

General cargo survey and inspection conditions

Clause 1: Application

1. These General Conditions shall apply to all offers and agreements in which the contractor offers goods and/or services of whatever nature to the customer, also if such goods and/or services are not (further) described in these conditions.
2. The contractor expressly reserves the right to declare - in addition to the present conditions - other conditions customary in the relevant industry applicable to the agreement (for instance the recent version of the FENEX conditions). In case of inconsistency between (any provision of) the present conditions and (any provision of) other conditions of which the application has been stipulated, such other conditions shall prevail.
3. The contractor shall furthermore always have the right to declare applicable to the agreement (provisions from) conditions of third parties with whom he has made an agreement for the purpose of implementing the agreement with the customer. In case of inconsistency between (any provision of) the present conditions and (any provision of) third party conditions of which the application has been stipulated, the conditions of such third party shall prevail.
4. The contractor who is a member of the Koninklijke Vereniging Het Comité van Graanhandelaren (Royal Association The Committee of Grain Merchants), shall apply the "Reglement met betrekking tot de verdeling van losgestorte en bepaalde partijen gezakte granen, zaden en peulvruchten en verdere veevoedergrond- stoffen" (Regulations on the Distribution of Bulk Grain and certain parcels of sacked Seeds and Pulses and other raw produce for cattle feed) (briefly: "Distribution Regulations"). By concluding an agreement with the contractor the customer agrees to the application of the Distribution Regulations. In case of inconsistency between (any provision of) the present conditions and (any provision of) the Distribution Regulations, the Distribution Regulations shall prevail.
5. The contractor who engages in cargo survey and/or inspection work, shall have the right to accept several inspection assignments from different customers in respect of individualised (bulk) goods, provided always that the objectivity of the findings and the interests of the respective parties are not impaired.
6. The contractor shall have the right to have the order and/or the work related thereto implemented by third parties or by engaging third party employees. In the as far as that such third parties or their employees are legally liable to the contractor's customer, it has been stipulated in their behalf that in the operation for which the contractor makes use of them, they shall be regarded exclusively as being employed by the contractor. All provisions as to exclusion and limitation of liability, as well as in respect of the contractor's indemnity as described herein, shall inter alia apply to them.
7. The agreement and these general conditions can only be diverged from in writing.
8. The application of any general conditions employed by the customer is hereby explicitly rejected.

Clause 2: Definitions

In these general conditions the following words shall be understood to mean

- The Contractor: a company engaging inter alia in supervising, inspecting, tallying, measuring, analysing, sampling, determining the weight, performing loss adjustments, claim settlement, customs work, advising and the like, everything in the widest sense of the word, as such activities are customarily performed by supervisory and/or inspection companies, grain factors and/or grain forwarding agents, consultants, research and loss adjustment agencies, laboratories or combinations thereof as well as any other activities customarily performed by supervisory and/or inspection companies or grain factors and/or grain forwarding agents.

Clause 3: Offers

1. All the contractor's offers, if made in writing and if related to activities to be performed by the contractor himself, shall be firm offers, subject to the provisions of the Clauses 3, 4 and 7 hereof, unless expressly stated otherwise in the offer; offers made in a manner differing from the above shall be without engagement.
2. The times of delivery stated in the offers are only indications and shall not be regarded as deadlines.
3. Firm offers that have not been accepted by the customer within the period specified in the offer, shall expire. In case no period is mentioned in the offer, the firm offer shall expire if the customer has not accepted it within 1 month from the date it was made.
4. Offers that are also based on third party offers (consider freight quotations, stowage charges and the like) or that are subject to price fluctuations, shall always be without engagement, even when this does not explicitly appear from the offer.

Clause 4: Prices

1. The stipulated prices and work that have been agreed on the basis of a firm offer, shall be firm for the specific project for which the offer was made or - in case the project continues for over 3 months - for a period of 3 months after the agreement was concluded, without prejudice to the contractor's right to alter the stipulated prices at any moment because of cost price increasing conditions as referred to in Clause 4.6.
2. In case of unforeseen circumstances that are of such nature that, according to criteria of reasonableness and fairness, the customer cannot expect the agreement to be maintained unchanged, the contractor shall have the right to alter the prices and work and/or to dissolve the agreement with the customer fully or partly without judicial intervention and without being obliged to pay compensation.
3. All the contractor's offers shall always contain exclusively such work and related costs that are specifically described in the offer; the cost of import duties, turnover tax (VAT), levies, administrative charges, insurance, telex, telephone, fax, postage and the like shall not be included in the offer, unless stated otherwise.
4. When no price quotation can be made in the offer (consider, for instance, investigations, expertises and laboratory work), the fee chargeable to the customer shall be determined by the contractor in accordance with the requirements of reasonableness and fairness and sound business practice, after completion of the work.
5. All freights, reimbursements, taxes, (import) duties, contributions, levies, fines and/or other charges or costs by whatever name, regarding or relating to the business or the work, shall be for the customer's account and risk and shall be paid to the contractor on demand.
6. The rates and fees shall be based on the costs prevailing at the time the agreement was made. The contractor shall have the right to recharge all cost price increasing conditions occurring in the meantime, such as changes in the cost of wages, cost prices of services rendered by third parties, of raw materials or supplies and/or exchange rate adjustments.

Clause 5: Payment

1. The customer shall be obliged to pay the contractor the amount due for the work he has performed, without any postponement, setoff or reduction, not later than on the fifteenth day after the invoice date, unless agreed otherwise.
2. The customer shall, on the contractor's demand, instantly provide adequate collateral security in the form required by the contractor for meeting his obligations as referred to in Clause 4 hereof, and to supplement such security if necessary for meeting all his obligations. As long as the customer has not complied with such request, the contractor shall have the right to suspend the performance of his obligations.
3. If payment of the amounts due has not been received by the contractor on the fifteenth day after invoice date at the latest (or - in case the parties have agreed otherwise - on the last day of the agreed term of payment), the customer and in general the debtor shall be in default and the legal interests shall be payable on the contractor's claims, without a notice of default being required.
4. In case of overdue payment, all the customer's payment obligations shall fall immediately due and payable, irrespective of whether the contractor has already invoiced in the matter.
5. If in the case of overdue payment judicial or other action is taken for collection, the amount of the debt shall be increased, regardless of the interests already due and to fall due, by 10% of the principal amount to cover accounting costs as well as all judicial and extra-judicial costs (including the cost of legal assistance) in the event that they have been paid or are to be paid by the contractor.
6. Unless agreed otherwise, accounts are made out in Euros and settlement shall be made in the same currency. The risk of exchange rate differences shall be for the customer's account.

Clause 6: Retention and Pledge

1. The contractor shall have the right to retain goods, documents, reports and moneys for account and risk of the customer and/or owner until the full settlement of his claims he may or will have on the customer and/or the owner.
2. All goods, documents, reports and moneys the contractor has or will have in his possession for whatever reason and for whatever purpose, shall serve as security for his claims referred to in Clause 6.1 hereof.
3. In case of non-payment of the debt the contractor shall have the right to undertake or to order the sale of the collateral or the things he has in his possession under the right of retention, in the manner prescribed by law.
4. If the contractor periodically charges the customer amounts, each instalment shall be considered a claim in terms of the clauses 6.1, 6.2 and 6.3 above. This shall also apply to instalments the customer still owes because of previous orders.

Clause 7: Working Hours

All offers are based on the performance of the work offered during ordinary daytime working hours. Overtime, including work in the evening, at night, on Saturday and on Sunday, as well as on a public holiday, waiting period beyond the contractor's sphere of influence and delays the contractor cannot reasonably foresee, shall always be for the customer's account.

Clause 8: Handling of Samples

1. The contractor undertakes to record all samples he has drawn and, if not forwarded in accordance with the customer's instructions, to store them (or have them stored) in appropriate places to be determined by the contractor.
2. If the customer prescribes other storage places than those the contractor made available, the storage of the samples shall be for the customer's account and risk.
3. The storage of samples that in the contractor's opinion and/or under Government regulations require separate storage, shall be for the customer's account and risk; moreover, the contractor shall be free to refuse the storage of such samples.
4. The samples shall be stored during a period of time agreed with the customer or during a period prescribed in the (standard) commercial contract applicable to such goods. In the absence of a specific storage period, the applicable storage period shall be considered to be 3 months.
5. On expiry of the applicable storage period, such samples shall be destroyed, unless the customer has given other instructions prior to the expiry of the applicable storage period. The storage of samples exceeding the duration of the applicable storage period shall be for the customer's account and risk.
6. The cost of (official) destruction of samples that are to be considered hazardous or otherwise dangerous, as well as of such samples as are under customs supervision, shall be for the customer's account on the basis of disbursements.

Clause 9: Termination

1. If an agreement that according to its nature and contents does not terminate by completion, has been made for an indefinite period of time, it can be terminated by either party by reasoned notice of termination in writing, subject to a notice period of at least 2 months. The contractor shall never be obliged to pay any compensation because of termination.
2. Either party shall have the right to dissolve the agreement fully or partly without judicial intervention, if the other party, after a sound and as detailed as possible written notice of default, whereby a reasonable period of time is granted for curing the shortcoming, imputably fails in the performance of essential obligations under the agreement.
3. Either party may fully or partly terminate the agreement with immediate effect without notice of default and without judicial intervention, by notice in writing, if any of the following situations occur:
 - a. the other party applies for a suspension of payments or the other party is granted a suspension of payments,
 - b. the other party files a petition for (his own) bankruptcy or the other party is adjudicated bankrupt,
 - c. the other party's company is dissolved or liquidated, otherwise than for the purpose of a reconstruction or merger of companies.

The contractor shall furthermore have the right to terminate the agreement fully or partly with immediate effect without notice of default and without judicial intervention, by written notification, if the control over the customer's enterprise changes.

The party terminating the agreement in any of the above circumstances shall never be obliged to pay any compensation.

4. Termination of the agreement shall not discharge the parties from their current obligations under the agreement. Payment obligations relating to commitments already made or to work performed, services rendered or deliveries made prior to the time of termination shall remain in full force. In case of termination the contractor shall have the right to demand immediate payment of all amounts owing to him, regardless of whether or not the amounts are already due and payable.

Clause 10: Force Majeure

Circumstances that at any rate shall not be for the contractor's account are: actions, except wilful intent or gross negligence, of persons whose services the contractor employs in the implementation of the contract; unsuitability of goods the contractor uses in the implementation of the contract; strikes; lockouts; sickness; import, export and/or transit bans; transport problems; non-performance of obligations by suppliers; production stoppages; natural and/or nuclear disasters and war and/or threat of war.

Clause 11: Issue of Reports and Certificates

The contractor undertakes to draw up written and detailed reports on the basis of his own findings, as soon as possible after having collected the necessary data in accordance with instructions received; the contractor shall never hand such reports to third parties, unless instructed otherwise. If so requested, he will undertake to write such reports either in the Dutch language or in English, German or French and if required include calibration and/or weight certificates, analyst's reports, et cetera. The certificates of analysis shall contain the methods of determination as far as possible.

Clause 12: Liability

1. All actions and operations shall be performed for the customer's account and risk.
2. The contractor shall not be liable for any damage, unless the customer can prove that the damage was caused through the fault or negligence of the contractor or his executive staff.
3. The contractor shall at any rate not be liable for damage (including death, injury, loss, missing, et cetera) exceeding a total amount equal to 10 times the fee charged or to be charged for such work.
4. The liability referred to in clause 12.3 above shall never exceed €20,000.
5. The contractor shall never be obliged to pay damages other than direct loss or damage to persons or goods. Liability for indirect loss or damage (including consequential loss) is explicitly excluded.
6. The customer shall be liable to the contractor for all damage (including death, injury and loss) however and by whomever caused or incurred for the purposes of the implementation of the agreement, to the contractor himself and/or to his employees and/or to the property of the contractor or his employees respectively or caused to third parties engaged by the contractor and/or their employees and/or to the property of such third parties or their employees respectively.
7. The customer shall be liable for all consequences resulting the non- or late supply of information, documents and/or instructions or from the supply of incorrect, inadequate or incomplete information, documents and/or instructions.

Clause 14: Third Party Clause

The provisions contained herein regarding exclusion and limitation of liability as well as regarding the contractor's indemnity and termination/prescription of the right of action shall also apply to and in behalf of the contractor's employees and of third parties he has engaged in any manner as well as of their employees.

Clause 15: Notification of Claim and Prescription

1. The customer shall be obliged to inform the contractor immediately, at any rate not later than within 3 days after irregularities or damage have been discovered, in writing and in detail by registered letter or by telex or fax. Without such notification within the specified time of 3 days all possible entitlement to indemnity shall cease.
2. At any rate every right of action against the contractor shall become void by prescription by the simple lapse of 9 months after the order has been executed.

Clause 16: Applicable Law and Jurisdiction

All legal relations between the contractor and the customer shall be subject to the laws of the Netherlands. All disputes, as far as they fall within the jurisdiction of the district court, shall be judged in the first instance by the competent court in the place of the contractor's registered office.

Clause 17: Final Provision

The present General Conditions, which were filed in the Office of the District Court of Rotterdam as well as in the office of the Chamber of Commerce of Rotterdam on 2 July 2001 shall be cited as the "Verocog Conditions".

The Dutch text of these conditions and of the conditions to which reference is made herein, shall be decisive.