



KVBG

1872/1997

CONDITIONS FOR THE PROVISION OF LOGISTIC SERVICES

(A free translation of the official Dutch wording)

1 DEFINITIONS

In these conditions the terms and phrases set out below are defined as follows:

- 1.1. Conditions: Conditions for the Provision of Logistic Services.
- 1.2. CC: (the Belgian) Civil Code.
- 1.3. CMR: convention on the contract for the international carriage of goods by road (Geneva 1956).
- 1.4. KVBG: ABAS-KVBG-conditions for the handling of goods and related activities in the port of Antwerp (dated 1 January 1992).
- 1.5. CEB : Standard Trading Conditions of the Belgian freight forwarders (1980).
- 1.6. Contract for the Provision of Logistic Services: the contract whereby the logistic service provider undertakes to provide logistic services to a principal.
- 1.7. Provision of Logistic Services: a series of related activities such as carriage, receiving in warehouse, storage, release from warehouse, inventory control, order processing, readying for shipment, and invoicing relating to articles as well as the exchange of information in connection with these and the management of same, insofar these are agreed between the logistic service provider and the principal.
- 1.8. Additional activities: activities for which instructions are given, but which were not agreed at the time of the original logistic service contract.
- 1.9. Addressee, the person to whom the logistic service provider must deliver the articles pursuant to the contract.
- 1.10. Reception: the time when the logistic service provider accepts the articles.
- 1.11. Delivery: the time when the addressee accepts the articles.
- 1.12. Force majeure is defined as follows: all circumstances over which the logistic service provider has no control nor can be expected to control and which make it practically and humanly impossible to perform his obligations.
- 1.13. Working days: all calendar days with the exception of Saturdays, Sundays, and legally recognised public holidays.

2 AREA OF APPLICATION

- 2.1. These conditions are applicable to the Contract for the Provision of Logistic Services and the additional activities insofar these do not conflict with mandatory provisions of law.
- 2.2. Unless otherwise agreed in writing :
 - all transport operations performed under this Contract for the Provision of Logistic Services are subject to the provisions of the CMR convention.
 - all instructions for forwarding, payment of duty, inwards clearance, fiscal representation and other Custom, VAT or fiscal services performed under this contract are among other things subject to the provisions of the CEB conditions.
 - all instructions for payment of duty, inwards clearance, fiscal representation and other custom, VAT or fiscal services are among other things subject to the general conditions of services with regard to customs, VAT and representation with the tax authorities.
 - all stevedoring activities performed further to this contract for the Provision of Logistic Services are subject to the provisions of the KVBG conditions, a copy whereof is provided in annex should they be applicable.

3 OBLIGATIONS OF THE LOGISTIC SERVICE PROVIDER

The logistic service provider is required :

- 3.1. To attend to the provision of logistic services and additional activities;
- 3.2. To receive the agreed articles at the agreed place and time and according to the agreed method, accompanied by a carriage document and other documents provided by the principal and to deliver them in the same condition as he has received them or in an agreed condition. Should no agreed time for the reception, or delivery have been indicated these activities must be performed within that period in which a careful logistic service provider would reasonably need for same counting from the time that reception or delivery is requested. This period will then be held to be the agreed time.
- 3.3. To nominate one or more contact persons and to inform the principal of same.

- 3.4. To cause the storage of articles and activities pertaining to them to take place in agreed spaces or spaces suitable for this purpose;
- 3.5. To take all necessary measures in respect of the articles, even if these do not arise directly from the provision of logistic services, at the expense of the principal and, if possible, to consult with the principal before doing so.
- 3.6. To insure his legal liability and when so requested in writing by the principal and for the account of the logistic service provider to insure his liability arising from the logistic service conditions with a sound insurer and to provide the principal with a copy of the policy if so desired.
- 3.7. To insure upon written request of the principal and on his behalf subject to the indication of the cover desired the articles with a sound insurer and if so requested to supply a cover note delivered by the relevant insurer to the principal.
- 3.8. To admit the principal and persons designated by him to the spaces in which the articles are kept, on condition that :
- this takes place in the presence of the logistic service provider;
 - prior notice is given;
 - this takes place in accordance with the internal regulations of the logistic service provider.
- 3.9. Not to move the stored articles unless the performance of the logistic service contract or the maintenance of the space(s) concerned so require.
- 3.10. To request instructions from the principal before receiving articles which have sustained damage that is externally visible. Should it not be possible to obtain instructions in good time, the logistic service provider is within his rights to refuse the reception of the damaged articles.
- 3.11. To provide the material used by him in the performance of the logistic service contract.
- 3.12. To maintain the confidentiality of facts and details in respect of third parties known to him on the basis of the logistic service contract.
- 3.13. The logistic service provider shall insure his buildings against fire and associated risks including waiver of recourse against the principal and all other third parties.

4 LIABILITY OF THE LOGISTIC SERVICE PROVIDER

- 4.1. If the articles and where applicable their packing received by the logistic service provider cannot be delivered to their destination in the same or in the agreed condition the logistic service provider will be liable for the damage to the articles arising from this except in the event of force majeure and other circumstances as determined elsewhere in these conditions. The burden of proving damage to the articles rests with the principal.
- 4.2. The logistic service provider is not liable for damage to articles insofar this damage is the consequence of special risks related to open air storage on the instructions of the principal.
- 4.3. The liability of the logistic service provider for article damage as meant by part 1 of this article is limited to 8 1/3 special drawing rights (SDR) per kilogram of lost or damaged articles with an absolute

maximum of a sum to be agreed between parties upon the signing of the logistic service contract. Should such a sum not be agreed, a maximum amount of EUR 25,000 will apply for each occurrence or series of occurrences having one and the same cause of loss.

- 4.4. If the logistic service provider fails to perform the logistic service and/or additional activities at the agreed time or within the agreed time, in the agreed way or at the agreed place he is required without prejudice to the provisions of part 1 of this article to perform these activities as quickly as possible in the agreed way without incurring any extra costs for the principal.
When the principal has in addition incurred costs in connection with the fact that the logistic service provider has not performed the logistic service and/or additional activities in the agreed way, at the agreed time or place, the logistic service provider is liable for these costs to an amount not in excess of a sum to be agreed upon the signing of the logistic service contract. If such an amount has not been agreed the liability of the logistic service provider for these costs will not exceed EUR 750 for each occurrence.
- 4.5. If the logistic service provider fails to designate one or more contact persons as meant by Art. 3 part 1. the person who has signed the logistic service contract on behalf of the logistic service provider will be held to be the contact person.
- 4.6. The logistic service provider is not liable for loss arising from information and instructions provided by or to persons other than those meant by part 5 of this article.
- 4.7. If the logistic service provider repeatedly fails to comply with his substantive obligations the principal may without prejudice to his right to compensation as described in parts 1, 2, 3 and 4 of this article terminate the logistic service contract after he has allowed in writing the logistic service provider a final period of no less than 30 days and the logistic service provider has still failed to comply with his obligations upon the expiry of same.
Compensation not in excess of a sum agreed upon the signing of the logistic service contract is payable to the logistic service provider for the loss suffered by reason of this termination.
- 4.8. With the exception of the liability recorded in this article as well as that arising from Art. 21 and 23 part 4 of CMR the logistic service provider is not liable for any loss other than that sustained by the articles themselves.
- 4.9. Any damage and/or discrepancies in inventory will be determined twice a year. No compensation will be requested for positive differences. In the event of a negative difference no compensation will be payable if this difference is less than 0.05% of the total annual volume being handled. If the rate is based on a piece count, the 0.05% will likewise be applied to the piece count. If a rate based on weight has been agreed, the 0.05% will be applied to the weight handled.
In the event that the 0.05% is exceeded nonetheless the logistic service provider will be liable for the true value of the lost of damaged product in excess of 0.05%.

5 OBLIGATIONS OF THE PRINCIPAL

The principal is required:

- 5.1. To nominate one or more contact persons and to inform the logistic service provider of same.
- 5.2. To communicate in good time to the logistic service provider all information about the articles as well as about the handling of same which he is capable or which he should be capable to give and that he knows or should know to be of importance to the logistic service provider, unless he may justifiably assume that the logistic service provider is aware of these details.
The principal is responsible for the accuracy of the information provided.
- 5.3. To make the agreed articles available to the logistic service provider at the agreed place and time and in the agreed way, accompanied by a carriage document and any other document that the principal is required to provide by law or pursuant to the law.
- 5.4. To reimburse in addition to the agreed price for the provision of the logistic service the costs incurred by the logistic service provider relating to the additional activities, as well as the costs, as meant by Art. 3 part 5, within the determined period of payment.
- 5.5. To indemnify the logistic service provider for claims by third parties arising from loss caused by the actions or negligence of the principal, his subordinates, as well as all other persons whose services the principal makes use of.
- 5.6. To provide the material to be made available by him to the logistic service provider.
- 5.7. Upon the termination of the logistic service contract to receive any articles still in the hands of the logistic service provider at the very latest on the last working day of the contract, this to be done after the payment of all outstanding debts or which will become payable. For all that will become payable after the termination of the logistic service contract, it is enough for the principal to provide adequate security.
- 5.8. To respect confidentiality in respect of third parties concerning all matter and items known to him on the basis of the logistics service contract.

6. LIABILITY OF THE PRINCIPAL

- 6.1. The principal is liable for all loss, caused by persons and/or articles which the logistic service provider has had to admit to his premises in accordance with the provisions of Art. 3, part 8 of these conditions on the part of the principal.
- 6.2. If the principal fails to nominate one or more contact persons as meant by Art. 5 part 1 of these conditions, the person who signed the logistic service contract on behalf of the principal is held to be the contact person.
- 6.3. The principal is not liable for loss resulting from information and instructions provided by persons other than those meant by part 2 of this article.
- 6.4. If the principal fails to communicate in good time to the logistic service provider all information about the articles as well as about the handling of same as meant by Art. 5 section 2 of these conditions, or fails to make the agreed articles available at the agreed time or within the agreed period, according to the agreed method or at the agreed place accompanied by the required documents as meant by Art. 5 part 3 of these conditions, he is required to perform these activities as quickly as possible free of charge and in

the agreed way on behalf of the logistic service provider.

When the logistic service provider has in addition incurred costs in connection with the fact that the principal has failed to comply with his obligations as meant by Art. 5 parts 2 and 3 of these conditions, the principal is liable for these costs to a maximum of EUR 30,000 per occurrence.

- 6.5. If the principal repeatedly fails to comply with his obligations the logistic service provider can without prejudice to his right to compensation for loss terminate the logistic service contract after he has allowed in writing the principal a final period and the principal has still failed to comply with his obligations upon the expiry of same
Compensation not in excess of a sum agreed upon the signing of the logistic service contract is payable to the principal for the loss suffered by reason of this termination.

- 6.6. The principal will insure his goods against fire and associated risks including waiver of recourse against the logistic service provider and all other third parties.
He will also be responsible for the clearance and processing of goods damaged by fire and/or flood.

7. TIME BAR

- 7.1. All claims arising from the logistic service contract including all claims arising from a cash-on-delivery clause expire after a period of twelve months has been allowed to elapse.
- 7.2. The expiry starts on the day following the day on which the articles were delivered or should have been delivered, or in the absence of same as of the next day following the day on which the claim arose.

8. CONDITIONS OF PAYMENT

- 8.1. All sums payable by the logistic service provider and the principal for whatsoever reason will be paid having regard for the agreed period or in absence of an agreed period within fourteen days of the invoice date.
- 8.2. If the principal or the logistic service provider fails to pay any outstanding sum within the agreed period or in the absence of an agreed period within fourteen days, he is required to pay interest equal to 3 % over and above the legal interest commencing on the day these payments should have been made until the day of payment inclusive.
- 8.3. In the event of non-payment, which will be apparent from the mere failure to comply with the payment deadlines, the principal or the logistic service provider will be liable for a contractually determined and irreducible compensation equal to 10% of the amount payable in addition to the interest determined in Art. 8 part 2.
- 8.4. Except in those situations required in Art. 1289 and subsequent of the Civil Code recourse to debt equalisation (compensation) of claims for the payment of charges arising from the logistic service contract, of payables arising from other causes relating to the provision of logistic services or of other costs incumbent on the articles with claims arising from other causes is not allowed.

8.5. In event of non-performance or upon the cessation of activities on the part of the principal or the logistic service provider all sums as meant by part 1 of this article become "immediately claimable and where applicable also open to compensation" if:

- a) the principal or the logistic service provider is in a state of bankruptcy or the principal or the logistic service provider is granted suspension of payment;
- b) the principal or the logistic service provider :
 1. seeks composition with his creditors;
 2. is essentially in default in the performance of his obligations;
 3. terminates the logistic service contract on the basis of Art. 4 part 7 or Art. 6 part 5 of these conditions;
 4. ceases to pursue his business or – for artificial persons or companies – is wound up.

8.6. The logistic service provider will always have the right to adjust his rates in order to bear expenditure and/or costs (including new taxes) unknown at the time the contract was signed and which the principal would also have had to bear if the principal would have performed the activities indicated in the contract for his own account.

9 SECURITY

9.1. The logistic service provider has a right in respect of every party seeking their surrender to retain articles and documents which he has in his hands in connection with the provision of the logistic service. This right nonetheless does not accrue to him in respect of a third party if at the time he received the goods for the purposes of the logistic service he had reason to doubt the authority of the principal in respect of that third party to make the goods available for the purpose the provision of the logistic service.

9.2. The logistic service provider may only exercise the right of retention in respect of the principal or the addressee for the amount he is owed or will be owed for the provision of the logistic service. He may also exercise this right for the amount payable on the goods by way of cash on delivery.

9.3. The logistic service provider may also exercise the right of retention granted to him by part 2 of this article for the amount still payable to him by the principal in connection with previous logistic service contracts.

9.4. The logistic service provider can also exercise the right of retention in connection with a provision accruing to him in connection with a provision relating to cash-on-delivery, for which he does not have to accept security.

9.5. If a dispute arises upon the settlement about the amount outstanding or if a calculation which cannot be quickly made is necessary to determine its amount, the person who seeks this delivery is required to settle immediately that part whereof the playability is in dispute, and to provide security for

the payment of that part disputed by him or of that part for which no precise amount has yet been fixed.

9.6. All goods, documents and monies, which the logistic service provider has in his hands by reason of the logistic service contract serve as pledge for all claims which he may have in respect of the principal.

9.7. Except in those cases where the principal is in a state of bankruptcy or has been granted suspension of payments, the logistic service provider never has a right to sell the goods pledged to him without the contract of the Court in accordance with the Law of 05.05.1872.

9.8. If the principal defaults on the payment of the sums payable by him to the logistic service provider and with respect to which the logistic service provider has pursuant to the foregoing parts a right of retention or pledge rights, the logistic service provider, after obtaining authorisation from the Court, has the right to sell the articles stored with him at the expense of the principal and to settle all sums owing to him relating to these articles from the yield all in accordance with the Law of 05.05.1872.

9.9. The logistic service provider may if requested cause the pledge to be replaced by a security which in his sole judgement is equivalent.

10 COURTS AND ARBITRATION

10.1. All contracts to which the logistic service conditions are applicable will be subject to Belgian Law.

10.2. This contract will fall under the jurisdiction of those Courts who have territorial jurisdiction for the principal office of the logistic service provider,

except in the event of there being an express contract between the principal and the logistic service provider to submit all disputes to arbitration.

11 MISCELLANEOUS PROVISIONS

11.1. If one or other provision in the contract should be invalid, such invalidity will not vitiate the validity of all the other articles. Both parties will immediately take the action necessary to replace the article concerned by a valid article which approximates the original intention of both parties as closely as possible.

11.2. The fact that one of the parties does not protest the failure by the other party to comply with the contractual provisions shall never be interpreted by the other party as a permanent waiver of the provision or provisions concerned.

12 REGISTRATION

12.1. These conditions, drawn up by the Royal Association of Traffic Flow Controllers, were registered with the Clerk of the Chamber of Commerce and Industry at Antwerp on 28 February 2001.

13 DATE OF COMMENCEMENT

13.1. These Conditions for the Provision of Logistic Services come into effect on 1 March 2001.