

# General Terms and Conditions

## Heisterkamp Transport B.V.

Version 01-01-2020

### Article 1 General

1.1 These Terms and Conditions apply to all agreements concluded with Heisterkamp Transport B.V. (hereinafter: Heisterkamp). They also apply to the legal relationships preceding and arising from those agreements as well as to additional and subsequent assignments. Heisterkamp's contracting party with regard to work performed by Heisterkamp will hereinafter be referred to as the 'client'. In the event of any difference between the Dutch and English text of these General Terms and Conditions, the Dutch text will prevail. The General Terms and Conditions can be downloaded free of charge from the internet site <http://www.heisterkamp.eu/nl/contact/terms-conditions/>.

1.2 In the event that any judicial authority considers one or more provisions of these General Terms and Conditions to be invalid, the validity of the remaining provisions shall not be affected by it.

1.3 By concluding an agreement with Heisterkamp or giving it an assignment, the client explicitly renounces any terms and conditions he applies, as a consequence of which the present General Terms and Conditions apply exclusively to the legal relationship between Heisterkamp and the client. Applicability of terms and conditions enforced by the client is explicitly rejected.

### Article 2 Terms and Conditions of work by Heisterkamp

2.1 Apart from these General Terms and Conditions, the following also apply:

- a) to international road transport: the CMR Convention, and in addition the General Terms and Conditions of Transport (AVC) (latest version);
- b) to domestic road transport: the General Terms and Conditions of Transport (latest version);
- c) the General Terms and Conditions of Payment of the TLN (2002).

### Article 3 Formation of agreements

3.1 A written framework agreement, accompanied by one or more rate-annexes, with the client forms the basis of providing services by Heisterkamp. All offers by Heisterkamp are non-binding.

3.2 An rate-annex made up by Heisterkamp on the basis of a valid framework agreement, qualifies as agreed upon when (written/digital) consent is given by an employee of the client, therefore authorized by undersigning the framework agreement.

3.3 The contents of the framework agreement, rate-annexes and these general terms form the sole content of the contractual basis between Heisterkamp and the client.

### Article 4 Prices and costs

4.1 All prices / rates indicated by Heisterkamp are exclusive of VAT, unless indicated otherwise.

4.2 The prices / rates indicated by Heisterkamp are based on cost price at the moment of conclusion of the agreement. Cost price shall be taken to mean without being limited to the costs of fuel, labour, insurance and tax charges. If the cost price increases, whether or not foreseeable, Heisterkamp will be entitled to pass such increase on in the prices / rates agreed upon with the client.

4.3 The rates Heisterkamp applies are based on a basic fuel price. A so called 'fuel clause', incorporated in the framework agreement / rate-annex, applies. If for some reason this fuel clause misses, Heisterkamp and the client will still agree on a fuel clause. If no agreement can be reached, the real costs of fuel will be charged, increased with a administrative surcharge of 5%.

### Article 5 Loading

5.1 The client is himself responsible for the loading and unloading of the load offered. Unless explicitly confirmed in writing by Heisterkamp, it will not arrange loading and/or unloading. In all cases, even if Heisterkamp arranges the partial or entire loading and unloading, loading and unloading will be at the expense and risk of the client.

5.2 Arising from the provisions of article 8.1, Heisterkamp is never liable for damage to the load caused by an inadequate manner of loading and/or unloading.

5.3 Heisterkamp is in no way whatsoever bound by the content of the load and the numbers stated on the consignment notes. This applies all the more to load that cannot be inspected. This is the case without being limited to trailers/semitrailers/containers loaded in advance and palletised cargo.

5.4 The client is not permitted to offer goods for transport if their joint weight exceeds statutory limits for the relevant vehicle. Furthermore, the client is bound to take the maximum allowed axle weight into account when loading the vehicle.

### Article 6 Stowage equipment

6.1 Loading, stowage and securing equipment, such as securing straps, anti-skid mats etc. are not made available by Heisterkamp due to the nature of the work and given the provisions of article 6 of these General Terms and Conditions. The client must arrange for these himself. Responsibility for the reliability of this equipment rests entirely with the client.

## **Article 7 Customs documents and international requirements**

**7.1** Customs formalities dealt with by Heisterkamp are at the expense and risk of the client. The client indemnifies Heisterkamp against claims caused by irregularities with, or missing documentation, the lack of preparation or incorrect preparation and/or processing of documents etc. imposed on Heisterkamp or the client by the government with regard to taxes, levies, duty, agricultural levies, refund of subsidies, VAT, administrative or other fines etc., unless it concerns intent or gross negligence on the part of Heisterkamp.

**7.2** If certain formalities apply with regard to entrance to or exit from a country, which include but are not limited to compliance with prescribed checks for entrance to the United Kingdom, Heisterkamp will comply with such formalities to the best of its ability. However, Heisterkamp is not liable for loss arising from incompliance with formalities and/or loss caused by illegal stowaways. The client indemnifies Heisterkamp against any fines imposed on it and other loss in this regard.

## **Article 8 Permits**

**8.1** The client is in any event responsible for the application for any permits and other documents required for specific types of transport. Any costs arising from the lack of such permits will be passed on to the client.

## **Article 9 Liability and fines**

**9.1** If the client believes that Heisterkamp is liable for any loss suffered, he must accurately indicate the reasons why Heisterkamp could have acted imputably, in the sense that Heisterkamp did not act the way a reasonably competent carrier would normally act.

**9.2** If Heisterkamp is in principle liable, the loss will always be limited to the amounts included in the terms and conditions cited in article 2 of these General Terms and Conditions.

**9.3** Heisterkamp is in no way liable for consequential damage, unless it is the result of intent or gross negligence on the part of Heisterkamp, its managers or subordinates.

**9.4** If Heisterkamp makes use of equipment of the client, such as trailers, to which damage is caused, Heisterkamp will never be held liable to compensate such damage. Heisterkamp is not liable. Fines and/or other taxes as a consequence of the condition of the equipment of the client are at the expense of the client.

**9.5** If Heisterkamp transports goods by means of equipment of the client, such as trailers, that equipment will be considered to be goods as referred to in the CMR Convention.

**9.6** In situations such as reflected in article 37 of the CMR Convention, Heisterkamp will never be held to make any payment to the client, in so far as it exceeds the freight price.

**9.7** Fines, taxes and invoices from (judicial) authorities ensuing from (violations of) statutory provisions, including but not limited to those relating to the dimensions of trailers and maximum permissible axle load, will be passed on to the client, unless there is incontrovertible proof that the violation was committed exclusively by Heisterkamp.

## **Article 10 Force majeure and delivery times**

**10.1** All delivery times indicated by the client and Heisterkamp are indicative and qualify as a best-efforts obligation. Heisterkamp is not liable if delivery times are exceeded due to force majeure, which includes but is not limited to weather conditions, congestion, broken down vehicles, disruptions etc. Heisterkamp is not liable for loss as a consequence of missing subsequent transport by road, rail, water or air. Any additional kilometers driven as a result of a driving ban or other obstacle on motorways or roads will be passed on to the client.

## **Article 11 Forced stoppage**

**11.1** Forced stoppage as a result of a driving ban (which (also) applies to such transport in general) is regarded as a waiting day and will be charged at the rate for waiting days given in the offer.

## **Article 12 Indemnity and Himalaya clause**

**12.1** The client indemnifies Heisterkamp against all claims by third parties with regard to damage caused during the work performance by Heisterkamp, save for intent or deliberate recklessness on the part of Heisterkamp.

**12.2** If subordinates of Heisterkamp and/or third parties engaged, whose services Heisterkamp uses in the performance of an assignment, are held liable in connection with said assignment, those subordinates and third parties may invoke any liability limitation and/or discharge from liability that Heisterkamp was able to invoke by virtue of these General Terms and Conditions and the terms and conditions cited in article 2 thereof.

## **Article 13 Third parties**

**13.1** Heisterkamp is at all times authorised to perform the assignments given to it in an alternative manner and/or through its affiliated parties and/or through other third parties.

#### **Article 14 Freight documents and delivery**

**14.1** The consignor is obliged to hand Heisterkamp prior to the transport a fully and truthfully completed waybill. The consignee is obliged to sign the waybill following delivery and return it to Heisterkamp. Irregularities with regard to these acts are at the expense and risk of the client.

**14.2** Heisterkamp does not provide the client with (original) waybills. The lack of a waybill does not form a reason to refuse to pay the cargo, nor if any contract document includes an obligation for Heisterkamp to hand over a waybill. Reference is made to article 3.3 of these general terms and conditions.

**14.3** At the client's written request to that end, Heisterkamp may endeavour to provide the client with a waybill. If an (original) waybill must be sent by post to the client, Heisterkamp will pass the costs involved on to the client, observing a minimum of €25,00.

**14.4** Not least in view of the provisions of article 5 of these General Terms and Conditions, parking and/or disconnecting the trailer/container/semitrailer at the consignee qualifies as delivery.

#### **Article 15 Communication with drivers, driving and rest times and cabotage**

**15.1** The on-board computers in the trucks allow the client and Heisterkamp to track the vehicles and to communicate with the drivers. This communication is effectuated through a Customer Portal. Heisterkamp is not liable for loss if, for whatever reason, no communication can be established by means of the on-board computer and/or the Customer Portal is out of reach.

**15.2** The Customer Portal reflects the driving times and hours of work of the drivers. If a driver of Heisterkamp is managed directly by the client, the client must strictly comply with prevailing legislation and regulations in the field of driving and rest times and working hours within the scope of the management referred to. Loss, including fines, resulting from violations of driving and rest times and/or working hours as a consequence of or caused by the client's planning will be at the expense and risk of the client and will be passed on.

**15.3** Cabotage is permitted only in accordance with the prevailing EU Regulation and any (additional) specific requirements per country with regard to cabotage. Loss, including fines, resulting from violations of cabotage rules as a consequence of instructions by the client will be at the expense and risk of the client and will be passed on. If Heisterkamp notes systematic violations of this prohibition, Heisterkamp will be entitled to terminate the provision of its services to the client with immediate effect.

#### **Article 16 Excluded work**

**16.1** Heisterkamp does not exchange packaging, including Euro-pallets, containers, flower trolleys, pallet cages etc. At the client's request, Heisterkamp may endeavour to follow instructions by the client with regard to such equipment but will in no way be liable for any damage and/or costs as a consequence of inaccuracies.

**16.2** Heisterkamp does not accept the following types of cargo, unless it has been approved by the transport manager in writing in advance:

Money	Valuable papers	Precious metals	Precious stones	Pearls
Medication	Livestock	Tank transport	Art objects	Collector's objects
High Value Loads	Weapons	Firework	Explosives	Perishable goods
ADR tank transport	ADR categories 1 / 6.2 / 7	Outsize cargo	Waste (separately poured/hazardous)	

**16.3** High Value Loads mean loads with a value exceeding €1.000.000. Loads with a joint value of €400.000 or more must be announced in writing in advance by the client and the client must instruct whether secured parking must be observed and, if so, where it is available. Furthermore, Heisterkamp will park in secure car parks if it believes this to be necessary. The costs will in all cases be passed on to the client.

**16.4** Heisterkamp does not undertake cash-on-delivery shipments. If the driver, for whatever reason, is instructed by or on behalf of the client to undertake a cash-on-delivery shipment, Heisterkamp will never be liable if money received for the shipment goes missing.

#### **Article 17 Payments**

**17.1** The client owes the freight price agreed as from the moment delivery is effectuated.

**17.2** Notwithstanding the provisions of article 17.1, the payment term for invoices from Heisterkamp is 30 (thirty) days. Heisterkamp does not accept any different payment terms applied by the client, unless specifically agreed in writing.

**17.3** The client is explicitly not permitted to offset any counterclaims (whether or not established) on Heisterkamp against any invoices to be paid by the client. If the client proceeds to offset despite this provision, the client will incur an immediately payable fine amounting to half (50%) the amount offset, notwithstanding his obligation to still pay the amount due to Heisterkamp in full.

**17.4** The term reflected in article 17.1 is a strict deadline as referred to in section 6:83a of the Dutch Civil Code. Therefore, the client will be immediately in default by operation of law in the event that he fails to pay in time.

**17.5** If the client is in default pursuant to paragraph 4, he will owe Heisterkamp from the date the default occurs until the date of full payment the statutory commercial interest rate plus 5%, pursuant to section 6:119a in conjunction with 6:120, paragraph 2, of the Dutch Civil Code. The client also owes Heisterkamp the judicial and extrajudicial costs it incurred for holding the client to his (payment) obligations. The amount of the extrajudicial costs is determined at 15% of the amount claimed, without prejudice to Heisterkamp's right to claim additional compensation of damages. Heisterkamp has the right to charge these costs from the moment it demands payment from the client by means of a written demand to that end.

**Article 18 Recruitment of drivers by the client**

**18.1** Without the explicit written consent of Heisterkamp, the client or its subsidiary is not permitted to enter into an employment relationship with a Heisterkamp driver. If the client or its subsidiary enters into an employment relationship with a Heisterkamp driver without the explicit written consent of Heisterkamp, they owe six months of full pay in compensation.

**Article 19 Amendments to the Terms and Conditions**

**19.1** Heisterkamp may amend these Terms and Conditions. Following such amendment, the amended Terms and Conditions apply to the next agreement with the client or other contracting party, including the legal relationship preceding it. If a translation of these Terms and Conditions has been provided, the Dutch text will be binding.

**Article 20 Applicable law and competent court**

**20.1** Dutch law applies to all offers and agreements of Heisterkamp. All disputes arising from agreements concluded between the client and Heisterkamp, or any further agreements ensuing from it, will in principle be resolved by the Court of Overijssel, the Netherlands.