

# GENERAL TERMS & CONDITIONS

## **Tank Services Valley B.V.**

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## TANK SERVICES VALLEY B.V. | GENERAL TERMS & CONDITIONS |

<b>Registered Address</b>	Tank Services Valley B.V., Schabernauseweg 1, 6718 XE Ede GLD, Netherlands
<b>Post Address</b>	Tank Services Valley B.V., Ind. Terrain BT A12, Drieënhuizerstraat 32, 3774 RE Kootwijkerbroek, NL
<b>Chamber of Commerce</b>	KvK Reg. No. 83347127
<b>General Email Address</b>	info@tsv-edede.com

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### DEFINITIONS

In these general Terms & Conditions the following capitalized terms have the following meaning, unless explicitly stated otherwise.

**General Terms & Conditions** | The General Terms & Conditions of Tank Services Valley B.V.

**AVC Terms and Conditions** | General Transportation Terms and Conditions of the Stichting Vervoeradres in The Hague, latest version, published at [AVC 2002 versie 2015 Engelse vertaling PDF | 850.55 KB \(sva.nl\)](#)

**CMR Convention** | Convention on the contract for the International Carriage of Goods by road (CMR), latest version published at [CMR-verdrag \(officiële Engelse versie\) PDF | 1.73 MB \(sva.nl\)](#)

**Dutch Forwarding Conditions** | Dutch Forwarding Conditions, General Terms of FENEX (Netherlands Association for Forwarding and Logistics), latest version, published at [Nederlandse Expeditie voorwaarden \(fenex.nl\)](#)

**Logistics Services Conditions** | Logistics Services Conditions (LSC), General Logistics Services Conditions of FENEX (Netherlands Association for Forwarding and Logistics) and TLN (Transport and Logistics Netherlands), latest version, published at [Logistieke Services Voorwaarden 2014 \(fenex.nl\)](#)

**General Tank Storage Conditions VOTOB** | General Terms and Conditions for Tank Storage in the Netherlands, latest version, published at [Download \(votob.nl\)](#)

**Goods** | The goods made available by or on behalf of the Customer to Tank Services Valley or its Auxiliary persons with a view to the performance of the Agreement.

**Tank Services Valley B.V.** | Tank Services Valley B.V., or also to be referred as TSV in this document, with its established office on Ind. Terrain BT A12 at the Schabernauseweg 1, 6718 XE Ede, The Netherlands.

**Logistics Service Provider** | The party concluding the agreement with the Customer and the party under whose title the Logistics Services are performed.

**Customer** | Every (legal) entity placing orders at Tank Services Valley, purchasing products or services from Tank Services Valley and/or having concluded or wishes to conclude an Agreement with Tank Services Valley.

**Agreement** | All agreements, established orally, in writing or electronically between Tank Services Valley and the Customer, as well as any referral or addition to it and all (legal) acts in preparation or execution of that agreement.

**Party/ Parties** | Tank Services Valley and the Customer separately or combined.

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## **ARTICLE 1 | RELEVANCE**

- 1.1. Deviations from the General Terms & Conditions is possible only if and to the extent that Parties have agreed upon it in writing.
- 1.2. The General (Purchasing) Conditions, under whatever name, of the Customer shall not apply unless the Parties have agreed upon otherwise in writing.
- 1.3. TSV is entitled to adapt the General Terms & Conditions to (legal) conditions. If TSV and the Customer have signed a comprehensive Agreement, the new General Terms & Conditions will only apply to new agreements that will be concluded once TSV has sent over a copy of the Conditions to the Customer.

## **ARTICLE 2 | APPLICABLE OTHER CONDITIONS**

- 2.1. Besides the General Terms and Conditions, depending on the nature of the services in question, the following agreements and conditions apply additionally, in the following order:
  - A. To Cross-Border Road Transportation: the CMR Convention, complemented by the AVC Terms and Conditions.
  - B. To Internal Road Transportation: The AVC Terms and Conditions.
  - C. To Custom Services and agency and Fiscal representation: the Dutch Forwarding Conditions.
  - D. To all Tank Storage Services Conditions: The General Terms and Conditions for Tank Storage in the Netherlands
  - E. To all Logistics Services Conditions including Filling Services, Warehousing Services and remaining Value-Added Services: The Logistics Services Conditions.
- 2.2. In case of conflict between the General Terms & Conditions and the conditions listed in Article 2.1, the content of the General Terms & Conditions will take precedence, unless the conditions referred to are a matter of imperative law.

## **ARTICLE 3 | PAYMENT CONDITIONS**

- 3.1 The agreed rates are based on daytime Logistics Services. If overtime is required and/ or if production during a Saturday and/ or Sunday and/ or National and/ or Bank holiday is requested, special overtime rates will apply. These rates will be agreed upon at the time required to.
- 3.2 In case Logistics Services are executed on Customers request that are not mentioned in the price agreement, TSV reserves the right to invoice these Logistics Services based on re-calculation.
- 3.3 The payment term of TSV are 30 days after Invoice date. The Customer shall pay 100% Net of their invoice.
- 3.4 If payment is received later than the agreed payment conditions, 5% interest will be charged per (part of) each calendar month that the payment is delayed.
- 3.5 TSV shall issue monthly invoices concerning the Tank Rental and weekly invoices for the other by TSV performed Logistics Services whereby each invoice is separated by single order/batch to their Customer for its performed Services, for the previous month in each case. Payments regarding invoices shall be due by Customer regarding the Tank Rental at the latest on the 1st Calendar day of every month and for all other weekly invoices Net 30 days after invoice date.
- 3.6 The with Customer agreed prices and rates are fixed until agreed date in each separate Customer agreement, unless Parties agree to a change of prices, in line with Clause 3.7 & 3.8

- 3.7 The base price for the agreed price agreement is made with each Customer individually. Despite of this agreement, on every February 1st TSV reserves the right to unilaterally adjust all its tariffs, to the extent also included in the price agreement agreed between the Parties, based on the annual CBS consumer price index all households (NL CPI Price index), series 2015=100, of January compared to January of the previous year. All further rate adjustments to with Customer agreed prices will continue to be made preferably by mutual agreement, unless unforeseen circumstances and/or Force Majeure compel TSV to unilaterally adjust certain rates. Any further adjustments to agreed Price agreements will be confirmed to Customer by email, no later than 2 weeks before the actual rate adjustment(s).
- 3.8 Regarding Packaging, the Customer intends to purchase the packaging directly from TSV. Packaging prices will be updated on a quarterly basis and, if required due to significant HDPE raw material price fluctuations, may also be adjusted monthly, in accordance with the formula set out in the mutually agreed Price Agreement.

#### **ARTICLE 4 | CONDITIONS AND LIABILITY**

- 4.1. The TSV General Terms & Conditions are applicable to all the Services as also defined in Article 2, meaning:
- The VOTOB General Terms & Conditions are applicable to the Tank Storage Services.
  - The Logistics Services Conditions are applicable to the Filling Services, Packaging Services and Warehousing Services.
  - The FENEX Forwarding Conditions apply to Customs Services provided by TSV.
  - For all Transport Services within the Netherlands the AVC applies and for cross border Transport Services the CMR applies.
- 4.2. Any liability of TSV will be in accordance with the under 4.1 mentioned VOTOB Tank Storage Services and Logistics Services Conditions, including the limitations provided there in, except if and in so far as a deviation there of has been laid down further in Article 4.9 and/ or Article 4.10.
- 4.3. Any subcontractors, agents, representatives, employees, or others who have received an order from or who have been appointed or engaged by TSV, shall each separately enjoy the same protection and be entitled to the same insurance & liability limitations exclusions and exemptions as apply to TSV under this Agreement and the applicable General Terms & Conditions.
- 4.4. In providing their Logistics Services, TSV shall not become owner of product or Filled IBC/ Drum units or Jerrycans. TSV may only exercise a right to pledge or withhold lien on the Product or the IBC/ Drum units/Jerrycans based on claims which are established legally and proportionate and of which are not disputed by Customer.
- 4.5. TSV will carry out its duties and obligations under this Agreement in compliance with all applicable laws and regulations.
- 4.6. Unless this has been explicitly agreed with the Customer, TSV shall never be obliged to take out insurances for the goods entrusted to TSV.
- 4.7. The insurance of goods during all stages of Customer's requested orders at the TSV facility in Ede and/or all kind of incoming or outgoing transport is not covered. At all times, the product remains the full responsibility of the Customer.
- 4.8 TSV will take out liability insurance covering possible liability arising from providing their Services, but TSV will not insure the Customer Products and Goods. Customer herself will be fully responsible for insurance their Products and Goods while in custody at TSV or her subcontractors or being transported by TSV or her subcontractors. At Customers request, TSV shall provide proper proof of the existence of the liability insurance policy.

- 4.9 In case of loss or damage to the Products during Tank Storage, the VOTOB Storage conditions apply with the following deviations:
- VOTOB Clause 57.3 Old: The words “wilful intent or gross negligence” in Clause 57.3 are deleted and replaced by only the Word “negligence” so that Clause 57.3 as complete Article reads as:
  - VOTOB Clause 57.3 New: “Without prejudice to provisions elsewhere in these General Terms and Conditions, the Storage Company shall not accept any liability for damage, loss, fines and/or costs arisen howsoever, unless the Customer evidence that such damage, loss, fines and/or costs have been caused by negligence on the part of the Storage Company itself, or of the Storage Company’s staff responsible for carrying out the Agreement or the Services of the Storage Company. Liability for third-party claims is expressly excluded.”
  - VOTOB Clause 58.1 Old: The Parties agree to increase the maximum per 1.000-kilogram amount from EUR 500, - to EUR 2.000, - per 1.000 kilogram but the maximum cap per event is reduced from EUR 500.000 to EUR 300.000 so that in the end Clause 58.1 as complete Article reads as:
  - VOTOB Clause 58.1 New: “If the Storage Company is liable, such liability shall be limited to a maximum amount equal to the current value of the damaged, lost or destroyed Goods as at the date of damage, loss or destruction, but limited to a maximum of EUR 2.000,- per 1,000 kilogrammes of the damaged, lost or destroyed Goods, and furthermore capped to a maximum of EUR 300.000,- per event or series of events caused by one and the same event.”
  - In addition to above mentioned VOTB Clause 58.1 New: About the in this Clause mentioned maximum per event amount of EUR 300.000, - the Parties further agree that this maximum is mainly based on the current (Cost)price of the Product, which is now fixed on this maximum of EUR 2.000, - per 1.000 kilograms. In case of a substantial increase of the cost price of the Product, Parties will, if either party so desires, discuss in good faith a potential increase of this maximum amount per event and the potential increase of insurance costs, therefore.
- 4.10 In case of loss or damages of Products/Goods during Filling Services, Packaging Services and/or Warehousing Services, the liability of TSV shall be limited in accordance with Clause 5 of the Logistics Services Conditions (LSC).

## ARTICLE 5 | MISCELLANEOUS

- 5.1 If one or more provisions of the General Terms & Conditions are found to be ineffective, the remaining provisions will remain effective. Parties commit themselves to replacing the non-binding provisions with such provisions which are binding and, considering the purpose and intent of the General Terms & Conditions, differ as little as possible from the non-binding provisions.
- 5.2 TSV is entitled to transfer in whole or in part to a third party the privileges and/or obligations under the Agreement with the Customer. The Customer is entitled to do so only after he has required written consent of TSV.
- 5.3 If one or more provisions of the General Terms & Conditions are found to be ineffective, the remaining provisions will remain effective. Parties commit themselves to replacing the non-binding provisions with such provisions which are binding and, considering the purpose and intent of the General Terms & Conditions, differ as little as possible from the non-binding provisions.
- 5.4 The headings (“titles”) above the various provisions in the General Terms & Conditions have no independent significance. These headings have been added solely for reasons of convenience and shall not affect the interpretations of the provisions themselves in the General Terms & Conditions.

## **ARTICLE 6 | FORCE MAJEURE**

- 6.1 If TSV is unable to perform all or part of its obligations under this Agreement and/or the Order(s) due to Force Majeure, TSV shall notify the other Party in writing, stating all details of such Force Majeure as soon as possible after the occurrence of such event. TSV's obligations, insofar as they are affected by such an event of Force Majeure, shall be suspended for as long as the impossibility thus caused continues. Force Majeure means any event which cannot reasonably be foreseen, controlled, or prevented and which renders the performance of the Agreement and/or the performance of TSV's obligation under this Agreement impossible.
- 6.2 TSV shall not be liable for the non-performance of its obligations due to an event of Force Majeure and the corresponding obligations shall therefore be suspended during the continuation of such Force Majeure. If the Force Majeure lasts longer than 180 (one hundred and eighty) days, TSV may terminate the Agreement or the respective Order by giving 30 (thirty) days prior written notice. TSV does commit itself to always use all reasonable efforts to minimize the delay in the performance of its obligations under the Agreement when invoking Force Majeure."
- 6.3 Extra and/ or not foreseen costs following from unexpected weather conditions such as a heat wave or extremely cold weather will be charged on actual costs to the Customer. These extra costs are to cover the actions taken by TSV such as extra handling, energy costs, and labour costs due to extreme hot weather or be freezing of the packed Goods. In the Netherlands, a heat wave is a series of at least five summer days (minimum temperature 25.0 °C or higher), of which there are at least three tropical days (minimum temperature 30.0 °C or higher). <https://knmi.nl/home>.

## **ARTICLE 7 | APPLICABLE LAW**

- 7.1 The legal relationship between TSV and the Customer is exclusively subject to Dutch law.
- 7.2 The place of business of TSV will be the place of settlement and adjustment of damage.

## **ARTICLE 8 | DISPUTE RESOLUTION/ ARBITRATION**

- 8.1 Any disputes arising from or related to the Agreement to which the General Terms & Conditions apply will be submitted exclusively for arbitration in Rotterdam in accordance with the TAMARA arbitration regulations, except for claims up to € 25.000, - and undisputed claims, which will be submitted to the competent court in Rotterdam.
- 8.2 No appeal can be made to the exceptions referred to in Paragraph 1 if the Customer has its registered office or principal place of business in a country outside the EU.
- 8.3 The arbitrators will, where applicable, apply the provisions of international transport treaties, including the CMR Convention. The Customer guarantees TSV that the unloader, the addressee and the other parties with an interest in the cargo will in case of damage to the Goods and/or delay in the delivery thereof be bound to the provision of this article.