



Maritime
Offshore
Onshore
Ship Delivery

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TOS Binnenvaart B.V.

This company is part of
TOS Holding B.V.

General Conditions Transport & Offshore Services Binnenvaart B.V.

Introduction and explanation

Transport & Offshore Services Binnenvaart B.V. ("TOS") second its employees for the duration of a certain work, period or voyage. The entire legal relation between TOS and the customer is covered by these General Conditions.

The customer must vouch that employees of TOS shall in no way be treated as inferior to the own employees of the customer under whose temporary authority they put themselves. As TOS is not present at the activities, and is not informed in detail about the nature of the activities and cannot exert any supervision the way the customer can, TOS transfers to the customer its liability as an employer for any damage that its employees may inflict upon themselves, customer or third parties in the execution of activities. In this respect the customer indemnifies TOS against any claims of third parties towards TOS, arising from, or to any extent related to activities carried out under the assignment agreement.

TOS is related to the customer as a contractor in the sense of section 7.7.1. Dutch Civil Code. Of this section TOS declares the art. 7:404 and 7:407 section 2 Dutch Civil Code inapplicable. The first article is not related to the freedom of choice that TOS has in seconding its personnel. The second article vests a joint and several liability when the order has been received by two or more persons, which involves a risk that is not acceptable for TOS.

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Article 1 Definitions

In these General Conditions

- “TOS” stands for the private company with limited liability Transport & Offshore Services Binnenvaart B.V.
- “Employee” stands for every employee that TOS seconds to customer.
- “Customer” stands for every natural person or legal person to whom TOS seconds one or several employees or who is in negotiation with TOS to this aim.
- “Assignment” stands for the agreement between TOS and the customer based on which the employee will be seconded.
- “Conditions” stands for these General Conditions, and
- “Parties” stands for TOS and the customer.

Article 2 Applicability

1. The conditions are applicable to the legal relationship between TOS and customer, including any offer of TOS to customer. Any general conditions used by customer only apply when they have been explicitly accepted in writing by TOS.

2. All estimates, quotations and offers, in whatever form, are without obligation.

3. If any provision of these General Terms and Conditions is nullified, declared null and void or declared to be inapplicable, the other provisions shall retain their full effect. In these circumstances, the parties will replace the nullified, null and void or inapplicable provision by a valid and enforceable provision in accordance with the purport of this nullified, null and void or inapplicable provision, and in such a way that the new provision differs as little as possible from the nullified, null and void or inapplicable provision

Article 3 Selection of employees

1. TOS is free in the choice of the employee whom it makes available on the basis of an assignment. TOS vouches that the employee disposes of the competences and qualifications agreed upon with customer.

2. In providing information regarding the work to be performed, the customer may not set any requirements that are not relevant to the position filled by the employee. Any such requirements will not be honoured by TOS.

3. Only when the employee has not at least once before worked for customer and he appears not to dispose of the competences and qualifications referred to, will customer have to notify TOS of this at the end of the employee's first working day at the latest, stating reasons and in writing. TOS will then make an effort to provide a deputy as soon as possible, while TOS will repatriate the replaced employee at its own expenses.

Article 4 Working hours and conditions

1. The employee will be made available for a certain period or for the duration of a voyage/project.

2. Customer commits himself towards TOS not to treat the employees negatively different from the own employees of customer as to working hours and conditions.

3. Should a collective arrangement be applicable with the customer involved, then TOS will apply this arrangement. Customer is to this aim obliged, when entering into the agreement, to report the full content of the arrangement referred to and to pay any resulting rise in rates to TOS.

4. The customer must inform TOS immediately of its intentions to make a car available to the employee. The customer may only permit the employee to use the company car for personal purposes in consultation with TOS, so as to allow TOS to take such private use into account for payroll tax purposes. If the customer fails to do so, the customer is obliged to compensate TOS for any resulting loss, damage, costs and (tax) implications suffered or incurred by TOS.

5. The duration of the working time includes the time of travelling between the domicile or residence of the employee and the location of commencement or termination of the activities.



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Article 5 Prohibition of seconding on and entering into a direct employment contract

1. The customer is not free to make the employee available to a third party to be employed under the management and supervision of this third party.
2. The customer is not allowed to enter into an employment contract, or any other form of employment relationship, during the period of the assignment and if the employee has not worked at least 1040 hours for the customer on the basis of an assignment between TOS and the customer.
3. The customer shall owe TOS an immediately payable fee, which is not open to judicial mitigation and judicial intervention. The transfer fee is equal to 25% of the applicable fee, multiplied by the number of remaining working hours as referred to in paragraph 2 of this article.
If no fee has been agreed, such compensation shall be equal to 50% of the gross hourly wage, which the employee would have earned in accordance with Article 4, paragraph 2, multiplied by the number of hours as referred to in Paragraph 2 of this article.

Article 6 Employment abroad

In case of employment abroad customer is obliged to notify TOS before commencement of the activities of where they are to be executed as well as what the duration of the activities will be. Customer must also pass on any alteration in the working area to TOS as soon as it becomes known. In case of a change, TOS may recall the employee without stating reasons, in which case customer is obliged to repatriate the employee immediately and at his own costs.

Article 7 Liability, insurances and indemnity

1. TOS is not liable for any damage or loss caused by the employee, caused in whatever manner, nor for consequential damage and any other damages suffered or to be suffered by customer or by third parties.
2. To the full exclusion referred to at section 1 there is an exception when customer proves that the damage was due to intention or gross negligence on the side of TOS. In this case TOS restricts its liability to 50% of the amount invoiced to customer for making available the employee who is in the closest connection to the effectuation of the damage. TOS is entitled to take measures to prevent or limit any loss or damage.
3. Customer is obliged to insure the employee on board of ships along with any other crew member against any damages to ship and/or third parties, especially under the "Hull and Machinery" and other "P&I insurances" of the ship.
4. Customer indemnifies TOS and the employee against claims of other employees of customer or third parties, including subcontractors, customers or auxiliary persons of customer.

Article 8 Safety guarantees

1. Customer is held to give guidance to and supervise the employee and the employee is under his authority for the duration of the activities.
2. The customer is not permitted to put the employee to work at a location in an area where there is a hazard for the health of the employee or where the safety of the employee is or can be at risk.
3. If after commencement of the activities the health or the safety of the employee runs or has run a risk, customer is obliged to immediately repatriate the employee at his own costs.
4. Customer is completely liable for all the damage that the employee has suffered by or as a result of the degradation of his health or a threat to his safety.
5. The customer agrees to indemnify, defend and hold TOS harmless from and against all claims made against TOS on account of non-performance by the customer of the obligations referred to in this Article, and authorises TOS to assign the claims in respect thereof to the party or parties directly concerned, or to assert the claims against the customer also on behalf of TOS.



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6. Customer bears the responsibility to execute and comply with the employers' obligations imposed by the law with regard to safety and further working conditions, as well as any further locally applicable laws and/or regulations.

7. Based on the Arbo-law and the general safety at work customer must see that the employee shall

- a) not consume alcohol or drugs during work;
- b) is not under the influence of alcohol and drugs during work;
- c) does not consume excessive amounts of alcohol or drugs outside working hours, if the employee is in the serve of TOS and is engaged in that capacity in project work;
- d) observe an alcohol-free period of at least eight hours after alcohol consumption, before commencing work/activities again.

Article 9 Payment conditions

1. Invoices are payable within 30 working days after dispatch. Customer is not permitted to set off, except as stipulated under section 2.
2. Payments by customer to the employee are always effected at the risk of customer. Any advance payments that customer has paid to the employee can only be set off against the amount that customer owes to TOS if a written preceding approval of TOS has been given and on submission of receipts signed by the employee.
3. If the approval referred to is not granted by TOS, customer is obliged to always pay the invoices of TOS in full, even if customer disposes of receipts signed by the employee.
4. The invoices of TOS are based on the lists of hours approved by customer. After approval any errors on the lists of hours are at the expenses of customer.
5. The customer is responsible for a correct and timely completion and authorization of lists of hours. Authorization is always done in writing, unless agreed otherwise.
6. If the customer fails to comply with the provisions of Paragraph 5 of this Article, TOS may decide to issue invoices to the customer on the basis of the facts and circumstances as they are known to TOS. TOS will not do so without proper consultation with the customer.
7. Claims further to a received invoice by customer must be declared to TOS within 14 days after date of the invoice. The payment obligation of the customer is not suspended due to statement of the claim.
8. If the customer fails to pay any outstanding amount on time, in full or at all, the customer shall be in default by operation of law from the due date of the invoice in question. From that date, the customer shall also be liable to pay default interest to TOS at a rate of 1% of the gross invoice amount per month, with part of a month counting as a whole month.
9. When in case of non-timely payment TOS proceeds to collection, the amount of the claim is increased by 10 % administrative costs, with a minimum amount of € 400.00. On top of these, all the legal and extrajudicial costs are chargeable to customer to the amount paid or owed by TOS.

Article 10 Rates

1. Customer owes to TOS a rate for making the employee available, which TOS confirms in writing to customer. Should any changes in rates occur pursuant to legislation, CBA-obligations (= CAO in Dutch) or any other regulations, TOS will charge them on to customer as from the time of commencement and with notification.
2. Unless TOS has given its written permission, customer is forbidden to place the employee in a different function or rank from the one that has been agreed upon.
3. If the employee is deployed in a lower function or rank than has been agreed upon between customer and TOS, the agreed rate remains applicable.
4. If the employee is deployed in a higher rank or function than has been agreed upon between customer and TOS, then the daily rate is adjusted according to the standard pricing of TOS.



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5. Unless it has been agreed upon otherwise in writing, all travelling and accommodation costs are not included in the agreed daily rate and must be reimbursed by customer.

Article 11 Resignation and Dissolution

1. The assignment ends by expiring of the agreed period of secondment of the employee supplied by TOS, unless otherwise stipulated in writing and explicitly by parties. Resignation during the period of the contract is not possible.

2. If either party imputably fails to fulfil its obligations under the assignment, the other party shall be entitled - in addition to the provisions of the assignment - to cancel the assignment by registered letter, without judicial intervention. Dissolution of the assignment shall not take effect until a written notice of default has been served upon the defaulting party, allowing a reasonable period to remedy the breach.

3. Moreover, either party is entitled to cancel the assignment in whole or in part by registered letter with immediate effect, without judicial intervention and without a reminder or notice of default being required in case of bankruptcy, moratorium, liquidation, ceasing of business, seizure of (part) of the assets of the other party.

4. If the customer after being issued with a notice of default, still fails to perform any obligation under the assignment or fails to do so fully or in time, TOS will be entitled to suspend performance of its obligations to the customer without a duty to pay any form of compensation to the customer, or the customer will have to provide TOS with financial security by means of an advance or a (bank) guarantee. The size of the advance or (bank) guarantee must be in proportion to the obligations of the customer under the assignment. TOS will also be entitled to do so if any of the circumstances referred to in Paragraph 3 of this Article arise.

5. If, in the opinion of TOS, there are serious doubts about the financial position of the customer, the customer will provide TOS, at its request, with the financial security referred to in Paragraph 4.

Article 12 Non-attributable failing (Force majeure)

1. In the event of Force Majeure, the obligations of TOS under the contract shall be suspended for the duration of the Force Majeure event. The term 'Force Majeure' means any circumstance beyond the control of TOS which permanently or temporarily prevents TOS from performing the contract and the risk of which should not, pursuant to the law or in terms of reasonableness and equity, be borne by TOS.

2. Force Majeure includes, but is not limited to: strikes, sit-down strikes, blockades, embargoes, government action, war, revolution and/or similar occurrences, power failures, electronic communication network breakdowns, fire, explosion and other emergencies, water damage, floods, earthquakes and other natural disasters, as well as epidemic diseases affecting TOS members of staff.

3. Each of the parties is entitled to terminate the agreement by means of a written announcement to the other party if the Force Majeure extends a period of three months, without notice being required.

Article 13 Illness employee and repatriation

1. In case of illness or accident in which repatriation is necessary all the travelling expenses are at the expenses of customer. In this respect also any costs arising from making a deputy available in time are also included.

2. Should customer send an employee away due to repeated misconduct, then the travelling and deputy expenses referred to at section 1 are at the expenses of TOS. TOS then has the obligation to perform to the best of its ability to provide an adequate deputy at the shortest possible notice and with all the remedies and knowledge that are available to us.

Article 14 Choice of law and jurisdiction

1. The legal relationship between parties is fully governed by Dutch law.
2. Disputes will exclusively be settled by the court of Rotterdam.



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