



## CONDITIONS INTERMODAL BARGE TRANSPORT INLAND TERMINAL-OPERATORS (VITO-intermodal barge conditions)

### ARTICLE 1

#### DEFINITIONS

In these Conditions, the following phrases have the following definitions:

1. **VITO-Intermodal barge conditions:** these terms & conditions as applied by the members of the Association of Inland Terminal Operators.
2. **CMNI:** treaty regarding the agreement of transport of goods across inland waterways. (Budapest 2001).
3. **Affreightment Conditions 1991**, registered with the clerk of the Amsterdam and Rotterdam courts, being the last registered version of this document.
4. **AVC:** the Terms & Conditions 2002, as determined in its most recent version by the SvA (Stichting Vervoersadres) and registered with the clerk of the Amsterdam and Rotterdam courts in the last registered version of this document.
5. **BW:** Dutch Civil Code (Burgerlijk Wetboek)
6. **CMR:** treaty regarding the agreement for international transport of goods by road (Geneva, 1956) as amended by the protocol of July 5<sup>th</sup> 1978.
7. **CIM:** The uniform rules regarding the agreement of international transport of goods by railway connected to the Treaty regarding international railway transport (COTIF CIM – Appendix B) of May 9th 1980 in the version of the Protocol of amendments of June 3rd 1999.
8. **Container Handling:** all activities such as transport, transshipment, temporary storage and removal, concerning a Container of multiple Containers, to the extent of which the Client and the Inland Terminal Operator have agreed upon.
9. **Container Handling Agreement:** the agreement in which the Inland Terminal Operator commits itself to the Client for the carrying out of Container Handling.
10. **Additional Activities:** all activities agreed upon, not being Container Handling, such as expedition activities, entry into storage, being or not being stored in a Container, stock management, order processing, order picking, preparing for shipment, invoicing and distributing matters, as well as any information exchange and management resulting from the aforementioned tasks.



11. **Container:** A container subject to the Container Handling Agreement meeting the requirements set forth in the Convention Safe Container of December 2<sup>nd</sup> 1972 Geneva, including all goods which it contains for the purpose of transport.
12. **Inland terminal:** A loading, unloading, storage or transshipment facility connected to a railway, road or inland waterway route, where Containers are received or delivered.
13. **Client:** the legal entity or individual providing for an assignment for Container Handling activities and any Additional Activities.
14. **Inland Terminal Operator:** The counterparty to the Client who carries out the Container Handling and any possible Additional Activities.
15. **Recipient:** the legal or natural entity to which, or the location where to, the Inland Terminal Operator shall deliver the Container in accordance with the Container Handling Agreement.
16. **Acceptance:** the moment on which the Inland Terminal Operator accepts the Container.
17. **Delivery:** the moment on which the Inland Terminal Operator makes the Container available to the Recipient.
18. **Force majeure:** Circumstances outside of the influence of a careful Inland Terminal Operator, the results of which could not be evaded and to the degree the Inland Terminal Operator could not avoid any consequences.
19. **Business Days:** all calendar days with the exception of Saturdays and Sundays as well as all official Dutch public holidays.



## ARTICLE 2

### SCOPE OF THESE CONDITIONS

1. The VITO-multimodal conditions are applicable to the Container Handling Agreement and the Additional Activities to the degree wherein these conditions are not contrary with peremptory law.
2. To the extent wherein these VITO-multimodal conditions does not cover matters at hand, all Container Handling and Additional Activities are subject to the following regulations or treaties in the following situations:

**Inland waterway transport:**

The CMNI, including for domestic transport in accordance with Article 8:889 BW, as well as the Affreightment Conditions 1991;

**Railway transport:**

The CIM;

**Road transport:**

The CMR, additionally the AVC to the extent wherein the provisions of the latter do not conflict with the CMR;

**Multimodal transport :**

If the location where the damage has occurred is known, the aforementioned provisions are applicable. If the location is unknown, the articles 8:42 and 8:43 BW are applicable.

## ARTICLE 3

### OBLIGATIONS OF THE INLAND TERMINAL OPERATOR

The Inland Terminal Operator is obliged to:

1. Fulfill all Container Handling and Additional Activities which were agreed upon.
2. Accept and Deliver the Container on the agreed location, time and manner, including a transport document and all other documents issued by the Client. Acceptance and Delivery of the Container shall happen in the same state as in which it was offered, or in the state which was agreed upon.



3. Check whether the seal on the Container is present and intact on the moment of Acceptance. Should, upon this inspection, become clear that the seal has been broken, the Inland Terminal Operator is obliged to inform the Client of this event and request instructions. The Client is aware of the fact, and accepts this, that upon loading an inland vessel in a sea harbor, a physical check of the presence of an (unbroken) seal or the contents of the container is impossible.
4. Exclusively check the contents of a Container per written request of the Client.
5. If no timeframe for the Acceptance and Delivery was agreed upon, these activities shall be carried out in a timeframe which may be reasonably expected from a reasonably effective and reasonably careful Inland Terminal Operator. This timeframe commences on the moment of Acceptance and ends on the moment of Delivery, after which this term is regarded to be the de facto term agreed upon.
6. Appoint one or more contact persons and inform the Client about the relevant information to this respect.
7. Care for the storage of Containers in the context of Container Handling and possible Additional Activities at the site of the Inland Terminal, or on an alternative premises or space agreed upon.
8. Take all reasonable and required measures regarding the Container which derive directly or indirectly from the Container Handling or the Additional Activities, the costs of which shall be borne by the Client and for which the Inland Terminal Operator shall consult the Client to the extent wherein this is reasonably possible.
9. To fully insure any possible liability resulting from the law and regulations, as well as the VITO-multimodal conditions, with a reputable insurance company, the costs of which shall be borne by the Inland Terminal Operator and of which proof shall be provided to the Client per request.
10. Offer access to the terrain and locations where the Container is stored to the Client and individuals appointed by him, provided that this:
  - happens in the presence of the Inland Terminal Operator;
  - has been made known prior to the visit;
  - proceeds in accordance with the House Rules of the Inland Terminal Operator.
11. Ask for instructions from the Client before accepting a Container which has been visibly damaged from the outside. If the instructions are not provided for within a reasonable timeframe, the Inland Terminal Operator has the right to refuse the Acceptance of the damaged Container and/or goods.
12. Be responsible for the materials used for fulfilling the activities forthcoming from the Container Handling Agreement and the Additional Activities.



13. To be bound by confidentiality of all knowledge and information which come to the attention of the Inland Terminal Operator as a result of the Container Handling Agreement and the Additional Activities.

## **ARTICLE 4**

### **LIABILITY OF THE INLAND TERMINAL OPERATOR**

1. If the Container which was accepted by the Inland Terminal Operator is not delivered in the state it was received or the state which was agreed upon, the Inland Terminal Operator is liable for the occurred damages, except in cases of Force Majeure or any other limitation set forward in these Conditions. The burden of proof for any damaged properties lies with the Client.
2. The Inland Terminal Operator is not liable for damages to goods if these damages have resulted from any packing or stowage by the Client which is inadequate for the transport of goods in a Container.
3. The liability of the Inland Terminal Operator as described under 1 of this article regarding the property damages is limited to 8 1/3 Special Drawing Rights (S.D.R.) per kilogram missing or damages goods, with the exception of any liability which has been regulated with peremptory rules for transport per railway, inland waterway vessel or by road in respectively the CIM, the CMNI and the CMR.
4. If and to the extent that peremptory rules do not object against it, the liability of the Inland Terminal Operator in the absolute sense is limited to a maximum of an amount to which parties can agree upon in the Container Handling Agreement. If such an amount is not specifically agreed upon for the Container Handling or Additional Activities, the liability is limited to a maximum amount of € 1,000,000.- per event or number of events resulting from the same cause of damage.
5. If the Inland Terminal Operator should not complete the Container Handling and/or Additional activities on the moment agreed upon or within the timeframe, method and location, he is obliged to carry out these activities as soon as possible, as close to the method agreed upon and without any extra costs for the Client.



6. If any demurrage or detention regimes are applicable between the Client and a ship owner or warehouse keeper, which induce costs for exceeding the pick-up/drop-off term for a Container, the Inland Terminal Operator shall only be liable for these costs if and to the extent of which the Inland Terminal Operator has delivered a culpable inadequate performance in the delivery of the activities forthcoming from the Container Handling Agreement and only in the case wherein he was made aware of such arrangements in writing beforehand. Unless specifically agreed upon otherwise, the maximum costs of liability are limited to € 10.00 per day per Container, to be calculated from the period of one week after the Container was made available for transport and not to exceed the period of two months.
7. Should the Client have made extra costs which were induced by non-compliance of delivery agreements by the Inland Terminal Operator concerning the time, location and method of delivery as agreed upon, the Inland Terminal Operator will be liable for an amount which is to be determined in the Container Handling Agreement. If such an amount was not specifically agreed upon, the liability will not exceed an amount of € 700.00 per event, or multiple events if these were caused by the same origin.
8. Should the Inland Terminal Operator fail to forward the information of one or more contact persons as described in Article 3 paragraph 6, then the individual who signed the Container Handling Agreement on behalf of the Inland Terminal Operator shall be deemed to be the aforementioned contact person.
9. The Inland Terminal Operator is not liable for damages or costs which have occurred as a result from information and assignments, given by or to other persons than meant and described in paragraph 8 of this article.
10. Should the Inland Terminal Operator repeatedly not fulfill his obligations to the Client, the latter has the right to terminate the Container Handling Agreement, notwithstanding his rights to file for reimbursement of damages as described in the paragraphs 1, 3, 4, 6 and 7 of this article. This right can only be invoked after having provided a notice of default in writing to the Inland Terminal Operator, offering a final reasonable term to fulfill his obligations, which has passed without fulfillment of the obligations.
11. With the exception of the liability explicitly set forward in this article, the Inland Terminal Operator rejects all liability for any damages or costs.
12. This limitation of liability for the Inland Terminal Operator also applies to its employees, auxiliary personnel and subcontractors.



## **ARCITLE 5**

### **OBLIGATIONS OF THE CLIENT**

The Client is obliged to:

1. Appoint one or more contact persons and inform the Inland Terminal Operator about their contact information.
2. Provide the Inland Terminal Operator with all the information regarding the Container of which he knows or should know that it is required or important for correct delivery on the Container Handling Agreement and the Additional Activities, unless the Inland Terminal Operator already is or should be aware of this information. The Client guarantees the accuracy of the information he provides.
3. The aforementioned information also includes any possible arrangements made by the Client with a ship owner or warehouse keeper concerning the ultimate pick-up/drop-off date of Containers and the costs which will be invoiced if these terms are exceeded.
4. Offer the Container to the Inland Terminal Operator on the day, time, location and method agreed upon, accompanied with transport documents and all other documents of which the Client is legally bound to include.
5. Pay, in addition to the price agreed upon for the Container Handling and Additional Activities, the costs mentioned in Article 3 paragraphs 1 and 8, within the payment term. If the Client is entitled to any claim, as set forward in Article 4 paragraph 6, the Client shall provide for a specified overview of these costs to the Inland Terminal Operator within two months of having discovered this right, in absence of which, all claim rights will be forfeited.
6. Safeguard the Inland Terminal Operator against any claims of third parties concerning damaged, caused by an act or omission of the Client, his subordinates or any third party or individual whose services are used by the Client.
7. Guarantee the proper working of the materials offered to Inland Terminal Operator to proceed with any kind of work.





8. To collect and accept any remaining properties at the site of the Inland Terminal Operator for the purpose of the Container Handling or Additional Activities on the last Business Day before the Container Handling Agreement is terminated and after having paid all that is or shall be owed.
9. For that what is or shall be owed after termination of the Container Handling Agreement, the Client will provide for sufficient collateral upon a first written request.
10. To be bound by confidentiality of all knowledge and information which comes to the attention of the Client based on the Container Handling Agreement.

## **ARTICLE 6**

### **LIABILITY OF THE CLIENT**

1. The Client is liable for all damages caused by individuals and/or goods from his side to whom the Inland Terminal Operator has granted access to his terrain in accordance with Article 3 paragraph 10 of these conditions.
2. If the Client fails to appoint one or more contact persons as meant in Article 5 paragraph 1 of these Conditions, it shall be assumed that the individual who signed the Container Handling Agreement on behalf of the Client is the contact person.
3. Should the Client fail to provide timely for information regarding the Container, as well as its processing, as set for forward in Article 5 paragraph 2 of these Conditions, or if the Container is not made available on the moment, location and method agreed upon, including the required documents as set forward in Article 5 paragraph 4 of these Conditions, he is required to fulfill these tasks as soon as possible, without charging any fees and in accordance with the methods and ways which were agreed upon. If the Inland Terminal Operator has made extra costs as a result of non-compliance with the obligations arising from Article 5 paragraph 2 and 4 of these Conditions, the Client shall be liable for these additional costs with a maximum amount which is to be defined in the Container Handling Agreement. If such an amount was not explicitly agreed upon, the liability of the Client will be limited to a maximum of € 700.00 per event.





4. The Client is liable for all claims from customs authorities and equal claims, levies, fines, costs and interest, including import and excise duties and costs for the disposal or destruction of goods which the Inland Terminal Operator possesses or shall possess as a result of the Container Handling. The Client will safeguard the Inland Terminal Operator per first request for the aforementioned claims and provide for sufficient collateral towards the Inland Terminal Operator or customs authorities, including the reasonable costs incurred for defenses.
5. Should the Clients repeatedly not fulfill his obligations to the Client, the latter has the right to terminate the Container Handling Agreement, notwithstanding his rights to file for reimbursement of damages. This right can only be invoked after having provided a notice of default in writing to the Client, offering a final reasonable term to fulfill his obligations, which has passed without fulfillment of the obligations.
6. The Client will safeguard the Inland Terminal Operator per first request against any claims or entitlements of any third party with a direct or indirect connection to the Container Handling Agreement to the extent wherein they exceed the liability of the Inland Terminal Operator based on the Container Handling Agreement and the VITO Multimodal Conditions.

## **ARTIKEL 7**

### **EXPIRY TERMS**

1. All claims originating from the Container Handling Agreement expire after 12 months have passed.
2. The expiry term commences on the day after the day on which the Container was or should have been delivered. In all other cases, the expiry term commences on the day the claim arose.



## **ARTICLE 8**

### **PAYMENT CONDITIONS**

1. All amounts owed by the Inland Terminal Operator and the Client, from whatever reason they may have originated, will be paid, in compliance with the payment term agreed upon; in absence of an agreed upon payment term, the payment shall take place within fourteen days after the invoice date.
2. Should the Client or the Inland Terminal Operator not pay any owed amount within the term agreed upon or in absence of which within thirty days after the invoice date, he is bound to pay the statutory commercial interest based on Article 6:119 BW from the day the payment should have been made up to the day the payment up to the day the payment is actually made.
3. The Inland Terminal Operator and the Client are bound to pay the actual extrajudicial costs made to collect any claim, as mentioned in paragraph 1 of this article, to the counterparty. The extrajudicial costs are owed from the moment that a state of default has occurred and the claim was outsourced for debt collection.
4. Reciprocal offsetting of claims is not allowed.
5. All amounts as aforementioned in the 1<sup>st</sup> paragraph of this article, shall become immediately due for reciprocal offsetting, therewith deviating from paragraph 4 of this article, if:
  - a. one of the parties is declared bankrupt, or if payments are suspended under protection of the law;
  - b. one of the parties: :
    1. offers a creditor haircut;
    2. terminates the Container Handling Agreement based on either Article 4 paragraph 7 or article 6 paragraph 5 of these Conditions;
    3. ceases his business activities or, for a legal entity, is dissolved



## **ARTICLE 9**

### **COLLATERAL**

1. The Inland Terminal Operator has a right of retention for all goods and documents he possesses resulting from the Container Handling to anybody. This right is voidable if reasonable doubt existed on the moment of Acceptance of the Containers, about the authority of the Client to offer the Containers to him.
2. The Inland Terminal Operator also holds the retention right towards the Client for any good or amount owed as a result of previous assignments.
3. Towards the Recipient, who entered into a previous Container Handling Agreement as such, the Inland Terminal Operator may also execute the retention right for that which is owed to him based on these previous agreements.
4. If during or regarding the financial settlement any dispute arises concerning the owed amounts or if the calculation for the definitive amounts cannot be made rapidly, the party who claims the Delivery is obliged to immediately pay the amount to which both parties do agree and to provide for sufficient collateral on the amount which is either disputed or has not been entirely determined.
5. All goods, documents and finds, temporarily possessed by the Inland Terminal Operator with regards to the Container Handling Agreement, are valid as collateral to all claims he has towards the Client.
6. With the exception of a Client who is declared bankrupt or has received payment protection under the law, or in the case of a natural person if offered debt relief under the law, the Inland Terminal Operator never has the right to sell the goods held as collateral without court approval; such in accordance with Article 3:248 paragraph 2 BW.



## **ARTICLE 10**

### **APPLICABLE LAW AND RESOLUTION OF DISPUTES**

1. All agreements between parties are exclusively subject to Dutch law.
2. All disputes arising between parties which cannot be solved in proper consultation amongst one another shall be resolved by the arbitration in Rotterdam according to the TAMARA Arbitration Code; therewith excluding the regular court. The arbitral tribunal will consist of three arbitrators, unless parties agree to a single arbitrator. The procedure shall take place in the Dutch language.
3. The Inland Terminal Operator has the right to dismiss the arbitrage and bring a case to the regular court system if the case regards collection of financial claims.

## **ARTICLE 11**

### **QUATION TITLE AND ORIGINAL TEXT**

1. These conditions may be referred to as the "VITO multimodal Conditions".
2. This document is made available in several languages for the convenience of and transparency to each individual reader. Although these multilingual versions have been created with the utmost care, should any discrepancy exist between these different variations, then the original Dutch text will always prevail.