

## Safe Food, Healthy People

Enabling the food industry to accelerate

# GENERAL TERMS AND CONDITIONS

H&S Group B.V., Baron van Nagellstraat 144-146, 3771 LL Barneveld  
Netherlands Chamber of Commerce Reg. No. 08160478

### DEFINITIONS

In these general conditions, the following capitalized terms have the following meaning, unless explicitly stated otherwise:

#### **General Terms and Conditions:**

These General Terms and Conditions of H&S Group

#### **ATCN Terms and Conditions:**

General Tank Cleaning Terms and Conditions of the Association of Tankcleaning Companies Netherlands in The Hague. Filed at the registry of the District Court of The Hague on 18 June 2001 and published at [ATCN-Terms-and-Conditions.pdf](#);

#### **AVC Terms and Conditions:**

General Transportation Terms and Conditions of the Stichting Vervoeradres in The Hague (AVC 2002 version 2015). Filed at the registry of the District Court of Amsterdam (under number 81/2014) and Rotterdam (under number 2/2015) and published at [AVC-Terms-and-Conditions.pdf](#);

#### **CMR Convention:**

Convention on the contract for the International Carriage of Goods by road (CMR) published at [CMR.pdf](#);

#### **Dutch Forwarding Conditions:**

Dutch Forwarding Conditions, General Terms of FENEX (Netherlands Association for Forwarding and Logistics), (version May 1<sup>st</sup>, 2018). Filed with the registry of the District Court of Amsterdam (under number 23/2018) and Rotterdam (under number 16/2018) and published at [FENEX.pdf](#);

#### **Logistics Services Conditions:**

Dutch Logistics Services Conditions of FENEX and TLN (Transport and logistics Netherlands), (version February 1<sup>st</sup>, 2014). Filed with the registry of the District Court Rotterdam (under number 28/2014) and published at [Logistics-Services-Conditions.pdf](#);

#### **Goods:**

The goods made available by or on behalf of the Client to H&S Group or its auxiliary persons with a view to the performance of the Agreement;

#### **H&S Group:**

H&S Group B.V., with its established office in Barneveld, its successors and all its related entities, including but not limited to:

- H&S Foodtrans B.V.;
- H&S Logistic Services B.V.;
- H&S Cleaning B.V.;
- H&S Transport B.V.;
- B.V. Transportonderneming Hempenius- Stommel;

#### **Client:**

Every (legal) entity placing orders at H&S Group, purchasing products or services from H&S Group and/or having concluded or wishes to conclude an Agreement with H&S Group;

#### **Agreement:**

All agreements, established orally, in writing or electronically between H&S Group and the Client, as well as any referral or addition to it and all (legal) acts in preparation or execution of that agreement;

#### **Party/Parties:**

H&S Group and the Client separately or combined;

**Article 1. Relevance**

- 1.1 The General Terms and Conditions of H&S apply to all Agreements concluded by H&S Group, as well as tenders, orders, offers and quotations.
- 1.2 The General Terms and Conditions of H&S Group are deemed accepted by the Client from the moment the Client issues an order to H&S Group, unless both Parties have agreed otherwise in writing.
- 1.3 Deviation from the General Terms and Conditions is possible only if and to the extent that Parties have agreed upon it in writing.
- 1.4 The General (Purchase) Conditions, under whatever name, of the Client shall not apply unless the Parties have agreed upon otherwise in writing.
- 1.5 Once an Agreement has been concluded under the applicability of the General Terms and Conditions, the General Terms and Conditions also apply without exception to future tenders, orders, offers, quotations and agreements. The General Terms and Conditions are then deemed to be known between the parties and to be accepted.
- 1.6 H&S Group is entitled to adapt the General Terms and Conditions to (legal) conditions. If H&S Group and the Client have signed a comprehensive Agreement, the new General Terms and Conditions will only apply to new agreements that will be concluded, once H&S Group has sent over a copy of the General Terms and Conditions to the Client.

**Article 2. Relevance Other Conditions**

- 2.1 Besides the General Terms and Conditions, depending on the nature of the services in question, the following conditions and conventions apply:
  - a. to cross-border road transportation: the CMR Convention;
  - b. to domestic road transportation: the AVC Terms and Conditions;
  - c. to forwarding services and customs duties: the Dutch Forwarding Conditions (FENEX);
  - d. to cleaning of materials and equipment and heating of materials and cargo: the ATCN Terms and Conditions;
  - e. to other logistics activities agreed with the client: Logistics Services Conditions;

Upon request, we will send you a copy of the text of the above mentioned conditions or you can access it via our website <https://hs-group.eu/>. Direct link to this document: [General-Terms-and-Conditions-HS-Group-B.V.pdf](#)

- 2.2 In case of conflict between the General Terms and Conditions and the conditions listed in Article 2.1, the content of the General Terms and Conditions will take precedence, unless otherwise stipulated in these General terms and Conditions, or if the conditions listed in Article 2.1 are a matter of imperative law.

**Article 3. Liability**

- 3.1 The liability of H&S Group is limited in accordance with the applicable (branch) general conditions and/or the applicable (international) conventions, as specified in article 2.1 of the General Terms and Conditions.
- 3.2 If the (branch) general conditions and/or the applicable (international) conventions specified in article 2.1 of the General Terms and Conditions do not apply, the following limitation of liability applies to the Agreement: The liability of H&S Group is limited to the maximum extend permitted by law. The H&S Group shall in any case not be liable for:
  - (1) an amount higher than the invoice value (transport rate) of the Agreement to which this liability relates in the year the damage materializes, and
  - (2) consequential, indirect or special loss and/or damage (including but not limited to loss of profit, loss of income, loss of interest, business interruption and loss of future business), even if the risk of such loss or damage has been brought to H&S Group's attention. This limitation shall not apply to damage resulting from intent or willful misconduct on the part of the H&S Group management.
- 3.3 The Client indemnifies H&S Group against all claims by third parties for compensation for any damage suffered by the third party caused by or in relation to the (performance of) the Agreement.

**Article 4. Force Majeure**

If, due to Force Majeure, H&S Group is unable to perform, in whole or in part, its obligations under this Agreement, those obligations shall, upon notice from H&S Group to Client, within a reasonable time after the occurrence of the cause invoked, be either suspended or terminated in whole or in part at the choice of H&S Group. In any case H&S Group will not be liable for any delays or failures in performance resulting from Force Majeure. "Force Majeure" includes, but is not limited to, an act of God, an

epidemic and/or pandemic, government decision or delay, changes in laws and/or regulations, strikes, civil disobedience or unrest, lightning, fire, flood, erosion, storm, communications failure, delays attributable to Client and/or third parties related to Client, accident with equipment or machinery, war, police action, terrorism, embargoes and any other cause reasonably not under H&S Group's control (including disruption in the supply chain and understaffing at the H&S Group enabled charters as a result of Force Majeure).

If the delay is the result of the Client's acts or omissions, in addition to a right to suspend its obligations under the Agreement, H&S Group shall be entitled to reimbursement of costs incurred in maintaining its schedule. For the avoidance of doubt, if the alleged cause existed before the parties entered into a contractual relationship, it will not invalidate the cause and will not preclude H&S Group's valid appeal to this Article.

#### **Article 5. Lien**

H&S Group is entitled to retain all goods held in its possession on behalf of the Client until payment of all that H&S Group, regardless to which entity it may concern, has to claim from the Client, unless the Client has provided sufficient security from the H&S Group's point of view. All costs associated with the exercise of the lien for H&S Group costs, including the storage costs, are at the Client's expense.

#### **Article 6. Settlement**

H&S Group is entitled to settle any obligation to pay it has against the Client with any amount that H&S Group, regardless to which entity it may concern, has to claim from the Client.

#### **Article 7. Pledge**

H&S Group is, unless the parties explicitly agree otherwise in writing, entitled to pledge claims from the Client onto third parties.

#### **Article 8. Other Conditions**

- 8.1 H&S Group is entitled to transfer in whole or in part to a third party the privileges and/or obligations under the Agreement with the Client. The Client is entitled to do so only after he has required written consent of H&S Group.
- 8.2 If one or more provisions of the General Terms and 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 and Conditions, differ as little as possible from the non-binding provisions.
- 8.3 The headings ("titles") above the various provisions in the General Terms and Conditions have no independent significance. These headings have been added solely for reasons of convenience and shall not affect the interpretation of the provisions themselves in the General Terms and Conditions.

#### **Article 9. Applicable Law**

- 9.1 The legal relationship between H&S Group and the Client is exclusively subject to Dutch law.
- 9.2 The place of business of H&S Group will be the place of settlement and adjustment of damage.

#### **Article 10. Dispute resolution/arbitration**

- 10.1 Any disputes arising from or related to the Agreement to which the General Terms and Conditions apply will be submitted exclusively for arbitration in Rotterdam in accordance with the UNUM arbitration regulations, with the exception of claims up to € 25.000,-- and undisputed claims, which will be submitted to the competent court in Rotterdam.
- 10.2 No appeal can be made to the exceptions referred to in Article 10.1 if the Client has its registered office or principal place of business in a country outside the EU.
- 10.3 The arbitrators will, where applicable, apply the provisions of international transport treaties, including the CMR Convention. The Client guarantees H&S Group 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 provisions of this article.

These terms have been filed with the Chamber of Commerce with registration number 08160478.

# APPENDIX: FREIGHT EXCHANGE

## APPENDIX to the General Terms and Conditions of H&S Group; Only applicable for Freight Exchange

### 1. General

#### **1.1 Aim of this document**

This document defines the minimum requirements in terms of standards and specifications that H&S Group B.V. requires from carriers who are active on the Freight Exchange portal and transport products on their behalf.

These requirements are based on the hygiene code of practice, national and EU laws and regulations ((EEG) 1072/2009, (EC) 561/2006, 178/2002, 852/2004 on the hygiene of foodstuffs are especially applicable), ISO 9001, ISO22000 and FSSC 22000 guidelines, EFISC and GMP+ standards.

For all **Remaining and additional Requirements** take notice of the instructions mentioned **in the order**. Instructions in the listed orders **are leading**.

Should any uncertainty arise concerning the instructions and/or procedures, or if the Carrier is unable to comply with one or more conditions and/or instructions, the Carrier will duly immediately inform H&S in writing.

The Carrier shall be fully liable and responsible for all losses suffered by either the Shipper, the sender, the receiver or third parties, including consequential or contamination losses, caused by a shortcoming, careless action, error or negligence on the part of the Carrier or one of his employees, during the period from receipt to delivery.

The Carrier agrees to provide truthful and accurate information when registering to use the platform. If the Client does not provide the requested information, it is not possible to make use of Freight Exchange portal. The decision to accept a registration is in discretion of H&S LOGISTIC SERVICES, where decision can be made to revoke a registration at any time. H&S LOGISTIC SERVICES reserves the right to limit and/or block the Carrier access to services if any of the provisions in this agreement are not and/or no longer met.

The Carrier is obliged to provide a pre-defined selection of company documents in order to complete the registration. This includes a valid transport license document and a valid company liability document for the general liability.

#### **1.2 Liability and Insurance**

The latest version of the General Transport Conditions (Algemene Vervoerscondities "AVC") (latest version of 2002) applies to domestic transport by road. If this agreement contains provisions that are contrary to the AVC, the provisions in this agreement prevail.

The latest version of the conditions of the CMR Treaty applies to international transport by road.

The Carrier will be held fully liable for all direct and indirect damage to the product incurred whilst the product was under the custody of the carrier. Such matters have to be directly reported to your (operational) contact within H&S Group.

The Carrier is not allowed to fully subcontract the orders issued to third parties. The Carrier has the obligation to execute the orders using their own tank trailers or tank containers. When the carrier decides to hire trucks from third parties to carry their tank trailers or tank containers, the carrier is liable as if the carrier was using its own trucks – meaning the carrier is fully liable.

The Carrier agrees to maintain, at its sole cost and expense, the following insurance coverage during the duration of the transport: goods in transit insurance, third party motor vehicle liability, public liability and employer's liability as required by law. A proof of such insurance coverage including its validity must be submitted to H&S LOGISTIC SERVICES prior the first order.

### **1.3 Confidentiality**

The carrier acknowledges that all the information in this document and the information related to the transports are confidential. All documents attached to the order in Freight Exchange are confidential. As such, the carrier agrees not to reveal any information to others.

### **1.4 Communication**

All standard communication like order acceptance, order feedback & self-billing, proceeds via the carrier portal.

If issues occur, carrier is obligated to inform the operations desk directly by phone and/or email. Following issues should be reported:

- Any expected and unexpected delays at loading
- Any expected and unexpected delays at unloading site
- Weight differences:
  - Deviation in planned weight versus loaded weight
  - Deviation in loaded weight versus unloaded weight
- Any residues weight after discharge (at customer)
- Any other issues which impact the order placed in Freight Exchange and accepted by the carrier
- When loading and/or unloading is taking longer than the agreed free of charge hours

In case of residue the carrier should supply the following additional information:

- Temperature at unloading
- Any deviation +/- 2 deg. C between the recommended arrival/discharge temperature
- Any remarks on CMR should be reported to H&S LOGISTIC SERVICES before leaving the site
- Driver will only leave site, after agreement with H&S LOGISTIC SERVICES
- Any issues with documents and reference samples (if applicable)
- Any spills at loading, during transport or unloading
- Any communication with authorities

**Communication is most important in case of deviation and/or irregularities.**

Further to this, all additional costs have to be communicated within 24hrs (during working days) after incident on the carrier portal of H&S LOGISTIC SERVICES. Requests later then 24hrs will be rejected. A signed CMR and cleaning certificate will demonstrate additional costs.

### **1.5 Site Rules**

All drivers are obliged to comply with the site safety and hygiene rules as applicable on the loading and delivery sites. The Carrier must ensure that before driving to a loading or unloading location, the driver is conversant with all rules of behavior and environmental and safety rules at that loading or unloading location.

Drivers are required at all times to have in their possession safety glasses, safety shoes, hearing protection, a helmet, a safety harness and reflective clothing, and to use these items as instructed. If applicable, other specified PPE must be used.

### **1.6 Definitions of products**

Food:	Raw materials, foodstuffs and ingredients suitable for human consumption and body healthcare products.
Feed:	Animal feeds: feed materials, additives, premixes, complementary and complete animal feeds, dedicated for animal consumption
Technical:	Any other product, which is not intended and not suitable for food or feed.

## 2. Obligations of the Carrier

Carrier is obliged

- to load, unload and execute the orders which are assigned by H&S LOGISTIC SERVICES with its own equipment, with due regard of the transport instructions as issued by H&S LOGISTIC SERVICES. The Carrier is not allowed to subcontract the assignments that are issued by H&S LOGISTIC SERVICES to third parties.
- to take delivery of the Products at the agreed location and time and in the agreed way with equipment that:
  - meets the statutory requirements as they apply to the concerning transport in the countries in which the concerning transport takes place; and,
  - meets the requirements concerning cleaning, previous cargo and equipment specifications as they have been defined by H&S LOGISTIC SERVICES in the order notification
- to load and deliver the Products at the agreed location and time and in the agreed way without delay. The Carrier shall report any delays immediately to H&S LOGISTIC SERVICES.
- to deliver the Products to the Customer in the same condition as the Carrier received them at the loading address. This is guaranteed by sealing. The Carrier is responsible for sufficient and in line with the requirements of the Customer, sealing of the cargo.
- to comply with given instructions concerning the loading or unloading location during loading and unloading.
- to insure itself properly with a reliable insurance company. Any change of insurance must be reported immediately to H&S LOGISTIC SERVICES.
- to inform H&S LOGISTIC SERVICES immediately about any delays during the transport or during loading/unloading. Not reporting delays will be taken into consideration in the KPI performance measurements.
- to record the transport information (time, weight, temperature), as well as the extra costs, in the carrier portal that is made available for this purpose by H&S LOGISTIC SERVICES, at the latest the next working day at 10:00 am after loading/unloading. A copy of the completed and signed CMR must be uploaded to the H&S LOGISTIC SERVICES carrier portal within 10 working days after delivery.
- to comply at all times with (inter)national legislation and regulations for working, resting and driving times of drivers, particularly in compliance with EC regulation 561/2006. The Carrier declares he will record and document the working, resting and driving times.
- to comply at all times with (inter)national legislation and regulations in line with the European Mobility Package. The Carrier declares he has implemented the legislations per category: drive- and resting hours (e.g. return home vehicle), tachograph, secondment, and cabotage.
- Reliability requirement ERRU: serious breaches of the valid rules are recorded in the Interconnected National Registers (ERRU) and can lead to loss of reliability for the transport manager and the company and therefore also of the license. This concerns violations with regard to but not exclusive of driving and rest times, tachograph, working time, weights and dimensions, technical control, professional competence, secondment, cabotage, tax regulations.
- to execute transport orders as a fully independent carrier. Parties acknowledge that there is no employment relationship. The Carrier bears the risks associated with personal incapacity for work and takes care of an old-age / pension-provision. The Carrier shall at all times be the authorized decision maker in respect of employer authority. The Carrier supervises his employees and the manner in which the work is executed. Therefore, as a consequence, employer authority remains at the Carrier at all times. None of the employees of the Carrier may be deemed to be employee of H&S LOGISTIC SERVICES.
- to execute the transport service with drivers that can communicate in English and/or German language

The Carrier is not authorized to represent H&S LOGISTIC SERVICES on whatever grounds, to recognize the liability of H&S LOGISTIC SERVICES, to enter into obligations on the part of H&S LOGISTIC SERVICES, or to assume obligations on the part of H&S LOGISTIC SERVICES.

All penalties, fines, claims or costs as a consequence of non-compliance with e.g. legislation, regulations, certificates and licenses as mentioned in this document, shall be for the account of the Carrier.

The Carrier must be in possession of a valid company/general liability insurance (AVB). This insurance policy covers the Carrier for claims involving bodily injuries and property damage resulting from your products, services or operations. This insurance should also cover the costs for contamination of products in a land tank, caused by unloading into the incorrect land tank. Minimum cover of € 2.500.000,- per occurrence.

### **2.1 Obligations of the Carrier regarding its employees**

The Carrier will comply with all applicable (inter)national legislation and regulations regarding employment conditions to its employees, in particular applicable rules for working, resting and driving periods of drivers, minimum wages, collective labor agreements, tax payments, social securities and insurance.

The Carrier will provide H&S LOGISTIC SERVICES with the necessary information regarding employment conditions of the Carrier's employees. The Carrier is obliged to cooperate in (periodic) inspections by H&S LOGISTIC SERVICES or by third authorized parties in order to make sure that at least minimum wages are paid and regulations are followed correctly.

The Carrier provides proof that all operators/drivers/employees of the vehicles of the Carrier are all properly qualified and licensed with the appropriate permits, certificates and/or training to operate the vehicles of the Carrier. All drivers that execute the transport are qualified with Code95.

### **3. Equipment requirements**

Road tankers or tank containers and all spare parts like hoses & couplings must be suitable for the transport of Liquid and/or dry products.

*3.1 Food tank:* "FOOD STUFF ONLY" (no feed nor technical previous loads – dedicated for FOOD)

*3.2 Feed tank:* GMP+ transports for feed industry (GMP+ certification required); 3 previous loads required to be GMP+

*3.3 Technical tank:* All other transports

### **4. Cleaning Guidelines**

For all **Remaining and additional Requirements** take notice of the instructions mentioned **in the order**. Instructions in the listed orders **are leading**.

4.1 The carrier is responsible for the cleanliness of the tank unit and all spare parts like hoses & couplings. A tank must be clean, odour free and/or dry as requested in the order notification.

4.2 A cleaning certificate must be available for each tank unit.

4.3 If specifically required, the tank units have to comply with the Kosher/Halal standards.

For Kosher, cleaning according to EFTCO P26 and for Halal, cleaning with potable water and detergents suitable for foodstuffs EFTCO P27.

Tank units have to be cleaned at EFTCO Food approved cleaning stations unless specified differently in the order instructions. All tankers can be subject to inspection before loading. Tankers failing the specifications mentioned above will be rejected.

### **5. Loading procedure**

#### **5.1 Transport and delivery General**

In case of problems during transport: Do not break any seals until you have permission to do so by H&S LOGISTIC SERVICES. If the seals are removed by Authorities (Police or Customs) they have to be replaced by these authorities and the numbers must be noted on the CMR and signed off by authorities. In all cases: H&S LOGISTIC SERVICES must be informed immediately.

In case of any doubts or unsafe situations, take contact with H&S LOGISTIC SERVICES.

At the unloading address, the seals may only be removed after permission and under supervision of the receiving party. If, on customer demand, a seal is broken for unloading, and if the customer does not accept the load, the broken seal must be replaced by an identifiable seal. The seal number must be recorded on the CMR and the recording must be signed by the customer. H&S LOGISTIC SERVICES must be informed immediately.



## **5.2 Invoicing General**

Latest Thursday the week after execution of the transport, when all delivery data is filled in the carrier portal by the carrier, including a copy from the completed and signed CMR, the carrier receives a self billing document, unless otherwise agreed.

## **6. Quality assurance**

### **6.1 Obligations of H&S LOGISTIC SERVICES**

H&S LOGISTIC SERVICES is obliged to provide all necessary instructions and information concerning the transport to the Carrier in time. Lane specific instructions will be communicated and attached as one of the documents to the transport order.

H&S LOGISTIC SERVICES is obliged to proceed with payment of the invoice as issued by the Carrier, within the agreed payment term, after mutual agreement concerning the delivery of the products without damages to the customer by the Carrier, proofed by an uploaded CMR.

### **6.2 Certification**

The carrier must confirm to H&S LOGISTIC SERVICES the transport license and the insurance prior the first order. In case of Feed transports, GMP+ or GMP+ accepted equivalent certification is mandatory.

In case of ADR transports, the DGSA certificate is mandatory. When Category 1/2/3 transport is required, the registration is mandatory.

A copy of all valid certificates and registrations must be sent to the Procurement department of H&S LOGISTIC SERVICES. Please also include if applicable ISO, HACCP, Kosher and/or Halal certificates.

H&S LOGISTIC SERVICES should be informed of all changes on the certifications of the transport activity of the supplier.

The desk audit document will be shared with the carrier and is required to be filled in by the carrier within 2 weeks after loading of the first order.

In all cases, H&S LOGISTIC SERVICES reserves the right to perform a quality field audit at the carrier when deemed necessary.

### **6.3 Temperature gauge**

Temperature gauges on tankers and tank containers are checked yearly during maintenance. However, the gauges are not calibrated and are therefore indicative.

If requested by the customer, temperature controlled vehicles must be used. These temperatures controlled vehicles will have calibrated temperature gauges and the temperature during transport must be logged.

## **7. Extra Surcharge**

Additional charges will be paid as per Additional charges document available in the carrier portal. The amount of additional charges may vary per order. The carrier may view the document before placing the bid on the order.

## **8. Disputes**

Dutch law is applicable.

If Parties do not reach agreement, all disputes shall exclusively be brought before the competent judge in Arnhem.

Parties may agree to submit disputes to competent arbitrators in conformity with the Arbitration Regulations of the "Stichting Arbitrage voor Logistiek" (Arbitration Foundation for Logistics).