

### 1. Scope

- 1.1 LTE provides its services exclusively according to the following terms and conditions (hereinafter also "GTC 2013").
- 1.2 General terms and conditions of the client are inapplicable and shall apply only if LTE agrees to them specifically and in writing, implied consent is excluded.
- 1.3 If LTE and the client conclude a contract at a later point, the GTC 2013 will be displaced (only) as far as they differ from the contract.
- 1.4 For possible consumer transactions, the GTC 2013 are not applicable.

### 2. Applicable provisions

- 2.1 Concerning the handling of wagons, the 'General Contract of Use for Wagons', GCU, is applicable. In case the client provides wagons whose keeper has not joined the GCU, the client will, apart from his other contractual obligations, take over all duties and liabilities of a 'keeper' in terms of the GCU.
- 2.2 Wagons to be transported by LTE must have an 'entity in charge of maintenance' in compliance with directive 2004/49/EG, as periodically amended. They have to be in accordance with the IRV (International Wagon Regulations), and the revision time must not be transgressed.
- 2.3 The provisions for the Transport of hazardous goods by rail (RID).
- 2.4 Concerning the provision of logistic services (procurement of transportation and freight, contract logistics, especially possible services rendered by trucks), subsidiary and additional to the GTC 2013, the "ALGEMENE VOORWAARDEN VAN DE FENEX", in its current version is applicable.

### 3. Written form clause

- 3.1 For their effectiveness, changes of or amendments to these general terms and conditions, as well as of any agreements based on them, and any supplementary stipulations, must be in writing.
- 3.2 The same applies for the written form clause itself.

### 4. Offers, and placing of orders

- 4.1 LTE's offers are always subject to change (request for relief of an offer).
- 4.2 After the client bindingly explains his will to conclude an agreement based on an offer as described above, the offer may be accepted if LTE confirms the agreement as stated in Pt 4.3.
- 4.3 The binding acceptance by LTE is conducted by transmission of a written "order confirmation" (possibly also in German: "Auftragsbestätigung"), which has to contain the quotation number from the preceding offer.

### 5. Not included performances

- 5.1 If not explicitly otherwise agreed, the following performances are not included in our offers:
  - Customs clearance
  - Costs for rent and maintenance of wagons
  - Loading, transshipping/reloading and unloading of wagons
  - Shunting in railway sidings: Railway trains will generally be accepted by LTE only under overhead traction wire.
  - Supervision of trains outside our own management (monitoring and provision of information about the movement of trains after handing over the train to a third party).
- 5.2 LTE will, if necessary and possible (depending on free capacities), also render performances not covered by the offer. We charge a payment customary for our performance and the industry, for example for each additional locomotive driver hour EUR 80,-, for each additional hour of administrative tasks EUR 60,-. The minimum accounting unit is one hour or part thereof.

### 6. Cancellation, dispense of performances

- 6.1 In the case that performances by LTE remain undone due to reasons the client is responsible for, LTE may invoice flat cancellation fees.
- 6.2 The cancellation fees depend on the period within which LTE gets notification of the cancellation, and the price of the performance:
  - more than 7 calendar days (more than 168 h before departure): 30% of the offered price
  - less than 7 calendar days (less than 168 h before departure): 50% of the offered price
  - less than 48 hours: 80% of the offered price

### 7. Obligations of the client

- 7.1 The client is responsible to provide, also without special request by LTE, all documentation and data which is necessary for proper handling of the arranged transports, as well as he is obliged to inform LTE about any circumstances which might be relevant for those transports. The same applies for documentation, data and information which are occurring later on during the performance. In particular the client has to ensure that
  - all required documents, especially customs documents, comply with statutory requirements. The client shall indemnify and hold harmless LTE from the noncompliance to this clause.
  - any deviations from the agreed time frame must be reported to LTE by the client as soon as identifiable, respectively immediately after notice.
- 7.2 If additional services are necessary due to circumstances in the client's range of responsibility the additional costs will be passed on to the client, own services by LTE in accordance with the prices of Pt 5.2.

### 8. Prices

- 8.1 Prices are set forth in each "order confirmation", respectively the preceding offer (see Pt 4). If both do not contain a price, a payment customary for this performance and industry will be invoiced.
- 8.2 Prices and other fees are always net prices and do not include applicable VAT.
- 8.3 All services (transport agreements) with a duration of more than 12 months (period between first and last performance) are subject to an indexation clause, excluding price reduction. The Dutch Consumer Price Index 2012, CPI, will serve as an index. The current index during the month of contract according to no. 4 will be the reference for adjustments. Deviations of the CPI up to 5% remain unconsidered. This fluctuation range will be redefined after each price adjustment, starting from the first rate beyond the fluctuation range. All adjustment rates will be rounded to one decimal.
- 8.4 Changes or the introduction of consumption taxes and dues after the conclusion of a transport agreement entitle LTE to a price adjustment to the extent of the additional costs arising for LTE. The claim for price adjustment can be made beginning from the point of effectivity of the constitutive amendment of law.
- 8.5 For equipment changes based on mandatory provisions Pt 8.4 applies accordingly.
- 8.6 If price adjustments or the indexation clause are not claimed promptly, this does not constitute a waiver; instead the missing amount will be charged subsequently.

### 9. Invoicing, payment, default or payment

- 9.1 Invoices are due within 14 calendar days, LTE may charge interest in arrears of 5% p.a. above the respective 12 month EURIBOR.
- 9.2 For each reminder a fee of EUR 50,- will be charged in addition to all costs which are necessary for appropriate legal action.
- 9.3 Payments are to be made without any deductions to our account:
  - Bank: Rabobank
  - Account no: 1661.48.628
  - IBAN: NL06 RABO 0166 1486 28
  - BIC/SWIFT Code: RABONL2U
  - VAT reg. no.: NL8512.45.833.B01
- 9.4 Complaints against our invoices must be made in writing within 4 weeks upon receipt; otherwise they are deemed accepted.
- 9.5 Setoff and retention against claims of LTE is excluded, except for undisputed or determined claims of the customer.
- 9.6 LTE is entitled to suspend all further services and performances until all due invoices for our performances are balanced, or at least guaranteed.

### 10. Liability and defects liability

- 10.1 The liability of LTE is restricted to willful intent and gross negligent conduct.
- 10.2 Liability is excluded for indirect damages, loss of profit, consequential damages and claims of third parties against the client, in so far as each of those liabilities are not mandatory. Especially, LTE is not liable for delays and damages resulting from delays, as long as there is no specific written agreement about penalties for delays, or the liability for delays in general.
- 10.3 The maximum limit of liability is, unless there are no agreed or legally permitted lower liability limits (which would otherwise apply in priority),
  - within the Netherlands EUR 36,50 per kg of gross weight
  - for international transports 17 SDR per kg of gross weight
  - and in any case independent from those EUR 5.000.000,- per train/trip
- 10.4 Claims for any kinds of compensations (especially for damages) must be made within six months upon notice by the client after the event causing the claim, anyway by 3 years from occurrence of the (primary) damage, unless there are no mandatory statutory deadlines.

### 11. Confidentiality agreement, non-solicitation clause

- 11.1 The client has to keep confidential all offers and affiliated agreements in regards to LTE's rail services.
- 11.2 The transfer of any information about operational procedures, vehicles or other operational specific features is only permitted, in so far as it is necessary for proper operational management, to administer serious interests or claims, or for fulfilling statutory obligations.
- 11.3 The client is obliged not to employ anyone from LTE's staff for the duration of one year after the ending of the contractual relationship in his organization or in associated organizations; otherwise he is committed to a penalty of one annual salary of the respective employee (the most recent).

### 12. Applicable law, place of jurisdiction

- 12.1 In the event that one or several provisions of these GTC prove or become ineffective, this will not render the based on agreement ineffective. In fact, the parties will replace the ineffective provision of the GTC with an effective one that reflects the intended economic purpose of the ineffective provision as closely as possible. The same applies in case of contractual gaps.
- 12.2 Any disputes arising as a result of or in connection with agreements under these GTC or relating to their validity are governed by Dutch law, excluding CISG. Foreign law will only be considered upon specific written agreement.
- 12.3 Rotterdam has been agreed as the exclusive place of jurisdiction, excluding all other jurisdictions.