



DAANEN

## GENERAL TERMS AND CONDITIONS

of Daanen Shipping & Logistics B.V. (Chamber of Commerce No.: 09175109)

### 1. Definitions

In these General Terms and Conditions ("GTC") will be understood under:

- a. Contractor: Daanen Shipping & Logistics B.V., having its seat of business in (654ICD) Nijmegen, the Netherlands, at Oostkanaaldijk 308, hereinafter: 'Daanen';
- b. Principal: each natural or legal person in the capacity of entrepreneur, for the benefit of whom Daanen executes services, or with whom Daanen concludes an Agreement of commission, or with whom Daanen is in discussion or negotiation is over the conclusion of an Agreement of commission (hereinafter: 'the Counterparty');
- c. Agreement: each Agreement of commission that is concluded between Daanen and the Counterparty, each change thereof or addition thereto, as well as all (legal) acts for the preparation and for the execution of that Agreement;
- d. Services: all activities, in whichever form and under whichever name that will be executed by or on behalf of Daanen;
- e. Order: each commission of the Counterparty, in whichever form.

### 2. Applicability

2.1 These General Terms and Conditions are applicable to all offers (and other legal acts) of Daanen and on all agreements that will be concluded by Daanen with the Counterparty.

2.2 The applicability of any (general) terms and conditions of the Counterparty is explicitly rejected – in accordance with the stipulations hereafter - by Daanen.

2.3 Further to the nature of the total commission, activity or other performance, or of section thereof reasonably to be regarded as an independent part, shall apply next to these General Terms and Conditions also the following standard conditions customary in the concerned industry:

- (a) for freighting in national and international traffic, as well as transport conditions for the inland waterways transport: IVTB 2010, CMNI 2009;
- (b) for sea freighting: Gencon Charter 1994;
- (c) for the towing and assisting: (i) The so-called Sleepconditiën 1965, filed with the District Court in Amsterdam of the 15th of December 1965, or (ii) The so-called General Sleepconditiën, filed with the District Court in Rotterdam of the 4th of March 1946, or (iii) The so-called Netherlands' sleepconditiën 1951, filed with the District Court in Rotterdam Of the 15th of November 1951;
- (d) for the lease of tug and tow boats in the dredge industry: General Terms and Conditions (lase conditions tug and tow boats Dredge industry 1980), for pontoons and flatboats: Dekschuitenvoorwaarden 1964;
- (e) for tugging and provision of services to and/or on board of tug barges (insofar not failing under the definition of assistance): European Tug Conditions 2007;
- (f) accepting the commission of loading and/or unloading: Rotterdam Stevedores conditions 1976;
- (g) for assisting tug units and the provision of all other services, insofar not falling under the

definition of assistance to tug units: "The conditions for the assisting of tug units", filed at the court clerk's office of the District Court in Rotterdam of the 29th of December 1967, lastly changed on the 27th of January 1978;

(h) in case of salvation (including among others the provision of assistance) of all vessels and other objects: The Salvation conditions 1958, modified on the 7th of February 1974, filed at the Court Clerk's office of the District Court in Amsterdam and Rotterdam of the 1st of August 1958;

(i) in case of the making available of floating barges and crew: The Barge use conditions 1976, filed at the Court Clerk's office of the District Courts in Rotterdam, Amsterdam and Middelburg of the 1st of January 1977;

j) in case of the making available of flatboats, barges, pontoons etc.: The Use Conditions for flatboats 1961, filed at the Court Clerk's office of the District Courts in Rotterdam of the 31st of December 1961;

(k) in case of flatboats: The Rotterdam flat bottom boat conditions, filed at the Chamber of Commerce in Rotterdam of the 1st of January 1970, lastly changed on the 1st of December 1974;

(l) in case of the inland transport of goods per regular barge service, tram and over the road: The General Terms and Conditions of Transport 2002, unless the CMR-treaty or any other law or treaty would be applicable mandatorily by law.

(m) in case of expedition: The Netherlands' Expedition conditions 2004 (Fenex-conditions), filed at the Court Clerk's offices of the District Courts in Amsterdam, Rotterdam, Arnhem and Breda of the 1st of July 2004;

(n) in case of general average: insofar in the above the general average has found no regulation, the York Antwerp-Rules 2004;

(o) in case of storage, custody and delivery of goods: The Netherlands' Storage Conditions filed by Fenex (1995);

(p) for the controle and inspection: "The General Terms and Conditions", (Verocog conditions) filed at the Chamber of Commerce in Rotterdam of the 1st of July 2001;

(q) for ship broker activities: "the General Netherlands' Ship broker conditions", filed at the Court Clerk's offices of the District Court in Amsterdam, Dordrecht, Groningen, Leeuwarden,

Middelburg and Rotterdam, as well as at the Chamber of Commerce in Amsterdam, Dordrecht, Groningen, Leeuwarden, Middelburg, Rotterdam and Terneuzen of the 1st of December 1992.

2.4 If standard conditions are (or have been) reviewed, then from the date of the filing the new text shall apply.

2.5 The standard conditions applicable in any case apply in their full scope, even in deviation of the stipulations of these General Terms and Conditions.

2.6 In accordance with the previous, changes of and/or additions to any stipulations in the Agreement and/or these General Terms and Conditions can only be agreed in writing.

2.7 When a change and/or addition as referred to in the previous section is agreed, then this change and/or addition applies only for the concerned Agreement.

2.8 The acceptance of an offer or the placing of an order constitutes that the Counterparty accepts the applicability of these General Terms and Conditions fully and without precondition.

2.9 From the stipulations in these General Terms and Conditions can only be deviated in writing, in which case the other stipulations remain in force without restriction.

### **3. Offers**

3.1 All offers are non-binding. Daanen is firstly then bound, because Daanen has accepted a commission/order in writing or has confirmed otherwise for approval. Daanen is authorised to

refuse orders and/or commissions, or connect certain conditions to the delivery (and/or commission), unless stipulated explicitly differently.

3.2 If no prior written acceptance of an order has taken place, then the Agreement is concluded because Daanen complies in whole or in part with a request (to delivery) of the Counterparty, or because Daanen sends an invoice to a Counterparty that has requested delivery (provision of services).

3.3 All statements by Daanen of numbers, sizes, weight and/or other designations of the products and/or services have been made with care, but Daanen cannot warrant that in that regard no deviations shall occur. Shown or provided drawings or models are only designations of the concerned products and/or services. When the Counterparty demonstrates that the delivered, respectively, the products and/or services made available deviate thus from the statements by Daanen or from the drawings or models, that he reasonably can no longer be required to the take-off thereof, then the Counterparty has the right to dissolve the Agreement, however only insofar that dissolution is necessary in reasonableness.

3.4 Images, drawings and so forth provided by Daanen remain its property and may without its explicit permission not be copied or reproduced, or made available to third parties.

#### **4. Prices**

4.1 All prices of Daanen are expressed in euros and exclusive of turnover tax, and exclusive of possible handling, shipping or transport costs, taxes or other levies, unless agreed otherwise in writing. The prices and additional information in all documents of Daanen are under the precondition of errors and changes.

4.2 The price mentioned by Daanen is based on his (purchase) price and other cost factors. When one of these cost price elements after the confirmation of the order, but before delivery of the products (or services) is increased, then Daanen has the right to charge on the increases to the Counterparty.

4.3 Notwithstanding the general applicability of the previous section is it in particular applicable to a change of import or export duties or other duties or taxes occurring after the sending of the order confirmation and to a change in the exchange rate of the euro against foreign currencies, in which Daanen has purchased the products (or services).

4.4 The Counterparty safeguards Daanen of all costs and damages that might derive for Daanen from the fact:

- a. that the Counterparty is not properly registered for the turnover tax or a comparable tax in relevant EU member state; and/or
- b. that the Counterparty has provided incorrect or untimely data to Daanen and/or the authorities in the area of turnover tax or a comparable tax in a relevant EU member state.

#### **5. Payment terms**

5.1 Each Agreement is concluded by Daanen under the suspending condition, that the Counterparty proves to be sufficiently creditworthy on the basis of information to be collected by Daanen.

5.2 During the execution of the Agreement Daanen is authorised to suspend the compliance with its obligations, until the Counterparty has provided surety upon request and to the satisfaction of Daanen for the compliance with all of his obligations from the Agreement.

5.3 Unless agreed otherwise in writing, the payment for delivery (provision of services) must take place per bank and so in to IBAN/account number: NL43INGB0677374399, in accordance with the applicable payment terms of Daanen, as stated on the concerned offer. The payment by the Counterparty must thereby each time take place within thirty (30) days after the date of the invoice, unless agreed otherwise in writing.

5.4 The Counterparty is not authorised to set-off of a claim from his side against a claim of Daanen, unless this is permitted to him on the basis of an irrevocable court or arbitration ruling.

5.5 For as long as the Counterparty does not have paid the counter performance due by him, insofar payable upon demand, Daanen is authorised to suspend the compliance with its obligations.

5.6 The Counterparty does not have the right to suspend his obligations, unless the Counterparty within thirty (30) days after the becoming payable upon demand of the concerned obligations, submits the dispute to a Netherlands' court competent thereto.

5.7 The Counterparty is, without further notification of default, liable to pay interest over all amounts that have not been paid no later than on the last day of the payment term, from that day, equal to the trade interest by law then applicable in the Netherlands. Each time after expiry of a month, the amount over which the interest will be calculated, will be increased with the interest due over that month.

5.8 If the Counterparty, also after the expiry of a further payment term set by registered letter, has not paid the due amount and interest, then the Counterparty is obliged to compensate Daanen for all out-of-court and in-court costs, inclusive of reasonable costs for legal assistance in or outside a procedure.

In any case the Counterparty is liable to pay in the case of a monetary claim: interest costs equal to the Deposit interest of the European Central Bank plus 6.75%. Out-of-court collection costs possibly to be made by Daanen will be calculated in accordance with the Dutch Resolution compensation for out-of-court collection costs 2012. If Daanen demonstrates to have made higher costs, which were reasonably necessary, then these will also be eligible for compensation.

5.9 If by Daanen on the basis of considerations on leniency or otherwise, to the Counterparty a delay for the execution of any performance is given, then the new term has each time a fatal character.

## **6. Obligations of the Counterparty**

6.1 The Counterparty is required to provide Daanen timely with all information, which Daanen requires in its opinion for a correct execution of the Agreement. The offer is based on the information provided thereto by the Counterparty, whereby Daanen may rely on the correctness and completeness thereof. The information provided by the Counterparty shall serve as point of departure for the conclusion of the agreement. The Counterparty warrants the correctness, completeness and reliability of the information provided to Daanen, also if this originates from third parties.

6.2 The Counterparty ensures that Daanen can dispose over the data and approvals required for the execution of the activities, insofar applicable.

6.3 If the data required for the execution of the Agreement have not been provided timely to Daanen, then Daanen has the right to suspend the execution of the Agreement and to bring the extra costs deriving from the delay - according to the usual rates of Daanen – into account to the Counterparty.

6.4 The Counterparty must ensure that the activities to be executed by third parties, which do not belong to the activities agreed with Daanen, will be executed in such a manner and so timely that the execution of the work experiences no delay thereof.

## **7. Execution of the Agreement**

7.1 Daanen shall execute the Agreement to the best of its insights and abilities and in accordance with the requirements of good expertise. The one and the other on the basis of the state of the technique known on that moment.

7.2 If and insofar a good execution of the Agreement requires so, Daanen has the right to let activities be executed by third parties. Such for the account of the Counterparty.

7.3 If it is agreed that the Agreement shall be executed in phases, Daanen can postpone the execution of those parts that belong to a following phase until the Counterparty has approved the results of the preceding prior phase in writing.

### **8. Changes and more/lesser work**

8.1 Changes required after all by the Counterparty, after the granting of the commission, respectively the conclusion of the Agreement with Daanen, in the (execution of the) Agreement must be reported by the Counterparty in writing to Daanen, before Daanen has made a start with the execution of the Agreement. These changes only become part of the Agreement concluded between Daanen and the Counterparty after Daanen has accepted these changes in writing, or has begun with execution thereof. If the changes desired by the Counterparty, in the opinion of Daanen make a proper execution of the Agreement impossible, Daanen is authorised to dissolve the Agreement with the Counterparty on this ground out-of-court. Daanen is in this case not liable for any damages suffered as a consequence thereof by the Counterparty, of whichever nature and scope. Problems, deriving from the changes are always for the account and risk of the Counterparty.

8.2 If Daanen accepts the changes in the original Agreement or has begun with the execution thereof, the Counterparty is obliged to pay all (extra) costs as costs of more/extra work deriving therefrom to Daanen, notwithstanding the other payment obligations of the Counterparty for the Agreement concluded with Daanen.

8.3 If the said changes have the consequence that delay in the execution of the Agreement occurs, then the terms stated by Daanen shall be extended with the period of the delay.

Daanen is with regard to the delay deriving here from never liable towards the Counterparty.

8.4 If Daanen otherwise is of the opinion that there is an instance of more/extra work, Daanen shall give notification thereof as soon as possible in writing to the Counterparty. Daanen shall give the Counterparty thereby also an indication of the consequences for the term of the completion of the execution of the Agreement, as well as of the costs connected to the more/extra work.

8.5 If the Counterparty has not made known within four working days after the receipt of the notification of Daanen referred to in section 4 to object to the more/extra work, the Counterparty is deemed to have accepted this more/extra work and the Counterparty is obliged to pay the (extra) costs deriving therefrom to Daanen.

### **9. Delivery term**

9.1 The term for the execution of services stated by Daanen is based on the circumstances applicable for Daanen at the time of the conclusion of the Agreement and, insofar dependent on performances of third parties, on the data provided by those third parties to Daanen. The delivery term and or execution term shall be observed as much as possible by Daanen, but these (delivery) terms stated by Daanen are only indicative.

9.2 Stated terms start on the date of the written order confirmation or confirmation otherwise by Daanen. If Daanen for the execution of the Agreement requires data or aids that must be provided by the Counterparty, then the terms start on the day that all required data or aids are in the possession of Daanen, but not sooner than on the date of the order confirmation.

9.3 In case of exceeding of any term the Counterparty has no right to compensation (of damages) in that matter. The Counterparty has in that case neither a right to dissolution or cancellation of the Agreement, unless the exceeding of the term is such that from the Counterparty reasonably cannot be required that he leaves (the concerned part of) the Agreement intact. The Counterparty is then authorised, after notification of default containing a reasonable further term for compliance, to dissolve or cancel the Agreement by registered letter, however only insofar that is strictly necessary.

## **10. Force Majeure**

10.1 If Daanen by a non-imputable shortcoming ("Force Majeure") cannot comply with its obligations towards the Counterparty, then those obligations will be suspended for the duration of the situation of Force Majeure.

10.2 If the situation of Force Majeure has lasted three months, then both parties have the right to dissolve the Agreement in writing in whole or in part.

10.3 Under Force Majeure of Daanen will be understood each circumstance independent of the will of Daanen, because of which the compliance with (the concerned part of) its obligations towards the Counterparty is hindered, delayed or made uneconomical or because of which the compliance with these obligations in reasonableness cannot be requested of Daanen. Insofar not already understood thereunder, will under Force Majeure of Daanen also be understood: work strikes, protest actions, government measures, war, revolution, terrorism or comparable situations, (power) disruptions, disruptions in communication lines or - systems, defects or disruptions to (transport) vehicles, blockade of traffic, explosion and other calamities in the broadest sense of the word, including among others disasters of nature and considerable diseases of an epidemic nature of members of the personnel of Daanen.

10.4 Under Force Majeure are also understood all circumstances, which must reasonably be regarded to stand in the way of the delivery or timely delivery of the sold, respectively (timely) delivery or making available, such as non or not timely delivery to Daanen by its supplier, in which instances Daanen has the choice to postpone the delivery or to dissolve the Agreement.

10.5 Parties shall notify each other as soon as possible about a (possible) situation of Force Majeure. Daanen is during the situation of Force Majeure not required to compensation of any (direct or indirect) damages of or at the Counterparty, or is Daanen required thereto after termination of the Agreement as referred to in section 2.

## **11. Reclamation/complaints**

11.1 Complaints about executed activities must be reported by the Counterparty no later than within two (2) days after discovery, in writing and with sufficient detail Daanen. Defects, that reasonably not within the above stated term could have been established, must be reported immediately after establishment and no later than within 30 days after execution of the services in writing to Daanen.

11.2 The Counterparty shall grant all cooperation desired by Daanen for investigation of the reclamation, among others by enabling by Daanen to (let) execute an investigation on the location into the circumstances of treating, processing, installation and/or use.

11.3 The Counterparty has no right to reclamations regarding products of which by Daanen no verification of the reclamation can take place.

11.4 The Counterparty can make no claims regarding reclamations about defects of executed activities towards Daanen for as long as the Counterparty has not complied with any direct opposed obligation towards Daanen.

11.5 Reclamation concerning executed activities can have no influence on the rights and obligations of parties concerning earlier delivered activities and activities yet to be delivered. Complaints concerning the execution of the Agreement by Daanen do never give the Counterparty the right to suspend his payment obligations towards Daanen.

11.6 If the Counterparty timely, correct and justifiably makes a reclamation concerning defects in provision of services, then the liability deriving therefrom for Daanen will be limited to the obligations described in 12, depending in the nature of the reclamation and in accordance with the other stipulations of article 12 (warranty).

11.7 Under no circumstance and on no single moment before or after definitive delivery (or execution) can the Counterparty claim compensation of damages, or dissolution of the Agreement with Daanen, if the executed activities do not comply with what has been

mentioned, demonstrated or stated by Daanen. Neither Daanen is in whichever form liable for possible violations and the financial and legal consequences hereof, as a consequence of the (i)legal use or application of the services delivered by Daanen to the Counterparty.

## **12. Warranty**

12.1 If timely, correct and in accordance with the stipulations of article 11 a reclamation has been made and to the reasonable judgment of Daanen it has been demonstrated satisfactorily that the activities have not been properly executed, then Daanen shall have the choice to execute the activities anew, not to grant the Counterparty after all a discount on the price, to be established in mutual consultation, unless by written Agreement by Daanen and the Counterparty explicitly differently would have been agreed. By satisfaction of one of the aforementioned performances, Daanen shall be fully discharged of his warranty obligations and Daanen shall not be held to any further compensation (of damages).

12.2 There is solely a warranty on the services executed by Daanen if this has been stated unequivocally and clearly on the orders, commissions, or invoices.

12.3 Should the Counterparty execute or let execute by others possible repairs or alterations without prior permission of Daanen, then Daanen shall not be required to comply with its warranty obligations. This also applies if by the Counterparty or affiliated parties an improper use of the goods has taken place, under which will be understood all the use for which the good reasonably and according to the user manual is not destined.

12.4 Unless explicitly stated differently, no warranty applies to the services that are offered by Daanen.

## **13. Liability and safeguard**

13.1 Daanen is never liable for any indirect damages of the Counterparty or third parties, including also consequential damages, non-material damages, enterprise or environmental damages.

13.2 The liability of Daanen towards the Counterparty is limited on whichever basis per event (whereby a related series of events is regarded as one event) to the concerned amount of the invoice. If no amount of the invoice can be designated, then the liability of Daanen is limited to the amount that it receives in that matter from its enterprise liability insurer.

13.3 Except for in case of gross fault or wilful intent by Daanen or its highest managing personnel, the Counterparty shall safeguard Daanen from all claims of third parties, on whichever basis, concerning compensation of damages, costs or interest, related to the services, unless the Counterparty can reasonably not be reproached in any manner concerning the damages.

13.4 The limitations of liability in the previous sections remain not applicable insofar the concerned damages are caused by wilful intent or gross negligence by Daanen or its highest managing personnel.

13.5 If upon delivery of services by Daanen to the Counterparty directions, prescriptions and/or use instructions are provided with regard to the services and purposes, then the Counterparty is obliged to comply therewith.

## **14. Suspension and Dissolution**

14.1 In case of (provisional) suspension of payment, bankruptcy, cessation or liquidation of the enterprise of the Counterparty, all agreements with the Counterparty shall be dissolved by law, unless Daanen notifies the Counterparty within reasonable time (in prevalent cases upon request of the receiver or the curator) to request compliance with (a part of) the concerned Agreement(s), in which case Daanen is authorised without notification of default:

a. to suspend the execution of the concerned Agreement(s) until payment has been made sufficiently sure; and/or b. suspends all of its possible obligations towards of the Counterparty; the one and the other notwithstanding Daanen's other rights under whichever Agreement with the Counterparty and without that Daanen is required to any compensation of damages.

14.2 If the Counterparty does not comply properly or not within a set term or otherwise timely with any obligation that derives for him from any Agreement, then the Counterparty is in default and Daanen is authorised without notification of default or intervention of the courts to:

a. suspend the execution of that Agreement and directly related agreements until payment has sufficiently been made sure; and/or

b. dissolve that Agreement and directly related agreements in whole or in part; the one and the other notwithstanding Daanen's other rights under whichever Agreement with the Counterparty and without that Daanen is required to any compensation of damages.

14.3 In case an event occurs as referred to in section 1 or section 2 respectively all claims of Daanen on the Counterparty and the claims referred to on the basis of the concerned Agreement(s) will be immediately and entirely payable upon demand. The Counterparty is obliged to take the necessary measures to enable Daanen to put its rights into effect.

### **15. Applicable law, information duty and competent court**

15.1 The Laws of the Netherlands are applicable to these General Terms and Conditions, as well as to all agreements.

15.2 Third parties do not access any Agreement between Daanen and the Counterparty on the basis of a third party stipulation in these General Terms and Conditions or the Agreement. Article 6:254 section I of the Dutch Civil Code is therefore not applicable.

15.3 If these General Terms and Conditions are applicable in an international relation with the Counterparty, shall the Counterparty inform Daanen each time directly about all stipulations in these General Terms and Conditions that are not enforceable in the country of the Counterparty. Provided that such is approved beforehand by Daanen, Daanen shall then bear the reasonable costs of a possible investigation into this. The Counterparty shall, insofar he remains in default with the stipulations in the first sentence of this section, not make a claim in or out-of-court on the possible non-enforceability of such stipulations and safeguard Daanen from any damages that might emerge, unless Daanen has refused to pay the reasonable costs for the required investigation – as referred to above.

15.4 Insofar by national or international rules of law it is not mandatorily prescribed otherwise, all disputes between parties shall be submitted to the court in the seat of business of Daanen.

### **16. Conversion**

If and insofar on the basis of the reasonableness and fairness or the unreasonably burdensome character on any stipulation(s) in these General Terms and Conditions no claim can be made, then to that stipulation(s) a meaning will be attributed concerning content and tenor, as much as possible in accordance with the meaning, so that a claim thereof can be made.

### **17. Partial invalidity**

Should any stipulation(s) of these General Terms and Conditions not be applicable or in violation with the public order or the law, then only the concerned stipulation(s) shall be regarded as not written, but the other General Terms and Conditions shall remain fully in force. These General Terms and Conditions are applicable to all offers, designated offers, invoices, orders, deliveries, services, and other activities of Daanen. These General Terms and



Conditions shall be sent free of charge upon first request. These General Terms and Conditions are also available on the internet page of Daanen: [www.daanen-shipping.nl](http://www.daanen-shipping.nl)