



# GENERAL CONDITIONS AND RULES FOR DUTCH SHIPBROKERS AND AGENTS





**UNITED DUTCH SHIPBROKERS AND AGENTS, CONSISTING OF:**

ORAM, THE AMSTERDAM REGION BUSINESS ASSOCIATION  
(AMSTERDAM SHIPAGENTS ARE INCORPORATED IN ORAM)

ASSOCIATION OF SHIPBROKERS IN THE NORTHERN NETHERLANDS

ASSOCIATION OF ROTTERDAM SHIPBROKERS AND AGENTS

ZEELAND SHIPBROKERS AND SHIPAGENTS ASSOCIATION

# GENERAL CONDITIONS AND RULES FOR 'CARGADOORS' (DUTCH SHIPBROKERS AND AGENTS)<sup>1</sup> 2009

## 1. General/applicability:

- 1.1. For the purposes of the present conditions 'Cargadoor's Services' shall be understood to cover the following:
  - 1.1.1. Services performed in an enterprise the business of which is attending to and taking care of ships- and transportation matters for shipowners, carriers, time charterers and/or masters of sea going vessels, delivering incoming cargo and receiving outgoing cargo, which shall comprise all that needs to be done in respect of or for the shipping- and/or transportation industry, such as for instance acting as customs agent/freight forwarder and conducting of shipsmanagement, all in the widest sense, as well as
  - 1.1.2. On behalf of others (in particular but not limited to receivers, shippers and senders) handling of cargo, as well as anything related there to in any way, as well as
  - 1.1.3. Acting as intermediary as to concluding contracts (amongst others and in particular contracts of affreightment, other contracts of carriage, contracts pertaining to the use of containers and the like, contracts of insurance and contracts of sale and purchase- whether or not in a broking capacity- and all related contracts always in the widest sense of the words), to the extent that a seagoing vessel or other means of conveyance is involved directly or indirectly;
- 1.2. The present conditions and not those of the principal are applicable in respect of services rendered/to be rendered by the 'Cargadoor', unless to the extent that it would explicitly have been agreed otherwise in writing (including by telex, facsimile or e-mail), whilst observing the provisions of art. 2.1 of the present conditions;

<sup>1</sup> Note by the Associations:

The Associations are aware that the words 'Shipbrokers and Agents' in practice are/have become the household translation/equivalent of the Dutch term 'Cargadoor'; In the heading of these conditions these words therefore have been retained between brackets; However, in recent years the activities of their members 'Cargadoors' have expanded beyond the classical activities of Shipbrokers as well as beyond those of Shipagents; Also, contracts regularly show a mixture of several different characteristics; Therefore, to prevent confusion and as the Dutch term 'cargadoor' in the Netherlands Shipping and Transportation Industry does these days indeed cover it all, in the present conditions the word 'Cargadoor' will be consistently used.

- 1.3. Board members/directors/managers and/or staff and/or (other) subordinates of the 'Cargadoor' and/or (of) third parties engaged by the 'Cargadoor', may also invoke the provisions of the present conditions in the event of a claim being made against them directly;
- 1.4. To the extent that one or more (parts of) provisions from the present conditions would in law transpire to be null and void or would be annulled and/or avoided, or would in equity be not applied, then that is of no consequence to the validity of the other (parts of) provisions of these Conditions.

## **2. The activities of the 'Cargadoor' in the wide sense of the word:**

- 2.1. All work done and/or to be done by the 'Cargadoor' that generally does not come within the scope of the work of a 'Cargadoor' in the strict sense of the word (such as for instance but not limited to stevedoring, freight forwarding, running of warehouses, controlling etc), shall be also subject to the conditions that are customary in the branch of trade concerned or that have been registered and/or laid down by the organisation of that branch of trade;  
The aforesaid, however, with the exception of such provisions therein that might extend a 'Cargadoor's liabilities beyond those envisaged in the present conditions, in stead of which the pertinent provisions of the present conditions (amongst others and in particular in art. 5 'liability') remain in force, and also with the exception of such jurisdiction or arbitration clauses as might be part of these other conditions, in stead of which art. 8 of the present conditions ('Tamara Arbitration' with the exceptions envisaged in that art.) remains in force, and finally with the exception of such choice of law clauses as would give rise to the application of other than Netherlands Law, in stead of which art. 7 of the present conditions remains in force;
- 2.2. Thus amongst others the conditions herein after shall (also) apply:
  - 2.2.1. On Freight Forwarding work the 'Netherlands Freight Forwarding Conditions', with the exception of amongst others and in particular the present artt 11 (liability) para's 2, 3 and 4 and the arbitration-/jurisdiction clause (presently art. 23);
  - 2.2.2. On Stevedoring work the 'Rotterdam Stevedoring Conditions', with the exception of amongst others and in particular the present art. 8 (liability) para's 1 and 3 and the arbitration/ jurisdiction clause (presently art. 13);

- 2.2.3. On Warehousing/Storage work the 'Netherlands Warehousing Conditions' (Nederlandse Opslag Voorwaarden), with the exception of amongst others and in particular the present artt. 19 (damage to and loss of goods) and 4 (arbitration clause); See, however, also art 2.2.4 herein after;
  - 2.2.4. On Tank Storage the 'General Conditions for Tankstorage in the Netherlands', with the exception of amongst others and in particular the present artt. 57 (liability of the storage company) and 66 (jurisdiction/arbitration clause);
- 2.3. In case of conflict between these (other) conditions referred to in herein before and the present conditions these other conditions shall prevail (whilst observing the afore said sub 2.1 and sub 2.2 as to the non applicability of such provisions as extend liability as well as arbitration and/or jurisdiction clauses and/or choice of law clauses), however to the extent only that the work is being done or has been done upon instructions from or in the interests of a party interested in the cargo; In all other situations the present conditions shall prevail.

### **3. The conclusion of contracts/payment:**

- 3.1. The 'Cargadoor' quotes the terms (such as for instance freight- and additional costs) on which a contract envisaged by the principal, may be brought about;  
The intended contract is then concluded by acceptance of the quotation;  
All quotations by the 'Cargadoor' are deemed to be without engagement unless the contrary is specified therewith;
- 3.2. Freight- and/or additional costs and/or other services are invoiced by the 'Cargadoor' to the principal as soon as possible after sailing and/or departure respectively after having been provided/delivered;
- 3.3. The 'Cargadoor', who after all is usually debited himself for the items sub 3.2 and who is usually under an obligation to promptly settle these sums, in the matter 'de iure' acquires title so sue (of his own) vis-a-vis the principal (whilst taking into account the other provisions of the present conditions):
  - 3.3.1. It stands established between the principal and the 'Cargadoor' that the 'Cargadoor' himself in these matters has title to sue vis-a-vis the principal;

3.3.2. On the other hand the 'Cargadoor' shall hold the principal harmless against such later claims by third parties as are established in a Court of law in respect of such amounts as may have been paid in these matters by the principal to the 'Cargadoor' to a maximum equal to these amounts paid;

3.4. (Timely) payment/penalty/interests:

3.4.1. In case a shipping agent allows credit, the duration of this creditperiod is at the discretion of the shipping agent himself. The debtor will be in default immediately if payment is not made within the above period, with no notice of default required.

3.4.2. In the event of nonpayment within the period stated in paragraph 1, to defray administrative expenses the Shipping Agent will be entitled to charge 10% of the outstanding amount plus statutory commercial interest pursuant to Section 119a of Book 6 of the Netherlands Civil Code;

3.4.3. The Shipping Agent will be entitled to pass on the claim to a debt-collection agency in the event of nonpayment within the stated period. All associated extrajudicial and judicial costs are to be borne by the debtor.

3.4.4. The Shipping Agent has right of retention in respect of all claims on its principal/client on all assets that are in its possession that were obtained from or on behalf of the principal/client concerned, regardless of who owns the retained goods. The Shipping Agent furthermore has right of pledge on all goods owned by the principal/client.

3.4.5. Prolonged and/or repeated non payment/signalling:

3.4.5.1. If the principal is/remains in default repeatedly and/or for a prolonged period of time with timely payment of one or more sums/invoices due to the 'Cargadoor', then the 'Cargadoor' is at liberty to report that to the Association of Rotterdam 'Cargadoors'/ORAM (section shipagencies);

- 3.4.5.2. In addition and supplementary to the reminders/ summonses by the 'Cargadoor' himself the Association/ORAM (section shipagencies) may then decide to inform that principal that he has been so reported and remind him that there are obligations outstanding for his account with members of the association/ORAM (section shipagencies);
- 3.4.5.3. In case of repeated and/or prolonged arrear(s) in payment of 'Cargadoor's invoices/sums due to the 'Cargadoor', the Association/ORAM (section shipagencies) is at liberty to point out to its members that there is no obligation to extend credit to the principal in question.

#### **4. Execution:**

- 4.1. The appointment of respectively instructions to a 'Cargadoor' to render his services in that capacity to any ship (inclusive of crew and/or cargo) in any port, shall confer upon the 'Cargadoor' authority to carry out and perform such work and services as are customary in the 'Cargadoor's trade and, whether in his own name or not, conclude contracts for the benefit of his principal however without being bound by the very appointment or instruction to perform all and sundry work for the benefit of that ship, her crew and her cargo;
- 4.2. If in case of any contract of affreightment between charterer and shipowner it has been agreed that the 'Cargadoor' appointed by the charterer is to act as the ship's agent, the charterer and shipowner shall be jointly and severally liable as principal vis-a-vis the 'Cargadoor' according to the terms envisaged by these Conditions;
- 4.3. The 'Cargadoor' shall be at liberty to have work that he contracts out to third parties for the benefit of his principal done, respectively make use in the execution of his obligations of goods/equipment of third parties, on the conditions that are customary in the branch of trade of these third parties concerned or that the third parties themselves have laid down for their business;  
The 'Cargadoor' himself shall then also be entitled though not obliged to vis-a-vis his principal rely on those conditions, inclusive of conceivable arbitration-, jurisdiction-, and/or choice of law clauses there in (in that case notwithstanding the articles 8 [arbitration] and 7 [choice of law] of the present 'Cargadoors conditions');

- 4.4. In all instances where the 'Cargadoor' receives cargo for shipment/transport he shall be deemed to have this cargo in his charge and render his services concerning these goods as authorised agent to the shipper/sender, until such time as when it has been taken over by or on behalf of the ship/the carrier, unless before or at taking over of the goods the 'Cargadoor' has explicitly stated to act on behalf of the carrier;  
In the aforesaid instances the cargo remains entirely at the risk and expense of the shipper/sender and therefore all costs such as berth dues and demurrage charges in respect of barges, demurrage on wagons, discharging of barges and wagons, superintendence, weighing, expenses for work at night or overtime shall be at the expense of the shipper/sender;
- 4.5. The 'Cargadoor' shall render his services against remunerations expressly agreed with the principal, or in the alternative – in the absence of these- as per his published charges or those quoted to the principal in question;  
However, in case of special work or particularly time consuming or exhaustive work being required, an equitable extra remuneration may be charged which, failing agreement, shall be determined in arbitration as per the rules of procedure of the Stichting Transport and Maritime Arbitration (TAMARA) (see also art. 8 and following);
- 4.6. Both before, during and after the performance of his obligations the 'Cargadoor' is entitled to demand security in respect of the sums due to him by his principal; He shall at no time be under any obligation to make any payment whatsoever on behalf of his principal until such time he has received the proper security or funds to do so;  
The 'Cargadoor' shall be entitled to charge his principal a fee of one percent over advance payments made on his principal's behalf;
- 4.7. The Cargadoor shall be entitled to retain goods and/or monies received from or intended for his principals until such time as when appropriate security has been posted for the sums due to him;  
The 'Cargadoor' shall have a lien on any and all goods and moneys he has in his custody on behalf of his principal for any claims which the 'Cargadoor' may have against his principal from any cause whatsoever;  
The 'Cargadoor' shall further more be entitled to set off any sum due to him from the principal against and from moneys owed by him to the principal and/or to sell the goods on which he has a lien either publicly or, having obtained leave to do so from the Court, privately. if the

principal has failed to, within 30 days as of the dispatch by registered letter, facsimile message or e-mail of a summons, either provide security or settle the 'Cargadoor's claim;

- 4.8. Any and all expenses incurred in connection with the remittance of moneys from, to or on behalf of the principal shall be for account of the principal;
- 4.9. If the sums due to the 'Cargadoor' by the principal are expressed in a foreign currency, the 'Cargadoor' shall have the option to demand payment either in the foreign currency concerned or by first rate bankcheque or in Netherlands Currency at the exchange rate of the Bank of the Netherlands prevailing on either the date of his instructions or the highest rate prevailing on the date of the account in question or the highest rate prevailing on the date of payment;
- 4.10. The 'Cargadoor' shall never be liable for any loss on exchange in respect of moneys which he has in his keeping on behalf of his principal or which he is to collect or pay on the latter's behalf. Freight or other moneys expressed in foreign currency which are to be collected or paid by him on behalf of his principal, may be accepted or paid by him in Netherlands currency at the Bank of the Netherlands' exchange rate prevailing on the day of payment;
- 4.11. All information and communications, for instance concerning port facilities, dispatch, cost and expenses, progress of loading and unloading, arrival and departure, strikes, etc etc, nothing excepted, shall be given and made by the 'Cargadoor' to the best of his knowledge and ability, but he shall not be responsible for their correctness;
- 4.12. Calling forward of cargo by the 'Cargadoor' against a specific date and/or time is done at all times subject to alteration of that date and/or time because of unforeseen circumstances and/or changes in the sailing/transportation schedule; Amongst other things and in particular the 'Cargadoor' is never liable for the laycan obligations;
- 4.13. The Cargadoor is never responsible for the proper collection of moneys due on delivery of goods shipped on C.O.D terms;
- 4.14. Shipment of cargo may be refused at the 'Cargadoor's discretion without any reason therefore being given, even after he has taken it in his charge;

- 4.15. If the 'Cargadoor' has cargo or other matters in his custody he is entitled to terminate that situation:
- 4.15.1. He shall then notify (to the last address known to him of) his principal of his intentions to do so by telex, or facsimile message, or e-mail or registered letter;
  - 4.15.2. If such cargo or other matters have then not been disposed of within the reasonable period of time specified in said notice, then the 'Cargadoor' is entitled at his discretion to store the goods for the account and at the risk of whom it may concern; Also he is then entitled to sell the goods, having obtained permission from the Court to do so, as envisaged in artt. 8 : 491 of the Neth. Civil Code and 632 of the Neth Code of Civil Proceedings;
  - 4.15.3. The 'Cargadoor' shall give notice of such sale intended by him by telex, or facsimile message, or by e-mail or by registered letter to the last address known to him of his principal;
  - 4.15.4. Furthermore the 'Cargadoor' shall then be entitled to set off and deduct any sums due to him from the principal against and from the proceeds of the goods;
- 4.16. The risk of mutilation of any communication or interruption of the transmission of communications through the use of the postal services, radio, telephone, telex, facsimile, telegraph and e-mail shall be for account of the principal; The 'Cargadoor' shall not be liable for misunderstandings arising or resulting from the use of a language other than the Netherlands language;
- 4.17. The 'Cargadoor' shall under no circumstance be bound to give guarantees and/or security vis-a-vis third parties on behalf of his principal; In respect of any and all guarantee given by him by order of his principal a commission in line with what is customarily charged by Netherlands commercial banks shall be payable to him by the principal on the maximum amount for which the 'Cargadoor' may be held liable under the guarantee or security given by him;
- 4.18. The 'Cargadoor' shall not be bound to effect any insurance, unless it has been explicitly agreed otherwise in writing (which includes exchange of telex-, facsimile messages and/or e-mails);
- 4.19. The 'Cargadoor' shall not be answerable for the due payment of amounts outstanding in the Netherlands, where the granting of credit is customary

or in the interest of an effective performance of his duties and where the debtor was to be considered solvent, all at his absolute discretion;  
He shall never be answerable for the due payment of amounts outstanding abroad;  
Nevertheless the 'Cargadoor' is 'authorised and instructed' by his principal to demand payment in his own name of amounts outstanding both in the Netherlands as well as abroad and to institute proceedings to that end;

- 4.20. The 'Cargadoor' shall be entitled to deliver cargo against appropriate security if the receiver is not in possession of bills of lading.  
Appropriate security shall include a bankers guarantee by a first class Bank on the form as recommended by the association of which the 'Cargadoor' is a member;
- 4.21. The 'Cargadoor', who names his principal or adequately identifies the principal amongst parties interested in the shipping and transportation industry by the use of abbreviations or otherwise or by giving the name of the ship, shall not on his own account be liable for the payment of orders or instructions which he has placed or given on behalf of his principal to third parties;  
Any payment in respect of such order or instruction made by the 'Cargadoor' shall be considered an advance which at all times can be claimed back as long as the 'Cargadoor' has not himself received the amount concerned from his principal
- 4.22. If the agreement between the 'Cargadoor' and the principal is by way of a long-term agreement the principal shall, save in the event of a serious breach by the 'Cargadoor', be under an obligation to give a term of notice that is under the circumstances equitable before terminating the agreement, whilst the 'Cargadoor', in the event that he is not equitably and fairly held harmless by observance of such term of notice and a conceivable goodwill payment, shall be entitled to an indemnity to be determined on the basis of equity and fairness in respect of amongst other things investments, selling costs, advertising expenses and extra costs arising from the discharge of redundant personnel, incurred on behalf of the principal;
- 4.23. 'Reach'
- 4.23.1. Pursuant to E.E.C directive No. 1907/2006 of the European Parliament and the European Council dd. 18th of December pertaining to the "Registration, Evaluation, Authorisation and Restriction of Chemicals" ("Reach") chemical substances in brief may only be produced on the territory of the European

- Community ("EC") or brought on to the Market of the EC after having been registered by the manufacturer or importer of these chemical substances with the European Chemicals Agency ("ECHA"), as envisaged by the provisions of REACH;
- 4.23.2. If and to the extent that the 'Cargadoor' in the course of rendering his services to the principal deals with cargo (including but explicitly not limited to on behalf of the principal physically bringing of cargo into EC customs territory) ("handling of cargo"), whilst that cargo in any manner (as such, in preparations or in articles) contains chemical substances envisaged in art 3.1 REACH ("substances"), the 'Cargadoor' renders these services only on the condition precedent that he shall not be regarded as the importer thereof as envisaged by "REACH"; Furthermore the principal recognises that the 'Cargadoor' is not to be regarded as the importer; Upon request of the 'Cargadoor' the principal shall render every reasonable assistance that is required to enable the 'Cargadoor' to substantiate vis-a-vis the authorities that the 'Cargadoor' is not to be regarded as the importer and/or which legal entity is to be regarded as the importer;
- 4.23.3. If and to the extent that the 'Cargadoor' in the course of rendering his services to the principal handles cargo that in any manner (as such, in preparations or in articles) contains "Substances" and the 'Cargadoor' is then at any time regarded as Importer concerning such cargo by third parties (including the authorities), then the principal shall hold the 'Cargadoor' harmless against any and all claims by these third parties, any and all contractual obligations and any and all statutory obligations (inclusive of any steps taken by way of enforcement by the authorities) in relation to thus having been regarded as Importer as envisaged by "REACH" and against any and all damages and costs that the 'Cargadoor' incurs or makes as a consequence thereof.

## **5. Liability:**

- 5.1. The 'Cargadoor' shall be liable for damages or losses, arising as a consequence of the non or improper execution of the instructions given to him or otherwise only to the extent that it is proven by his counter part that the damages or losses in question have been caused by wilful misconduct or negligence tantamount thereto by the 'Cargadoor' himself or his leading subordinates;

- 5.2. However, the 'Cargadoor's liability is limited to a maximum amount equal to the remuneration that the 'Cargadoor' would be entitled to in the event he had properly executed the instructions in question;
- 5.3. Furthermore the 'Cargadoor' shall never be liable
- 5.3.1. In respect of damage or loss to goods that have been entrusted to him for handling or storage;
- 5.3.2. In respect of the consequences of war, danger of war, riots, strikes or slow down actions, congestion and/or overburdening of any port and the like that may be of influence on or interrupt his regular course of business;  
In the event that cargo and/or other matters cannot be delivered because of one or more of the circumstances set out in previous sentence or other circumstances amounting to force majeure, the 'Cargadoor' shall nevertheless be entitled to payment of Warehouse hire and/or storage charges up to the moment of delivery, as per the applicable rates;
- 5.3.3. For any kind of consequential damages;
- 5.4. The principal shall be liable to 'Cargadoor', notwithstanding the provisions of art. 6:74 of the Neth Civil Code, in respect of all obligations entered into vis-a-vis the 'Cargadoor' by the Master of the Ship to which the 'Cargadoor renders his services on behalf of the principal and in respect of any and all instructions whether emanating from the Master or from the office of the principal or from their subordinates or written on their stationery, even where for instance the Master, respectively the person by whom such instruction has been given on behalf of the Principal has exceeded his authority, unless the principal proves that the 'Cargadoor' had been aware of such authority having been exceeded or that this could have been established timely and simply and without investigation abroad;
- 5.5. The principal shall hold the 'Cargadoor' harmless in all cases where the 'Cargadoor' is himself liable to third parties (including the authorities and/or departments or services of the authorities) in respect of his actions on behalf of the principal vis-a-vis such third parties which shall include any fine as may be imposed upon him, in particular but not exclusively where the 'Cargadoor' has acted as licensed customs agent, except for instances or wilful misconduct or negligence tantamount there to as envisaged in art. 5.1 of the present conditions.

## **6. Extinction-/time bar of the right of action:**

Any claim against the 'Cargadoor' shall become time barred after 9 months have passed and shall become extinct after 18 months have passed, these periods to be determined as of the date of the final day of the occurrence that gave rise to the claim.

## **7. Applicable law:**

The legal relationship between the 'Cargadoor' and the principal shall be governed by Netherlands Law, unless and to the extent that elsewhere in the present conditions it is specified otherwise or that in the contract/instructions in question it has been agreed differently explicitly, and therefore the question whether and to what extent the 'Cargadoor' has executed correctly any action on behalf of the principal shall also be judged in accordance with the Laws and views prevailing in the Netherlands; Errors at his end as to foreign law or situations abroad cannot be held against him.

## **8. Arbitration clause:**

- 8.1. All disputes arising between the 'Cargadoor' and the principal shall be subject to arbitration in Rotterdam or Amsterdam as per the TAMARA Rules, which shall be supplied by the 'Cargadoor' upon request;
- 8.2. Notwithstanding the provisions in the preceding paragraph the 'Cargadoor' shall be at liberty but not obliged
  - 8.2.1. To bring claims concerning sums of money that are due and demandable, and of which the indebtedness has not been challenged by the other party within 4 weeks as of invoice date/ as of the date of their becoming due and demandable, before the regular Court, i.e. in first instance before the Rotterdam- or the Amsterdam District Court ('Rechtbank');
  - 8.2.2. In case proceedings are commenced against him before a regular Court (whether or not abroad) or before other (than TAMARA) arbitrator(s) then, to the extent that there exists the procedural possibility to do so, proceed against his principal/ contract partner before that same Court/. Arbitrator(s) (for instance and in particular in indemnity);

9. The present Conditions shall be available, in Dutch and/or in English upon first request from the 'Cargadoors Associations' and/or from the 'Cargadoor';  
In case of any discrepancy between the text in Dutch of these conditions and the text in any other language the Dutch text shall prevail;  
If these Conditions are amended then the new Conditions, provided they have been registered promptly and properly, shall replace the previous conditions without the need for further juridical acts;
10. These Conditions may be quoted as the "General Conditions for 'Cargadoors' (Dutch Shipbrokers and Agents) 2009".