



**Tankreinigung, Industriestrasse 16, 4617 Guzgen**

## **GENERAL TERMS AND CONDITIONS TRANSCLEAN**

### **ARTICLE 1 – PURPOSE AND APPLICABLE CONDITIONS**

**1.1** – The service rendered by Transclean to its clients consists in cleaning the inside of tanks and various containers, hereinafter named all together “Containers”.

The purpose of the service is thus to make a container "clean" in accordance with the instructions of the Client with respect to the criteria of the EFTCO (European Federation of Tank Cleaning Organizations).

A Container is considered as “clean” when any apparent trace or smell of the last cargo or used cleaning product no longer shows during an inspection, it being specified that for a Container, the inspection is done visually by openings.

The order to clean a Container does not automatically imply to clean all Accessories (Accessories refer to anything that is not the container, knowing that all attached elements, and in particular manholes, valves, pipes, joints, filters, pipes are not considered as accessories but part of the container). If the Customer wants any accessory to be cleaned, he must expressly designate in writing the Accessory to be cleaned on the cleaning order.

**1.2** – Unless prior written and formal agreement signed between the parties, and provided that said agreement is not contrary to law, the Transclean General Terms and Conditions apply to all of the contractual relations concluded between Transclean and its Client.

Therefore, any general purchasing conditions of the Client, or any other commercial document thereof, are not relevant and cannot apply, unless otherwise agreed in writing.

### **ARTICLE 2 – Transclean obligations**

**2.1** – Transclean, with respect to the current state of the art for cleaning, guarantees cleaning in accordance with the cleaning order presented by the Client, without ever guaranteeing the risks inherent in the design, obsolescence, maintenance, poor condition, possible hidden defects in the vehicle, the Container and / or the Accessories which could have caused a washing defect or a hidden area incompatible with current cleaning techniques.

The Client present on site is the only one person responsible for taking the decision to carry out (or not) the dismantling and / or replacement of the Accessories of the Container. Transclean has no duty of advice on such decisions and whatever the decision of the Client, Transclean cannot be held responsible for any consequences of such a decision.

In any event, the Client retains full control over the scope of his cleaning order and of the condition of his container and accessories, which he acknowledges having full knowledge, in particular as regards to its design, its particularities (hidden areas, product retention areas, etc.), its age and its maintenance conditions.

In certain cases, and without Transclean having any duty of advice in this regard, the Client may require, in addition to cleaning the Container, the disassembly and / or replacement of the Accessories of the Container. Transclean cannot be held responsible for the need to carry out such dismantling and / or replacements or for the technical impossibility of carrying out such dismantling and / or replacements. In all cases, Transclean is required to use all due care, in accordance with art. 365 al. 2 CO, vehicles, Containers and accessories entrusted by the Client for cleaning.

Any difficulty in this regard will be subject to a reservation on the European cleaning certificate / European Cleaning Document (hereinafter "ECD") or any other document evidencing the reception within the meaning of article 4.

As a result, Transclean is liable to the Client for an obligation of result, namely the cleanliness of the Container and its possible accessories within the meaning of the EFTCO criteria, subject to incorrect indications from the Client on the cleaning order and subject to the reservations set out above in this article.

**2.2** – In return for receipt, referred to in article 4 hereof, Transclean will provide the Client with a DPE, in a single original or any other document confirming receipt. This document corresponds, as regards its content, to the services appearing on the cleaning order.

### **ARTICLE 3 – Client obligations**

**3.1** – The Client designates both the legal person and its representative, in particular the driver, or any person representing it. More generally, as a Client, any person who comes to Transclean for the execution of the order and / or its receipt is considered as such.

The Client must present, before carrying out the cleaning service, its CMR consignment note attesting to the last product transported and all the information useful for its observation (precise description, technical specifications, possible hazard class, if applicable Data Sheet Security, etc.).

If the Customer does not have a CMR consignment note, he must provide all the information contained therein.

More generally, the Client must give to Transclean in writing all the necessary and useful data which he knows or must know is important for the performance of the service, and which is necessary for the service to be performed in secure circumstances which are not dangerous or harmful to the personnel, the installation and the equipment of Transclean and third parties, and according to normal and usual working methods.

In the absence of communication of the elements referred to in the preceding paragraphs, including in the event of problems of linguistic understanding between the Customer's representative and Transclean, Transclean may use the usual cleaning programs and, in any case, reserves the right not to perform the requested service. If, however, it provides this service, Transclean cannot guarantee that it will be executed correctly.

In any event, Transclean cannot be held responsible if the products transported before washing or if necessary, before the previous washing, have not been declared or specified.

More generally, Transclean cannot be held responsible, given the poor quality of the washes previously carried out.

In principle, Transclean can rely on the data and declarations provided, without being required to examine the precision, accuracy and completeness of these data.

**3.2** – The Client undertakes to comply with all the safety and security instructions in force at Transclean.

**3.3** – The Client accepts these general conditions by global acceptance, duly indicated on the cleaning order.

**3.4** – The Customer and the representative of the loading site are required to inspect the Container before loading the products, except in the case of sanitization ordered before cleaning. Transclean cannot guarantee the capacity of a Container to load a product due to the possible incompatibility of one product compared to another or the design of the Container and / or Accessories, the incapacity noted to dismantle and / or replace an Accessory. The Client and the representative of the loading site therefore remain responsible for loading the Container presented even after washing.

## **ARTICLE 4 – RECEIPT AND SERVICES**

**4.1** – The Customer check his Container and / or its Accessories after cleaning, carrying out, if necessary, any inspection operation appearing to him necessary.

Receipt by the latter certifies that the cleaning means corresponding to his order have been executed by Transclean.

The absence of the Client or their legal representative when the Containers are made available does not release the Client from its obligation to control the proper execution of cleaning operations. The acceptance of the Container without reservation validates the proper execution (art. 370 al. 2 CO).

**4.2** – The receipt is materialized by the signature of the EDC issued by Transclean by the driver of the Client: as of this signature, the Client assumes full responsibility for the cleanliness of the Container and the Accessories. If they deem it necessary, the Client and / or Transclean must immediately make written and precise reservations on the EDC or any other document evidencing the receipt. With regard to the Client, these reservations constitute notice of defects within the meaning of art. 367 al. 1 CO.

## **ARTICLE 5 – PRICES AND PAYMENT**

**5.1** – Prices of the services executed by Transclean are those in force on the day the cleaning order is taken. They are expressed in CHF and in EUR and calculated without taxes. Consequently, they will be increased by the VAT rate on the day of the order.

**5.2** - Services are payable in cash, without discount, or by wire transfer based on the invoice, as per the conditions that appear on the invoice. If special payment conditions have been agreed, these conditions will lapse immediately in the event of late payment.

## **ARTICLE 6 – RESPONSABILITES**

**6.1** – Comme rappelé à l'article 2.1 des présentes, la Station de lavage est débitrice à l'égard du Client d'une obligation de résultat.

Il lui est cependant impossible de garantir, à travers la prestation standard de lavage, une propreté parfaite, en particulier des Accessoires du Récipient (trous d'hommes, vannes, conduits, canalisations, joints, filtres, tuyaux, appendices, etc.).

Only the Client can judge of the need to carry out or not the dismantling and / or replacement services of the Accessories of the Container, without weighing on Transclean any duty of advice in this regard.

**6.2** – Transclean is only responsible for the direct material damage attributable to it, caused to goods washed during cleaning, to the exclusion of all others.

Thus, for all damage resulting from a failure in the performance of the washing service, exclusively attributable to Transclean, the responsibility of the Transclean is strictly limited to the price of the service causing the damage, without being able to exceed a maximum amount of EUR 10'000.00, respectively of CHF 10'000.00 according to the currency of payment agreed at the start, per event and this for any damage whatsoever.

**6.3** – Transclean cannot, in particular, be held responsible for the harmful consequences resulting from defects, lack of conformity, defects in all or part of the goods washed, direct or indirect damage, material or immaterial, occurring after the cleaning has been carried out and as a result of it.

**6.4** – As per art. 371 al. 1 CO for the biannual prescription in terms of business contract, the rights that the Client or any other person would like to assert against Transclean because of the faults of the cleaning carried out, will be prescribed by 2 years from the date of receipt by the Client of the cleaned Containers and accessories.

**6.5** – The Client is responsible for all direct and indirect, material and immaterial damage that Transclean could suffer due to the absence or inaccuracy of the information transmitted.

More generally, the Client must compensate Transclean for any damage caused, during the stay on site, by the vehicle, the container, the accessory, the load or any person related to the Client.

The Client must finally guarantee Transclean against any action undertaken by a third party against it, including the administration, in direct or indirect link with the execution of the cleaning service.

## **ARTICLE 7 – INSURANCE**

**7.1** – The Client must be covered by all the insurance policies which guarantee his liability in the event of a claim, either that this occurs during the presence of the Container at Transclean, or subsequently and in connection with the execution of the cleaning service (pollution of the next load for example).

The amounts insured must be in line with the damage normally foreseeable in the event of a claim.

The Client must be able to present their insurance certificates at the request of the operator of Transclean, without the said request being an obligation incumbent on the operator. Otherwise, Transclean reserves the right not to perform the requested service.

**7.2** – All the provisions included in these General Terms and Conditions, in particular those relating to the limitation of liability of Transclean, must be understood as applying both to the Client and to his beneficiaries and insurers.

In this regard, the Client undertakes to communicate these limitations of liability to its insurers.

## **ARTICLE 8 – INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

All studies, tarif, documents submitted or sent by Transclean remain its property.

Communication to third parties for any reason whatsoever is prohibited.

## **ARTICLE 9 – FORCE MAJEURE**

The responsibility of each Party will be released in the event of its inability to perform part or all of its obligations due to the occurrence of events having the character of a case of force majeure, as usually retained by case law of the Federal Court (see ATF 102 Ib 257, recital 5). According to this case law, force majeure is an unforeseeable and extraordinary event occurring with irresistible force.

In addition, it is considered that cuts in water, electricity or gas independent of the exclusive fault of Transclean is a case of force majeure within the meaning of article 9 hereof.

## **ARTICLE 10 – APPLICABLE LAW, DISPUTES AND JURISDICTION**

10.1 - These General Terms and Conditions and all of the resulting contractual relations are governed by Swiss law.

10.2 - In the event of a dispute, the Parties will approach in good faith in an attempt to find an amicable settlement, possibly through the appointment of a mediator chosen jointly by the Parties. These procedures cannot last more than 30 days, except with the written agreement of the Parties.

10.3 - In the event of failure of the attempt to reach an amicable settlement, the dispute, whatever the cause, will come under the exclusive jurisdiction of the Court of Fribourg, Switzerland, where the company Translait SA has its seat, even in the event of a call in warranty or more than one defendant, despite any contrary stipulations which may be recorded on the commercial documents of the Client.

## **ARTICLE 11 – OFFICIAL LANGUAGE - PRIMALITY CLAUSE**

The official version of the Transclean General Terms and Conditions is the version written in French.

In order to facilitate access to said General Terms and Conditions for none French speaking Clients, Transclean has prepared this English version.

In the event of any discussion on the interpretation of these General Terms and Conditions, the French version prevails over the English translation as well as over any other possible translation into any other language.

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