

General Terms & Conditions
Bruinsma Freriks Transport B.V.

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Article 1 - definitions

1. Contract of carriage: any agreement, however named, by which a carrier undertakes to transport cargo.
2. Carrier: any party by whom or on whose behalf a contract or carriage has been concluded with a consignor.
3. Subcarrier: any party to whom the carrier has entrusted the performance of the carriage in whole or in part. A subcarrier is also understood to mean the party who actually performs the carriage - in whole or in part.
4. Consignor: any party by whom or on behalf of whom or for the account of whom a contract of carriage has been concluded with a carrier.
5. Consignee: the party who is entitled to receive the cargo.
6. Transport document: a document substantiating a contract of carriage and the takeover or loading of the cargo by a carrier and that is drawn up in the form of a bill of lading or a consignment note or another document customary in the trade.
7. Party arranging carriage: the consignor and/or consignee of the cargo transported or to be transported.
8. Unless the party concerned has agreed otherwise in writing, this also includes the situation where the information is transmitted by electronic, optical or similar means of communication, including but not limited to telegrams, faxes, telex messages, electronic mail or electronic data interchange (EDI), provided that the information remains available for later consultation.
9. Cargo: anything offered for carriage, with the exception of towed or pushed vessels.
10. CMNI = 'Contrat de transport de Marchandises en Navigation Intérieure'.
11. IVR = International Association for the representation of the common interests of inland navigation and insurance and for keeping the register of inland navigation vessels in Europe.
12. Force majeure: circumstances which a diligent carrier could not avoid and/or the consequences of which it could not prevent.

Article 2 - scope

These general terms & conditions form part of all offers and agreements with Bruinsma Freriks Transport B.V., including in particular with regard to the transport of liquid cargo by inland waterways by Bruinsma Freriks Transport B.V., hereinafter also called BFT.

Article 3 - applicable law

In so far as these general terms & conditions do not contain any special provisions, the CMNI Convention applies, also to transport within the Netherlands. In addition to these conditions and the CMNI Convention, Dutch law is applicable.

Article 4 - description and receipt of the cargo

1. The consignor shall provide the carrier in good time, i.e. before the start of loading, with the necessary information and accompanying documentation relating to (nature of) the cargo, including all national and international regulations issued by the authorities to promote safety and the protection of the environment, and provide the carrier in good time with all information relating to the loading and its handling which it knows or ought to know to be of interest to the carrier.
2. The consignor guarantees the accuracy of the description of the cargo and the accuracy and completeness of the documentation provided. The consignor is liable for all direct and indirect losses, damage and other disadvantages resulting from inaccuracy of the statements and incompleteness of the documentation as well as for the costs incurred as a result. In case of incorrect description and lack of necessary documentation, the carrier can unload the cargo, place it ashore, transport it back or even destroy it in urgent cases at the expense of the parties arranging carriage without becoming liable for compensation.
3. The carrier is not obliged, but is entitled to check whether the documentation and/or information provided is/are correct.

Article 5 - loading

1. The (sub)carrier shall determine the maximum quantity to be taken on board with due observance of, among other things, the water level, the design of the vessel, the agreed consignment size and the public law regulations.
2. The size of the cargo taken on board shall, at the carrier's discretion, be determined by means of a volume meter, by measuring the difference in the contents of the land tank, by measuring the inside dimensions of the vessel or the verification marks of the vessel.
3. The consignor shall ensure that the vessel can safely berth, lie, load and depart at the place it has designated for loading.
4. The carrier shall make the vessel ready for loading available at the loading site. If the vessel sustains or causes damage during loading, the consignor and/or consignee shall compensate the damage or whatever the carrier may owe to third parties in this connection, unless the consignor proves that the damage was not caused by the unsafety of the loading site or an act or omission of personnel of the tank terminal.
5. The consignor shall load the cargo on board the vessel. The carrier has the right to give instructions regarding the safety of the voyage or to prevent damage. The consignor shall follow these instructions.
6. The consignor is liable for damage to the vessel caused by loading unless the damage was caused by fault of the carrier.
7. The consignor shall compensate the carrier for the damage it suffers because the agreed cargo is not available to him at the agreed place or time for whatever reason.

Article 6 - delay of the loading

1. Of the consignor has the right to terminate the contract of carriage until such time as the cargo has been loaded into the vessel or made available to the carrier. In the event of such termination, the carrier is entitled to payment of the full freight (100%).
2. If the contract of carriage is terminated more than 72 hours prior to the agreed loading date, the consignor shall owe compensation amounting to 33.3% (1/3) of the agreed freight.
3. In the event of termination of the contract of carriage between 72 hours - 24 hours prior to the agreed loading date, the consignor shall owe compensation amounting to 66.6% (2/3) of the agreed freight.
4. In the event of termination of the contract of carriage within 24 hours prior to the agreed loading date and in the event of termination of the contract of carriage after the agreed loading date, the consignor shall owe compensation amounting to 100% (3/3) of the agreed freight.
5. If, after the time within which the consignor is required to load the cargo into the vessel, no cargo has been loaded into the vessel for whatever reason, the carrier is entitled to declare the contract of carriage terminated without notice of default being required. In this case the carrier retains the right to compensation of the full agreed freight and outstanding mooring fees at all times.
6. If, after expiry of the time mentioned in paragraph 2, the agreed cargo, for whatever reason, has only been partially loaded into the vessel, the carrier has the right to terminate the agreement or to start the voyage without prior notice of default being required. If in the latter case, the carrier shall start the voyage with the consent of the consignor, the consignor remains obliged to pay the full freight.
7. The termination referred to in paragraphs 2, 3 and 4 may be given by written notice or other notification whose receipt can be demonstrated. The agreement ends at the time of receipt of the notice of termination, but not before the unloading of the cargo.
8. If the consignor pays the carrier the full freight before expiry of the time referred to in paragraph 2, the carrier shall, at the consignor's request, start the voyage with part of the agreed cargo. This part of the cargo shall be offered by the consignor within one week after the agreed loading date. If at that time nothing is offered by consignor, the carrier is entitled not to start the transport while retaining compensation of full freight and mooring fees. The carrier shall accept other cargo instead of the missing cargo without being obliged to set off the freight it receives for the transport of this cargo against the freight to be paid by the consignor.
9. This article shall not apply to time charter contracts.

Article 7 - choice of vessels and routes, right to transshipment and partial unloading

1. The transport is carried out by vessels designated by the carrier for this purpose. The carrier may also engage other carriers to carry out the transport. In the unlikely event that a designated vessel cannot be deployed, the carrier shall attempt to deploy a similar vessel. If no comparable vessel is available within the carrier's fleet, the carrier may hire another vessel at the client's risk and expense.
2. The carrier is not obliged to transport the cargo in a specific order, via a specific route or with a specific vessel. The cargo shall be transported within the period that may be expected from a diligent carrier, taking into account the circumstances of the voyage and assuming an unobstructed voyage.
3. The carrier is entitled to fully or partially transfer the cargo to other vessels, to load or unload in lighters and/or to store it in land tanks, insofar as this appears necessary in the interest of the vessel or the cargo under the given circumstances. The parties arranging carriage are jointly and severally liable to the carrier for the extra costs incurred as a result, to the extent that the measures in question did not have to be taken by the carrier through its own fault.
4. Transshipment in lighters, storage or unloading in vessels or land tanks as well as storage shall take place on behalf of and at the risk and expense of the parties arranging carriage. The carrier is first liable for the cargo after it has passed the vessel's flange hole during loading, following which the carrier is no longer liable for the cargo.
5. In the cases referred to in paragraphs 3 and 4, it is the responsibility of the parties arranging carriage to maintain uninterrupted insurance cover.

Article 8 - lapse of the takeover and carriage obligation

1. The takeover and carriage obligation shall lapse on any waterway, regardless of whether the cargo has already been taken over or loaded and whether the voyage has already started or not, if the following events or circumstances occur in a general sense or only for the vessel that loaded the cargo:
 - a) force majeure, war, civil war, mobilisation, military action, riots, terrorist attacks, sabotage, strikes, lockouts, blockades, domestic unrest;
 - b) government measures and interventions, import, export and transit restrictions or prohibitions, seizures and collections, unless the carrier has caused these circumstances through its fault;
 - c) blockades of shipping of any kind, shipping accidents, malfunctions or business interruptions in locks, canals, ports or other shipping facilities, traffic disruptions, obstructions of traffic and seaports or obstruction of shipping, unless the carrier has caused these circumstances through its fault;
 - d) natural disasters, high water, low water, floods, ice formation and hazard.
2. For the duration of one of these circumstances and up to a maximum of fourteen days thereafter, the carrier shall be entitled to charge compensation for operating loss plus the cost of additional effort for all delays in the voyage, as well as at its option:
 - a) to either carry out the transport and charge a freight surcharge for the entire agreed transport route and to charge to the cargo all additional costs incurred in comparison with a normal execution of the carriage order, whereby the consignor and the consignee are jointly and severally liable for the additional costs;
 - b) or to terminate the agreement, without any notice of default being required, and in accordance with Article 18 paragraph 5 to charge dead freight and to unload or have unloaded cargo already loaded at a location deemed suitable by it on behalf of and at the risk and expense of the consignor and consignee and to have it unloaded and stored or to transport it further by other means. All additional costs, transport costs and expenses incurred as a result of unloading at an intermediate port, storage or further transport shall be borne by the parties arranging carriage.
3. The carrier shall also have the above rights if it has failed to inform the consignor and/or the consignee that such an event has occurred.
4. If the performance of the voyage is permanently prevented by circumstances other than those referred to in paragraph 1 of this article, for which the carrier is not liable under these general terms & conditions, the contract of carriage shall cease to have effect without either party being liable to pay compensation to the other party. The consignor shall bear the costs of unloading already loaded cargo.
5. In particular, permanent impediment shall be deemed to exist,
 - a) when a vessel carrying out the transport is lost or damaged to such an extent that it cannot make the voyage without major repairs;
 - b) such repairs are to be regarded as, in particular, those requiring the complete unloading of the cargo;
 - c) if the cargo to be transported is lost.
6. the consignor and the consignee are jointly and severally liable to the carrier for all extra daily freight, freight surcharges, operating loss and other additional costs.

Article 9 - loading and unloading times and mooring fees

1. Subject to specific agreements, the duration and rate of the loading and unloading time is calculated on the basis of the Tankschiff-Transport Bedingungen in force at the time the transport is carried out. Unless otherwise agreed in the carriage order, the mooring fees shall be calculated on the basis of the German "Lade- und Löschzeitenverordnung" in accordance with the latest adjustments in 2010 and/or calculated on the basis of a deviating agreement made between BFT and the consignor.
2. This does not affect any further claims for compensation.

Article 10 - obstacles to delivery, storage and forced sale

1. If the cargo is not accepted by the designated consignee or if payment of the claims on the cargo is refused, there are other obstacles or if the consignee does not present itself, the carrier shall inform the consignor thereof and request instructions. If this is not feasible under the given circumstances or if the consignor remains in default in providing instructions within the period of 12 hours after notification or if the carrier cannot reasonably be expected to carry out the instructions, the carrier is authorised to store the cargo on behalf of and at the expense and risk of the parties arranging carriage in a land tank or a lighter.
2. If the unloading time is exceeded, the carrier is entitled to unload the cargo itself or have it unloaded at the risk and expense of the parties arranging carriage or to store it in accordance with the provisions of paragraph 1, all without prejudice to the carrier's right to the resulting mooring fees. This does not affect any further claims of the carrier for compensation due to exceeding the unloading times.
3. The storage of the cargo in lighters or land tanks count as a correct delivery. The carrier's right of retention and/or pledge is not affected by this.
4. If the cargo is not accepted within two months after being put into storage, the carrier is entitled to sell the cargo sold by private treaty or public auction without any notice, official decision or court order being required. If the cargo requires high maintenance or storage costs or if, in the carrier's estimation, its value does not cover the associated costs, the carrier is entitled to immediately sell or auction the cargo without being bound to the two-month period.

Article 11 - unloading site, unloading

1. The parties arranging carriage shall designate the suitable unloading site. The provisions for the designation and safety of the loading site in Article 5 shall apply mutatis mutandis to the designation and safety of the unloading site.
2. Prior to arrival at the unloading port, the parties arranging carriage shall provide instructions for unloading and customs clearance, failing which the carrier shall be entitled to take any measures it deems necessary in the name and on behalf of the parties arranging carriage.
3. The readiness of the vessel for unloading may be reported at any time to the unloading site.
4. The parties arranging carriage are jointly and severally liable for damage caused by unloading operations. If the damage is due to the fault or negligence of the carrier, the parties arranging carriage shall not be liable. The provisions set out in Article 5, paragraphs 4 and 6 apply accordingly.
5. The vessel shall be unloaded clean and free of cargo residues. If the unloading site does not comply with this obligation, the carrier is entitled, following a complaint, to remove the cargo residues for the account of the parties arranging carriage.
6. The carrier is not obliged to check whether the vessel has been unloaded completely clean and free of cargo residues. The consignor is therefore at all times obliged to indemnify the carrier against damage resulting from contamination of cargo on the next voyage due to contamination with cargo residues. The consignor shall also be liable to the carrier for all other damage which the carrier may suffer as a result of the vessel not being clean and free of cargo residues, including in particular loss of time, surveyor's fees and cleaning costs.

Article 12 - liability of the carrier

The carrier is not liable for any damage caused:

- a) by acts or omissions of the captain of the vessel, the pilot or any other person employed by the vessel or by the push or tug boat during navigation or in the composition or uncoupling of a pushed or towed convoy, provided that the carrier has complied with its obligations to the crew under Article 3(3) CMNI, unless the acts or omissions were the result of an intentional attempt to cause the damage or of reckless conduct with the knowledge that such damage would probably result;
- b) by fire or an explosion on board the vessel;
- c) by defects in its vessel or in a rented or chartered vessel that existed before the start of the voyage, if it proves that these defects could not be discovered before the start of the voyage, despite due care being taken;
- d) by force majeure. In case of force majeure, the carrier is relieved of its takeover and/or carriage obligation, regardless of whether the cargo has already been taken over or loaded and whether or not the voyage has started. The carrier shall not be liable for any damage if the takeover and/or carriage obligation lapses as a result of force majeure.

Article 13 - liability of the consignor

Supplementary to Article 8 CMNI, the consignor is liable for (future) damage suffered by the carrier caused by the cargo or by materials or other items made available by the consignor, the shipper or the consignee. The consignor's obligation to pay compensation is excluded if the damage is caused by the carrier's fault. If the damage is caused by fault of both the consignor and the carrier, then both are liable for their part of the fault.

Article 14 - insurance

Without explicit written instructions, the carrier is not obliged to insure the cargo against possible dangers or risks.

Article 15 - transport documents

1. Transport documents may only be signed on behalf of BFT if BFT has given permission for this.
2. If the consignor or the subcarrier signs transport documents on behalf of FTT contrary to the previous paragraph and as a result liability arises on the part of FTT that exceeds the liability under these general terms & conditions, the consignor shall indemnify FTT against third-party claims.

Article 16 - mutual cooperation in the event of damage

1. The carrier and parties arranging carriage shall cooperate with each other in the event of damage to or loss of the cargo, in the event of damage to the facilities of the tank terminal as well as in the event of damage to the vessel in order to determine the extent and cause thereof. Both the carrier and the consignor are authorised before or on delivery of the cargo to have a judicial or extrajudicial investigation carried out into the condition and quantity of the cargo and the extent of the damage. The consignor who suspects damage or a shortage is authorised before or on delivery to have a judicial or extrajudicial investigation carried out into the manner in which the loading took place and into that which appears from the condition of the vessel and the cargo with regard to the cause of the damage or the shortage.
2. The carrier and parties arranging carriage are obliged, within the framework of an investigation as described in paragraph 1, to give each other access to cargo samples, the vessel and the facilities of the tank terminal upon prior request.
3. The carrier shall be immediately informed by the party arranging carriage in writing and invited in writing to perform a counter investigation.

Article 17 - general average

1. In the case of general average, the general average rules of the latest published version of IVR at the time of the takeover of the cargo for transport apply and as available at www.ivr.nl.
2. The parties arranging carriage shall immediately pay the contributions and/or advances, regardless of and without prejudice to their possible rights under the contract of carriage to recover the payable contributions. They are jointly and severally liable to the carrier for all general average contributions resting on their cargo under average adjustment. The carrier is entitled to demand an average bond and an advance payment for these contributions. A right of suspension with respect to the general average contributions is excluded. In particular, the parties arranging carriage are not entitled to refuse payment of an advance or contribution on grounds that the carrier is at fault and a right of action exists due to fault of the carrier or the vessel.
3. The right parties arranging carriage to recovery of general average contributions paid is excluded in the event of a general average event due to a nautical error within the meaning of Article 25(2)(a) CMNI, due to fire or explosion or due to a defect in the vessel which was not identifiable at the time of commencement of the voyage (Article 25(2)(b)(c) CMNI). The right to recovery of general average contributions paid does not lapse in the aforementioned cases, if in the event of a nautical error there is a fault on the part of the carrier within the meaning of Article 21(1) CMNI, or if in the event of fire or explosion or in the event of a defect in the vessel at the time of the commencement of the voyage due to a fault on the part of the carrier.

Article 18 - freight, dead freight

1. Subject to special arrangements, the freight includes the transport in the period between receipt and delivery of the cargo on board the inland vessel. The freight shall at least be calculated over the gross weights, quantities or dimensions of the cargo as stated in the cargo documents. If higher weights or quantities are stated in other documents, or are determined during weighing or inspections, these are decisive for the freight calculation. The freight is payable on delivery of the cargo.
2. The agreed freight is based on open and unobstructed voyage. All additional costs and expenses that arise in deviation of a normal course of the voyage of the vessel are for the account of the parties arranging carriage, unless these are caused by fault of the carrier.
3. The carrier is entitled to the full freight, if:
 - a) the load is only partially delivered;
 - b) the consignor or the consignee require the discharge of the cargo at the loading port or at an intermediate port;
 - c) the continuation of the voyage for reasons beyond the carrier's control, is permanently or temporarily prevented or the voyage is only partially performed or;
 - d) the cargo is destroyed, lost, seized, confiscated, damaged, deteriorated or otherwise rendered worthless.
4. After commencement of the voyage, the consignor may issue instructions to unload the cargo again at the loading port or at another port situated on the route of the voyage. If the consignor gives such instructions, it shall pay the full freight and all additional costs incurred by the carrier as a result.
5. The consignor is liable towards the carrier for freight, dead freight, freight surcharges, costs, expenses, levies and other claims resting on the cargo as well as for mooring fees.

Article 19 - right of retention and pledge of the carrier

1. The carrier has a right of retention and/or a right of pledge on the cargo for all claims based on the contract of carriage as well as for undisputed claims under any other contract of carriage concluded with the consignor. The right of retention and/or pledge also applies to the accompanying documents.
2. The right of retention and/or pledge exists as long as the carrier has the cargo in its possession, in particular as long as it can dispose thereof on the basis of the bill of lading or the storage receipt.
3. When exercising the right of retention or pledge, the carrier is entitled to unload the cargo on behalf of and at the risk and expense of the consignor and consignee and to store it at a suitable location or to demand security for its claims.
4. Third parties who make a claim on the cargo under the bill of lading or the consignment note, acknowledge by receipt of the bill of lading or the consignment note or by having such documents at their disposal, the carrier's right of retention and/or pledge, but only insofar as this relates to claims relating to transport as reflected in the bill of lading.

Article 20 - setoff / transfer prohibition

1. The consignor and consignee are not entitled to set off claims disputed by the carrier under any legal relationship against claims of the carrier and/or to exercise a right of suspension in respect of claims of the carrier.
2. Without written permission from the carrier, the consignor and consignee are not entitled to transfer claims against the carrier or its agents to third parties, unless it concerns a transfer to transport insurers who have insured the transport in question.

Article 21 - payment

1. Payment of the invoiced amounts shall be made within thirty days of the invoice date.
2. If the parties arranging carriage do not pay any amount owed by them within the aforementioned term, they shall be in default without any notice of default being required. As from the day on which the cargo interests are in default, BFT shall be entitled to claim default interest of 1.5% per month or part of a month during which the default continues. If the parties arranging carriage are in default as referred to in this article, they shall owe BFT the extrajudicial collection costs from the date of default, which costs shall be fixed at 15% of the invoice amount, without prejudice to BFT's right to full compensation.
3. All payments to BFT shall be made in the bank account designated for this purpose by BFT or in another manner of payment indicated by BFT.

Article 22 - limitation and expiry

All claims on FTT under this agreement lapse after 10 months from the bill of lading (B/L) date. By receipt of the cargo without judicial or extrajudicial investigation and without reservation of right at or immediately after receipt, all claims against the carrier due to partial non-delivery or total or partial damage lapse, unless this was not externally perceptible and the consignor has made a reservation of right no later than on the third day after receipt. The reservation shall generally indicate the nature of the damage.

All claims against the carrier shall be made within 10 months after the bill of lading date, under penalty of forfeiture of the legal claim.

Article 23 - conversion

Insofar as these conditions, whether or not in part, are in conflict with mandatory law, even if it concerns only part of a provision, these conditions shall otherwise remain in force. If the purport of a provision, insofar as it is contrary to mandatory law, largely corresponds to that of another, valid provision, that other provision shall be regarded as appropriate, and the valid provision shall be entitled to the effect of the replaced provision.

Article 24 - competent court

1. All disputes, including those disputes, which are considered as such by only one of the parties, which may arise as a result of an agreement to which the present conditions apply in whole or in part or as a result of a further agreement which is the result of such an agreement, shall, without prejudice to the parties' authority to request a provision for interim relief, be adjudicated by the competent court in the district of Rotterdam.
2. The provisions of the previous paragraph do not affect BFT's right to submit the dispute in accordance with the competent court as shown by the normal rules of competence.

Article 25 - languages

A Dutch, German, English and French text of these general terms & conditions exists. In the event of any contradictions, the Dutch text shall prevail.