



## COMBINED CARGO TERMINALS – GENERAL TERMS & CONDITIONS

### 1. Definitions

In these general terms & conditions (hereafter: Terms and Conditions) the following definitions shall apply:

- a. CCT: The user of the these Terms and Conditions, Combined Cargo Terminals B.V., registered in Moerdijk (4782 PM), at de Middenweg 35;
- b. EDI: (Electronic Data Interchange) the electronic exchange of structured and standardised messages between information systems;
- c. Client: the counterparty to CCT;
- d. Agreement: any agreement arising between CCT and the Client, any amendment or addition thereto, as well as any (legal) action in contemplation of, or for carrying out, that agreement;
- e. Terminal: any site, building or body of water where CCT is located or where it performs Work, including (as the case may be) adjacent quays, railways, crane tracks, roads and waterways;
- f. Means of Transport: any equipment intended to transport goods or persons, regardless of whether this structure has its own drive power;
- g. Terms and Conditions: these CCT general terms & conditions;
- h. Work: any actual or legal act, in whatever form and however described, which CCT carries out for or on behalf of a Client.

### 2. Application

**2.1.** These Terms and Conditions shall apply to all legal relationships with CCT under which Work is carried out, regardless of whether this is done on behalf of another party, against payment or at no cost.

**2.2.** Application of any Client or third party purchase conditions or other general terms and conditions shall be expressly excluded.

**2.3.** Any deviations from these Terms and Conditions shall apply only if they have been explicitly agreed with CCT in writing.

**2.4.** The Dutch language version of these Terms and Conditions shall take precedence over any translations of these Terms and Conditions.

**2.5.** In the event of discrepancy between the provisions of these Terms and Conditions, and other terms and conditions declared by CCT as applying to the Work, the provision which most benefits CCT shall apply.

**2.6.** Additionally, the Terminal Operator shall be entitled to use the port for commercial purposes.

### 3. Quote and Acceptance

**3.1.** All offers and quotations from CCT are made without obligation and shall be valid for thirty (30) days from the date of the offer or quotation, unless explicitly stated otherwise.

**3.2.** No rates lists, catalogues or other CCT documentation supplied with an offer or quotation shall be legally binding with regard to the rate set.

**3.3.** The Agreement between CCT and the Client shall come into effect and be legally binding on CCT only if this is confirmed in writing by CCT, or through CCT actually carrying out the Agreement.

#### **4. Carrying out the Agreement**

**4.1.** When carrying out Work, CCT relies upon the accuracy and completeness of the contract given by the Client, and the information and particulars provided in that context, in order to be able to carry out such contract correctly. If a difference of opinion arises concerning an Agreement between CCT and the Client, as to whether CCT has carried out the contract correctly, the burden of proof with regard to the particulars of the assigned contract, and the completeness and accuracy of the information and particulars provided by the Client, shall be on the Client.

**4.2.** CCT shall be entitled to engage third parties in the context of the Work or other activities, and to accept (general) terms and conditions from those third parties. The Client agrees to be bound by those terms and conditions.

**4.3.** In the event of discrepancy between the Terms and Conditions and the terms and conditions referred to in Clause 4.2, the provision which most benefits CCT shall apply.

#### **5. Rates**

**5.1.** Unless explicitly agreed otherwise, prices shall:

- a. be based on cost prices, wages, employment costs, special or government levies, insurance premiums and other costs applying during the offer period;
- b. exclude VAT;
- c. be shown in euros.

**5.2.** CCT shall be entitled to increase the rates agreed if, after entering into the Agreement, there are increases in factors which influence costs, beyond the control of CCT, which

could not be taken into account at the time of entering into the Agreement, including, but not limited to, an increase in raw material costs, exchange rate differences, increases in taxes or levies and collective wage increases. If the rate increase does not exceed 10% of the rates agreed, the Agreement shall remain in force and the Client shall be liable to pay the increased rate. If the rate increase exceeds 10%, the Client shall be entitled to terminate the Agreement, subject to a notice period of thirty (30) calendar days from the date of notification of the rate increase.

**5.3.** If, in the reasonable opinion of CCT, circumstances have changed after entering into the agreement such that CCT cannot reasonably be expected to (continue to) carry out the Work, even at rates adjusted in accordance with Clause 5.2, CCT shall be entitled to terminate the agreement with regards to Work not yet carried out, without thereby becoming liable for damages.

**5.4.** Any discount on the agreed rate shall be valid only following written confirmation by CCT.

#### **6. Payment**

**6.1.** Payment of CCT invoices must be made by the Client within the payment terms as stated on the invoice. If the invoice does not include payment terms, the Client must pay the invoice within fourteen (14) days of the invoice date.

**6.2.** Disputing the invoice shall not suspend the Client's liability for payment. In the event of a dispute concerning the amount owing by the Client to CCT on account of work carried out, the documentation

submitted by CCT shall be sufficient proof of the nature, particulars and extent of the Work carried out, subject to proof to the contrary by the Client. CCT documentation shall take precedence over documentation prepared by the Client or third parties.

**6.3.** The Client shall in no event be entitled to set off any (alleged) claim of its own of whatever nature against the claim for payment from CCT, or for any reason whatsoever, to suspend the liability to settle the claim for payment from CCT.

**6.4.** If the Client fails to pay invoices from CCT within the stipulated payment terms, the Client shall automatically be deemed in legal default and CCT shall be entitled to statutory commercial interest on the balance then outstanding, without further notice of default, from the payment date up to the date of full payment, in accordance with Article 6: 119a of the Netherlands Civil Code.

**6.5.** Any legal or third-party recovery (collection) costs, reasonably incurred by CCT as a result of the Client's failure to meet its payment liabilities on time, shall be borne by the Client. Third-party recovery costs are set at 15% of the invoice amount, with a minimum of €500.

**6.6.** CCT shall be entitled at all times to demand a deposit, payment in advance, interim payment or, in its opinion, adequate security from the Client, for anything that CCT holds or will receive from the Client. If the Client does not immediately comply with such a request, CCT shall be entitled to decline, suspend, interrupt or terminate the Work without reminder, notice of default or legal intervention. The same shall apply if the Client fails to pay any costs whatsoever arising from this.

**6.7.** In the event of liquidation, (application to the Court for) suspension of payments, bankruptcy, seizure of goods for Client debt, recourse to the statutory debt rescheduling scheme or any other circumstance as a result of which the Client can no longer dispose of its assets, any liabilities on the part of the Client shall immediately fall due and payable to CCT. In such event, CCT shall also be entitled to terminate the legal relationship with the Client with immediate effect, without prejudice to CCT's right to compensation.

**6.8.** CCT shall be entitled to retain goods, documents and funds for the account and risk of the Client or interested parties, until all claims by CCT against the Client have been paid or, in the opinion of CCT, adequate security has been provided. CCT shall have a right of lien and/or retention over any assets, documentation or funds which it holds or will hold, for whatever reason, against any claims that CCT may have against the Client. In the event that the claims against which these rights are exercised are not settled or not settled in time, or if the Client fails to provide adequate security within a reasonable period, CCT shall be entitled to sell the security in a manner approved by law. CCT may also exercise these rights for anything the Client still owes in connection with previous legal relationships or prior contracts. CCT shall at all times be entitled to set off any claims against any funds it may hold or will hold.

**6.9.** Payment to CCT must be made using the method indicated by CCT. Payment to any party representing the Client does not release the client.

**6.10.** Payments from the Client to CCT shall be applied as follows: firstly, to reduce any costs incurred, then to reduce any interest that has accrued, and finally to reduce that share of the principal sum and current interest as determined by CCT, regardless of any Client instructions.

**6.11.** If the Client fails to settle any claim from CCT in good time, the amount of the claim shall increase by at least 10%, to cover administration costs for collection by legal or other means, unless these costs turn out to be higher. In such event, CCT shall also be entitled to the excess costs.

## **7. Terminating the agreement**

**7.1.** CCT shall be entitled to terminate or suspend carrying out its obligations arising under the Agreement in the event that the Client fails to meet an obligation arising under the Agreement or these General Terms and Conditions, or if CCT has reason to believe that the Client will not be able to meet those obligations. In such event, CCT shall not be held liable for any consequences which might result for the Client.

## **8. The Work**

**8.1.** CCT shall be entitled to have the Work carried out in whole or in part using personnel and equipment involved with third parties or, at CCT's option, using loading and unloading equipment or driving power of any Means of Transport made available free of charge by the Client.

**8.2.** CCT and the Client shall each, as far as applicable to them, be responsible for obtaining and keeping up to date any necessary permits as well as complying with any applicable regulations. They shall be responsible for their employees, assistants and subcontractors meeting these obligations.

**8.3.** Any information supplied by CCT, such as availability of berths and the time the Work will be carried out, shall be without obligation.

**8.4.** CCT and the Client shall be responsible for material supplied by them for carrying out the Work.

**8.5.** The Client must arrange the Means of Transport and the items to be loaded or unloaded by them at their own cost and risk, in such a way that CCT can carry out the Work safely, responsibly and without delay.

**8.6.** In the event of declining, suspending, interrupting or terminating the Work, the Client must arrange for the Means of Transport and related equipment to leave the Terminal immediately upon request from CCT, failing which CCT shall be entitled to arrange this at the Client's cost and risk.

**8.7.** The Work shall not include inspecting or insuring the goods unless this has been expressly agreed in writing. In the latter event, the costs of inspection and insurance will be borne by the Client.

**8.8.** The Client shall be responsible for seaworthy or adequate packaging for the relevant goods (which also includes containers in which the goods are stowed) and clearly legible labelling of the goods in accordance with applicable (safety and environmental) regulations, or in the absence of these, in accordance with generally accepted standards for transport.

**8.9.** The Client must inform CCT in writing, in good time before the Work commences, of any goods potentially special or hazardous in nature, scope and handling, and, to provide CCT generally and in good time, with any

instructions or information that it knows or should know, which CCT needs in order to carry out the Work safely, responsibly and without delay. Additional work in connection with failure to comply with the foregoing shall be borne by the Client.

**8.10.** The Client guarantees that anyone who enters the Terminal by water or land as part of the Work for or on behalf of the Client, shall comply strictly with safety and other regulations in force at the Terminal.

**8.11.** CCT shall be entitled to turn away or have removed from the Terminal any person not complying with these regulations or threatening not to comply with them, or who is otherwise unwanted, in the opinion of CCT. The Client shall include a third-party clause in favour of CCT in its legal relationships with third parties, such as a so-called Himalaya clause, under which CCT has the right to (partly) invoke legal clauses and any liability limitations or exclusions at the Client's disposal, including a "before-and-after-clause", for damage, loss and/or delay to the goods to be transported or having been transported by the Client, which CCT accepts in advance.

## **9. Electronic message exchange**

**9.1.** Messages between the Client and CCT can be exchanged using EDI if agreed in writing.

**9.2.** If message exchange using EDI has been agreed upon, this shall be done in accordance with internationally applicable messaging standards and recommendations.

## **10. Force majeure**

**10.1.** CCT shall be entitled to suspend the Work in the event of force majeure. CCT shall not be held liable for the consequences of force majeure and/or such suspension of the Work.

**10.2.** Force majeure shall apply to any circumstances which CCT could not reasonably have avoided and the consequences of which CCT could not reasonably have prevented. This includes, but is not limited to:

- a. strikes or interruptions to work, lockouts, working to rule or protests, and any other forms of employee dispute;
- b. extreme weather or water conditions and natural disasters;
- c. burglary, fire, explosion and nuclear reaction;
- d. government measures;
- e. war, riot, rebellion, terrorism, hostage-taking, sabotage, havoc and similar unrest;
- f. computer and power failures;
- g. hidden faults in equipment used by CCT;
- h. Any other circumstances not the fault of CCT and which are not for its account in law, legal action or generally accepted views.

**10.3.** In the event of force majeure, CCT shall inform the Client of this in writing as soon as possible, and shall undertake all reasonable measures to end the force majeure situation as soon as possible and to limit the consequences of it.

**10.4.** Any additional costs caused by force majeure shall be at the cost and risk of the Client.

## **11. Liability**

### **A. CCT**

**11.1.** Without prejudice to Clause 5.4, 6.6, 11.8 and 11.11, CCT shall be liable for:

- a. damage to or loss of any Means of Transport owned, chartered, rented or otherwise operated by the Client, during the time that the Means of Transport is present at the Terminal in connection with the Work;

**b.** damage to or loss of items to which the Work relates, from the moment of physical receipt until the moment of physical delivery by CCT;

**c.** injury to or death of any person involved for or on behalf of the Client in carrying out the Work, where this occurred at the Terminal.

**11.2.** CCT shall not be liable for the aforementioned damage or loss if it proves that that damage or loss was not caused through the fault of CCT or of persons or parties for whom CCT is responsible in connection with the Work.

**11.3.** CCT shall in no way be liable for the aforementioned damage or loss if it proves that this damage or loss was caused by intent or gross negligence on behalf of persons or parties for whom CCT is responsible in the context of the Work.

**11.4.** If the aforementioned damage or loss appears after the Means of Transport, goods or person concerned has left the terminal, CCT shall be liable only if the Client proves that the damage or loss is due to the fault of CCT or the persons or parties for whom it is responsible in accordance with Clause 11.1.

**11.5.** CCT shall not be held liable for lost off profits, loss of production, delay or any other form of consequential damage.

**11.6.** CCT shall be exempt from any liability unless the Client notifies CCT in writing of damage or loss as described in Clause 11.1, either within 14 days after the Client has become aware of the damage or within 14 days after the Means of Transport, goods or person in question has departed the Terminal. Any claim against CCT becomes time-barred after twelve months elapse from the time the claim arose.

**a.** for damage or loss referred to in Clause 11.1 (a), the liability of CCT shall be limited to €1,000,000 (in words: one million euros) per event;

**b.** for loss or damage as referred to in Clause 11.1(b), CCT's liability shall be limited to 875 SDR for any one event (in words: eight hundred and seventy-five special drawing rights) per package or unit, or 2 SDR (in words: three special drawing rights) per kilogram of gross weight of the lost or damaged items, whichever is greater;

**c.** for loss or damage as referred to in Clause 11.1(c), CCT's liability shall be limited to €1,000,000 (in words: one million euros) for any one event.

**d.** If there are several claims for any one event which on aggregate exceed the limits stated, that maximum shall be applied proportionately between the agreed or legally determined value of those claims.

**11.8.** CCT shall make every effort to take appropriate measures to limit the risk of stowaways or other unauthorised people gaining access to the Client's Means of Transport. In the event that stowaways or other unauthorised people are nevertheless found in the Client's Means of Transport, CCT shall not be liable for any damage, costs or penalties which may result.

**11.9.** The Client shall indemnify CCT immediately and on demand against all claims or claims from third parties in connection with the Work, where these exceed CCT's liability under the Terms and Conditions.

**11.10.** Any limitations to liability or exclusions in the Terms & Conditions favouring CCT shall also apply to its employees, independent ancillary staff and subcontractors.

**11.11.** CCT policies and procedures shall also apply to filing claims, as included in the latest version of the CCT claims procedure. This claims procedure can be found on the CCT website.

## **B. The Client**

**11.12.** In addition to its liability under common law, the Client shall also be liable for any claims, of whatever nature, relating to customs or similar duties and taxes, penalties, (negative) costs or interest, including import duties, excise duties or costs for removal or destruction related to or in connection with goods that CCT holds, has held, or will hold in the course of the Work. The Client shall fully indemnify CCT immediately and on demand, or provide adequate security immediately and on demand, in favour of CCT or the relevant customs authority, including reasonable costs of defence.

**11.13.** Where the Client is liable to third parties for damage for which the Client may have recourse to CCT, the Client shall give CCT the opportunity to attend or be represented at any investigation into the cause and extent of that damage. The Client must also demonstrate that it has used all arguments in defence in its legal relationship with such third party, to reject or limit liability unless CCT has explicitly agreed in writing to the Client's acceptance of liability or to making a relevant settlement with that third party. If the Client fails to meet these obligations, CCT shall be released from any liability.

**11.14.** The Client shall take out and maintain adequate insurance to cover its potential liabilities to CCT. The Client shall allow CCT to inspect any relevant policies on request.

## **12. Applicable law and jurisdiction**

**12.1.** The law of the Netherlands shall apply exclusively to any Agreement between CCT and the Client.

**12.2.** Any disputes under or in connection with the said legal relationships shall be subject to arbitration in Rotterdam in accordance with the UNUM Arbitration Regulations.

**12.3.** CCT shall be entitled to waive arbitration for recovery of financial claims, in which event the competent court in Rotterdam shall have exclusive jurisdiction.