conditions of operators of the relevant branch or such specific conditions as may have been agreed.

The stevedore is equally entitled to invoke the conditions whether standard or personal of third parties with whom he has made a contract relating to his operations or any specific provisions in such contract.

In case of conflict between such conditions and these General Conditions, the stevedore can decide on which conditions or provisions he wishes to rely.

3. The conditions and provisions referred to in sub-article 2 of this article, shall be deemed to have been made in favour of the stevedore and to have been accepted by him as such.
4. These General Conditions can be invoked against the principal as well as his representative, against whom they are equally applicable.
5. The stevedore is also entitled to invoke the custom of the port, even if this differs from what would be valid pursuant to these General Conditions
6. If the stevedore, at any time, does not exercise any right granted to him in these General Conditions, this shall not be construed as a waiver of the right.
7. Reliance on a specific provision or right shall not prevent the stevedore from relying on any other specific provision or right.
8. In case of difference between the Dutch text of these General Conditions and a text in a foreign language, the Dutch text shall prevail.

OFFERS, TARIFFS AND PAYMENTS

Article 3

1. All offers made by the stevedore are without engagement. The tariffs quoted by the stevedore are based on the normal handling of sound and seaworthily packed cargo in the way as customary with the members of the Association of Rotterdam Stevedores, with gangs of the size normal and during the working hours normal when the tariff was quoted.

The stevedore shall be entitled to adjust the tariffs offered by him even after they have been accepted, if one or more of the factors referred to in the preceding paragraph change between the time the offer was made and the execution of the operations

2. All operations, with the exception of those referred to in sub-article 3 of this article, shall be paid for immediately on presentation of the stevedore's invoice, without any deduction or set-off whatsoever.
3. The stevedore's invoice for operations with respect to vessels trading in a regular liner service shall be paid within 14 days after presentation of the invoice to the principal or his representative, again without any deduction or set-off whatsoever.

4. The documentation supplied by the stevedore shall be conclusive evidence of the nature, scope and extent of the operations performed by him such as the hours during which work has been performed and the men and material made available. The stevedore's documentation shall prevail over documentation prepared by others.

5. On invoices due to the stevedore but not paid, interest shall accrue from the time when the invoice is due for payment at the interest rate charged by the Central Netherlands Bank on loans to the customers ("promesse disconto") plus 4%

6. Notwithstanding the foregoing or any other contractual provision, the stevedore shall always have the right to ask for an advance or cash payment or for such security as he considers proper for any invoice presented but not paid and/or for payment of current operations and/or any other claim and until any request for payment or security has been properly satisfied to refuse to perform, or suspend or terminate operations without previous warning or court intervention and without any liability on his part.

7. All claims of the stevedore shall become due immediately in the case of the bankruptcy or suspension of payments (or applications therefore) of the principal or his representative and/or the owner and/or operator and/or charterer of the means of transport in relation to which operations are or have been performed or if any property of the principal or his representative is seized or – in general – if any goods or any contents or part thereof in relation to which operations are or have been performed, such as the vessel, the cargo or the bunkers of the vessel or the freight earned or to be earned by the vessel, are seized.

8. The stevedore is entitled to retain goods, documents and money, for the account and the risk of the principal and/or interested parties, until his claims have been properly paid or until, in his opinion, proper security has been furnished.

The stevedore has the right of pledge on all goods, documents and monies which are in his possession or which will come into his possession for any cause whatsoever, for all claims arising from his operations or otherwise.

If in relation to any claim, no payment has been made or proper security has been furnished within 30 days after request, the stevedore is entitled to sell the goods or documents on which he has the right of pledge by private treaty or public auction without court intervention.

The stevedore is at all times entitled to set off any of his claims against such money that is or shall come into his possession.

9. If the tariff offered by the stevedore is quoted in foreign currency, any devaluation of such currency against the Netherlands guilder or any revaluation of the Netherlands guilder against such currency after the time of the offer, is for account of the principal.

10. Payment to the stevedore shall always take place in the manner indicated by the stevedore. Remittance to an agent of the principal shall not be an acquittal for the principal.

11. Without prejudice to the provisions of article 1433 of the Netherlands Civil Code, payments shall, where more than one account is outstanding, be set off against such outstanding accounts in chronological order, which the stevedore shall decide in case of doubt.

12. The provisions of this article do not invalidate the provisions of the Tariff conditions referred to in article 11.

GENERAL PROVISIONS WITH RESPECT TO THE OPERATIONS

Article 4

1. The stevedore is always entitled to let the operations in whole or in part be performed by one or more third parties or by persons who are employed by third parties.

2. The operations will be carried out at the stevedore's option with his own equipment or with hired equipment or with the help of the loading or the discharging gear or power of the means of transport, which shall be put at his disposal free of charge. The gear and the said means of transport itself must comply with the requirements of the public authorities and the stevedore. The master of the vessel or the persons in charge of the means of transport in relation to which operations are performed, are under an obligation to supervise the proper functioning and use of same and to do whatever is possible to prevent damage.

3. When information is given by the stevedore such as when certain cargo will be discharged or the time of loading and/or delivery, this will be to the best of his knowledge and belief but without any liability on his part.

The ordering alongside of the means of transport of the interested parties is considered as a supply of information as indicated in the preceding paragraph.

4. The clearing up of holds, the opening and closing of hatches, the rigging of derricks and/or winches, the placing and removing of gangways and in general any work, which has no direct relation with the operations in a strict sense but which is necessary in order to commence, continue or terminate the operations, shall take place without any liability on the stevedore's part, even if the execution of such work has become customary.

If the principal fails in good time to have such work performed, the stevedore shall be entitled to do such work for the account and risk of the principal.

5. The principal is under the obligation to ensure there is sufficient light on the means of transport. If light is unavailable or not sufficiently available, the stevedore will make such arrangements as he considers necessary without any liability on his part and he will in no case be liable for fire, explosion or other consequences thereof.

6. Where the stevedore has refused to perform or suspended or terminated operations, the means of transport shall leave the stevedore's premises at his first request, failing which the stevedore is entitled to take such measures as he thinks fit for the account and risk of the principal and/or the carrier and/or the owner and/or the interested party or parties without any liability on his part.

7. Goods, which are not received or taken away timely, may be stored by the stevedore for the account and risk of the principal and/or interested parties, without prejudice to any of the rights of the stevedore by virtue of these General Conditions or otherwise.

CONTROL-SERVICES

Article 5

1. All control-services for the principal such as tallying, weighing, measuring, gauging, checking, sampling, sorting, etc. shall be exclusively performed by the stevedore for a separate charge unless as an exception the stevedore and principal agree that such services shall be performed by a control service company provided such company is a member of the "Scheepvaart Vereeniging Zuid" (Port Employers Association).

2. The principal shall make his request for control by such other control service company to the stevedore timely and he shall pay the stevedore a reasonable fee and reasonable charges for the facilities that the stevedore will place at the disposal of such control service company. If a timely request is not made or no agreement is reached on the fee and/or charges to be paid to the stevedore, he shall not be under any obligation to accept the control service company indicated by the principal on his premises. The stevedore is entitled to impose conditions on such acceptance, notably with regard to the responsibility of or to the said company; if such conditions are not accepted by the control service company, the stevedore may refuse to accept the said company on his premises.

3. The provisions of this article do not exclude the possibility that the stevedore agrees directly with the control service company indicated by the principal on the fee and/or charges to be paid to him, in which case the principal shall be jointly and severally liable with the control service company for the payment of such charges and the provisions of article 3 relating to payment shall apply.

THE PACKING AND MARKING OF GOODS

Article 6

1. Without limitation to what follows hereafter, the cargo to be handled must be packed and marked clearly in conformity with the law of the place where the operations are performed.

2. In any case, it must be clearly and accurately indicated on the goods in conformity, wherever possible, with generally accepted rules failing formal legal rules if they are or contain items which are especially susceptible to rust or self-heating and/or inflammable and/or explosive and/or fragile and/or poisonous and/or radio-active and/or intoxicating and, in general, if they are or contain items which may be injurious or dangerous to men, animals or the environment; also the weight, if more than 1000 kg, must be clearly and accurately indicated on the goods. The stevedore's attention must be drawn to any of the elements referred to in this subarticle and also to goods which, having regard to their value, require special stowage or handling.

3. Furthermore, the stevedore may at any time refuse to perform, suspend or terminate the operations with respect to goods, which do not, in his opinion, comply in any respect with the foregoing requirements and/or take such measures in respect of such goods as he thinks fit (including their destruction), without any liability on his part and for the account of the principal.

4. Indications or descriptions in a foreign language or in technical terms which, in the opinion of the stevedore, are not generally known, shall not be deemed to comply with the foregoing requirements.

PERSONS ON OR AT THE PREMISES

Article 7

1. All persons on or at the premises of the stevedore shall strictly follow the rules and directives issued by any public authority or the stevedore in the interests of order and safety.
2. The vessels and other means of transport and the labourers involved in the delivery and the receiving of goods shall not go under the reach of the cranes in so far as this is not required for the performance of the operations. It is forbidden to smoke on the premises.
3. Persons who enter the stevedore's premises to deliver or receive goods or who are responsible for operations performed or perform operations there for any reason in connection with the operations or the goods involved are responsible to the stevedore for the proper compliance with the provisions of this article and/or the rules and directives referred to in sub-article 1 of this article.
4. The stevedore is entitled at any time to refuse entrance to his premises to persons not wanted there by him or to require such persons to leave.
5. The stevedore is under no obligation to ensure that goods on his premises (whether in sheds or elsewhere ashore) shall be kept above high water.

LIABILITY

Article 8

1. The stevedore is not liable for damage nor for the event which causes such damage, unless and in so far as it is satisfactorily proved these are the result of actual fault or privity or gross negligence of the stevedore or someone for whom he is responsible and, in the latter case, the stevedore has not exercised due diligence in the choice and the supervision of the person(s) involved.
2. Any and all liability of the stevedore ends, if he is not notified in writing of the alleged damage or of the operations which it is alleged were improperly executed before the operations are terminated or before the persons, animals or goods leave his premises (whichever occurs first), unless such notice could not reasonably be given.
3. In the case of the liability of the stevedore, same is limited as follows:
 - a. for damage in respect of goods or animals to a maximum of Dfl. 2,000.- per unit or animal and in the case of non-unit cargo Dfl. 2,000.- per 1000 kg;
 - b. for damage in respect of persons to a maximum of Dfl. 20,000.- per person;
 - c. for damage in respect of goods not covered by sub-article 3a to a maximum of Dfl. 20,000.-

In any event where damages are incurred or suffered in respect of persons and/or animals and/or goods or otherwise, the stevedore's liability shall be limited to Dfl. 50,000.- per assignment or event (at his option), such amount to be divided pro rata between the interests involved according to the damage suffered.

4. If damage occurs or may occur in any form, as well as if any rule or directive is not followed, the stevedore may refuse to perform, suspend or terminate his operations, as well as take such further measures as he thinks fit, without any liability on his part.
5. All damages including costs, loss of profit, losses, fines or other disadvantages incurred by the stevedore in respect of any event for which he is not liable under these General Conditions or otherwise, shall be reimbursed to him at his first request by the principal, irrespective of whether the principal and/or others have incurred damage themselves. If an event has resulted in damages for which the stevedore is liable as well as damages for which he is not liable, the stevedore shall bear his own damages.
6. The principal shall indemnify the stevedore in respect of any claim whatsoever of third parties, against whom the stevedore might not be entitled to invoke these General Conditions, in so far as such claims would have been excluded if such third parties were bound by these General Conditions.

Article 9

Except in case of his actual fault or privity or gross negligence, the stevedore shall never be liable for non-material damage nor for consequential damages in any form whatsoever (such as loss of profit or income, fines and similar charges), nor for the event from which such damage arises, nor for damage of any kind, nor for the event from which such damage arises in the following circumstances:

- a. owing to the condition, nature or stowage of the goods or the nature or condition of any means of transport involved or any part thereof;
- b. The unavoidable result of the method of working, if neither the principal nor the carrier nor other interested parties timely objected in writing concerning such method if working or of the speed required necessitated this method of working in the opinion of the stevedore;
- c. owing to incorrect stowage, if the principal or the carrier or other interested parties gave insufficient guidelines or information and did not object in writing concerning the stowage to the stevedore during the operations;
- d. as a result of the breaking of hoisting devices, ropes, wires and other gear unless where such equipment is the property of the stevedore, it can be proved that such equipment had not been adequately maintained or did not conform to legal requirements or, failing such requirements, to requirements generally considered reasonable
- e. incurred during operations normally performed by others (e.g. ships' crew or agent, irrespective of the reason why the stevedore carried out such work and if he received or will receive payment;
- f. as a result of work done by the stevedore in connection with customs formalities;
- g. owing to strikes of labourers, casual or regular, general or partial, official or unofficial, regardless whether the result of a breach of contract, previous notice of dismissal of labourers, lock out, agitation by or lack of labourers, labour trouble or delay in any other form; irrespective whether labourers in the service of the stevedore or in the service of others (including the principal) are involved;
- h. owing to war, riots, sabotage, seizure, arrest, detention, destruction, terrorism or taking hostage;
- i. owing to burglary, fire or explosion;
- j. owing to the non-compliance by the principal or by third parties or by persons for whom the stevedore is responsible of any rule or directive issued by any public authority or by the stevedore himself (including those contained in these General Conditions);
- k. owing to high water, storm or similar perils;
- l. owing to other goods, latent defects in piping, buildings or machinery, any accident connected with the operations, changes in the quality of goods, leakage, perishing, infestation or insufficient or faulty packing;
- m. owing to any negligence in the performance of anything which the stevedore was not specifically asked to perform;
- n. owing to causes which the stevedore could not reasonably prevent or unknown causes.

Article 10

1. If the stevedore is under obligation to indemnify the principal in respect of damages payable to third parties, the amount of any damages to be paid shall be fixed in consultation with the stevedore. The stevedore shall only be bound to pay the principal, if satisfied that such damages have been or will be paid to the third party.
2. In case of damage, for which the stevedore would appear to be liable, the parties interested are under an obligation to claim such damages in the first instance under any policy or scheme of private or public insurance available to them or the parties which suffered the damages.
3. The stevedore is at any time entitled to invoke provisions relating to the exclusion or limitation of liability, in agreements between his principal and/or the carrier and third parties, or legal rules applicable to such agreements to similar effect.

4. All provisions relating to the exclusion or limitation of liability of the stevedore and the indemnification by the principal in respect of claims by third parties, as well as the provisions for arbitration and any legal rules such as those referred to in sub-article 3 of this article and all other rights intended to benefit the stevedore in connection with possible claims (such as sub-article 6 of article 8), are made also to the benefit of those persons referred to in sub-article 1 of article 4 of these General Conditions, as well as to the benefit of any persons employed by the stevedore and in general to the benefit of any party, for whose acts the stevedore may be responsible or who can be held liable for operations performed by the stevedore.

The stevedore shall, where appropriate be deemed to have acted as agent for the persons referred to in this sub-article when concluding agreements.

Moreover, the stevedore is irrevocably authorized by the principal to waive such rights as the principal may have against the persons mentioned.

TARIFF CONDITIONS

Article 11

1. The tariffs and the conditions attached thereto issued or to be issued by the Association of Rotterdam Stevedores are deemed to form part of the present General Conditions save in so far as the stevedore has expressly agreed the contrary in writing.
2. In case of conflict between any provision of these General Conditions and any Tariff condition, it is for the stevedore to decide on which provision he wishes to rely.

EXPIRATION OF CLAIMS

Article 12

Any claim against the stevedore shall lapse, irrespective of whether there has been compliance with the provisions of sub-article 2 of article 8, six months after the claim has arisen, unless such claim has been made the subject of arbitration in accordance with article 13.

ARBITRATION

Article 13

1. Any dispute which arises between the stevedore and his principal or his representative shall be decided by three arbitrators to be appointed after consultation between the parties or, failing agreement thereon within a reasonably short time, by the Chairman of the Chamber of Commerce at Rotterdam at the request of either party, of which request the other party must have been notified. The Chairman of the arbitrators shall be a lawyer practising at Rotterdam.
2. The arbitrators shall decide "as good men in equity".
3. Each party shall notify the request to arbitrate and the result of the arbitration to the Secretariat of the Association of Rotterdam Stevedores and shall deposit the arbitration award there.
4. The stevedore is entitled to waive the provisions of this article, in particular in respect of claims for unpaid invoices, in which event the competent civil courts at Rotterdam shall have jurisdiction.

APPLICABLE LAW

Article 14

All operations of the stevedore shall be subject to the law of the Netherlands.

EFFECTIVE DATES

Article 15

1. These General Conditions can be referred to as the "Rotterdam Stevedoring Conditions". They shall come into effect on the day of their deposit at the registry of the District Court at Rotterdam. General Conditions deposited earlier shall cease being effective at that time, except for agreements to which they are applicable and in which the present General Conditions cannot be incorporated.
2. With respect to offers or operations current at the time of the deposit of the present General Conditions at the above-mentioned Registry, these General Conditions shall be applicable as from the date of the deposit. Modifications, which may be made to these General Conditions thereafter, shall come into effect as from the day on which they shall be deposited and shall, as from that day, be applicable to all current operations of the stevedore.
3. In case of doubt, it is for the stevedore to decide on which General Conditions or on which provision(s) he wishes to rely, even if this would be contrary to the provisions of this article.