

DUTCH FORWARDING CONDITIONS
GENERAL CONDITIONS
OF THE
FENEX (Netherlands Association for Forwarding and Logistics)

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

Scope of Application

Article 1

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 does not exclusively imply the forwarder as referred to in Book 8 of the Netherlands Civil Code. The party ordering the forwarder to effectuate operations and activities shall be considered the forwarder's client irrespective of the agreed manner of payment.
2. With respect to operations and activities effected by the forwarder such as those of shipbrokers, stevedores, carriers, insurance agents, warehousing and superintending companies, the conditions which prevail in that particular branch or industry and any other conditions stipulated shall also be applicable.
3. The forwarder may at any time declare applicable stipulations from the conditions specified by third parties with whom it has concluded contracts for the purpose of effectuating the orders accorded to it.
4. The forwarder may have its orders and/or the work connected therewith effectuated by third parties or the employees of third parties. Insofar that such third parties or their employees bear statutory liability towards the forwarder's client, it is stipulated on their behalf that in effecting the work for which the forwarder employs them, they shall be deemed to be solely in the employ of the forwarders. All the conditions with respect to non-liability and the limitation of liability and also with respect to the indemnification of the forwarder as set out herein shall apply to such entities.
5. Orders for delivery C.O.D., against a banker's draft etc. shall be deemed to be a forwarding activity.
Contracts for delivery with cash on delivery (C.O.D.) or against a banker's draft etc. shall be deemed to be a forwarding activity.

Formation of the Contract

Article 2

1. All quotations made by the forwarder are non-binding.
2. 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 which apply at that time of quotation or the concluding of the contract.

3. Upon any change in any or more of these factors, the quoted or agreed prices shall likewise be adjusted in accordance therewith and shall apply retroactively from the time when the change occurred. The forwarder is required to demonstrably prove those change(s).

Article 3

1. Where the forwarder charges an all-in or fixed rate then this rate shall be deemed to include all costs a forwarder would incur upon normal implementation of such an order.
2. Unless stipulated otherwise, all-in or fixed rates shall in any event not include: duties, taxes and levies, consular and attestation fees, costs for the preparing of bank guarantees and insurance premiums.
3. For extra services extraordinary work and work requiring an exceptional amount of time or effort, an additional reasonable amount may at all times be charged.

Article 4

1. In the case of insufficient time for loading and/or unloading - irrespective of the cause thereof - all costs resulting therefrom, such as demurrage, shall be borne by the client and this shall also apply when the forwarder has accepted without protestation the bill of lading and/or charter party from which the additional costs arise.
2. Exceptional expenses and higher wages arising whenever any condition in the shipping documents necessitates loading or unloading goods in the evening, at night, on Saturdays or on Sundays or public holidays, are not included in the agreed prices unless specifically stipulated. Any such costs shall therefore be refunded by the client to the forwarder.

Article 5

1. Insurance of any kind shall be arranged only upon specific instructions in writing and at the client's expense and risk. The risks to be covered shall be clearly stated. Mere mention of the value is not sufficient.
2. If the forwarder has taken out any insurance in its own name it shall only be bound - if so requested - to transfer its claims against the insurer to its client.
3. The forwarder shall not be accountable for the choice of insurer and the latter's solvency.
4. Where the forwarder uses derricks and any other such equipment for carrying out its orders, it shall be entitled to take out insurance at its client's expense to cover the forwarder's risk arising from the use of such equipment.

Article 6

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

Performance of the Contract

Article 7

1. If the client has not given any specific instructions with its order, the mode and transport routing shall be at the forwarder's discretion and the forwarder may at all times accept the documents customarily used by those companies which it contracts for the purpose of implementing its orders.

Article 8

1. The client shall ensure that the goods are available at the agreed place and time.
2. The client shall ensure that all documents required for receipt and dispatch and all necessary instructions are received by the forwarder in good time.
3. The forwarder shall not be obligated to but shall be entitled to enquire whether the specifications it has received are correct and complete.
4. In the absence of documents, the forwarder shall not be obligated to take receipt against a guarantee. Should the forwarder furnish a guarantee, its client shall assume any liability arising therefrom.

Article 9

1. All operations such as inspecting, sampling, taring, tallying, weighing and measuring, and receiving goods subject to appraisal by a court-appointed expert, shall take place only on the client's specific instructions and upon reimbursement of the costs thereof.
2. The forwarder shall be entitled to but not obligated to take all such measures as it deems necessary in the client's interest on its own authority and at its client's expense and risk.
3. The forwarder shall not act as an expert. It shall in no way be liable for any notification of the condition, nature or quality of the goods nor shall it be under any obligation to ensure that the shipped goods correspond to the samples.

Article 10

1. The addition of the word "approximately" allows the client the liberty to deliver 2.5% more or less.

Liability

Article 11

1. All operations and activities shall be at the client's expense and risk.
2. Without prejudice to the conditions of Article 16, the forwarder shall not be liable for any damage whatsoever unless the client can prove that the damage has been caused by fault or negligence on the part of the forwarder or the forwarder's employees.

3. The forwarder's liability shall in any event 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 damage, 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, with the maximum being 4,000 SDR per consignment.
4. The loss to be indemnified by the forwarder shall never exceed the invoice value of the goods, to be attested by the client, in default whereof the market value at the time when the damage occurred, to be attested by the client, shall apply. The forwarder shall not be liable for lost profit, consequential loss, and intangible loss.
5. If during the implementation of the order damage occurs for which the forwarder is not liable, the forwarder shall make all effort to recover the client's damage from the party that is liable for the damage. The forwarder shall be entitled to charge to the client those costs incidental thereto. If so requested, the forwarder shall waive in its client's favour its claims against third parties engaged by it for the purpose of executing the order.
6. The client 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 information, the failure to present the goods or the effecting of this in an untimely manner or other than at the agreed place and time, as well as the failure to timely supply documents and/or instructions, and any fault or negligence in general on the part of the client and the latter's employees and third parties called in or engaged by it.
7. The client shall indemnify the forwarder against third party claims with respect to the damage as referred to in the foregoing paragraph, including claims from the employees of both the forwarder and the client.
8. Even where an all-in or fixed rate has been agreed upon, the forwarder who is not a carrier shall be liable under the present conditions, though not as a carrier.

Article 12

1. Force majeure shall be deemed to cover all those circumstances which the forwarder could not reasonably avoid and consequences which the forwarder could not reasonably prevent.

Article 13

1. In the event of force majeure, the contract shall remain in force; the forwarder's obligations shall however be suspended for the duration of that period of force majeure.
2. All additional costs incurred through 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 client and shall be paid to the forwarder at the forwarder's initial request.

Article 14

1. The mere mention by the client of a time for delivery shall not be binding upon the forwarder.
2. The forwarder does not guarantee arrival times unless otherwise agreed in writing.

Article 15

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

Mandatory Law

Article 16

1. If the goods are not delivered without delay at the place of destination in the condition in which they were presented, where the forwarder itself effectuated a contract of carriage which it should have concluded with a third party, it is obliged to notify this forthwith to the client who notified it of the damage.
2. If the forwarder fails to make notification as referred to in the first paragraph and if as a result thereof it is not timely made liable as a carrier, it shall, in addition to being liable for payment for the further damage sustained by the client as a result thereof, be liable to pay compensation equal to the damages it would have had to pay if it had been timely made liable as a carrier.
3. If the goods are not delivered without delay at the place of destination in the condition in which they were presented, where the forwarder did not effectuate a contract of carriage itself which it should have concluded with a third party, it shall be obliged to inform the client forthwith as to which contracts of carriage it has entered into in order to fulfil its obligation. It is also obligated to make available to the client all documents in its possession or which it can reasonably supply that may be used to claim the damages such sustained.
4. As from the point in time at which it informs the forwarder unequivocally that it desires to exercise such rights and powers, the client shall acquire against that party with whom the forwarder has conducted business those rights and powers to which it would have been entitled if it had concluded the contract itself as a shipper. It shall be at liberty to take legal action in this matter if it submits a statement to be issued by the forwarder - or in the event that the forwarder has entered into compulsory liquidation, by the forwarder's liquidator - that a contract for the carriage thereof was concluded between it and the forwarder with respect to the goods.
5. If the forwarder fails to comply with an obligation as referred to in the third paragraph, it shall, in addition to being liable for the payment of the further damage sustained by the client as a result thereof, be liable to pay compensation equal to the compensation which the client would have received from it if it had itself implemented the contract concluded by it, less that compensation which the client may have received from the carrier.

Payment

Article 17

1. The client shall pay to the forwarder the agreed remuneration and other costs, freights, duties, etc., arising from the contract and/or these conditions, upon arrival or dispatch of the goods which are being received or forwarded. The risk of exchange rate fluctuations shall be borne by the client. The agreed remuneration and other resulting costs, freights, rights, etc., which arise from the contract and/or these conditions, shall also be due and payable if damage has occurred in the implementation of the contract.
2. If, in divergence of paragraph 1 of this article, the forwarder allows for a credit term, the forwarder shall be entitled to make an additional credit limit charge.
3. If the client does not pay the amount due immediately upon notice to that effect or, as the case may be, after the lapse of the credit term, the forwarder shall be entitled to charge statutory interest pursuant to Articles 6:119 or 6:119a of the Dutch Civil Code.
4. In the event of a cancellation or dissolution of the contract, all claims of the forwarder, including that of future claims, shall become fully due and payable forthwith and in full. All claims shall in any event be fully due and payable forthwith, if:
 - The client is involuntarily wound up, the client applies for a suspension of payment(s) or otherwise loses the unrestricted disposition over its assets;
 - The client offers a settlement to its creditors, is in default of fulfilling any financial obligation due the forwarder, ceases to trade or - where the client is a legal entity or a corporate body - if the legal entity or the corporate body is dissolved.
5. The client is by virtue of the forwarding contract and upon demand from the forwarder, required to provide security in the form of a bond with sureties for any amount for which the client is or may be indebted to the forwarder. The client is also obligated where it already has had to provide surety as related to the payable amount.
6. The forwarder shall not be obligated to provide from its own means security in the form of a bond with sureties for the payment of freight, duties, levies, taxes and/or other costs should such 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 client.
If the forwarder has provided security in the form of a bond with sureties from its own means, it may demand that the client pays that amount for which security has been provided in the form of a bond with sureties.
7. The client shall at all times be obligated to indemnify the forwarder for any amounts to be levied or additionally demanded by any public authority such in relation to the order, as well as any related fines imposed upon the forwarder. The client shall also reimburse the said amounts to the forwarder if a third party engaged by the forwarder demands payment within the scope of the forwarding contract.

8. The client 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 related to the order as a result of incorrectly charged freight rates and costs.
9. The client shall not be entitled to apply any setoff in respect of sums charged by the forwarder to the client under any contract existing between them.

Article 18

1. Cash payments shall in the first instance be deemed to have been effected towards the decrease of unsecured debts, irrespective as to whether any other instructions were given at the time of payment.
2. If legal proceedings or other means are resorted to in the event of overdue payment(s), the amount of the indebtedness shall be increased by 10%, such being administration costs, whilst the legal and other costs shall be borne by the client up to that amount paid by or due from the forwarder.

Article 19

1. With respect to all claims it has or may at any time have against the client and/or the owner, the forwarder shall have a pledge and a lien over all goods, documents and monies which it holds or shall hold in its possession, whatsoever may be the reason and the purpose thereof, as against any party requiring their delivery. If the goods are forwarded onward, the forwarder shall be entitled to collect the sum due on a subsequent delivery, or draw a bill therefor with the shipping documents appended.
2. The forwarder may also exercise the rights granted to it in paragraph 1 for that which the client was due and payable to it with respect to previous orders.
3. The forwarder is also authorised to exercise the rights granted to it by virtue of paragraph 1 for any amount(s) payable by way of cash on delivery (C.O.D.) in respect of the goods.
4. Failing payment of the amount due, the security shall be sold as provided by law or - if so agreed - by private sale.

Final Stipulations

Article 20

1. No legal or arbitration proceedings shall be taken against third parties by the forwarder unless it states its readiness to undertake this at the client's request and risk and expense.

Article 21

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

2. Each claim against the forwarder shall lapse by the mere expiry of a period of eighteen months.
3. The terms as stated in paragraphs 1 and 2 shall commence on that 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 conditions, the said terms shall commence on that day following the day of delivery with respect to claims with respect to damage to, decrease in value, or loss of the goods. The day of delivery shall be held to be that day on which the goods are delivered from the means of transport or, if they have not been delivered, that day on which they should have been delivered.
4. In the event that any public authority or third parties as referred to in paragraph 7 of Article 17 claim payment from the forwarder, the term specified in paragraph 1 of this Article shall commence on the first of the following days:
 - That day following the day on which payment is claimed from the forwarder by any public authority or third party;
 - That day following the day on which the forwarder has settled the claim against it.If the forwarder or a third party engaged by the forwarder as referred to in paragraph 7 of Article 17 has raised an objection and/or lodged an appeal, the term specified in paragraph 1 shall commence on that day following the day on which the decision on the objection and/or the appeal became final.
5. 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 - being three months – shall commence, unless the situation as referred to in paragraph 4 of this Article occurs.

Article 22

1. All contracts to which the present conditions apply shall be governed by Dutch law.
2. The place for settlement and the adjustment of damage shall be at that place where the forwarder's business is located.

Disputes

Article 23

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

Without prejudice to the conditions of the preceding paragraph, the forwarder shall have the discretion to bring before the competent Dutch court located in the forwarder's place of business claims for sums of money due and payable, where this indebtedness has not been disputed in writing by the opposing party within four weeks after the invoice date. In the event of pressing claims, the forwarder shall equally have the discretion to institute interlocutory proceedings before the competent Dutch court located in the forwarder's place of business.

2. One arbitrator shall be appointed by the Chairperson or the Vice-Chairperson of FENEX; the second shall be appointed by the Dean of the Bar Association of the district in which the aforesaid forwarder has its registered office; the third shall be appointed by mutual agreement between the two arbitrators such appointed.
3. The Chairperson of FENEX shall appoint an expert on forwarding questions; the Dean of the Bar Association shall be requested 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 opposing party is engaged.
4. The party desirous of having the dispute decided shall inform the Secretariat of FENEX hereof by registered letter or facsimile letter, stating a brief description of the dispute and of its claim and at the same time remitting the amount due as payment for the administrative costs of FENEX in an arbitration action as determined by the Board of FENEX.
A hearing shall be considered to be pending on the day of receipt of the said registered letter or facsimile letter by the Secretariat of FENEX.
5. After receipt of the above-mentioned application for arbitration, the Secretariat of FENEX shall, at its earliest opportunity, acknowledge receipt thereof and send a copy of the application to the other party, to the Chairperson of FENEX and to the Dean of the Bar Association, with a request to each of the latter two parties 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, at its earliest opportunity, 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 such appointed.

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

6. If all three arbitrators have not been appointed within two months of the application for arbitration having being lodged, upon the request of either party all of them shall be appointed by the President of the District Court within whose jurisdiction the forwarder's business is located.
7. The person appointed by the Dean shall act as Chairperson of the arbitration board. If the arbitrators are appointed by the President of the District Court, the arbitrators shall themselves decide as to which person is to function as chairperson. The place of arbitration shall be that place where the chairperson of the arbitrators is established. The arbitrators shall make their award as good equitable men, subject to their liability to observe the applicable mandatory legal stipulations. Where applicable, they shall also apply the provisions of the international transport treaties, *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 the opportunity to advance their standpoints in writing and to orally explain the same.

8. The arbitrators shall remain in office until the final award. They shall lodge their award at the Registry of the District Court within the district of which the seat of the arbitration is located, whilst 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 of money in advance for the arbitration costs; during the proceedings they may require an additional amount to be deposited. If, within three weeks of a respective request thereto, the deposit required by the arbitrators of the plaintiff has not been paid in, it shall be deemed that the plaintiff has 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 insofar as the arbitrators deem this to be reasonably necessary.

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

Article 24

1. These general conditions shall be cited as the "Dutch Forwarding Conditions". In the event where the English translation differs from the Dutch text, the latter shall prevail.

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