

General Terms and Conditions of The Flexitank Company

1. Applicable terms and conditions

1.1 All acts and activities of The Flexitank Company B.V., registered with the Chamber of Commerce under number 65323912, hereinafter referred to as The Flexitank Company, are—depending on the nature of the acts or activities—governed by the terms and conditions listed below per category of acts to be performed and/or services to be rendered by The Flexitank Company. This is always excluding the dispute resolution provisions included in those terms and conditions, but including the provisions contained in the following paragraphs of this article and in the subsequent articles of these general terms and conditions, which shall at all times prevail over any deviating provisions in the terms and conditions mentioned below:

1.1.1 For freight forwarding activities:

a) the Logistics Service Conditions (LSV) filed by FENEX (the Netherlands Association for Forwarding and Logistics) and TLN (Transport and Logistics Netherlands) with the Registry of the District Court of Rotterdam on 2 April 2014 under number 28/2014; and/or

b) the Netherlands Freight Forwarding Conditions / Fenex Conditions, filed on 1 May 2018 with the District Court of Amsterdam under number 23/2018 and with the District Court of Rotterdam under number 16/2018 (latest version).

In the event of a conflict between the terms under (a) and those under (b), the terms under (a) shall prevail.

1.1.2 For cargo handling/ship's agent activities (cargadoorswerkzaamheden): the General Netherlands Ship's Agent Conditions, filed with the registries of the District Courts of Amsterdam, Dordrecht, Groningen, Leeuwarden, Middelburg and Rotterdam (latest version).

1.1.3 For warehouse activities (veemwerkzaamheden): the Warehouse Conditions Amsterdam/Rotterdam, filed with the registries of the District Courts of Amsterdam and Rotterdam (latest version).

1.1.4 For stevedoring activities: the general terms and conditions of the Association of Rotterdam Stevedores (Rotterdam Stevedores Conditions), filed with the Registry of the District Court of Rotterdam on 12 August 1976 (latest version), as well as—insofar as not conflicting therewith—the general terms and conditions of the Scheepvaartvereniging Zuid, business group “Mechanical Companies”, filed with the Registry of the District Court of Rotterdam.

1.1.5 For carriage of goods by road within the Netherlands: the General Transport Conditions 2002, filed with the Registry of the District Court of Amsterdam under number 81/2014 and with the Registry of the District Court of Rotterdam under number 2/2015.

1.1.6 For international carriage of goods by road (outside the Netherlands): the CMR Convention (Convention on the Contract for the International Carriage of Goods by Road, 1956).

1.1.7 For carriage of goods on inland waterways: the BV 2016 (General Conditions for the Carriage of Goods by Inland Waterways for a Single Voyage), filed with the Registry of the District Court of Rotterdam under number 35/2016.

1.1.8 For container depot and repair activities: the General contracting, delivery and payment conditions of the metal industry sector group Holland Container Repair Association (HCRA), filed with the Registry of the District Court of Rotterdam on 1 August 2021.

1.1 (additional) If The Flexitank Company enters into a chartering or transport agreement, then—unless expressly agreed otherwise—not The Flexitank Company itself, but the party for whom it enters into such agreement shall be the contracting party to that agreement.

1.2 The Flexitank Company is at all times entitled to declare applicable provisions from the terms and conditions of third parties with whom it has entered into agreements in order to perform a given assignment.

2. General applicability

2.1 If and insofar as it has not been agreed otherwise pursuant to Article 1, the following applies to all agreements:

2.1.1 Goods belonging to third parties which The Flexitank Company has in its possession shall at all times and in every respect remain at the expense and risk of the party entitled thereto.

2.1.2 The contents, dimensions, nature, quality/condition, weight, quantity, marks, numbers and value of the goods shall always be deemed unknown to The Flexitank Company. The Flexitank Company is permitted to rely on such lack of knowledge, even if the goods have been counted, weighed or measured and even if it could have known their nature or condition, etc.

2.1.3 The Flexitank Company is not liable for insurable risks. The party entitled to the goods undertakes—unless it wishes to bear such risks itself—to insure the goods, also for the benefit of The Flexitank Company, against all insurable risks, on the condition that insurers waive any right of recourse against The Flexitank Company and that assignment of the insured's rights to the insurers and subrogation into those rights by insurers are excluded; failing which liability towards the entitled party shall be excluded.

2.1.4 The Flexitank Company shall never be liable for damage suffered by the goods, nor for costs incurred in connection with the goods, which are the result of fault or negligence of The Flexitank Company, its employees or auxiliary persons.

2.1.5 The liability of The Flexitank Company is in all cases limited to a maximum of 7,500 SDR per event or series of events with one and the same cause of damage, respectively per shipment, provided that in the event of damage, depreciation or loss of the goods included in the assignment, liability shall be limited to 2 SDR per kilogram of damaged or lost gross weight, subject to the aforementioned maximum.

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2.1.6 The Flexitank Company stipulates all statutory and contractual defences which it can invoke to ward off its own liability towards the client, also for the benefit of its employees and others engaged by it for whose acts it would be liable by law.

2.1.7 The Flexitank Company never arranges insurance for the goods, unless it has committed itself to do so in writing, in which case the conclusion of the insurance is at the client's risk.

2.1.8 The client is at all times obliged to reimburse The Flexitank Company for any amounts to be levied or recoverable by any authority in connection with the assignment, as well as any related fines.

2.1.9 The following shall in any event—though not exclusively—be for the account of the client: strikes, lockouts, work-to-rule actions, illness, import/export/transit bans, transport problems, failure by suppliers to fulfil obligations in the broadest sense of the word, production disruptions, natural and/or nuclear disasters, and war and/or threat of war.

2.2 If, between The Flexitank Company and the client, it cannot be established during which activities damage occurred, these terms and conditions shall in any event apply, or at least Article 2 (General applicability) thereof.

3. Indemnity

The client shall indemnify The Flexitank Company against third-party claims if The Flexitank Company would not be able to invoke these general terms and conditions.

4. Payments

4.1 Unless, when entering into the agreement, The Flexitank Company has specified or accepted a different payment term in writing, payment—deviating from any provisions to that effect in the conditions referred to in Article 1(a) through (g)—must be made within 14 days after submission of the relevant invoice and in the manner indicated by The Flexitank Company.

4.2 All payments shall be made without any set-off or discount.

4.3 In the event of late payment, all payment obligations of the client, irrespective of whether The Flexitank Company has already invoiced in that respect, shall become immediately due and payable.

4.4 In the event of late payment, the client shall owe interest of 1.25% per month on the amount due, with a minimum of the statutory interest per year.

4.5 Extrajudicial collection costs will be charged to the client in accordance with the collection tariff of the Netherlands Bar Association.

4.6 Payments by or on behalf of the client shall be applied successively to settle the extrajudicial collection costs owed by it, the judicial costs, the interest owed by it, and thereafter—by order of age—the outstanding principal amounts, irrespective of any different instruction by the client.

4.7 The client may only object to the invoice within the payment term.

5. Dutch text prevails

If the Dutch text of these general terms and conditions of The Flexitank Company, or of the terms and conditions referred to in Article 1, differs from a translation thereof into another language, only the Dutch text shall prevail.

6. Applicable law

All legal relationships to which these general terms and conditions of The Flexitank Company apply shall be governed by Dutch law.

7. Competent court

All disputes shall, in the first instance, be adjudicated by the competent court in Rotterdam, unless The Flexitank Company decides to bring proceedings before another competent court, or wishes to voluntarily submit to the jurisdiction of another competent court or another arbitral tribunal.

8. Conversion

If and insofar as, on grounds of reasonableness and fairness or because of its unreasonably onerous nature, no reliance can be placed on any provision in these general terms and conditions or in the terms and conditions referred to in Article 1, such provision shall be given a meaning that is as similar as possible in content and purport, so that reliance on it remains possible.

9. Filing

These general terms and conditions of The Flexitank Company have been filed in the Dutch language with the Rotterdam Chamber of Commerce.