



ZIEGLER®

GENERAL TERMS AND CONDITIONS



UW EXPEDITEUR VOOR MULTIMODALE LOGISTIEKE OPLOSSINGEN

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GENERAL TERMS AND CONDITIONS OF ZIEGLER NEDERLAND B.V.

Article 1 – General

1) Insofar as these General Terms and Conditions or any other relevant provisions do not provide otherwise, all agreements that Ziegler Nederland B.V. concludes with its client will be governed primarily by the most recent version of the Forwarding Conditions of the Dutch Association for Forwarding and Logistics (*Nederlandse Organisatie voor Expeditie en Logistiek* (FENEX)), as filed with the Registrar of the District Courts of Amsterdam, Arnhem, Breda and Rotterdam, the Netherlands, exclusive of Article 23 (Arbitration).

2) Storage, entry, removal, management work, etc. in respect of goods in our warehouses are governed by the most recent version of the 'Physical Distribution Conditions', as filed by Transport and Logistics Netherlands (*Transport en Logistiek Nederland* (T.L.N.)) with the Registrar of the District Court of The Hague, the Netherlands.

3) All agreements with respect to the domestic and international transport of goods by road are governed by the mandatory provisions of the CMR Convention. The most recent version of the General Terms and Conditions of Transport of 2002 (*Algemene Vervoerscondities* (AVC 2002)) also apply as a supplement.

A copy of all the above-mentioned terms and conditions referred to above will be provided free of charge immediately upon request. In addition, all the above-mentioned terms and conditions can be downloaded at www.ziegler-nederland.nl.

Article 2 – Quotations and offers

All quotations and offers from Ziegler Nederland B.V. are without engagement and subject to typographical errors. Our quotations are based on the current exchange rates, other rates, terms and conditions of employment, surcharges and fuel prices. The prices indicated in quotations and offers are exclusive of VAT and are exclusive of other government levies, unless otherwise indicated.

Article 3 – Rates, invoicing and payment

Ziegler Nederland B.V. is entitled to adjust its rates at any time in the event that Ziegler Nederland B.V. no longer can be expected to perform the agreement at the rates agreed earlier.

When Ziegler Nederland B.V. uses graduated scales in its offer in order to indicate its rates, the maximum in the preceding scale applies as the minimum in the subsequent scale.

Advance payments, including import duties, taxes and other amounts advanced for national government levies will be charged to the client retroactively, including a 3% surcharge on the amount advanced.

Our invoices must be paid within 30 days of the invoice date, unless the parties agree otherwise. In the event that that term is exceeded administrative costs and statutory interest will be charged. Administrative costs will be based on Article 6:96 of the Dutch Civil Code (*Burgerlijk Wetboek*) and will be determined in accordance with the Dutch Extrajudicial Collection Costs (Fees) Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*). Statutory interest will be based on Articles 6:119 *et seq.* of the Dutch Civil Code.

In the event that no written complaint is submitted within seven days of the invoice date you will be deemed to have accepted the contents by way of a determination in accordance with Article 7:900 of the Dutch Civil Code.

In derogation from Article 6:127 and as a supplement to Article 8:1128 of the Dutch Civil Code, the client is not permitted to set off any claims against Ziegler Nederland B.V.'s outstanding invoices.

We reserve the right, in the event that invoice due dates are repeatedly exceeded, to increase subsequent invoices by a percentage to be determined, which will not be due in the event of timely payment.

Article 4 – Measurements and volumes

Ziegler Nederland B.V. always bases the calculation of its rates on the actual weight of the shipment, unless the volume of the shipment in cubic metres x 333 (kg) or in loading metres x 1850 (kg) leads to a higher result, in which case the rates will be based on that higher result. With respect to loading and/or unloading by hand, the weight of each separate package to be loaded and/or unloaded will amount to a maximum of 25 (kg). Extra costs that ensue from the maximum weight being exceeded will be paid by the client.

Article 5 – Surcharges and other costs

Unless the parties have agreed otherwise in writing, the following costs will be charged separately:

- a. fuel surcharges;
- b. Currency Adjustment Factor (CAF);
- c. a surcharge levied on the transport by water: Bunker Adjustment factor (BAF);
- d. costs for customs documents, customs formalities and/or clearance charges;
- e. ADR/IDMG surcharge;
- f. surcharge for access times less than four hours in the event that the access time for loading or unloading is less than four hours;
- g. surcharge for waiting hours;
- h. costs for loading and unloading using till lifts;
- i. length surcharge, depending on the country of destination and mode of transport;
- j. costs for providing Proof of Delivery;
- k. costs for failing to book shipments online; and
- l. costs for supplementary all-risk transport and/or storage insurance.

Article 6 – Transport of hazardous materials

The shipper/client is responsible for the correct labelling, approved packaging, the transport document and transport emergency cards in the prescribed languages and, if applicable, the Multi Model Dangerous Goods Form. Ziegler Nederland B.V. must also be informed of the UN number of the hazardous material in question, in addition to the chemical name and the packaging group.

The IMO/IMDG Code applies at various destinations where carriage by sea is used. In this context the ADR shipments will be settled on the basis of loading metres and consignments will not be stowed.

With respect to Ziegler Nederland B.V.'s warehouses, there is a prohibition against the storage and transshipment of goods that have certain UN numbers. Extra costs that arise as a result of offering goods to those warehouses that fall within the scope of the storage and transshipment prohibition will be paid by the client.

Article 7 – Transit times and time of departure

Instructions given by the client to load and/or unload a vehicle that has a till lift or to transport hazardous materials or long items may affect normal transit times. Transit times and departure days may also change due to national or international public holidays and/or

customs formalities and/or the lack of access time.

The client must give Ziegler Nederland B.V. sufficient notice of specific transit times and departure dates in order to avoid any delay or late delivery. Ziegler Nederland B.V. is not liable for any loss that the client nonetheless sustains.

Article 8 – Goods in transit insurance

Ziegler Nederland B.V. has adequately insured the contractual liability towards its client that ensues from Article 1. A copy of the insurance certificate will be provided free of charge immediately upon request.

In consultation with Ziegler Nederland B.V. it is possible for the client to take out all-risk goods in transit insurance and/or storage insurance in the name and for the account of the client.

Suppliers are obliged to ensure that adequate insurance has been taken out for the contractual liability that ensues from Article 1. If trailers are used that are made available by Ziegler Nederland B.V., the supplier will be obliged to adequately insure its liability for those trailers.

Article 9 – Euro pallets

The exchange of Euro pallets will be applied in respect of separate agreements governing the exchange of Euro pallets. In all other cases the client will not be entitled to return, exchange, set off or receive compensation for Euro pallets that are delivered, in any manner whatsoever. Ziegler Nederland B.V. charges the client a standard percentage of 10% for loss and breakdown of Euro pallets. This means that we will return to the client or reimburse the client for only 90% of the pallets.

Complaints with respect to Euro pallets will be considered only if they have been submitted to Ziegler Nederland B.V. within three months after the shipment date.

Article 10 – Documentation

The client and suppliers must retain and keep available all documentation with respect to the performance of the agreement or the work performed for at least seven years.

Article 11 – Cancellation

In the event of a cancellation or other revocation of collection requests all the related costs will be paid by the client.

Article 12 – Acceptance

Ziegler Nederland B.V. will fill orders only subject to the applicability of the above-mentioned terms and conditions. Ziegler Nederland B.V. explicitly rejects the applicability of the other party's general terms and conditions.

Article 13 – Performance of the agreement

The client warrants that the information that it provides Ziegler Nederland B.V. is correct and complete and is responsible for that information and must ensure that all the information and documents that Ziegler Nederland B.V. deems necessary in order to fill the order correctly and in a timely manner are made available to Ziegler Nederland B.V. in a timely manner in the form and manner that Ziegler Nederland B.V. wishes. The client must ensure that Ziegler Nederland B.V. is informed immediately regarding facts and circumstances that could be relevant in connection with the actual fulfilment of the order.

Unless the nature of the order dictates otherwise, the client is responsible for the correctness, completeness and reliability of the information and documents made available to Ziegler Nederland B.V., even if they came through or from third parties.

Article 14 – Retention of title

Ziegler Nederland B.V. will retain the title to all the goods that have been or will be delivered on the ground of purchase agreements until the following claims have been extinguished as a result of payment by the client:

- a. the claims with respect to the consideration for those goods;
- b. the claims with respect to work performed or to be performed by Ziegler Nederland B.V. for the implementation of such agreements, also for the benefit of the client; and
- c. the claims on the ground of a failure to comply with such agreements.

Goods will be deemed not to have been paid for in the event that the client has failed to demonstrate payment for them. The client will be obliged to show the goods to Ziegler Nederland B.V. immediately upon request and to return them to Ziegler Nederland B.V. if it is requested to do so due to a failure to pay. The client is not authorised to dispose of or encumber goods that fall within the scope of the retention of title. However, the client is entitled to sell such goods and transfer them to third parties in the context of its normal business operations. That permission will lapse by operation of law at the time at which the client is in default in any way in respect of the claims for which the retention of title applies, is granted a suspension of payments or is declared bankrupt. Under no circumstances may the client allow the goods that fall within the scope of the retention of title to serve as security for claims of third parties.

Article 15 – Force majeure

Force majeure is taken to mean any circumstance with which Ziegler Nederland B.V. or the client could not reasonably have taken into consideration and/or avoided, as a result of which the client cannot reasonably demand normal performance of the agreement and/or could not have avoided the consequences of the circumstances.

The client will not be entitled to claim any compensation in the event of *force majeure*.

Article 16 – Liability

In the event that Ziegler Nederland B.V. is liable, its liability will be subject to the limitations stipulated in these General Terms and Conditions. Under no circumstances is Ziegler Nederland B.V. liable for indirect damage, including but not limited to consequential damage, loss of profit, lost savings and damage due to business interruption.

Article 17 – Confidentiality

The parties are obliged to keep confidential any and all confidential information that they have received from each other in the context of the agreement or from another source, regardless of whether that information is in writing or oral. Information will be deemed to be confidential if the other party so states or if that ensues from the nature of the information.

Article 18 – Legal relationship

All Ziegler Nederland B.V.'s legal relationships are governed by Dutch law. Any and all disputes that ensue from or are related to the agreement will be resolved by the competent court in Rotterdam.

This document is drawn up in two equally authoritative versions in Dutch and in English language. In case of divergences between the texts, the Dutch version will prevail unless circumstances indicate the contrary

DUTCH FORWARDING CONDITIONS OF THE FENEX

(Netherlands Association for Forwarding and Logistics)

deposited at the Registry of the District Courts at Amsterdam, Arnhem, Breda and Rotterdam on 1 July 2004

Applicability

Article 1.

These general conditions shall apply to any form of service which the forwarder shall perform. Within the framework of these general conditions the term forwarder must not be understood exclusively to mean the forwarder as contemplated in Book 8 of the Dutch Civil Code. The party ordering the forwarder to carry out operations and activities shall be considered the forwarder's principal, regardless of the agreed mode of payment.

With respect to the operations and activities, such as those of shipbrokers, stevedores, carriers, insurance agents, warehousing and superintending firms etc. which are carried out by the forwarder, the conditions customary in the particular trade, or conditions stipulated to be applicable, shall also be applicable.

The forwarder may at any time declare applicable provisions from the conditions stipulated by third parties with whom he has made contracts for the purpose of carrying out the orders given to him.

The forwarder may have his orders and/or the work connected therewith carried out by third parties or the servants of third parties. In so far as such third parties or their servants bear statutory liability towards the forwarder's principal, it is stipulated on their behalf that in doing the work for which the forwarder employs them they shall be regarded as solely in the employ of the forwarders. All the provisions (inter alia) regarding non-liability and limitation of liability and also regarding indemnification of the forwarder as described herein shall apply to such persons.

Instructions for delivery C.O.D., against banker's draft etc., shall be deemed to be forwarding work.

Contracts

Article 2.

All quotations made by the forwarder shall be without any obligation on his part.

All prices quoted and agreed shall be based on the rates, wages, costs incidental to social security and/or other provisions of law, freight and exchange rates applying at the time of quotation or contract.

Upon any change in any or more of these factors the quoted or agreed prices shall likewise be altered in accordance therewith and retroactively to the time such change occurred.

The forwarder must be able to prove the change(s).

Article 3.

If the forwarder charges all-in or fixed rates, as the case may be, these rates shall be deemed to include all costs that in the normal procedure of handling the order are for the account of the forwarder.

Unless provided otherwise, all-in or fixed rates shall not include at any rate: duties, taxes and levies, consular and attestation fees, cost of preparing bank guarantees and insurance premiums.

For work of a special nature, unusual job or work requiring a special amount of time or effort, an additional reasonable amount may at all times be charged.

Article 4.

In the event of loading and/or unloading time being inadequate - regardless of the cause thereof - all costs resulting therefrom, such as demurrage, etc., shall be borne by the principal, even when the forwarder has accepted the bill of lading and/or charter party from which the additional costs arise without protestation.

Expenses of an exceptional nature and higher wages arising whenever carriers by virtue of any provision in the shipping documents load or unload goods in the evening, at night, on Saturdays or on Sundays or public holidays, shall not be included in the agreed prices, unless specifically stipulated. Any such costs shall therefore be refunded by the principal to the forwarder.

Article 5.

Insurance of any kind shall be arranged only upon specific instructions in writing at the principal's expense and risk. The risks to be covered shall be clearly stated. A mere statement of the value is not enough.

If the forwarder has taken out any insurance in his own name he shall be bound - if so requested - only to transfer his claims against the insurer to his principal.

The forwarder shall not be responsible as regards the choice of the insurer and the latter's solvency.

When the forwarder uses derricks and any other such equipment for carrying out his orders he shall be entitled to take out insurance at his principal's expense to cover the forwarder's risk arising through the use of such equipment.

Article 6.

1. Unless agreed otherwise in writing, the supplying to the forwarder of data required for customs formalities shall imply an order to perform such formalities.

Performance of the contract

Article 7.

1. If the principal has not given any specific instructions with his order, the mode and route of transport shall be at the forwarder's option and the forwarder may at all times accept the documents customarily used by the firms with which he contracts for the purpose of carrying out his orders.

Article 8.

The principal shall ensure that the goods are tendered at the agreed place and time.

The principal shall ensure that the documents required for receipt and for despatch, as well as the instructions, are in the forwarder's possession in proper time.

The forwarder shall not be obliged but shall be entitled to investigate whether the specifications stated to him are correct and complete.

In the absence of documents, the forwarder shall not be obliged to receive against a guarantee. Should the forwarder furnish a guarantee, he

shall be saved harmless by his principal from and against all the consequences thereof.

Article 9.

All operations such as inspecting, sampling, taring, tallying, weighing, measuring etc., and receiving goods subject to appraisal by a court-appointed expert shall take place only on the principal's specific instructions and upon reimbursement of the costs thereof. Nevertheless, the forwarder shall be entitled, but not obliged, on his own authority and at his principal's expense and risk to take all such action as he deems necessary in the principal's interest.

The forwarder shall not act as an expert. He shall in no way be liable for any notification of the state, nature or quality of the goods; nor shall he be under any obligation to ensure that the shipped goods correspond with the samples.

Article 10.

1. The addition of the word "approximately" shall allow the principal the freedom to supply 2.5% more or less.

Liability

Article 11.

All operations and activities shall be at the principal's expense and risk.

Without prejudice to the provisions of Article 16, the forwarder shall not be liable for any damage whatsoever, unless the principal shall prove that the damage has been caused by fault or negligence on the part of the forwarder or the latter's servants.

The forwarder's liability shall in all cases be limited to 10,000 SDR per occurrence or series of occurrences with one and the same cause of damage, on the understanding that in the event of damaging, loss of value or loss of the goods comprised in the order, the liability shall be limited to 4 SDR per kilogram damaged or lost gross weight, the maximum being 4,000 SDR per consignment.

The loss to be indemnified by the forwarder shall never exceed the invoice value of the goods, to be proved by the principal, in default whereof the market value - to be proved by the principal - at the time when the damage has occurred shall apply. The forwarder shall not be liable for lost profit, consequential loss, and pain and suffering.

If during the execution of the order damage occurs for which the forwarder is not liable, the forwarder shall make efforts to recover the principal's damage from the party that is liable for the damage.

The forwarder shall be entitled to charge to the principal the costs incidental thereto. If so requested, the forwarder shall waive in his principal's favour his claims against third parties engaged by him for the purpose of carrying out the order.

The principal shall be liable towards the forwarder for any damage as a consequence of the (nature of the) goods and the packaging thereof, the incorrectness, inaccuracy or incompleteness of instructions and data, the failure to tender the goods or not doing so in time at the agreed place and time, as well as the failure to supply -- or to do so in time -- documents and/or instructions, and fault or negligence in general on the part of the principal and the latter's servants and third parties called in or engaged by him.

The principal shall indemnify the forwarder against third-party claims connected with the damage referred to in the foregoing paragraph, such third parties including servants of both the forwarder and the principal.

Even where all-in or fixed rates, as the case may be, have been agreed, the forwarder, who is not a carrier, shall be liable under the present conditions and not as a carrier.

Article 12.

1. To be regarded as force majeure are all circumstances which the forwarder could not reasonably avoid and the consequences of which the forwarder could not reasonably prevent.

Article 13.

In the event of force majeure, the contract shall remain in force; the forwarder's obligations shall, however, be suspended for the duration of the event of force majeure.

All additional costs caused by force majeure, such as carriage and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance, removal, etc., shall be borne by the principal and shall be paid to the forwarder at the forwarder's initial request.

Article 14.

The mere statement by the principal of a time for delivery shall not be binding upon the forwarder.

The forwarder does not guarantee arrival times, unless agreed otherwise in writing.

Article 15.

1. If the carriers refuse to sign for number or weight of pieces or items etc., the forwarder shall not be liable for the consequences thereof.

Imperative law

Article 16.

If the goods are not delivered without delay at the place of destination in the state in which they were tendered, the forwarder, in so far as he has carried out a contract of transport himself which he was to conclude with a third party, is obliged to notify this forthwith to the principal who has notified him of the damage.

If the forwarder fails to make notification as referred to in the first paragraph and if as a result thereof he has not been called upon as a carrier in time, he shall, in addition to being liable for payment of the further damage sustained by the principal as a result thereof, be liable to pay compensation equal to the damages he would have had to pay, if he had been called upon as a carrier in time.

If the goods are not delivered without delay at the place of destination in the state in which they were tendered, the forwarder, in so far as he has not carried out a contract of transport himself which he was to conclude with a third party, is obliged to inform the principal forthwith which contracts of transport he has entered into to fulfil his obligation. He is also obliged to put at the disposal of the principal all documents in his possession or which he can reasonably supply, at any rate in so far as they may be used to claim damages sustained.

As from the point of time at which he informs the forwarder unequivocally that he wishes to exercise such rights and powers, the principal shall obtain as against the party with whom the forwarder has conducted business the rights and powers to which he would have been entitled if as a shipper he had concluded the contract himself. He shall be free to take legal action in this matter if he submits a statement to be issued by the forwarder - or in case the forwarder has gone into compulsory liquidation, by the forwarder's liquidator - that between him and the forwarder with respect to the goods a contract for the carriage thereof was concluded.

If the forwarder fails to comply with an obligation as referred to in the third paragraph, he shall, in addition to being liable for payment of the further damage sustained by the principal as a result thereof, be liable to pay compensation equal to the damages which the principal would have received from him if he himself had carried out the contract concluded by him, less the damages which the principal may have received from the carrier.

Payment

Article 17.

The principal shall pay to the forwarder the agreed remuneration and other resulting costs, freights, duties, etc., ensuing from the contract and/or these conditions, upon arrival or despatch of goods which are being received or forwarded respectively. The risk of exchange rate fluctuations shall be borne by the principal.

The agreed remuneration and other resulting costs, freights, rights, etc., ensuing from the contract and/or these conditions, shall also be due if in the performance of the contract damage has occurred.

If, in contravention of paragraph 1 of this article, the forwarder allows deferred payment, the forwarder shall be entitled to make an additional credit limit charge.

If the principal does not pay the amount due immediately upon notice to that effect or, as the case may be, after lapse of the term of deferred payment, the forwarder shall be entitled to charge the legal interest in conformity with Articles 6:119 or 6:119a Dutch Civil Code.

In the event of cancellation or dissolution of the contract, all claims of the forwarder, with the inclusion of future claims, shall become due and payable forthwith and in full. All claims shall be due and payable forthwith and in full in any case, if: the principal is involuntarily wound up, the principal applies for suspension of payment or otherwise loses the unrestricted disposition over his assets;

the principal offers a settlement to his creditors, is in default of fulfilling any financial obligation owed to the forwarder, ceases to trade or - where the principal is a legal entity or a corporate body - if the legal entity or the corporate body is dissolved.

The principal shall be reason of the forwarding contract and upon demand by the forwarder provide security in the form of a bond with sureties for any amount for which the principal is or may be indebted to the forwarder. The principal is also so obliged where he already has to provide or has provided security in the form of a bond with sureties in connection with the amount owed.

The forwarder shall not be obliged out of his own means to provide security in the form of a bond with sureties for the payment of freight, duties, levies, taxes and/or other costs should the same be demanded. All the consequences of non-compliance or of failure to comply forthwith with a demand to provide security in the form of a bond with sureties shall be borne by the principal.

If the forwarder has provided security in the form of a bond with sureties out of his own means, he may demand that the principal pay the amount for which security has been provided security in the form of a bond with sureties.

The principal shall at all times be obliged to indemnify the forwarder for any amounts to be levied or additionally demanded by any authority in connection with the order, as well as any related fines imposed upon the forwarder.

The principal shall also reimburse the said amounts to the forwarder if a third party called in by the forwarder demands payment within the framework of the forwarding contract.

The principal shall at all times indemnify the forwarder for any amounts as well as for all additional costs that may be claimed or additionally claimed from the forwarder in connection with the order as a result of incorrectly charged freight rates and costs.

The principal shall not be entitled to apply any set-off in respect of sums charged by the forwarder to the principal under any contract existing between them.

Article 18.

Cash payments shall be deemed in the first place to have been made on account of non-preferential debts, regardless of whether any other instructions were given at the time of payment.

If legal proceedings or other means are resorted to in the event of overdue payment, the amount of the indebtedness shall be increased by 10% for clerical expenses, while the legal and other costs shall be borne by the principal up to the amount paid by or due from the forwarder.

Article 19.

With respect to all claims he has or may at any time have against the principal and/or the owner, the forwarder shall have a pledge and a lien on all goods, documents and moneys which he holds or will hold in his possession whatever the reason and the purpose thereof may be, as against any party requiring their delivery. If the goods are forwarded on, the forwarder shall be entitled to collect the sum due on subsequent delivery or draw a bill therefor with the shipping documents annexed.

The forwarder may also exercise the rights granted to him in paragraph 1 for that which the principal was owing to him with respect to previous orders.

The forwarder is also authorized to exercise the rights granted to him by virtue of paragraph 1 for any amount(s) payable by way of delivery C.O.D. in respect of the goods.

Failing payment of the amount due the security shall be sold as provided by statute or - if so agreed - by private sale.

Final provisions

Article 20.

1. No legal or arbitration proceedings shall be taken against third parties by the forwarder unless he states his readiness to take the same at the principal's request and expense.

Article 21.

Without prejudice to the provisions of paragraph 5 of this Article, all claims shall be barred by the mere lapse of a period of nine months.

All claims against the forwarder shall be barred by the mere lapse of a period of eighteen months.

The terms mentioned in paragraphs 1 and 2 shall commence on the day following the day on which the claim has become due and payable or the day following the day on which the prejudiced party had knowledge of the loss. Without prejudice to the preceding provisions, the said terms shall commence on the day following the day of delivery with respect to claims regarding damage to, decrease in value or loss of the goods. The day of delivery shall be understood to be the day on which the goods are delivered from the means of transport or, if they have not been delivered, the day on which they should have been delivered.

In case any public authority or third parties as referred to in paragraph 7 of Article 17 claim payment from the forwarder, the term mentioned in paragraph 1 of this Article shall commence on the first of the following days:

the day following the day on which payment is claimed from the forwarder by any public authority or third party;

the day following the day on which the forwarder has settled the claim existing against him.

If the forwarder or a third party called in by the forwarder as referred to in Article 17,

par. 7 has submitted an administrative objection and/or lodged an administrative appeal, the period specified in paragraph 1 shall commence on the day following the day on which the decision on the administrative objection and/or the administrative appeal has become final.

If after the term of prescription a third party claims payment of the amount due and payable by either parties, a new term of prescription - of three months - commences, unless the situation referred to in paragraph 4 of this Article occurs.

Article 22.

All contracts to which the present conditions apply shall be governed by Dutch law.

The place for settlement and adjustment of damage shall be that where the forwarder's business is situated.

Disputes

Article 23.

All disputes which may arise between the forwarder and the other party shall be decided by three arbitrators to the exclusion of the ordinary courts of law, and their decision shall be final. A dispute shall exist whenever any of the parties declares this to be so.

Without prejudice to the provisions of the preceding paragraph the forwarder shall be at liberty to bring before the competent Dutch court in the forwarder's place of business claims for sums of money due [and] payable, the indebtedness of which has not been disputed in writing by the opposing party within four weeks after the invoice date. In the event of urgent claims, the forwarder shall equally be at liberty to institute interim relief proceedings (*kort geding*) before the competent Dutch court in the forwarder's place of business.

One arbitrator shall be appointed by the Chairman or the Vice-Chairman of the FENEX; the second shall be appointed by the Dean of the Bar Association of the district in which the aforesaid forwarder has registered office; the third shall be appointed by mutual agreement between the two arbitrators so appointed.

The Chairman of the FENEX shall appoint as such an expert on forwarding questions; the Dean of the Bar Association shall be asked to appoint a member of the legal profession; the third arbitrator shall preferably be an expert on the trade and industry in which the forwarder's opposite party is engaged.

The party desirous of having the dispute determined shall inform the Secretariat of the FENEX hereof by registered letter or fax letter, giving a brief description of the dispute and of his claim and at the same time remitting the amount of administrative costs to be determined by the Board of the FENEX, due as a compensation for the administrative work of the FENEX in an arbitration case.

A case shall be considered to be pending on the day of receipt of the said registered letter or fax letter by the Secretariat of the FENEX.

After receipt of the above-mentioned application for arbitration the Secretariat of the FENEX shall as soon as possible acknowledge receipt thereof and send a copy of the application to the other party, to the Chairman of the FENEX, to the Dean of the Bar Association, with a request to each of the latter two to appoint an arbitrator and to notify the FENEX Secretariat of the name and address of the person appointed. Upon receipt of such notification the FENEX Secretariat shall as soon as possible notify the persons concerned of their appointment, send each of them a copy of the application for arbitration and a copy of these general conditions and request each of them to appoint a third arbitrator and notify the FENEX Secretariat of the person so appointed.

Upon receipt hereof the FENEX Secretariat shall forthwith notify the third arbitrator of his appointment, at the same time sending him a copy of the application for arbitration and a copy of these general conditions. The FENEX Secretariat shall also notify both parties as to who have been appointed arbitrators.

If all three arbitrators have not been appointed within two months of the application for arbitration having been lodged all of them shall be appointed by the President of the District Court within whose jurisdiction the forwarder's business is situated upon the application of whichever party shall first make the same.

The person appointed by the Dean shall act as Chairman of the arbitration board. If the arbitrators are appointed by the President of the District Court, the arbitrators shall themselves decide who is to function as chairman. The place of arbitration shall be the place where the chairman of the arbitrators is established.

The arbitrators shall make their award as good men in equity, subject to their liability to observe the applicable imperative legal stipulations. Where applicable, they shall also apply the provisions of the international transport treaties, among which, *inter alia*, the Convention on the Contract for the International Carriage of Goods by Road (CMR).

The arbitrators shall determine the procedure of the arbitration, subject to the parties being given opportunity to put forward their cases in writing and to elucidate the same orally.

The arbitrators shall continue in office until the final award. They shall deposit their award at the Registry of the District Court within the district of which the seat of the arbitration is situated, while a copy thereof shall be sent to each of the parties and to the FENEX Secretariat. The arbitrators may require the Plaintiff or both parties to deposit a sum beforehand in respect of the arbitration costs; during the proceedings they may require an additional amount to be deposited. If, within three weeks of the relevant request, the deposit required by the arbitrators of the plaintiff has not been paid in, it shall be deemed to have withdrawn the arbitration. In their award the arbitrators shall order which of the two parties shall bear the costs of arbitration or what proportion thereof each party shall bear. These costs shall comprise the arbitrators' fees and disbursements, the amount of administrative costs paid to the FENEX with the application and the costs incurred by the parties in so far as the arbitrators deem the same to be reasonably necessary.

The sums due to the arbitrators shall to the extent possible be taken from the amounts deposited.

Article 24.

1. These general conditions may be cited as the "Dutch Forwarding Conditions".

In case the English translation differs from the Dutch text, the latter will prevail.

FENEX, Netherlands Association for Forwarding and Logistics

PortCity II, Waalhaven Z.z. 19 3rd Floor, Portnumber 2235, 3089 JH Rotterdam
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CMR CONVENTION

PREAMBLE

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability

HAVE AGREED AS FOLLOWS:

CHAPTER I

Scope of Application

Article 1

This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting country, irrespective of the place of residence and the nationality of the parties.

For the purposes of this Convention, "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Conventions on Road Traffic dated 19th September 1949.

This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.

This Convention shall not apply:
to carriage performed under the terms of any international postal convention;
to funeral consignments;
to furniture removal.

The Contracting Parties agree not to vary any of the provisions of this Convention by special agreements between two or more of them, except to make it inapplicable to their frontier traffic or to authorize the use in transport operations entirely confined to their territory of consignment notes representing a title to the goods.

Article 2

Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage.

Provided that to the extent that it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by an act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions of paragraph 1 of this article, but as if, in his capacities as carrier by road and as carrier by the other means of transport, he were two separate persons.

CHAPTER II

Persons for whom the Carrier is Responsible

Article 3

For the purposes of this Convention the carrier shall be responsible for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

CHAPTER III

Conclusion and Performance of the Contract of Carriage

Article 4

The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.

Article 5

The consignment note shall be made out in three original copies signed by the sender and by the carrier. These signatures may be printed or replaced by the stamps of the sender and the carrier if the law of the country in which the consignment note has been made out so permits. The first copy shall be handed to the sender, the second shall accompany the goods and the third shall be retained by the carrier.

When the goods which are to be carried have to be loaded in different vehicles, or are of different kinds or are divided into different lots, the sender or the carrier shall have the right to require a separate consignment note to be made out for each vehicle used, or for each kind or lot of goods.

Article 6

The consignment note shall contain the following particulars:
the date of the consignment note and the place at which it is made out;
the name and address of the sender;
the name and address of the carrier;
the place and the date of taking over of the goods and the place designated for delivery;
the name and address of the consignee;
the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description;
the number of packages and their special marks and numbers;
the gross weight of the goods or their quantity otherwise expressed;
charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);
the requisite instructions for Customs and other formalities;
a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention.

Where applicable, the consignment note shall also contain the following particulars:

a statement that transshipment is not allowed;
the charges which the sender undertakes to pay;
the amount of "cash on delivery" charges;
a declaration of the value of the goods and the amount representing special interest in delivery;
the sender's instructions to the carrier regarding insurance of the goods;
the agreed time-limit within which the carriage is to be carried out;
a list of the documents handed to the carrier.

The parties may enter in the consignment note any other particulars which they may deem useful.

Article 7

The sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of:

the particulars specified in article 6, paragraph 1, (b), (d), (e), (f), (g), (h) and (j);

the particulars specified in article 6, paragraph 2;

any other particulars or instructions given by him to enable the consignment note to be made out or for the purpose of their being entered therein.

If, at the request of the sender, the carrier enters in the consignment note the particulars referred to in paragraph 1 of this article, he shall be deemed, unless the contrary is proved, to have done so on behalf of the sender.

If the consignment note does not contain the statement specified in article 6, paragraph 1 (k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods.

Article 8

On taking over the goods, the carrier shall check:

the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and

the apparent condition of the goods and their packaging.

Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article,

he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.

The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note.

Article 9

The consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.

Article 10

The sender shall be liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

Article 11

For the purposes of the Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.

The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.

The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

Article 12

The sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.

This right shall cease to exist when the second copy of the consignment note is handed to the consignee or when the consignee exercises his right under article 13, paragraph 1; from that time onwards the carrier shall obey the orders of the consignee.

The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.

If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, that other person shall not be entitled to name other consignees.

The exercise of the right of disposal shall be subject to the following conditions:

that the sender or, in the case referred to in paragraph 3 of this article, the consignee who wishes to exercise the right produces the first copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;

that the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them

out and does not either interfere with the normal working of the carrier's undertaking or prejudice the senders or consignees of other consignments; that the instructions do not result in a division of the consignment.

When, by reason of the provisions of paragraph 5(b) of this article, the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.

A carrier who has not carried out the instructions given under the conditions provided for in this article, or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

Article 13

After arrival of the goods at the place designated for delivery, the consignee shall be entitled to require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods.

If the loss of the goods is established or if the goods have not arrived after the expiry of the period provided for in article 19, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage.

The consignee who avails himself of the rights granted to him under paragraph 1 of this article shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

Article 14

If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12.

Nevertheless, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time from the person entitled to dispose of the goods in accordance with the provisions of article 12, he shall take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

Article 15

Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note.

Even if he has refused the goods, the consignee may nevertheless require delivery so long as the carrier has not received instructions to the contrary from the sender.

When circumstances preventing delivery of the goods arise after the consignee, in exercise of his rights under article 12, paragraph 3, has given an order for the goods to be delivered to another person, paragraphs 1 and 2 of this article shall apply as if the consignee were the sender and that other person were the consignee.

Article 16

The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.

In the cases referred to in article 14, paragraph 1, and in article 15, the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may however entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

The carrier may sell the goods, without awaiting instructions from the person entitled to dispose of them, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if after the expiry of a reasonable period he has not received from the person entitled to dispose of the goods instructions to the contrary which he may reasonably be required to carry out.

If the goods have been sold pursuant to this article, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.

CHAPTER IV

Liability of the Carrier

Article 17

The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

The carrier shall however be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter.

Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one or more of the following circumstances:
Use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee;
the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;
insufficiency or inadequacy of marks or numbers on the packages;
the carriage of livestock.

Where under this article the carrier is not under any liability in respect of some of the factors causing the loss, damage or delay, he shall only be liable to the extent that those factors for which he is liable under this article have contributed to the loss, damage or delay.

Article 18

The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.

When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall however be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.

This presumption shall not apply in the circumstances set out in article 17, paragraph 4(a), if there has been an abnormal shortage, or a loss of any package.

If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4(d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such of such equipment were taken and that he complied with any special instructions issued to him.

The carrier shall not be entitled to claim the benefit of article 17, paragraph 4(f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him.

Article 19

Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit, the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.

Article 20

The fact that goods have not been delivered within thirty days following the expiry of the agreed time-limit, or, if there is no agreed time-limit, within sixty days from the time when the carrier took over the goods, shall be conclusive evidence of the loss of the goods, and the person entitled to make a claim may thereupon treat them as lost.

The person so entitled may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered in the course of the year following the payment of compensation. He shall be given a written acknowledgement of such request.

Within the thirty days following receipt of such notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges shown to be due on the consignment note and also against refund of the compensation he received less any charges included therein but without prejudice to any claims to compensation for delay in delivery under article 23 and, where applicable, article 26.

In the absence of the request mentioned in paragraph 2 or of any instructions given within the period of thirty days specified in paragraph 3, or if the goods are not recovered until more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the law of the place where the goods are situated.

Article 21

Should the goods have been delivered to the consignee without collection of the "cash on delivery" charge which should have been collected by the carrier under the terms of the contract of carriage, the carrier shall be liable to the sender for compensation not exceeding the amount of such charge without prejudice to his right of action against the consignee.

Article 22

When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate, if necessary, the precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee.

Goods of a dangerous nature which, in the circumstances referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage out of their handing over for carriage or of their carriage.

Article 23

When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of

goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short.

In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damages shall be payable.

In the case of delay, if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26.

The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 3 of this article shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question of its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 7 of this article may, at the time of ratification of or accession to the Protocol to the CMR or at any time thereafter, declare that the limit of liability provided for in paragraph 3 of this article to be applied in this territory shall be 25 monetary units. The monetary unit referred to in this paragraph corresponds to 10/31 gram of gold of millesimal fineness nine hundred. The conversion of the amount specified in this paragraph into the national currency shall be made according to the law of the State concerned.

The calculation mentioned in the last sentence of paragraph 7 of this article and the conversion mentioned in paragraph 8 of this article shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amount in paragraph 3 of this article as is expressed there in units of account. States shall communicate to the Secretary-General of the United Nations the manner of calculation pursuant of paragraph 7 of this article or the result of the conversion in paragraph 8 of this article as the case may be, when depositing an instrument referred to in article 3 of the Protocol to the CMR and whenever there is a change in either.

Article 24

The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in article 23, paragraph 3, and in that case the amount of the declared value shall be substituted for that limit.

Article 25

In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4.

The compensation may not, however, exceed:

if the whole consignment has been damaged the amount payable in the case of total loss;
if part only of the consignment has been damaged, the amount payable in the case of loss of the part affected.

Article 26

The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note.

If a declaration of a special interest in delivery has been made, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independently of the compensation provided for in articles 23, 24 and 25.

Article 27

The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per centum per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.

When the amounts on which the calculation of the compensation is based are not expressed in the currency of the country in which payment is claimed, conversion shall be at the rate of exchange applicable on the day and at the place of payment of compensation.

Article 28

In cases where, under the law applicable, loss, damage or delay arising out of carriage under this Convention gives rise to an extra-contractual claim, the carrier may avail himself of the provisions of this Convention which exclude his liability or which fix or limit the compensation due.

In cases where the extra-contractual liability for loss, damage or delay of one of the persons for whom the carrier is responsible under the terms of article 3 is in issue, such person may also avail himself of the provisions of this Convention which exclude the liability of the carrier or which fix or limit the compensation due.

Article 29

The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.

The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1.

CHAPTER V

Claims and Actions

Article 30

If the consignee takes delivery of the goods without duly checking their condition with the carrier or without sending him reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent, the fact of his taking delivery shall be prima facie evidence that he has received the goods in the condition described in the consignment note. In the case of loss or damage which is not apparent the reservations referred to shall be made in writing.

When the condition of the goods had been duly checked by the consignee and the carrier, evidence contradicting the result of this checking shall only be admissible in the case of loss or damage which is not apparent and provided that the consignee has duly sent reservations in writing to the carrier within seven days, Sundays and public holidays excepted, from the date of checking.

No compensation shall be payable for delay in delivery unless a reservation has been sent in writing to the carrier, within twenty-one days from the time that the goods were placed at the disposal of the consignee.

In calculating the time-limits provided for in this Article the date of delivery or the date of checking, or the date when the goods were placed at the disposal of the consignee, as the case may be, shall not be included.

The carrier and the consignee shall give each other every reasonable facility for making the requisite investigations and checks.

Article 31

In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or the place where the goods were taken over by the carrier or the place designated for delivery is situated, and in no other courts or tribunals.

Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgment has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgment of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

When a judgment entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. The formalities shall not permit the merits of the case to be re-opened.

The provisions of paragraph 3 of this article shall apply to judgments after trial, judgments by default and settlements confirmed by an order of the court, but shall not apply to interim judgments or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting countries resident or having their place of business in one of those countries.

Article 32

The period of limitation for an action arising out of carriage under this Convention shall be one year. Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years. The period of limitation shall begin to run:

in the case of partial loss, damage or delay in delivery, from the date of delivery;

in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier;

in all other cases, on the expiry of a period of three months after the making of the contract of carriage.

The day on which the period of limitation begins to run shall not be included in the period.

A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in

writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object.

Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court or tribunal seised of the case. That law shall also govern the fresh accrual of rights of action.

A right of action which has become barred by lapse of time may not be exercised by way of counter-claim or set-off.

Article 33

The contract of carriage may contain a clause conferring competence on an arbitration tribunal if the clause conferring competence on the tribunal provides that the tribunal shall apply this Convention.

CHAPTER VI

Provisions Relating to Carriage Performed by Successive Carriers

Article 34

If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note.

Article 35

A carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. He shall enter his name and address on the second copy of the consignment note. Where applicable, he shall enter on the second copy of the consignment note and on the receipt reservations of the kind provided for in article 8, paragraph 2.

The provisions of article 9 shall apply to the relations between successive carriers.

Article 36

Except in the case of a counter-claim or a set-off raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred; an action may be brought at the same time against several of these carriers.

Article 37

A carrier who has paid compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions:
the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;
when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;
if it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned all the carriers as laid down in (b) above.

Article 38

If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.

Article 39

No carrier against whom a claim is made under articles 37 and 38 shall be entitled to dispute the validity of the payment made by the carrier making the claim if the amount of the compensation was determined by judicial authority after the first mentioned carrier had been given due notice of the proceedings and afforded an opportunity of entering an appearance.

A carrier wishing to take proceedings to enforce his right of recovery may make his claim before the competent court or tribunal of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage was made. All the carriers concerned may be made defendants in the same action.

The provisions of article 31, paragraphs 3 and 4, shall apply to judgments entered in the proceedings referred to in articles 37 and 38.

The provisions of article 32 shall apply to claims between carriers.

The period of limitation shall, however, begin to run either on the date of the final judicial decision fixing the amount of compensation payable under the provisions of this Convention, or, if there is no such judicial decision, from the actual date of payment.

Article 40

Carriers shall be free to agree among themselves on provisions other than those laid down in articles 37 and 38.

CHAPTER VII

Article 41

Nullity of Stipulations Contrary to the Convention

Subject to the provisions of article 40, any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.

In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

CHAPTER VIII *Final provisions*

Article 42

This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

The Convention shall be open for signature until 31 August 1956 inclusive. Thereafter, it shall be open for accession.

This Convention shall be ratified.

Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 43

This Convention shall come into force on the ninetieth day after five of the countries referred to in article 42, paragraph 1, have deposited their instruments of ratification or accession.

For any country ratifying or acceding to it after five countries have deposited their instruments of ratification or accession, this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

Article 44

Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations.

Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

Article 45

If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date on which the last of such denunciations takes effect.

Article 46

Any country may, at the time of depositing its instrument of ratification or accession or any time thereafter, declare, by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. The Convention shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Convention has not yet entered into force, at the time of its entry into force.

Any country which has made a declaration under the preceding paragraph extending this Convention to any territory for whose international relations it is responsible, may denounce the Convention separately in respect of that territory in accordance with the provisions of article 44.

Article 47

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention, which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Article 48

Each Contracting Party may, at the time of signing, ratifying or acceding to this Convention, declare that it does not consider itself as bound by article 47 of the Convention. Other Contracting Parties shall not be bound by article 47 in respect of any Contracting Party which has entered such a reservation.

Any Contracting Party having entered a reservation as provided for in paragraph 1 may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.

No other reservation to this Convention shall be permitted.

Article 49

After this Convention has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention. The Secretary-General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary-General, not less than one-fourth of the Contracting Parties notify him of their concurrence with the request.

If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider.

The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the conference together with the texts of such proposals at least three months before the date on which the conference is to meet.

The Secretary-General shall invite to any conference convened in accordance with this article all countries referred to in article 42, paragraph 1, and countries which have become Contracting Parties under article 42, paragraph 2.

Article 50

In addition to the notifications provided for in article 49, the Secretary-General of the United Nations shall notify the countries referred to in article 42, paragraph 1, and the countries which have become Contracting Parties under article 42, paragraph 2 of:
ratifications and accessions under article 42;

the dates of entry into force of this Convention in accordance with article 43;
denunciations under article 44;
the termination of this Convention in accordance with article 45;
notifications received in accordance with article 46;
declarations and notifications received in accordance with article 48, paragraphs 1 and 2.

Article 51

After 31 August 1956, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in article 42, paragraphs 1 and 2.

IN WITNESS WHEREOF, the undersigned, being duly authorized there-to, have signed this Convention.
DONE at Geneva, this nineteenth day of May, one thousand nine hundred and fifty-six, in a single copy in the English and French languages, each text being equally authentic.

ROTOCOL OF SIGNATURE

ON PROCEEDING TO SIGN the Convention on the Contract for the International Carriage of Goods by Road, the undersigned, being duly authorized, have agreed on the following statement and explanation:
This Convention shall not apply to traffic between the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland.

Ad article 1, paragraph 4.

The undersigned undertake to negotiate conventions governing contracts for furniture removals and combined transport.
IN WITNESS WHEREOF, the undersigned, being duly authorized there-to, have signed this Protocol.
DONE at Geneva, this nineteenth day of May, one thousand nine hundred and fifty-six, in a single copy in the English and French languages, each text being equally authentic.

AVC- GENERAL TRANSPORT CONDITIONS 2002

Article 1

Definitions

In these conditions the following will mean:

1. **Contract of carriage:** the contract by which the carrier undertakes towards the sender to carry goods by road.
2. **Sender:** the contractual other party of the carrier. If a sender is referred to in the consignment note this does not automatically mean that the sender referred to is the contractual other party of the carrier.
3. **Consignee:** the person who by virtue of the contract of carriage is entitled to delivery of the goods by the carrier.
4. **The consignment note:** the document drawn up in three original copies, one of which (evidence of receipt) is destined for the sender, the second (evidence of delivery) being destined for the carrier, and the third being destined for the consignee.
5. **Servants and agents:** employees of the carrier as well as persons whose services the carrier uses for the completion of the contract of carriage.
6. **Force majeure:** circumstances which a diligent carrier is unable to avoid and in so far as a carrier is unable to prevent the consequences thereof.
7. **Loss due to delay:** financial loss arising from delay in delivering goods.
8. **Written or in writing:** in writing or electronically.
9. **BW:** Burgerlijk Wetboek (Netherlands Civil Code).
10. **CMR:** Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva 1956), as supplemented by the 1978 Protocol.
11. **'Algemene Veerboot-enBeurtvaartcondities'** the Dutch General Ferry Boat and Regular Barge Terms and Conditions, most recent version, as deposited by Stichting vervoeradres at the registry of the District Courts of Amsterdam and Rotterdam.
12. **General Storage Terms and Conditions:** the General Storage Terms and Conditions, most recent version, as deposited by Stichting vervoeradres at the registry of the District Courts of Amsterdam and Rotterdam.

Article 2 Electronic messages

1. If data, including those relating to the consignment note, are exchanged electronically, parties shall not dispute the admissibility of electronic messages as evidence in the event of a mutual conflict.
2. Electronic messages have the same evidential value as written documents, unless these messages were not sent, saved and registered in the format as agreed on between the parties and in accordance with the security level and manner agreed on by parties.

Article 3 Scope of application

The General Transport Terms and Conditions apply to the contract of carriage of goods by road; if the CMR applies, then the General Transport Terms and Conditions also apply.

Article 4 Obligations of the sender;

notice of termination of the contract of carriage

1. The sender is required:
 - a) concerning the goods and the treatment of same, to timely supply the carrier with all data and information as he is able to or ought to be able to, and of which he knows or ought to know that such data and information are important to the carrier, unless he may assume that the carrier is already aware of this data;
 - b) to make the agreed goods available to the carrier at the agreed location and time and in the agreed manner, accompanied by the consignment note as required by article 5 and by any further documents as required by law from the sender;
 - c) to clearly and appropriately address each package to be carried and, in so far as reasonably practicable, to affix or append the required information and address to the packages or their packaging in such a manner that under normal circumstances it remains legible until the end of the carriage. The sender may agree in writing with the carrier that addresses on the packages can be substituted by a statement of numbers, letters or other symbols;
 - d) to report the total weight of the goods to be carried on the consignment note;
 - e) to load and to stow the goods as agreed in or on the vehicle, and to have them unloaded, unless parties agree otherwise, or unless other obligations arise from the nature of the intended carriage, considering the goods to be carried and the vehicle made available.

2. The sender is not allowed to back out of his obligations mentioned in section 1 a, b, c, and d irrespective of the circumstances he may invoke and the sender is required to compensate the carrier for the damage arising from non-compliance with the obligations mentioned.
3. Without prejudice to the provisions of section 2, the carrier may terminate the contract without any notification if the sender does not fulfil his obligations referred to in section 1a and b; however the carrier may only do so after he has set a final deadline for the sender in writing and the sender fails to meet its obligation by the expiry of that deadline. If setting such a deadline would mean that the business operations of the carrier would be unreasonably affected, then the carrier may terminate the contract without granting a deadline as mentioned. The sender may likewise terminate the contract, if he does not fulfil his obligation as mentioned in section 1b.
Termination is effected by written notice and the agreement is terminated when this notice is received. After termination the sender owes the carrier 75 percent of the agreed freight rate but cannot be held liable for further compensation. If no freight rate was agreed, the applicable freight rate will be as per the law, respectively as per custom, respectively in fairness.
4. The carrier may also give notice of termination of the contract, in case of defective loading or stowing or in case of overloading, but not until the sender has been given the opportunity to rectify the defect or the overloading. If the sender refuses to rectify the defective loading and/or stowing or the overloading, the carrier may either give notice of termination of the contract, or rectify the defects and/or the overloading himself; in both cases the sender is required to pay the carrier an amount of € 500, unless the carrier proves that the damages suffered are in excess of that amount; section 3 does not apply.
5. The sender must repay to the carrier any fine imposed on him as a result of overloading, unless the carrier has fallen short in fulfilling his obligations pursuant to article 9 sections 1 and 5 or the carrier has not given notice of termination of the contract of carriage on the ground of the previous section, without prejudice to his right to invoke bad faith on the part of the sender. In case the sender can show proof of any fine resulting from violation of article 2.6 section 2 of the Wet Wegvervoer Goederen (Law road transport of goods), this stipulation is deleted.
6. Notwithstanding the other sections of this article the sender must compensate to the carrier the damages suffered in so far as caused by the circumstance that the carriage of the goods is or will be fully or partially prohibited or restricted by public authority; however this liability will not exist if the sender proves that the carrier was or could have reasonably been aware of the prohibition or restriction at the time of the contract of carriage being concluded.

Article 5 The consignment note

1. When making the goods available the sender is obliged to submit a consignment note to the carrier which states that these General Terms and Conditions apply to the contract of carriage concluded.
2. The sender is required to complete the consignment note truthfully and in full according to the instructions, and when making the goods available to the carrier he warrants the correctness and completeness of the data supplied by him.
3. The carrier is required to clearly identify himself as the carrier in the consignment note presented by the sender and to sign it and return it to the sender. If the carrier so requires, the sender is required to sign the consignment note. The signature may be printed or substituted by a stamp or any other mark of origin.
4. The consignment note may also be drawn up in the form of an electronic message in accordance with the format and security level as agreed between the parties and in accordance with the manner of sending, saving and registering as agreed between the parties.

Article 6 Evidential value of the consignment note

1. When accepting the goods the carrier is obliged to check the correctness of the statement of the quantity of goods in the consignment note as well as the outward good condition of the goods and their packaging, and in case of deviation to make a note of that on the consignment note. This obligation does not exist if in the opinion of the carrier this would considerably delay the carriage.
2. The consignment note is prima facie evidence, subject to evidence to the contrary, of the conditions of the contract of carriage and the parties to the contract of carriage, and of the receipt of the goods and their packaging in outwardly good condition, and of the weight and quantity of the goods. If the carrier has no reasonable means to check the correctness of the entries referred to in section 1, then the consignment note will not be evidential of these entries.

Article 7 Freight payment

1. The sender is obliged to pay the freight and further expenses attached to the goods at the time that the consignment note is handed over or the goods are received by the carrier.
2. If freight payable at destination has been agreed, the consignee is obliged to pay the freight, the costs due owing to other reasons relating to the carriage and further charges attached to the goods on delivery of the goods by the carrier; if the consignee does not pay these upon the first reminder, he and the sender are jointly and severally obliged to pay. If, in the case of freight payable at destination, the sender has mentioned in the consignment note that no delivery may be performed without payment of the freight costs, the costs due owing to other reasons relating to the carriage and further expenses attached to the goods, the carrier, if no payment is made, must ask the sender for further instructions which he is obliged to follow up, in so far as reasonably possible, against compensation of costs and damage and possibly payment of a reasonable fee, unless these costs were incurred by his own fault.
3. The carrier has the right to charge all extrajudicial and judicial costs incurred to collect the freight and other amounts, as mentioned in sections 1 and 2, to the parties required to pay the freight and other costs.
The extrajudicial collection costs are due as from the time that the debtor is in default and the claim has been referred to a third party for collection. The extrajudicial collection costs are calculated on the basis of the Extrajudicial costs compensation decree (*Besluit voor buitengerechtelijke incassokosten*, Bulletin of Acts, Orders and Decrees 2012/141) or the most recent version of that decree.
4. The freight, the costs due owing to other reasons relating to the carriage and further expenses attached to the goods are due also if the goods are not delivered at their destination or only partly, damaged or delayed.
5. An appeal to set off claims to pay freight, costs due owing to other reasons relating to the carriage and further expenses attached to the goods against claims for any other reason is not permitted.
6. If the sender does not fulfil his obligations referred to in this article, then the carrier is entitled to suspend departure of the vehicle, and in this event the damage arising will be considered as expenses attached to the goods.

Article 8 Instructions of the sender

1. The sender is entitled to change the location where the goods are made available, to designate himself or somebody else as consignee, to change a designation given of the consignee as well as to give orders concerning delivery or to change the place of delivery, provided these instructions do not impede the normal business operations of the carrier. Instructions concerning non-delivery which reach the person having to carry them out on time, must still be carried out however.
2. Instructions may also be given after receipt of the goods by the carrier.
3. The sender is required to compensate the carrier for any damage and costs caused by following the instructions. If as a result of the instructions given the vehicle has been driven to a location which was not previously agreed on, then the sender is required to pay a reasonable fee in this respect as well as compensating the damage suffered and expenses incurred.
4. The right to give instructions lapses as soon as the consignee accepts the goods at the place of delivery or the consignee claims compensation from the carrier because the latter did not deliver the goods.

Article 9 Obligations of the carrier

1. The carrier is required to accept the goods agreed on at the place and time and in the manner agreed as well as to communicate the loading capacity of the vehicle

- to the sender, unless it can be presumed that the sender is aware of this.
2. The carrier is obliged to deliver the goods received for carriage at the destination in the condition in which he has received them.
 3. The carrier is obliged to deliver the goods received for carriage within a reasonable time period; if a period of delivery has been agreed in writing delivery must be carried out within this period.
 4. If the carrier does not fulfil the obligation referred to in section 1, either party may give notice of termination of the contract in respect of the goods not yet accepted by the carrier. However, the sender may do so only after having set a deadline in writing for the carrier and the carrier does not fulfil his obligation at the expiry of it. Notice of termination is given by a written communication to the other party and the contract terminates when this notice is received. After termination the carrier is required to compensate the sender for the damage which he has suffered as a result of the termination. This compensation, however, cannot amount to more than twice the freight and the sender owes no freight.
 5. The carrier is obliged to check the loading, stowing and any overloading by or on behalf of the sender if and in so far as circumstances permit this. If the carrier considers that the loading and stowing is defective, he is obliged, notwithstanding the stipulation in article 4 section 4, to make a note of this on the consignment note. If he is not able or in a position to fulfil his control obligation, he may make a note of this on the consignment note.
 6. If delivery domicile has been agreed, the carrier must deliver the goods to the door of the address mentioned in the consignment note or to the door of an address which the sender has provided in good time instead of the one in the consignment note pursuant to article 8. If the address is not reachable via a surfaced road or any other reasonable manner, it must be delivered to a location, which is as close as possible to the address originally indicated.

Article 10 Liability of the carrier

1. Except in the case of force majeure the carrier is liable for damage to or loss of the goods and for damage due to delayed delivery in so far as the carrier has not fulfilled the obligations referred to in article 9, sections 2 and 3.
2. The carrier is also liable for acts and omissions of his agents and servants in the same way as for his own acts and omissions..
3. The carrier cannot relieve himself of his liability by invoking the defective condition of the vehicle or of the equipment which he uses unless this was made available to him by the sender, the consignee or the receiver. Material will not mean a ship or a railway carriage containing the vehicle.

Article 11 Special risks

Notwithstanding article 10, the carrier, who does not fulfil his obligations pursuant to article 9 sections 2 and 3, will nevertheless not be liable for the damage arising from this, in so far as the non-observance is the result of the special risks related to one or more of the following circumstances:

- a) the carriage of the goods in an open uncovered vehicle, if this was explicitly agreed and specified in the consignment note;
- b) absence of or defective condition of packing of the goods which considering their nature or the manner of carriage should have been sufficiently packed;
- c) handling, loading, stowing or unloading of the goods by the sender, the consignee or persons acting on account of the sender or the consignee;
- d) the nature of certain commodities which owing to causes related to this nature are exposed to total or partial loss or to damage, particularly through combustion, explosion, melting, breakage, corrosion, decay, desiccation, leakage, normal reduction of quality or presence of vermin or rodents;
- e) heat, cold, temperature variations or air humidity, but only if it has not been agreed that the carriage would be performed by means of a vehicle especially equipped to protect the goods from the effects of such conditions;
- f) incompleteness or inadequacy of the address, numbers, letters or signs on the packages;
- g) the fact that it concerns carriage of a live animal.

Article 12 Presumption of exonerating circumstances

1. If the carrier proves that, considering the circumstances of the case, the non-compliance with his obligations pursuant to article 9 sections 2 and 3 may have been a consequence of one or more of the special risks specified in article 11, it will be presumed that the non-compliance was indeed such a consequence. However, the person who is entitled to receive the goods from the carrier may prove that this non-compliance was not wholly or partly caused by one of these special risks.
2. The presumption referred to here above does not apply in the event mentioned in article 11a, if there is an abnormal shortage or an abnormally large loss of packages.
3. If, in accordance with what the parties had agreed, the carriage is performed by means of a vehicle especially equipped to protect the goods from the effects of heat, cold, temperature variations or air humidity, the carrier for the purpose of exonerating his liability as a result of these effects may only invoke article 11d if he proves that all measures had been taken, which he was obliged to take considering the circumstances, with respect to the choice, the maintenance, and the use of such equipment and that he acted in accordance with the special instructions referred to in section five.
4. The carrier may only invoke article 11g, if he proves that all measures had been taken which he was normally obliged to take, considering the circumstances and that he acted in accordance with the special instructions referred to in section five.
5. The special instructions referred to in sections three and four of this article must have been given to the carrier before the start of the carriage and must have been explicitly accepted by him and must be specified in the consignment note if one has been issued for the carriage concerned. Merely the specification of them in the consignment note constitutes no evidence in this event.

Article 13 Compensation

1. The compensation owed by the carrier on the ground of non-compliance with his obligation pursuant to article 9 section 2 is limited to an amount of €3.40 per kilogram; the carrier is not liable on the grounds of the contract of carriage for other damage than that arising from loss of or damage to the goods, such as consequential damage, business stagnation or immaterial damage.
2. The number of kilograms as basis for the calculation of the amount specified in section 1 is the weight of the damaged or not delivered object as specified in the consignment note.
3. If the carrier is liable because he did not deliver within the reasonable period specified in article 9 section 3, the compensation for delay in delivery is limited to once the freight; if the period specified in article 9 section 3 has been agreed in writing, the compensation is limited to twice the freight.
4. The costs of expertise research, salvage and other costs which are incurred to establish and realise the value of the damaged or lost goods and of those delivered with delay are considered as depreciation of the object.
5. If the carrier is liable because of non-compliance with his obligation stemming from Sections 8:1115 para 2 and 8:1118 para 3 BW, or the articles 6 section 1, 19 sections 4, 21 or 25 of these terms and conditions, compensation due by the carrier in this respect shall not exceed the compensation which he would owe in the event of total loss of the goods concerned.

Article 14 Intention to cause damage and wilful recklessness

An act or an omission by whomever, except the carrier himself, carried out either with the intention to cause damage, or recklessly and in the knowledge that this damage would ensue, does not deprive the carrier of his right of appealing to any exoneration or limitation of his liability.

Article 15 Notice of damage

1. If the goods are delivered by the carrier showing obvious damage or loss and the consignee does not, on receipt of the goods or immediately thereafter, communicate to the carrier a reservation in writing, specifying the general nature of the damage or the loss, then the carrier is presumed to have delivered the goods in the same condition as in which he received them.
2. If the damage or the loss are not externally visible and the consignee has not, within one week of acceptance of the goods, communicated to the carrier a reservation in writing, specifying the general nature of the damage or the loss, then the carrier is likewise presumed to have delivered the goods in the same condition as in which he has received them.
3. If the goods are not delivered within a reasonable or an agreed period and the consignee has not, within one week of acceptance of the goods, communicated to the carrier a reservation in writing, specifying that the goods were not delivered within this period, then the carrier is presumed to have delivered the goods within this period.

Article 16 Right to claim

Both the sender and the consignee are entitled to demand delivery of the goods in accordance with the obligations of the carrier from the carrier.

Article 17 Cash on delivery (COD)

1. Parties may agree that the goods will be charged with a COD amount which, however, shall not exceed the invoice value of the goods. In that case the carrier may deliver the goods only after advance payment of the COD amount in cash, unless the sender has authorised the carrier to accept some other form of payment.
2. If after notice of arrival the consignee does not pay the COD amount in accordance with the form of payment as prescribed by the sender to the carrier, then the carrier must ask the sender for further instructions.
The costs related to asking for instructions are for account of the sender. The carrier must follow up the instructions given to him, in so far as this is reasonably possible, in return for reimbursement of costs and possibly a reasonable fee, unless these costs were incurred by his own fault.
If the sender gives instructions to the effect that delivery must be carried out in deviation to instructions previously given relating to payment, then these instructions must be given in writing to the carrier.
In the absence of instructions the stipulations of article 21 apply mutatis mutandis.
3. The carrier is obliged after delivery of a COD consignment and transfer of the amount to him to remit the COD amount without delay but in any event within two weeks to the sender or to transfer it to his bank or giro account.
4. The period of two weeks specified in section 3 starts on the day that the goods are delivered.
5. The consignee who at the time of delivery knows that the goods are burdened by a COD amount is obliged to pay to the carrier the amount which the latter owes to the sender.
6. If the goods have been delivered without the COD amount having been collected in advance, the carrier is obliged to compensate the sender for the damage to the maximum of the COD amount, unless he proves that there was no fault on his part or on the part of his employees. This obligation does not affect his right of recourse against the consignee.
7. The COD fee due accrues to the sender.
8. All claims against the carrier stemming from a COD condition are limited to one year, counting from the commencement of the day following the day when the goods were delivered or ought to have been delivered.

Article 18 Reservations of the carrier

In application of the present conditions the carrier reserves the right:

- a) to carry the goods by means of the vehicles which are appropriate in his opinion and to keep them if necessary in such vehicles, storage rooms or warehouses as he thinks fit, irrespective of whether these vehicles, storage rooms or warehouses belong to the carrier or third parties;
- b) to have the free choice of the route for carriage, and likewise to deviate from the customary route. He is also entitled to call on places as he thinks fit for the operation of his enterprise.

Article 19 Prevention after receipt

1. If upon receipt of the goods by the carrier the carriage cannot reasonably be effected, continued or completed or within a reasonable time period, the carrier is obliged to communicate this to the sender. Both carrier and sender are then entitled to give notice of termination of the contract.
2. Notice of termination shall be given by notifying the other party in writing and the contract will terminate when this written notification is received.
3. The carrier is not obliged to effect further carriage to the place of destination and is entitled to unload the goods and store these at a place fit for the purpose; the sender is entitled to take possession of the goods. The costs incurred with respect to the goods in connection with the termination are for account of the sender, under reservation of section 4.
4. Without prejudice to or in addition thereto the carrier is obliged to compensate the sender for the damage which he suffers as a result of the termination of the contract.

Article 20 Stack-on transport, through transport

1. If part of the carriage, whether or not after transshipment of the goods, takes place on inland waterways, the liability of the carrier for this part is defined by articles 9 and 13 of the Algemene Veerboot- en Beurtvaartcondities.
2. If, after delivery of the goods which he has carried, the carrier undertakes to have the goods carried onwards, he does so in the capacity of a forwarding agent and his liability in this capacity is then limited to € 3.40 per kilogram for lost or damaged goods; no further compensation for any kind of damage shall be owed.

Article 21 Storage in the event that the consignee does not show up

1. If the consignee does not show up after notice of arrival of the goods, if he does not begin taking delivery of the goods, if he does not continue to accept delivery of the goods regularly and with appropriate haste, if he refuses to accept the goods or to sign for receipt, the carrier may store the goods for account and risk of the sender, observing due care, in a manner and location of his determination, if necessary also in the vehicle in which the goods were carried; the carrier is obliged to inform the sender.
2. The carrier, taking section 1 into consideration may also proceed to storage or garaging, if furnishment of security as specified in article 23 section 5 is refused, or if a dispute arises over the amount or the nature of the security to be furnished.
3. Except in the event of seizure, the goods may be sold publicly or privately for account of the sender without any legal authorisation being required, but only after expiry of one week after a notice in writing by registered mail to the sender of the intention to sell.
4. The sale may be effected without observing any term and without prior notice if the goods are perishable or storage may be detrimental or give rise to damage or danger for the vicinity. If prior notice was not given, the carrier is obliged to inform the sender of the sale afterwards.
5. With regard to livestock the term specified in section 3 is three days, subject to the right of the carrier to proceed to the sale without respecting any term and without prior notice if the condition of the livestock so warrants. If prior notice was not given, the carrier is obliged to inform the sender of the sale afterwards.
6. The carrier will retain the proceeds from the goods sold, after deduction of the amount of any COD and a fee due to the carrier in connection therewith and of everything due to the carrier in connection with the goods sold, both for freight as well as the costs of storage and parking and other costs and damages, for the sender for six months following the acceptance of the goods for carriage, at the expiry of which term he shall put the amount retained in judicial custody.

Article 22 Storage before, during and after carriage

If sender and carrier agree that the carrier will store the goods before or during the carriage as agreed, or will do so on completion of the carriage, such storage is effected under application of the General Storage Terms and Conditions, pursuant to which sender and carrier are respectively considered as the depositor and the custodian.

Article 23 Right of lien

1. The carrier has a right of lien on goods and documents in his possession in connection with the contract of carriage towards any person who demands delivery of same. This right does not accrue to him if, at the time of receipt of the goods for carriage, he had reason to doubt the right of the sender to make the goods available for carriage to him.
2. The right of lien applies likewise to charges attached to the goods by way of COD as well as to the COD fee to which he is entitled, for which he is not obliged to accept security.
3. The carrier may also exercise the right of lien against the sender for reason of what is still owed to him with respect to previous contracts of carriage.
4. Likewise, the carrier may exercise the right of lien against the consignee who in this capacity became a party to previous contracts of carriage for reason of what is still owed to him with respect to these contracts.
5. If when settling the invoice a dispute arises over the amount due or if there is a need for a calculation to be made for the determination of what is due that cannot be made quickly, then the party demanding delivery is obliged to pay forthwith the part which the parties agree is due and to furnish security for the part in dispute or for the part for which the amount has not yet been established.

Article 24 Right of pledge

1. All the goods, documents and monies in possession of the carrier in connection with the contract of carriage serve as pledge for all claims which he has against the sender.
2. Except for the cases where the sender has been declared bankrupt, has been granted moratorium of payments or in has been declared subject to a debt reorganisation scheme for natural persons, the carrier shall never be entitled to sell the pledged objects without permission from the Court in accordance with Section 3:248 para 2 BW.

Article 25 Lost goods

If the goods have not been delivered within thirty days from the day when they were accepted for carriage and if their whereabouts is unknown, the goods will be considered as lost.

If within one year after the carrier has paid compensation for non-delivery of the goods to the person who was entitled to delivery of same, these goods or some of them appear to be (again) in possession of the carrier, the latter is obliged to communicate this circumstance to the sender or the consignee in writing, whichever has expressed the wish to this effect in writing, and then the sender respectively the consignee has the right for thirty days from receipt of such communication to demand as yet delivery of these goods against reimbursement of the compensation he has received. The same applies if the carrier has paid no compensation for non-delivery, subject however to the period of one year to start from the day after the day when the goods ought to have been delivered. If the sender or the consignee respectively does not avail himself of this right, article 21 applies.

Article 26 Indemnification; Himalaya clause

1. The sender who fails to meet any obligation which the law or these conditions impose on him is obliged to indemnify the carrier against all damages which he might suffer as a result of this non-compliance when he is held liable by a third party on account of the carriage of the goods.
2. When servants and agents of the carrier are held liable on account of the carriage of the goods, these persons may invoke each liability limitation and/or exoneration which the carrier can invoke pursuant to these conditions or any other legal or contractual provision.

Article 27 Default interest

Pursuant to Section 6:119 BW, parties owe statutory default interest on any amounts owed.

Article 28 Limitation period

1. All judicial claims based on or related to the contract of carriage are limited to one year.
2. In so far as a carrier seeks recourse against a person whose services the carrier has used in completing the contract of carriage to recoup what the carrier is due to the sender or the consignee a new limitation period of three months begins from the time as stipulated in Section 8:1720 para 1 BW.

Article 29 Choice of court; choice of law

1. All disputes arising from or relating to domestic carriage by road between parties residing in the Netherlands can exclusively be adjudicated by the competent court in Rotterdam, unless the parties agree otherwise in writing.
2. All legal relationships ensuing from or relating to the contract of carriage are governed by Dutch law.

PHYSICAL DISTRIBUTION CONDITIONS 2000

(PD-Conditions)

ARTICLE 1 DEFINITIONS

In these conditions the following is meant:

1. **PHYSICAL DISTRIBUTION:** All activities, such as transport, forwarding, unloading, stocking, storage, taking out of storage, loading, stocks management, assembly, order management, order groupage, preparing for despatch, invoicing, information exchange and information management in relation to goods, insofar as this has been agreed between the principal and the physical distributor.
2. **PHYSICAL DISTRIBUTION AGREEMENT:** The agreement whereby the physical distributor undertakes to carry out physical distribution for the principal (also called: "PD- Agreement).
3. **PHYSICAL DISTRIBUTOR:** The provider of services who has entered into a physical distribution agreement with the principal and accordingly has agreed to undertake physical distribution.
4. **PD-CONDITIONS:** The present Physical Distribution Conditions.
5. **TRANSPORT TRAJECTORY:** That section in the performance of the physical distribution agreement whereby the goods assigned to the physical distributor are on board a means of transport for the purpose of being transported. The trajectory does not include

- loading into or unloading out of the means of transport.
6. **FORCE MAJEURE:** Circumstances a diligent physical distributor was not able to avoid and the consequences of which he was not able to prevent. Fire and explosions, as well as the consequences thereof, are always considered to be force majeure.
 7. **GOODS:** The goods made available by the principal to the physical distributor for the performance of this agreement.
 8. **RECEIVING:** The moment in which the goods have physically been received by the physical distributor for the performance of the agreed work.
 9. **DELIVERY:** The moment in which the goods, after the agreed work has been carried out by the physical distributor, are made available to the principal or entitled party.
 10. **FREIGHTFORWARDING:** The concluding, on behalf of the principal, of one or more transport agreements with a carrier, or making a stipulation in such transportation agreement(s) on behalf of the principal.
 11. **STOCK DISCREPANCY:** An inexplicable discrepancy between the actual stock and the stock which according to stock records of the physical distributor and the principal should be present.
 12. **WORKING DAYS:** All calendar days, with the exception of Saturdays, Sundays, as well as generally recognised Christian and national holidays in the Netherlands.
 13. **HELPERS:** All those persons whom physical distributor makes use of in the performance of the agreement (such as sub-contractors, agents and other helpers).

ARTICLE 2 SCOPE OF APPLICATION GENERAL

1. The PD-conditions govern all tenders, agreements entered into and legal and effective acts carried out by the physical distributor for implementation purposes, insofar as not contradictory with mandatory law.
2. Deviations from these conditions are only valid if and insofar as explicitly agreed upon by the parties.
3. Unless explicitly agreed otherwise the applicability of conditions observed by the principal is excluded.
4. If the principal and the physical distributor agree to exchange information by electronic means the General Conditions of Electronic Message Transfer, filed at the Offices of the District Courts in Amsterdam and Rotterdam by the Stichting Vervoeradres, is applicable together with these conditions, specifically the version filed at the time of the conclusion of the PD Agreement.

TRANSPORT

5. Besides treaties, laws and legal regulations applicable to the various modes of transport, the following regulations with regard to the defined means of transport apply with regard to the above:
 - domestic road carriage: the General Transport Conditions 1983 (Algemene Vervoerscondities), filed at the Offices of the District Courts in Amsterdam and Rotterdam, that is to say the version of these conditions lodged at the time of the conclusion of the PD Agreement.
 - transport by railway: the conditions of the documents relating to the carriage of the goods;
 - transport by inland shipping: the Freightling Conditions (Bevrachtingsvoorwaarden) 1991, filed at the Offices of the District Courts in Amsterdam and Rotterdam, that is to say the version of these conditions filed at the time of the conclusion of the PD Agreement.
 - transport by air: the standard IATA Transport Conditions, as can be found on the back of the standard IATA airbill, as well as the conditions referred to therein;
 - combined transport: for each section of the transport, the applicable legal regulations for that section, as well as Articles 8.40 up to and including 8:52 of the Dutch Civil Code.

If and insofar as the above treaties, laws and legal regulations and conditions have not regulated liability, the present PD conditions apply.

FREIGHTFORWARDING

6. In the event the physical distributor undertakes to forward the goods, the Dutch Forwarding Conditions of 4 January 1999, filed at the Offices of the District Courts in Amsterdam, Arnhem, Breda and Rotterdam apply, that is to say the version of these conditions filed at the time of the conclusion of the PD Agreement.

FISCAL AND CUSTOMS SERVICES

7. In the event the physical distributor undertakes to carry out the fiscal representation for the principal and/or undertakes customs formalities (including formalities regarding storage in customs warehouse), the Dutch Forwarding Conditions as mentioned above in Article 2 paragraph 6 apply.
8. All conditions stated in this article shall be sent free of charge at first request.

ARTICLE 3 EMPLOYEES AND INDEPENDENT CONTRACTORS

1. The physical distributor is authorised to make use of helpers in the performance of the agreement. For acts and omissions of these helpers, carried out during the performance of the work for which they are being used by the physical distributor, the physical distributor shall be responsible in the same way as for his own personnel.
2. In the event the aforementioned employees or independent contractors are held liable outside the agreement with regard to the work, for which they were being used by the physical distributor, it has been stipulated on their behalf that they shall be able to appeal to all the stipulations in the present conditions regarding exclusion or limiting of liability.
3. Any legal action regarding liability, notwithstanding the grounds, may only be made by the principal within the limitations of the agreement entered into with the physical distributor.

ARTICLE 4 OBLIGATIONS OF THE PHYSICAL DISTRIBUTOR

The physical distributor is obliged:

1. to accept the agreed goods at the agreed place, time and manner, accompanied by the documents relating to the carriage of the

- goods and any other documents supplied by the principal.
2. to take care of storing the goods and taking the goods out of storage.
 3. to carry out storage and have work done on the goods in areas explicitly agreed upon.
 4. to take all necessary measures regarding the goods, also those not arising directly from the physical distribution, at the principal's expense and before doing so, consulting with the principal, if possible.
 5. to insure his liability, at the principal's request, arising from the PD Agreement.
 6. at the written request of the principal and on behalf of both parties, without the possibility of recourse and stating the desired coverage, to insure the goods and to supply the principal with a copy of the insurance policy or an insurance certificate.
 7. to allow the principal and persons designated by the principal to enter areas where the goods are, on the condition that:
 - this is done in the presence of a person on behalf of the physical distributor and is requested in good time beforehand,
 - this occurs in accordance with the company rules of the physical distributor.
 8. to carry out extra activities in consultation with the principal at a rate agreed upon.
 9. before accepting goods which are visibly damaged, to ask the principal for instructions, or, if instructions cannot be obtained on time, to refuse acceptance of the damaged goods.
 10. to make use of equipment suitable for the intended purpose in carrying out the physical distribution agreement.
 11. to deliver the goods in the same condition in which they have been received, or in the agreed condition.
 12. to maintain secrecy towards third parties concerning the facts and details known to him on the basis of the PD Agreement.

ARTICLE 5 OBLIGATIONS OF THE PRINCIPAL

The principal is obliged:

1. to supply the physical distributor in good time with all the information and documents regarding the goods, as well as the handling thereof, which he knows or is deemed to know that they are important for the physical distributor, unless he may assume that the physical distributor knows or is deemed to know this information. The principal guarantees the correctness of information supplied by him.
2. to make the agreed goods available to the physical distributor at the agreed place, time and manner, accompanied by the agreed documents and/or documentation and all other documents required by law to be supplied by the principal.
3. to compensate the physical distributor, besides the agreed price for the physical distribution, for any additional costs made for additional work and/or deviating circumstances.
4. to indemnify the physical distributor or his assistants, at his first request, against claims outside the agreement from third parties regarding damage or financial loss, relating in any way to the carrying out of the PD Agreement by the physical distributor, his assistants or helpers, including claims on account of product liability.
5. to guarantee the goods and equipment made available by him to the physical distributor.
6. to oblige the addressee or consignee of the goods to report immediately visible damage at the latest at the moment of delivery, and damage which is not immediately visible as soon as possible, and in any event within 7 days of delivery, in writing to the physical distributor, failing which any (timely) claims for damage by the principal with regard to the goods shall become null and void.
7. to receive, upon termination of the Physical Distribution Agreement, all goods still present at the physical distributor on the last working day of this agreement, after payment of that which is owing or forthcoming. For that which shall be owing after termination of the Physical Distribution Agreement, the principal may suffice in supplying sufficient security. In the event the principal does not fulfil the obligation, as stated in this article, Article 17 AVC shall be accordingly applicable.
8. to maintain secrecy towards third parties with regard to the facts and information known to him to the basis of the Physical Distribution Agreement.

ARTICLE 6 DURATION AND TERMINATION OF THE AGREEMENT

1. Unless parties have agreed otherwise, the PD Agreement is valid for an indefinite period, with a period of notice of three months.
2. In the event the principal has failed accountably to fulfil his obligations pursuant to Article 5 the physical distributor may terminate the Physical Distribution Agreement without prejudice to his rights to compensation for damage, after he has given the principal in writing an ultimate period of a minimum of 14 days and the principal has not yet fulfilled his obligations after the period has lapsed. In the event the running of his business would be unreasonably disrupted by the setting of such term, the physical distributor may terminate the agreement immediately.
3. Termination of the agreement by the physical distributor with immediate effect is at any event possible, irrespective of the agreed duration of the agreement, in the event the principal:
 - discontinues his profession or company entirely or to a major extent;
 - loses the power to dispose of his capital or a part thereof;
 - loses his corporate capacity, his company is dissolved or effectively liquidated;
 - is declared bankrupt;
 - proposes an settlement outside bankruptcy or if the goods of the principal have been seized.
4. In the event the physical distributor fails accountably in the performance of his obligations during an uninterrupted period of 30 days and this failure justifies the dissolution of the agreement, the principal may terminate the physical distribution agreement, without prejudice to his rights to compensation for damage suffered to the goods, within one week after he has given the physical distributor in writing an ultimate term with an appeal to the present article and the physical distributor has not yet fulfilled his obligations after the term has lapsed. If the duration of the term within which the obligations must be fulfilled has not been explicitly been agreed upon in the PD Agreement, a term of thirty calendar days is applicable.
5. Any termination or written notification must be given by registered mail.
6. If, upon termination of the agreement, the physical distributor still has goods as meant by Article 1 paragraph 7 in his charge, the stipulations of the agreement regarding those goods remain in force up to such time as these goods have been removed from his charge in the agreed manner.

ARTICLE 7 LIABILITY OF THE PHYSICAL DISTRIBUTOR

1. **TRANSPORT TRAJECTORY:** The physical distributor accepts liability as carrier for damage to or loss of goods in his charge which have occurred during transport, also in the event he has subcontracted the transport to others. The above applies unless the physical distributor has explicitly made known beforehand that he is acting as forwarding agent and not as carrier: in that case his liability is governed by the Dutch Forwarding Conditions.
2. **DAMAGE TO GOODS FROM CAUSES OTHER THAN DURING TRANSPORT:** The physical distributor is liable for damage to or loss of goods in his care from the moment of receiving the goods until delivery unless he can prove force majeure as meant by Article 1 paragraph 6, and with due regard to the following restrictions and limitations, unless parties have agreed otherwise.
3. **CONSEQUENTIAL DAMAGE:** The physical distributor is only liable for damage to and loss of goods in his charge and therefore not for immaterial damage, loss of profit, consequential damage, however occurring, including damage caused by delay and damage caused on account of advice from the physical distributor.
4. **OPEN AIR STORAGE:** The physical distributor is not liable for damage to goods, insofar the damage is the result of the special risks in connection with storage, by order of the principal, in the open air.
5. **LIABILITY LIMIT:** Except in the case of gross negligence or wrongful act on his part, the physical distributor is not liable for anything exceeding E 3,50 per kilogram damaged or lost weight, up to a maximum of E 115.000 per occurrence or series of occurrences having the same cause.
6. **DISCREPANCIES IN STOCK:** Any discrepancies in stock must be apparent from the stocktaking, which should take place at least once per calendar year, upon termination or at the moment of termination of the agreement. Any shortage and any surplus shall be balanced against each other. In case of stock discrepancies the physical distributor may only be held liable if the shortage outweighs the surplus by an amount, in items, kilograms or liters, greater than one per cent of the amount which on a yearly basis regarding those goods is the subject of the physical distribution agreement.

Needless to say it is explicitly agreed that the present conditions also govern the liability of the physical distributor regarding stock discrepancies, including the liability limit as described in Article 7 paragraph 5.

ARTICLE 8 LIABILITY OF THE PRINCIPAL

1. The principal is liable for all damage caused by or in connection with the goods, or nature or packaging thereof, entrusted to the care of the physical distributor, in particular damage caused by the fact that the dangers, inherent to dangerous goods materialized.
2. The principal is liable for damage caused by persons representing the principal, whom the physical distributor has allowed on his premises.
3. The principal is also liable for all costs, damage, interest, fines, penalties and confiscation, including damage on account of non-clearance or tardy clearance of customs documents, which are directly or indirectly the result of the circumstance that the goods were not accompanied upon delivery for physical distribution by the required documents or were accompanied by incorrect documents, or are the result of or in any way connected to a circumstance for which the physical distributor is not liable.

ARTICLE 9 TIME BAR AND FORCLOSURE

1. Any claim made against the physical distributor, including claims arising from collection on delivery matters, is timebarred by the mere lapse of twelve months and shall be foreclosed by the mere lapse of eighteen months.
2. Limitation and expiry respectively are calculated from the day following the day on which the goods were delivered or should have been delivered, or failing that, from the day following the day on which the claim has arisen. In any case the limitation or expiry commences on the day following the day on which the agreement between parties was terminated.

ARTICLE 10 PAYMENT CONDITIONS

1. All amounts owing by the principal to the physical distributor, for whatever account, shall be paid in accordance with the agreed term or, in the absence thereof, within fourteen days of the invoice date.
2. In the event the principal does not pay any amount owing within the agreed term or, in the absence of an agreed term, within fourteen days of the invoice date, he is obliged to pay legal interest over the amount with effect from the day on which these payments should have been made up to the day of final settlement of the invoice.
3. The physical distributor is entitled to charge the principal for all necessary out-of-court and legal debt collection costs stated in paragraph 1. The out-of-court debt collection costs shall be due from the moment the principal is in default and the claim for collection has been passed on.
4. The principal relinquishes all rights to settlement of claims for payment of compensation arising from the Physical Distribution Agreement, of costs owing for any other reason regarding the physical distribution or of other costs chargeable against the goods with claims for other reasons, and the principal also relinquishes all rights to the suspension of his payment.
5. All amounts stated in paragraph 1 of this article shall be immediately due and payable and subject to settlement in the cases stated in Article 6 paragraphs 2 and 3.

ARTICLE 11 SECURITY

1. The physical distributor has the retention right in respect of monies, goods and documents he holds in his charge in connection with the physical distribution against anyone wishing the handing over thereof.
 2. With respect to the principal or the consignee the physical distributor may exercise his right of retention for that owing to him or shall be owing to him by the principal or the consignee for whatever account. He may also exercise this right for costs chargeable against the goods in case of collection on delivery.
3. The physical distributor may also exercise the right of retention stated in paragraph 2 for that owing to him by the principal in connection with previous physical distribution agreements.
4. The physical distributor may also exercise the right of retention for a provision owing to him in connection with collection on delivery, for which he does not have to accept a security.
5. In the event a dispute arises during settlement regarding the amount owed or, for the purposes of determining such, a calculation which cannot be carried out immediately, then the person claiming delivery is obliged to immediately pay the portion which parties are in agreement about and to issue security for payment of the disputed portion or the portion of which the amount has not yet been determined.
6. A right of pledge as meant by Article 3:236 of the Dutch Civil Code shall be established on all goods, documents and monies, which the physical distributor for whatever reason and whatever purpose has in his charge or shall have, for all claims which he has or shall have at the expense of the principal or the owner.
7. The sale of any pledge must be carried out in a manner stipulated by law or - in the event of mutual agreement - privately.

8. The right to sale as meant in the above paragraph implies the sale of the goods in his charge at the principal's cost in accordance with Articles 3:249 et seq. of the Dutch Civil Code and to retain all amounts owing by the principal out of the proceeds, in the event the principal fails to pay the amounts owing by him to the physical distributor, or if the physical distributor has good reason to suspect that the payment obligations shall not be met.
9. The physical distributor may have the pledged goods replaced by another equivalent security to be evaluated solely by him.
10. At the first request of the physical distributor the principal will provide security for the cargo, rights, taxes, levies, premiums and other costs the physical distributor makes or has to make on behalf of the principal. All consequences of the non (timely) fulfilment of the obligation to provide security are for the account of the principal.

ARTICLE 12 COMPETENT COURT

1. All agreements, to which these Physical Distribution Conditions apply, are subject to Dutch law.
2. All disputes emanating from or in connection with the agreement, irrespective of which general conditions are applicable to these disputes, shall be decided by the competent court of the place of establishment of the physical distributor or the competent court in Amsterdam if the place of establishment is not in the Netherlands.

ARTICLE 13 RECOMMENDED OFFICIAL TITLE

1. The present conditions can be cited as "Physical Distribution Conditions 2000" and have been listed at the Offices of the District Courts of Amsterdam and Rotterdam on 1 September 2000.
2. The Dutch text will prevail in the event of discrepancy between the Dutch text and the text in any other language.