

## **BELGIAN FREIGHT FORWARDERS** **STANDARD TRADING CONDITIONS** (Free translation)

### **Definition and Scope of the Contract**

#### **Article 1**

Unless otherwise agreed these Conditions shall be applicable to any form of service provided by the Freight Forwarder.

They may be quoted as "Belgian Forwarding Conditions". They represent a recognized custom of the trade.

#### **Article 2**

In these Conditions:

- Customer: is the Freight Forwarder's Principal at the instructions of whom and on behalf of whom the Freight Forwarder provides services, information or advice, whether gratuitous or for reward.
- Freight Forwarder: is a CEB member or each Freight Forwarder conducting business under these Conditions.
- service: is any instruction to forward goods offered, accepted for performance, or performed by the Freight Forwarder, and any related act, any information or advice in respect thereof.
- goods: are all and any goods including their packaging, entrusted to the Freight Forwarder by the Customer. Such goods include all and any merchandise as well as all and any titles or documents that represent or may represent such goods.
- owner: is the owner of the goods to which the service provided by the Freight Forwarder pertains.
- third parties: are any non-contracting parties, in particular any natural or legal persons whom the Freight Forwarder deals with in the performance of his duties.

#### **Article 3**

Where the performance of services is concerned, a distinction is made between the Freight Forwarder who acts:

- 1) as a forwarding agent under Belgian law (commissionnaire — expéditeur): his duties consist of, inter alia, forwarding goods either in his own name or in his Principal's name, but always on the latter's behalf, and pursuant thereto in providing all and any such services as may be necessary in respect thereof, performing all and any required formalities and concluding any such agreements as are necessary for such purpose
- 2) as a principal under Belgian law (commissionnaire de transport): in the following cases only, and in no other cases, the Freight Forwarder shall be regarded as a principal:
  - a) when he performs the carriage of goods in his own name and by his own means of transport,
  - b) when he issues a transport document in his own name,
  - c) when the instructions explicitly show that the Freight Forwarder assumes such obligation.

#### **Article 4**

These Conditions do not imply any waiver of any right by the Freight Forwarder and they cannot give rise to a more extensive liability than that to which he would be subject pursuant to any legislation or regulation applicable in addition to these Conditions.

#### **Article 5**

The Customer warrants that the goods entrusted by him to the Freight Forwarder under his instructions are his property or that as an authorized agent of the owner he has the right of control of such goods, and that consequently he accepts these Conditions not only for himself but also for and on behalf of his Principal and for and on behalf of the owner.

## **Formation and Performance of the Contract**

### **Article 6**

Unless otherwise agreed, or unless an event constituting force majeure arises beyond the Freight Forwarder's control, an offer made by the Freight Forwarder shall be valid for 8 days.

Such an offer shall be based upon existing rates, remunerations, freight charges, currency rates and estimated dates, which are in force at the time when the offer is communicated to the Customer.

Should one or more of these elements be varied, the prices offered shall be adapted accordingly and retroactively.

The Freight Forwarder shall at all times be entitled to charge to the customer all and any amounts charged to him by third parties as a result of improperly calculated freights, costs and rates.

### **Article 7**

The Customer shall undertake to supply to the Freight Forwarder, in advance and not later than at the time of confirmation of the order, any useful information including, but not limited to, the nature of the goods, the method of shipment, the place of taking over and delivery, and the required route and procedure, and in particular any information which the Principal may be presumed to have at his disposal as manufacturer, merchant, owner or consignor of the goods, and which may ensure their preservation, shipment, taking over at the place of departure and delivery at the place of destination.

### **Article 8**

The Freight Forwarder shall not be presumed to examine the correctness of the particulars or the information given by the Customer or the authenticity or regularity of the documents furnished by the Customer. Such information shall be accepted in good faith.

### **Article 9**

In the absence of precise instructions to the contrary or special agreements, the Freight Forwarder shall be at liberty in his choice of means to be used to organise and perform the services to the best of his abilities according to normal business practice, including the groupage of goods.

### **Article 10**

The Freight Forwarder shall be entitled to charge any amounts or fees for his expenses and interventions on a fixed basis, i.e. as a lump sum or an inclusive price.

### **Article 11**

In the performance of his duties, the Freight Forwarder may employ third parties, servants and agents who show normal professional qualifications.

### **Article 12**

Unless instructed to the contrary, the Freight Forwarder shall be entitled to keep possession, control or custody of any goods that for some reason could not be delivered, or to take custody of them, and to store the goods at the Principal's cost and risk or at the expense and risk of the goods themselves.

In accordance with the provisions of the Act of 5 May 1872, the Freight Forwarder may sell the goods and apply the proceeds in or towards the payment of his claims.

In the case of dangerous, perishable, flammable, explosive goods or goods that may otherwise cause damage to persons, animals or property, subject to prior notification in writing to the Customer and subject to accountability the Freight Forwarder may destroy, remove or sell the goods on the Customer's behalf and at the Customer's risk.

### **Article 13**

The Freight Forwarder shall be entitled to suspend the performance of his duties if the Customer fails to fulfil or insufficiently fulfils his obligations in any way.

In the event of force majeure, the Contract shall remain in force. The Freight Forwarder's duties shall, however, be suspended for the duration of the event constituting force majeure.

In case of specific duties, or activities that are uncommon, particularly time-consuming or that require specific effort, additional fees may be charged at any time. All additional costs caused by force majeure shall also be borne by the Principal.

#### **Article 14**

Unless otherwise and previously agreed in writing, the Freight Forwarder shall not be under a duty to guard the goods to be forwarded, nor to have them guarded, nor to have them insured, wherever they are, even out in the open.

### **Payment**

#### **Article 15**

The amounts or fees charged shall be payable in cash at the Freight Forwarder's registered office, within eight days from the date of the invoice.  
Any loss resulting from exchange rate fluctuations is for the Customer's account. Payments not allocated by the Customer himself to the payment of a specific debt, may be applied at the Freight Forwarder's choice to the payment of any amount owed by the Customer.

#### **Article 16**

Any protest against the invoicing or any services and amounts charged must have been received by the Freight Forwarder in writing within 14 days from the date of invoice.

#### **Article 17**

The Customer waives any right to rely on any circumstance which might entitle him to suspend payment in whole or in part and waives any right to set-off or counterclaim with regard to all amounts charged to him by the Freight Forwarder.

#### **Article 18**

The Freight Forwarder shall not be required to provide security for the payment of freight, duties, levies and taxes or any liabilities whatsoever, should this be required by third parties. Where the Freight Forwarder has provided security, the Customer is under a duty, at the Freight Forwarder's first request in writing, to pay to the Freight Forwarder, by way of security, any amount for which the Freight Forwarder has provided security to third parties, ..

#### **Article 19**

Any debt not paid on its due date shall, without any prior notice, be increased with compensatory interests calculated at the statutory interest rate and increased by liquidated damages equal to 10 % of the debt, so as to cover any economic and administrative loss, without prejudice to the Freight Forwarder's right to prove the existence of more extensive damage.

### **Customer's Duties and Liability**

#### **Article 20**

The Customer shall undertake and accept liability for the following:

- that his instructions and his description of the goods are complete, correct and accurate;
- that the goods to be entrusted by him to the Freight Forwarder shall be made available in time, completely and in a useful way, that they are loaded, stowed, packed and marked in accordance with the nature of the goods, the place of receipt or destination, and for the purposes for which they are entrusted to the Freight Forwarder;
- that all documents submitted to the Freight Forwarder by the Customer are complete, correct, valid, authentic and not improperly prepared or used;
- that, unless the Freight Forwarder has been informed thereof previously and in writing, the goods entrusted to him are not of a dangerous, perishable, flammable or explosive nature or liable to otherwise cause damage to third parties, persons or property;
- that he will examine all documents submitted by the Freight Forwarder upon receipt and that he will verify whether they are in accordance to the instructions given to the Freight Forwarder.

#### **Article 21**

The Customer shall be liable to the Freight Forwarder and he shall indemnify him at his first request:

- against any damage and/or loss resulting from the nature and the packaging of the goods, the incorrectness, inaccuracy or incompleteness of instructions and information, the non-delivery or untimely delivery of the goods to the Freight Forwarder at the agreed time and place of receipt, the failure to provide, or timely provide, documents and/or instructions, and the fault or negligence in general of the Customer and of the third parties employed by him;
- against any damage and/or loss, costs and expenditure which is claimed from the Freight Forwarder by authorities, third parties or servants and agents, for whatever reason, with regard to the goods, any damage, expenditure, costs, duties, claimed directly or indirectly as a result of the service provided on the instructions of the Customer, unless the Customer shows that such claim was directly caused by a fault or negligent act or omission for which only the Freight Forwarder is liable;
- against any damage and/or loss, costs and expenditure which is claimed from the Freight Forwarder in cases where, under Community or national laws and regulations, he is under any personal and/or joint and several liability for the payment or settlement of customs duties and/or other taxes.

#### **Article 22**

If the claim for which the Freight Forwarder requires compensation or indemnity from the Customer pertains to a customs or other tax claim, and if it is based on instructions with regard to customs received from the Customer or on his behalf, the Customer shall undertake, at the Freight Forwarder's request, to provide a financial guarantee to unconditionally warrant the Customer's liability towards the Freight Forwarder, to the benefit of the Freight Forwarder or to the benefit of a third party designated by the Freight Forwarder.

## **Freight Forwarder's Duties and Liability**

### **1) Provisions common to Agents and Principals**

#### **Article 23**

The Freight Forwarder shall not be liable for damage caused by an event constituting force majeure, including, but not limited to, war, riots, strikes, lockouts, boycotts, work congestion, scarcity of cargo or weather conditions.

#### **Article 24**

The Freight Forwarder shall not be liable for damage or loss as a result of theft of goods in his possession, custody or control, unless the Customer shows that the theft took place as a result of circumstances which the Freight Forwarder, in view of the Contract with the Customer, should have avoided or which he should have foreseen, provided that the risk of theft is not for the account of the goods under local regulations or business practice.

#### **Article 25**

The Freight Forwarder shall not be liable for any indirect loss or damage, including economic loss or damage, consequential loss or damage and immaterial loss or damage.

#### **Article 26**

The Freight Forwarder shall not be responsible for the lack of or bad result of any instructions to collect money, unless this is proved to have been caused by gross negligence.

### **2) Liability of the Freight Forwarder acting as Agent (art. 3.1)**

#### **Article 27**

The Freight Forwarder shall perform his duties with reasonable care, dedication and perception, and he shall be under a duty of normal professional performance of the instructions given to him.

#### **Article 28**

The Freight Forwarder's liability shall be limited to that for fault, negligence or omission in the performance of the instructions given to him.

To the extent that such fault, negligence or omission has caused any direct material damage or financial loss to the Customer or third parties, the Freight Forwarder shall be entitled to limit his liability to € 5 per kilogramme gross weight of the goods lost or damaged, with a maximum of € 25,000 per contract.

#### **Article 29**

The Freight Forwarder shall not be liable for the performance of any contract entered into by him for and on behalf of his Customer with third parties, servants or agents, pertaining to storage, transport, customs clearance or the handling of goods, unless it is shown by the Customer that the defective performance thereof was directly caused by the Freight Forwarder's fault.

#### **Article 30**

The Freight Forwarder does not guarantee any fixed time or date for delivery, dates of arrival and departure, unless otherwise previously agreed in writing. The indication of a time or date for delivery by the Principal is not binding upon the Freight Forwarder.

### **3) Liability of the Freight Forwarder acting as Principal (art. 3.2)**

#### **Article 31**

The Freight Forwarder shall be liable as a carrier in the cases provided for in article 3.2.

His liability shall be determined according to national law and the international conventions applicable to the mode of transport concerned.

## **Privilege and Lien**

#### **Article 32**

Any amounts charged by the Freight Forwarder shall be privileged in accordance with Belgian law and with these Conditions.

#### **Article 33**

Any claims of the Freight Forwarder as against his Principal shall be privileged under Article 14 of the Act of 5 May 1872, Article 20,7<sup>o</sup> of the Mortgage Act, and Article 136 of the General Customs and Excise Act with regard to all goods, documents or monies currently or in the future in his possession, custody or control, regardless of the fact whether the claim pertains in whole or in part to the taking in charge or forwarding of other goods than those in his possession, custody or control.

#### **Article 34**

The Freight Forwarder shall have the right to retain the goods and he shall be entitled to sell or dispose of the goods and to apply the proceeds to his claim in full; they shall also serve as security, regardless of the fact whether the Principal is the owner of the goods.

## **Insurance**

#### **Article 35**

The Freight Forwarder may make insurance (AREX 21) available to the Principal upon his request in writing, for any business related to international carriage at the Freight Forwarder's risk.

The costs of such insurance shall be borne by the Principal.

## **Prescription and Extinction of Right**

### **Article 36**

**The Freight Forwarder must be given notice in writing of any claim for damages as against him, with reasoned grounds, within 14 days from either the delivery of the goods or the sending of the goods.**

**Any potential liability of the Freight Forwarder shall be extinguished automatically and definitively when the Customer has retaken delivery of the documents pertaining to a specific operation within the framework of services after the performance thereof without having formulated a reasoned reservation not later than on the 10th day after the sending of these documents by the Freight Forwarder.**

### **Article 37**

Any liability action against the Freight Forwarder shall be time-barred as a result of prescription if it is not brought in the Court having jurisdiction within a period of six months.

Prescription shall run from the day following the day on which the goods were delivered or should have been delivered, or, in the absence of delivery, from the day following the day the event giving rise to the action took place.

## **Jurisdiction and Administration of Justice**

### **Article 38**

Exclusive jurisdiction is deferred to the Courts of the Freight Forwarder's registered office, which is presumed to be the place of formation and performance of the Contract, without prejudice to the Freight Forwarder's right to bring the action before another Court.

### **Article 39**

Legal and arbitration proceedings against third parties shall not be conducted by the Freight Forwarder unless he agrees to do so at the Principal's request and for and on the Principal's behalf.

### **Article 40**

All legal relations governed by these Conditions shall exclusively be governed by the laws of Belgium.

## **Entry into force**

These Conditions were published in the Supplements to the Belgian Official Gazette (Belgisch Staatsblad— Moniteur belge) of June 24, 2005 under number 0090237 and replace all other General Terms and Conditions of the Belgian Freight Forwarders from the date of entry into force.

## A.B.A.S.

Professional Association of  
Antwerp Master Stevedores and  
Port Operators

Professional Association

## K.V.B.G.

Royal  
Association of Trafficflow controllers  
Incorporated

c.v.b.a.

### **GENERAL CONDITIONS FOR THE HANDLING OF GOODS AND RELATED ACTIVITIES IN THE PORT OF ANTWERP**

Article 1: Every assignment to the assignee will be concluded according to the following conditions that govern the commercial relations between the parties.

- The assignor is the one who gives the order to the assignee.
- The assignee is the one who accepts this order and executes it or has it executed. These general conditions do not detract from the regulations and customs of the port of Antwerp.

Article 2: The assignment consists of all activities of a manual or non-manual nature relating to the loading, unloading, handling, receiving, controlling, tallying, delivery of goods, warehousing, transportation within the port area (Belgian Royal Decree 12.8.1974 art. 2 4), including all related and additional activities. This enumeration is not limitative.

Article 3: The assignee is only liable for the material damage and/or loss which is the direct consequence of his proven fault. Under no circumstances more than the actual damage will be compensated for. The liability of the assignee is limited to EUR 2 per kg of damaged or lost gross weight. For steel products (such as coils, sheets, plates, slabs, pipes, tubes, beams, bars, blooms, billets, wire rods and cast iron pipes) a liability limitation of EURO 1000 per package will be taken into account.

The maximum liability regardless of the number of packages for each claim of damage, shall in no case exceed EUR 25,000 per event or series of events caused by one and the same cause.

For damage caused to the ship or means of transport, the maximum liability shall not exceed EUR 25,000,-. In case of convergence of several claims relating to damage caused to the ship or the means of transport, loss and/or damage of goods or materials made available by the assignor or by third parties, the total

liability shall not exceed EUR 50,000,- irrespective of the number of prejudiced parties.

Article 4: All costs arising from government decisions and all claims which governments have or think they have towards the assignee, and all costs which the assignee will have to pay to protect himself from this type of claims, shall be borne by the assignor.

Article 5: The assignor who can invoke discharge clauses and/or limitations shall stipulate these in favour of the assignee. The assignor confirms that the goods of the assignment are his property or that he, as the representative of the interested party of the goods, can dispose of these goods in a way that he will not only accept these conditions for himself, but also explicitly on behalf of his assignor and/or any other interested party of the goods. Article 6:

- a) Money advanced shall be repaid in cash on presentation of the supporting documents.
- b) All amounts which have been charged by the assignee shall be paid in cash, unless another term of payment has been agreed between the assignee and the assignor.
- c) Every protest against an invoice shall be received in writing by the assignee within 14 days following the invoice date. Partial protest shall not suspend the payment of the not-protested parts of the invoice.
- d) Delay in payment will give rise ipso jure to the payment of interest for delay equal to the interest rate of the Belgian law on the fight of arrears during commercial transactions of 2 August 2002.
- d) Formal notice of payment shall give rise to the payment of contractual damages equal to 10 % of the amount invoiced, with a minimum of EUR 125,- for administrative charges.

Article 7 : The assignee is exempt from all liability in the following cases:

- all immaterial, indirect and/or consequential damage such as but not limited to: delays, harbor dues, demurrage, loss of profits, fines and/or similar levies;
- all damage and loss occurring before or after the actual execution of the task by the assignee;
- force majeure;
- shortage of personnel;
- theft;
- defect in the goods and/or the packing;
- flooding, whirlwind, natural disaster, explosion and fire, whoever or whatever may be the cause thereof; - error of third parties and/or of the assignor;
- failure to communicate or incorrect communication of data or instructions, or communicating incorrect or incomplete data or instructions by the assignor and/or by third parties; - any claim resulting from an unforeseeable defect of the equipment of the assignee. Article 8:

- a) The assignor is required to communicate in writing to the assignee in time before the commencement of the task:
  - the correct and accurate description of the goods, including type, number, weight, condition and risk category.
  - all instructions and limitations connected with the protection, handling, and storage of the goods and the execution of the assignment in general. - all instructions regarding the protection of the appointed persons.
- b) The goods shall carry all necessary markings indicating their characteristics. The assignor shall pack the goods required for the execution of the assignment, unless it is customary not to pack the goods.
- c) The available means of transport shall be supplied so that the assignment to be executed can be started immediately according to the usual method of working and the relevant statutory regulations. Unless agreed otherwise in writing, the assignee will not guarantee the fastening of the load. Before the start of the transport, the transporter shall verify whether the stowage and — if applicable — the fastening of the load has been carried out pursuant to the technical requirements of the vehicle and to the relevant statutory regulations.
- d) The installations, warehouses and equipment shall be checked by the assignor before being put to use, as to their suitability. In the absence of such a check or any motivated reserve, they shall be deemed to have been found suitable.

The assignor shall safeguard the assignee against all claims and shall compensate him for his damage, losses and costs that could arise from a breach of the above obligations, even if the breach is attributable to a third party.

Article 9: Unless agreed explicitly with the assignor, the assignee shall never insure the goods. The parties and respective insurers shall mutually renounce redress for all damage resulting from fire, explosion, stroke of lightning and the impact of aircrafts. The assignor himself shall be responsible for cleaning and removing the goods which have been damaged by fire.

Article 10: The assignee shall carry out the assignment to the best of his ability and pursuant to the customs, usages and regulations of the port.

Article 11: As guarantee for the payment of all sums due by the assignor to the assignee for the handling, storage and additional activities of these and previous goods, he is granted a possessory lien in accordance with article 1948 of the Belgian Civil Code and the stipulations of the law of May 5, 1 872 even if warehouse warrants and bearer storage certifications are postponed.

Should the assignor remain in default, the assignee shall be entitled, after due notice, to have the goods sold pursuant to the procedure stipulated in the law of May 5, 1872.

Article 12: All liability of the assignee lapses if the assignor has not protested in writing and at the latest upon conclusion of the task.

Article 13: Without prejudice to the preceding stipulations, any claim against the assignee expires one year after the determination of the damage and/or shortage or, in case of dispute, one year after the date of invoice, unless a shorter date is fixed by law.

Article 14: Should any article of these general conditions be in conflict with compelling legal stipulations that article shall be regarded as not written, so that the validity of the remaining articles shall be unaffected.

Article 15: All legal disputes between assignor and assignee shall be settled according to these general conditions and Belgian law, unless both parties have agreed otherwise.

Only the courts of Antwerp are competent in case of disputes. In case of arguments the Dutch text shall be decisive.

Article 16: These conditions were deposited at the court registry of the Commercial Court of Antwerp on March 26, 2009 and are effective as of April 1, 2009.



## GENERAL LOGISTICS CONDITIONS

(a free translation of the official Dutch wording)

### 1 DEFINITIONS

Hereinafter the following conditions shall mean:

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| <p>1.1 G.L. Conditions: General Logistics Conditions.</p> <p>1.2 CC: Civil Code.</p> <p>1.3 KVBG: ABAS-KVBG-conditions for the handling of goods and related activities in the Port of Antwerp.</p> <p>1.4 CEB: General Conditions of the Belgian forwarding agents.</p> <p>1.5 Logistics Service Agreement: the agreement whereby the logistics service provider binds himself towards the Principal to perform the logistics services.</p> <p>1.6 Logistics Service: all agreed services of any nature whatsoever related to the handling and distribution of goods, including but not restricted to collection, purchase, storage, stock management, order handling, preparing for shipment, invoicing, regarding the goods as well as the related data exchange and its management, customs' orders, fiscal representation.</p> <p>1.7 Additional activities: activities ordered after the original agreement for logistics services had been entered into.</p> <p>1.8 Consignee: the party to whom the provider of logistics services must deliver goods under the conditions of this agreement.</p> <p>1.9 Principal: the party that has entered into an agreement with the logistics provider.</p> | <p>1.10 Reception: the time at which the logistics provider has accepted the goods.</p> <p>1.11 Delivery: the time at which the consignee has accepted the goods.</p> <p>1.12 Force majeure: All circumstances beyond the control of the logistics provider or that he does not have to have under control and which humanly-speaking make it practically impossible to meet his obligations.</p> <p>1.13 Working days: all calendar days, excluding Saturdays, Sundays, as well as all recognised legal holidays in Belgium.</p> |
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### 2 SCOPE

- 2.1. The L.S. Conditions are applicable unless explicitly agreed otherwise in writing, to the logistics service conditions and the additional activities; in so far they are not in conflict with imperative law and public order.
- 2.2. All transports carried out within the framework of this Logistics Service Agreement are subject to the provisions of the international treaties and imperative legislation applicable to the related transport (CMR, added with the General Conditions for Carriage by Road as these are mentioned on the reverse side of the CMR-Way Bill forms and in so far they are Belgian Way Bill forms and in so far they are not in conflict with the strictly binding statutory provisions, CIM, ...).
- 2.3. All forwarding, customs, VAT assignments carried out within the framework of this Logistics Service Agreement are governed by the provisions of the CEB-Conditions and each assignment for fiscal

representation is subject to the standard CEB-contract.

- 2.4. The provisions of the KVBG-conditions govern all stevedoring activities carried out within the framework of a maritime transport carried out within the framework of these Logistics Service Conditions.

### 3 OBLIGATIONS OF THE LOGISTICS PROVIDER

The logistics provider must:

- 3.1. Perform logistics services and if required additional activities agreed with the Principal.
- 3.2. Take reception of the agreed goods at the agreed place, time and in the agreed way, accompanied by the transport document and accept the other documents that may have been given by the Principal and to deliver them in the same condition as the one in which they have accepted them, or in the agreed condition.

If there is no agreed time of accepting delivery or delivery these agreed activities must take place within the time which a logistics provider reasonably needs, counting from the time the accepting of delivery or the delivery is requested. This time is then deemed to be the agreed time.

On reception of the goods, note any necessary reservations on the transport document and inform the Principal about this so that he can take the necessary measures.

- 3.3. Designate one or more contacts and report this to the Principal.
- 3.4. If the logistics fails to designate one or more contacts as referred to under Article 3 paragraph 3, the person who has signed the agreement for logistics services on behalf of the logistics provider shall be deemed to be the contact.

- 3.5. See to it that the storage and handling of the goods is done in an appropriate environment, including the necessary licences, as the case may be. Any change in agreed location shall have to be approved by the Principal.
- 3.6. Behave like a diligent administrator regarding the goods and should this be necessary for the preservation of the goods to take all measures at the expense of the Principal, including those that do not result directly from the provision of logistics services.
- 3.7. Insure its liability as it results from the L.S. Conditions with an approved insurance company, according to the Supervisory Act of Insurances of 9 July 1975.
- 3.8. Insure the goods with waiver of recourse against the logistics provider for the benefit and the expense of the Principal, at the explicit written request of the Principal stating the requested cover, with an approved insurance company and to deliver an insurance certificate to the Principal Signed by the underwriter or this agent.
- 3.9. Allow only the presence of the Principal or of the persons designated by him to the areas and the premises where the goods are located but exclusively at their own risk and exclusively during normal working hours, however, provided that this:
- Takes place in the presence of the logistics provider;
  - Was communicated and approved in advance;
  - Takes place in accordance with the logistics provider's internal rules and regulations-
- 3.10. See to the proper functioning of the equipment he uses to perform the contract for the provision of the logistics services.
- 3.11. Maintain confidentiality towards third parties regarding facts and data it



became informed of on the basis of the logistics service agreement.

#### 4 LIABILITY AND INDEMNIFICATION OF THE LOGISTICS PROVIDER

4.1 If goods accepted by the logistics provider are delivered in their packaging, if any, in the same condition or in the agreed condition to the Principal and/or consignee, the logistics provider, except in case of *force majeure* and the further provisions in the present conditions, shall be liable for the related damage and/or loss. The Principal has the burden of proof that the damage and/or the loss occurred between the time of reception and the time of delivery as stipulated in these Conditions.

4.2. The logistics provider is not liable for damage to/loss of the good, in so far that damage/loss is the result of the special risks related to storage in the open air, as per the instructions of the Principal.

4.3. The liability of the logistics provider for the property damage/loss referred to under paragraph 1 is limited to 8.33 special drawing rights (S.D.R.) per kilogram of lost or damaged goods with the absolute maximum of an amount to be further agreed between the parties at the time of entering into the logistics service agreement. If such an amount has not been agreed, a maximum amount of 25,000€ will apply per occurrence or series of occurrences having one and the same cause of damage.

4.4. If the logistics provider does not perform the provision of logistics services and/or additional activities at or within the agreed time, in the agreed way and at the agreed place, he shall be held, without prejudice to the provisions of paragraph 1 of the present article, to perform these activities as soon as

possible without additional costs for the Principal, in the agreed way. If the principal has furthermore incurred expenses in relation with the fact that the logistics services provider did not perform the logistics services and/or additional activities in the agreed manner, time and place the logistics service provider liable is to pay these costs up to an amount to be agreed at the time of the entering into the logistics service agreement. If such an amount was not agreed, the liability of the logistics provider for these costs shall be 780 EUR maximum per occurrence.

4.5. The logistics provider is not liable for damages as a result of information and instructions provided by or to other persons than those referred to under Article 3.3.

4.6. If the logistics provider repeatedly fails to comply with the substantial obligations, the Principal can, without prejudice to the right to compensation for damages as described in paragraphs 1.2.3 and 4 of this article, terminate the logistics service agreement after having given formal notice to the logistics provider in writing for a period of 30 days and that the logistics provider still has not met his obligations upon expiry of this period. Towards the compensation of the damage resulting from this termination the logistics provider shall at the most owe a sum to be fixed at the beginning of the logistics service agreement.

4.7. Besides the liability laid down in this article the logistics provider is not liable for any damage except to the goods themselves unless the damage was caused intentionally.

4.8. Any damage/loss and/or difference in stock shall be evaluated once per year. If there is a positive difference no compensation for damages will be claimed.





In case of a negative difference no compensation for damages will be paid if the difference is less than 0.05% of the total annual volume that was handled.

If there is a rate based on the number of pieces, the 0.05% shall also be applied to the number of pieces. If a rate was agreed based on weight the 0.05% shall be applied to the weight handled.

If 0.05% is nevertheless exceeded the logistics provider shall pay a compensation for damages to the Principal equal to the actual value of the lost/damaged product beyond 0.05%.

- 4.9. The logistics provider may proceed to sell the goods without awaiting the instructions of the cargo interest if the perishable nature or condition of the goods justifies this or if the costs of preservation are out of proportion compared to the value of the goods. The value of the goods is the cost of production or failing this, the current market price or failing that, the usual value of goods the same nature and quality.

He can also proceed to sell if the Principal surrenders the goods. In the other cases he can also orders to sell if he has received no other instructions from the cargo interest within a reasonable period, of which the service can reasonably be demanded.

If the goods are sold in compliance with the present article, the proceeds of the sale shall be made available to the cargo interest deducting the costs burdening the goods. If these costs are higher than the proceeds of the sale the provider of logistics services will be entitled to the difference.

The law and the current practice of the place where the goods are located shall fix the procedure in case of sale.

In any case, in the event of perishable goods or goods of which to cost of preservation are out of

proportion with the value of the goods a simple communication will be addressed to the cargo interests. If the latter fail to respond to this immediately the sale may proceed. In case of non-perishable goods, a simple communication of sale will be addressed to the cargo interests. If the latter fail to respond to this within a period of 15 days the sale may take place.

## 5 OBLIGATIONS OF THE PRINCIPAL

The Principal must:

- 5.1. Designate one or more contacts and communicate these to the logistics provider.
- 5.2. If the Principal fails to designate one or more contacts as referred to in this article of the present conditions, the party that has signed the logistics service agreement on behalf of the Principal shall be deemed to be the contact.
- 5.3. Provide in due time all information to the logistics provider concerning the goods and their handling. For the dangerous goods the Principal is held to provide or communicate all documents and instructions as indicated in the conventions and prescriptions in this respect such as ADR, ADN, IMDG,... to the logistics provider.

The Principal is liable for all the charges and damages the logistics provider would sustain as a result of the inaccuracy or the deficiency of the above-mentioned data or documents.

He is also liable for any damage to the environment, damage or any harm the logistics provider would sustain as a result of insufficient information concerning the nature of the goods.

- 5.4. Inform the logistics provider about the necessary licences to perform his activities.

- 5.5. Place the agreed goods at the agreed place, time, and manner, together with a transport document and the documents required by law, at the disposal of the logistics provider.
  - 5.6. Besides the agreed price of the provision of logistics services, to pay the expenses incurred by the logistics provider with respect to the additional activities, including the costs, as referred to under Article 3 par. 6, within the fixed period of payment.
  - 5.7. Hold harmless the logistics provider against any claims of third parties regarding damages caused direct or indirect by the goods, by an act or negligence of the Principal, his subordinates, as well as all other persons whose services the Principal uses.
  - 5.8. Guarantee for the equipment made available by him to the logistics provider.
  - 5.9. At the end of the logistic service agreement receipt the goods that are still at the premises of the logistics provider on the last working day of that agreement after payment of all that was due or will become due. For whatever may be due after the completion of the logistics service agreement it will suffice for the Principal to provide sufficient security.
  - 5.10. Maintain confidentiality towards third parties with regard to the facts and data known to him on the basis of the logistics service agreement.
  - 5.11. To accept every adjustment of rates regarding the incurrance of expenses and/or the payment of costs (including new taxes) that are unknown at the time this agreement was signed and which the Principal would also have to pay if the Principal were to perform the activities mentioned in this agreement for his own account.
  - 5.12. Pay the costs of removal and recycling of packaging and waste that result from the provision of services at cost price.
- 6.1. The Principal is liable for any damage and costs caused by persons and/or goods the logistics provider had to allow to his premises and or inside his facilities on behalf of the Principal in accordance with Article 3 par. 9 of these conditions.
  - 6.2. The Principal is not liable for the damage resulting from information and instructions supplied by or to other persons than those referred to under Article 5.1 .
  - 6.3. If the Principal fails to communicate the information and documents as referred to under Article 5 par. 3 of these conditions in due time, or fails to make available the agreed goods at the agreed time or within the agreed period of time, manner and place, accompanied by the required documents as intended under Article 5 par. 5 of these conditions, he must perform these activities as soon as possible, free of charge and in the agreed manner for the logistics provider. If the logistics provider has in addition incurred costs in relation with the fact that the Principal has failed to meet his obligations as referred to under Article 5 par. 3 and 5 of these conditions, the Principal is liable for these costs up to a maximum of 30,000 EUR per occurrence.
  - 6.4. If the Principal repeatedly fails to meet his obligations the logistics provider can, without prejudice to compensation of damages, terminate the logistics service agreement, after he has allowed the logistics provider in writing a reasonable last deadline and the Principal still has not met his obligations at the expiry of it. Towards the compensation of the damage resulting from this cancellation the Principal shall at the most have to pay a sum to be agreed at the time of entering into the logistics service agreement.
  - 6.5. Unless explicitly and in writing agreed to the contrary in compliance with Article 3 par. 7 of the present conditions the Principal shall insure the goods among others against fire, lightning, explosion, crashing of airplanes, storm damage, water damage, floods and burglary including waiver of recourse by the

## 6 LIABILITY OF THE PRINCIPAL

insurers with regard to the logistics provider and all other third parties.

In any case he will also be liable for the collection and handling of the goods damaged by fire and/or floods. The access to the areas is described in Article 3.9. Moreover he will pay all costs caused by the collection and handling of the goods damaged by fire and/or floods as well as all costs whatsoever resulting from this. Such as the costs of cleaning and sanitation of the land and of the facilities and all the above without prejudice to what is mentioned under Article 6 par. 1.

## 7 PRESCRIPTION

- 7.1. All claims to which the service agreement gives rise including those that are the result of a Cash On Delivery-clause, shall expire after a period of one year as of the day following the one on which the Principal is informed of the fact or the occurrence that gives rise to the claim.

## 8 CONDITIONS OF PAYMENT

- 8.1. All amounts due by the logistics provider and the Principal shall be paid taking into account the agreed due date or in absence of this within two weeks after the date of invoice.
- 8.2. If the invoice is not paid on the due date the outstanding amount shall produce an interest by law and without formal notice at a rate fixed by the European Central Bank, fixed by the Act of 2 August 2002 implementing the European Directive 2000/35/CE of 29 June 2000, plus seven percent and rounded upwards to half a percent.
- 8.3. If the debtor fails to comply within a period of fifteen days after having sent a registered letter by mail, the amount outstanding shall moreover be increased with 10% with a minimum of 125 EUR and a maximum of 4,000 EUR as a lump sum compensation for additional administrative costs, supervision of

accounts outstanding and disturbance of commercial activities.

- 8.4. Except in the situations prescribed by Article 1289 and following of the Civil Code invoking the right of set off the payment of claims resulting from the logistics service agreement, of the amounts due on other grounds regarding the logistics service agreement or of other charges burdening the goods, with claims due on other grounds is not allowed
- 8.5. In the event of faulty service or in case the Principal or the logistics provider stops his activities, all sums as referred to under Paragraph I of this article 'fall immediately due and with the exception of bankruptcy, as the case may be also liable to compensation' if:

- the Principal or the logistics provider are granted suspension of payment;
- the Principal or the logistics provider:
  - o submits an agreement to their creditors;
  - o fundamentally fails to meet his obligations;
  - o terminates the logistics service agreement stops to carry on his business, or — in the event of a legal person or company — if it is wound up.

## 9 GUARANTEES

- 9.1. Against anyone who requests delivery thereof, the logistics provider holds a right of retention in respect of the goods and documents he holds in regard with the logistics service. However, he is not entitled to this right with respect to a third party if at the time he received the goods to provide the logistic service, he had reasons to doubt the capacity of the Principal with respect to that third party to place the goods at the disposal of the logistics service.
- 9.2. The logistics provider can only exercise the right of retention against the Principal or the consignee for what is or will be due to him for the logistics service. He can also exercise this right

on the Cash on Delivery-fee burdening the goods.

- 9.3 The logistics provider can also exercise the right of retention granted under paragraph 2 of this article for what is due to him by the Principal in relation with the above agreements for logistics service.
- 9.4. The logistics provider can also exercise the right of retention for a commission fee he is entitled to in relation with a Cash on Delivery shipment, for which he does not need to accept a guarantee.
- 9.5. If at the time of the settlement there is a dispute about the sum due or that for its determination a calculation is necessary that does not have to be carried out urgently, the Principal who demands delivery is held to immediately pay the part on which the parties agree that they are due and to extend a guarantee for the payment of the part that is disputed by him or the part of which the amount is not yet fixed.
- 9.6. All goods, documents and monies the logistics provider holds for the logistics service agreement, shall constitute a pledge for all claims he has with respect to the Principal.
- 9.7. If the Principal fails to pay the sums he owes to the logistics provider and for which the logistics provider holds a right of retention and/or a right of pledge on the basis of the above paragraphs, the logistics provider shall have the right, after having obtained the approval of the judge, to sell the goods stored at this premises at the expense of the Principal and to pay all the sums due with regard to the goods, all the above in compliance with the Act of 5 May 1872.
- 9.8. When requested the logistics provider can also replace the pledge by an equivalent guarantee to be assessed exclusively by him.

## 10 GOVERING LAW / JURISDICTION

- 10.1. Belgian Law shall govern all agreements to which the General Logistics Conditions are applicable.
- 10.2. All disputes related to the validity interpretation or service of the agreement on which the General Logistics Conditions are applicable, shall fall within the jurisdiction of the courts that are territorially competent for the Registered Office of the logistics provider except if there is an explicit agreement between the Principal and the logistics provider which stipulates that the disputes will be referred to arbitration.

## 11 MISCELLANEOUS PROVISIONS

- 11.1 The non-applicability of one or several provisions of these conditions shall not affect the applicability of the other provisions. Both parties will immediately take the action necessary to replace the provision concerned by a valid provision which approximates the original intention of both parties as closely as possible.
- 11.2. The fact that one of the parties would fail to react against the non-compliance of the contractual stipulations by other party can never be considered by the other party to be permanent waiver of the stipulation(s) under consideration.

## 12 REGISTRATION

- 12.1. The present conditions, drawn up by BELOTRA/Logistics Cell of FEBETRA and the Royal Federation of Managers of Flows of Goods have been registered with the Clerk of the Court's Office of the Chamber of Commerce and Industry of the 27<sup>th</sup> of November 2003.

## 13 COMING INTO EFFECT

The present General Logistics Conditions shall come into effect as of the 27<sup>th</sup> of November 2003.