

TERMS AND CONDITIONS FOR VALUE ADDED LOGISTICS

*deposited by the FENEX,
Netherlands Association for Forwarding and Logistics,
at the Registry of the District Court at Rotterdam
on 15 November 1995*

Clause 1

Definitions

In the terms and conditions it is understood by:

1. **logistic activities:** all activities like unloading, acceptance, storage, delivery, stock control, order handling, order picking, preparing for shipment, loading, invoicing, assembling, labelling, exchange and control of information with regard to goods, in the event that they have been agreed between the principal and the service provider.
2. **logistic centre:** the agreed space(s) where the logistic activities take place.
3. **service provider:** the party performing the said activities by order of the principal.
4. **principal:** the party ordering the service provider.
5. **agreement:** the agreement made between the principal and the service provider.
6. **terms and conditions:** the Terms and Conditions for Value Added Logistics applying to the agreement.
7. **force majeure:** all circumstances a conscientious service provider has reasonably been unable to avoid and whose consequences the service provider has reasonably been unable to prevent.
8. **working days:** all calendar days, except Saturdays, Sundays as well as public and national holidays.

Clause 2

Scope

1. The logistic activities shall commence with the unloading of the goods from the carrier in the logistic centre. The logistic activities shall cease after the goods have been loaded into the means of transport at the logistic centre, unless agreed otherwise in writing.
2. Even after termination of the agreement, the present terms and conditions shall apply to the legal relation between the principal and the service provider.

Clause 3

Prices and rates

1. Changes in price resulting from movements in price and costs, customary or related to the nature of the activities, may be passed on, after consultation with the principal. The service provider shall propose changes in price established in reasonableness and fairness. Changes in price established in reasonableness and fairness by the service provider cannot produce grounds for dissolution of the agreement by the principal.
2. The agreed rates shall be considered to include all costs generally borne by the service provider in the ordinary performance of the agreement.
3. Unless agreed to the contrary, the rates shall at any rate not include: taxes and levies, cost of drawing up bank guarantees and insurance premiums.
4. For unforeseen activities, including inter alia special performance, uncommon, extremely time-consuming or energy-requiring activities, an extra payment - established in fairness - may always be charged.

Clause 4

Duties of the service provider

The service provider shall be obliged:

1. to take delivery of the agreed goods, provided that the packing is sound, the proper documents are present and the goods are made available in the agreed place, time and manner;
2. to see to the loading and unloading, the acceptance and delivery of the goods;
3. to have the logistic activities performed in expressly agreed or suitable spaces.
If no specific spaces have been agreed, the service provider shall be free in the choice of the place of warehousing and shall have the right to move the goods.
If specific spaces have been agreed, the service provider shall have the right to move the goods, in consultation with the principal, if the proper conduct of their business so requires.
4. to notify the principal that the goods are being moved to a different place of warehousing.
The principal cannot lay any claim against the service provider on the basis of the absence of a notification.
5. to have the transfer take place for their account, unless the transfer must be made:
 - in the interest of the principal or the order, or
 - as a result of circumstances for which the service provider is not responsible, or
 - as a result of circumstances that are reasonably not for the service provider's account and risk, or
 - as a result of government rules.

The transport related to the transfer for account of the service provider, shall take place on the customary transport conditions, provided that the limits of liability of clause 8 hereof shall apply, unless the relevant transport conditions would render a higher limit of liability.

The transport related to the transfer for the principal's account, is to be considered pre-and/or on-carriage in terms of the agreement and shall be made for the principal's risk.

6. to take all the necessary measures - even not directly resulting from the logistic activities - at the principal's expense and prior to proceeding thereto, to consult with the principal, if possible;
7. to insure, at the principal's written request on entering into the agreement, their liability under the terms and conditions;
8. to insure the goods, at the principal's written request and for the principal's account, stating the desired cover. A copy of the policy or of an insurance certificate shall be handed to the principal.
9. to admit the principal and the persons designated by him at the principal's risk, to the spaces where the goods are, provided always that
 - it takes place in the presence of the service provider or someone in his name and behalf;
 - it was announced beforehand;
 - it is done in accordance with the service provider's house rules.The resultant cost shall be for the principal's account.
10. to undertake auxiliary work in relation to the goods, in consultation with the principal, against a consideration to be agreed, if such work may reasonably be required from the service provider;
11. to guarantee the soundness and suitability of his equipment;
12. to make the goods available in the agreed condition;
13. to observe secrecy towards third parties in respect of the facts and data known to them on the basis of the agreement and which he understands to be confidential.

Clause 5

Consequences of the service provider's non-performance

If the service provider do not meet his obligations described in the paragraphs 1, 2, 3, 8 and 9 of clause 4, the principal may - without prejudice to his right to compensation of the loss suffered in accordance with clause 8 hereof - dissolve the agreement, after he has given the service provider a period of four weeks by registered letter and on the lapse thereof the service provider has not yet met his obligations.

Clause 6

The principal's obligations

The principal shall be obliged:

1. to supply the service provider in good time with all such particulars on the nature and quality of the goods as well as their treatment and packing, and furthermore to give all such information and furnish such data as he knows or should know could be important to the service provider.
The principal shall be responsible for the accuracy of the data supplied.
2. if goods and/or activities are subject to government regulations, including inter alia customs and excise regulations or to tax regulations, the principal shall in good time provide all information and documents required therefor, in order to enable the service provider to comply with such rules or regulations.
Supplying the service provider with information required for performing formalities in relation to the above government regulations, shall imply an order thereto. The service provider shall have the right, but not be obliged to perform such formalities.
3. to make the agreed goods available to the service provider in sound packing in the agreed place, time and manner, together with the agreed documents and/or documentation and other documents required by or under the government rules and regulations.
The service provider shall have the right to refuse goods which do not meet the above provisions, or goods that are in apparent damaged condition.
4. to indemnify the service provider against third party claims for damage caused by the principal's acts or negligence, his instructions or the data supplied, his employees as well as all third parties engaged by him, by persons who under the order or with the principal's consent or on his behalf are present in the logistic centre, or by the principal's goods or goods of third parties engaged by the principal.
To indemnify the service provider against third party claims for damage caused by the nature of the goods and their packing.
5. to guarantee the goods and material made available to the service provider;
6. to pay, in addition to the agreed price, any other costs resulting from the agreement and/or the terms and conditions;
7. to pay the cost of clearance of the goods and to compensate the damage caused by the goods;
8. on the termination of the agreement, to take delivery of goods still held by the service provider and/or have them removed not later than the last working day of such agreement, after paying all he owes or will owe. For the amounts he will owe after termination of the agreement, the principal needs only issue a guarantee that is adequate in the service provider's opinion.

9. to take delivery of the goods and/or to have them removed immediately, if in the service provider's opinion the goods are so dangerous, or cause such aggravation that they cannot be required to keep them in storage any longer, subject to the provisions of paragraph 8 though. Contrary to the provisions of paragraph 2 of clause 4, the delivery and loading shall take place by or on behalf of the principal and for his account and risk.
10. to observe secrecy towards third parties in respect of the facts and data known to him on the basis of the agreement and which he understands are confidential.

Clause 7

Consequences of the principal's non-performance

1. If the principal does not meet his obligations as described in the paragraphs 1, 2, 3, 4, 6 and 7 of clause 6, the service provider may - without prejudice to their right to compensation of the loss suffered - dissolve the agreement, after he has given the principal a period of four weeks by registered letter and on the lapse thereof the principal has not yet met his obligations. If, by giving such period, the service provider's interests in the undisturbed conduct of his business would be impaired disproportionately, the service provider may dissolve the agreement without observing a time limit.
2. If the principal does not meet his obligations described in paragraph 9 of clause 6, the service provider may dissolve the agreement with immediate effect.
3. If the principal does not meet his obligations described in paragraphs 8 and 9 of clause 6, the service provider shall have the right:
 - a. to transfer the goods to other spaces for the principal's account and risk;
 - b. to sell the goods privately or by auction for the principal's account after the lapse of one week after they informed the principal by registered letter of the intended sale, without the necessity of complying with any formality;
 - c. to abandon or destroy the goods if it is likely that in case of sale of the goods the costs will be higher than the benefits or if no buyer can be found despite the service provider's reasonable effort thereto, while the cost of abandonment or destruction shall be for the principal's account.

Clause 8

The service provider's liability

1. For the purpose of these terms and conditions the principal waives his recourse against third parties in case of damage, he shall only be able to hold the service provider liable; also in case the service provider has made use of third party services in the conduct of their business, subject to the following limitation.

2. Except for force majeure and other provisions hereof, the service provider shall be liable for damage caused during the logistic activities. The service provider shall not be liable for damage resulting from the principal's failure to meet any of his obligations under the agreement and/or these terms and conditions.
3. The service provider's liability shall be limited to 4 SDRs per kilogram gross weight missing or damaged goods with a maximum amount to be agreed by the parties when entering into the agreement. If such amount has not been agreed, a maximum amount of 100,000 SDRs per event or series of events with one and the same cause of damage shall apply.

Subject to the provisions of the last sentence of paragraph 4 of clause 8 hereof, the service provider's liability for all other damage than to the goods themselves, shall be limited to 10,000 SDRs per event or series of events with one and the same cause of damage.

4. The damage to be compensated by the service provider shall never amount to more than the invoice value of the goods to be proved by the principal, in the absence of which the market value to be proved by the principal shall apply at the moment the damage was done. The service provider shall not be liable for lost profits, consequential damage and immaterial damage.
5. The service provider shall not be liable for damage to the goods, if such damage is caused by the special risks of open-air warehousing performed on the principal's instruction.
6. The service provider shall not be liable for any damage resulting from the performance of formalities described in paragraph 2 of clause 6, unless the principal proves that the damage was caused by the service provider's fault or negligence. In such case the service provider's liability shall be limited to 7500 SDRs per event or series of events with one and the same cause of damage.

Clause 9

The principal's liability

1. The principal shall be liable for all damage however caused by himself, his goods, his staff or by third parties engaged by him and their staff.
2. The principal shall be liable for all damage caused by not, or not punctually, or not properly meeting any of his obligations hereunder or under the separate agreement.

Clause 10

Time bar

1. All claims under the agreement shall be barred by the simple lapse of twelve months.
2. All claims shall become extinct by the simple lapse of two years.

3. The periods mentioned in paragraphs 1 and 2 shall commence, in case of total loss, damage or reduction, on the first of the following days:
 - the day the goods were made available by the service provider or should have been made available;
 - the day the service provider informed the principal of such event.
4. In case the service provider is held liable by third parties including any government, the periods of paragraphs 1 and 2 shall commence on the first of the following days:
 - the day the service provider is held liable by the third party;
 - the day the service provider paid the claim against them.
5. Without prejudice to the provisions of paragraphs 3 and 4, the periods of paragraphs 1 and 2 for all other claims shall commence on the day they become due and payable.

Clause 11

Complaints

1. If the goods are made available by the service provider without the principal or someone else for him having established their condition in the presence of the service provider or without having informed the service provider of reserves, in case of visible loss or damage not later than the moment of availability, or in case of invisible loss or damage within five working days of the availability, indicating the general nature of the loss or damage, he shall be considered to have received the goods in good condition, unless there is proof to the contrary.
In case of invisible loss or damage, the above reserves shall be made in writing.
2. The day of availability shall not be counted in the determination of the above periods.

Clause 12

Terms of payment

1. All amounts owing to the service provider by the principal for whatever reason, shall be paid with due regard to the agreed time or, in the absence of an agreed time, within two weeks of the invoice date.
2. If the principal does not pay any amount due within the agreed time or, in the absence of an agreed time, within two weeks of the invoice date, he shall be obliged to pay the legal interest thereon from the day such payment should have been made until the day of payment.
3. If in case of overdue payment judicial or other means of collection is used, the amount of the claim shall be increased by 10% administrative costs, while the judicial and extrajudicial costs shall be for the principal's account.
4. The principal shall at all times refund the service provider amounts collected or additionally claimed or after-tax levied by any government in connection with the agreement and/or the terms and conditions, as well as the related fines imposed.

5. The principal shall at the service provider's first demand provide collateral security for all amount the principal owes or will owe the service provider.
6. Recourse to compensation of claims for payment of charges under the agreement and/or the terms and conditions, of amounts owing for other reasons related to the logistic activities, or of other costs falling on the goods, with claims for other reasons shall not be permitted.
7. At any rate, all amounts mentioned in paragraph 1 of this clause shall be immediately due and payable and notwithstanding paragraph 6 of clause 12, subject to compensation if:
 - a. a bankruptcy petition is filed against the principal, the principal applies for a moratorium or otherwise loses the free disposal of his capital;
 - b. the principal:
 1. offers his creditors a composition;
 2. fails to meet any financial obligation towards the service provider;
 3. discontinues carrying on his business or - in case of a corporation or partnership - if it is dissolved.

Clause 13

Securities

1. The service provider shall have a lien and a right of retention towards anyone requesting delivery thereof, on all goods, documents and monies the service provider hold or will hold for whatever reason and with whatever destination, for all claims they have or might have in future on the principal and/or the owner.
2. The service provider may also exercise the rights awarded to them in paragraph 1, for all amounts still owing to them by the principal in connection with earlier orders.
3. The service provider shall regard everyone who entrusts goods to them on behalf of the principal for performing activities, as the principal's agent for creating a lien and a right of retention on goods.
4. In case of non-payment of the claim, the sale of the security shall take place in the manner prescribed by law or - if there is consensus thereon - privately.

Clause 14

Final provisions

1. All agreements to which these terms and conditions apply, shall be subject to the Laws of the Netherlands.

2. The place of payment and settlement of claims shall be the service provider's place of business.
3. In case of divergences with translated terms and conditions, the Dutch version hereof shall prevail.

Clause 15

Disputes

1. All disputes arising from the terms and conditions shall be decided in the highest instance by three arbitrators, with the exclusion the ordinary court of law. There shall be a dispute when either party so declares.
Without prejudice to the above provisions the parties shall be free to submit claims of amounts due and payable, the indebtedness of which has not been challenged in writing by the opposite party within four weeks of the invoice date, to an ordinary court of law.
2. One of the arbitrators shall be designated by the President of FENEX; the second by the President of the Bar Council of the judicial district where the said service provider's registered office is; the third shall be appointed by the two arbitrators so designated, in mutual consultation. The President of FENEX shall only designate an arbitrator if one of the parties to the dispute is a FENEX member. If the said President does not designate an arbitrator, the designation of arbitrators shall take place in accordance with paragraph 6 of this clause. Exclusively persons of Dutch nationality may be appointed arbitrators.
3. The FENEX President shall designate an expert on logistic activities; the President of the Bar Council shall be requested to appoint a lawyer; as third arbitrator shall preferably be elected an expert in the branch of trade or industry the opposite party of the service provider operates in.
4. The party wishing a decision of the dispute, shall inform the FENEX secretariat thereof by registered letter, briefly describing the dispute and his claim, simultaneously sending an amount for service charge fixed by the FENEX board, due in compensation of the administrative involvement of FENEX in an arbitration.
5. On receipt of the above registered letter the FENEX secretariat shall send a copy as soon as possible to the opposite party, to the President of FENEX, to the President of the Bar Council, requesting the latter two to designate an arbitrator each and to inform the FENEX secretariat of the name and address of the person designated.

On receipt of such information the FENEX secretariat shall inform the two persons designated of their appointment as soon as possible, sending them a copy of the application for arbitration and a copy of the terms and conditions and requesting them to designate a third arbitrator and to inform the FENEX secretariat who has been designated as such.

On receipt of the information the FENEX secretariat shall inform the third arbitrator as soon as possible of his appointment, sending him a copy of the application for arbitration and a copy of the terms and conditions. Then the FENEX secretariat shall inform both parties who have been appointed arbitrators.

6. If within 30 days of the application for arbitration the designation of all three arbitrators has not been made, all arbitrators shall - at the complainant's request by simple petition - be designated by the President of the District Court within whose jurisdiction the service provider's registered office is.
7. Chairman shall be the person designated by the President of the Bar Council. If designation is made by the President of the District Court, the arbitrators shall decide among themselves which of them will act as Chairman.

The Arbitrators shall make their award as good men in fairness and under obligation to observe the compulsory legal provisions, including the provisions of international transport treaties. They shall decide how the arbitration will be treated, provided always that the parties shall at any rate be given an opportunity to expound their views in writing and explain them orally.

8. The arbitrators' assignment shall continue until their final decision. They shall file their award with the Registrar of the District Court within whose jurisdiction the place of arbitration lies, sending copies to each of the parties and to the FENEX secretariat.

Arbitrators may require the complainant or both parties to make a deposit for cost of arbitration; during the proceedings they may demand additional deposits. In their award the arbitrators shall decide which of the two parties or for what portion each of the parties shall bear the cost of arbitration. Such cost shall include the Arbitrators' fees and expenses, the amount paid to FENEX on application for service charge, as well as the expenses incurred by the parties, if the arbitrators deem them reasonably necessary. The amounts due to the arbitrators shall be recovered as far as possible from the deposit.

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