

## **General logistics conditions of Delta Warehousing nv**

### **1 Definitions**

In these terms and conditions, the following definitions shall apply :

- 1.1 L.D. conditions : Logistics service conditions.
- 1.2 BW : Civil Code.
- 1.3 KVBG : ABAS-KVBG-conditions for cargo handling and related activities at the port of Antwerp.
- 1.4 CEB : General conditions of freight forwarders of Belgium.
- 1.5 Logistics service agreement: The agreement whereby the Logistics Service Provider is committed to the Principal to provide logistics services.
- 1.6 Logistics services: All agreed performances of any kind relating to the handling and distribution of goods. Such as, but not limited to, receipt, entry, storage, removal, stock management, order processing, preparation for shipment, packing, repackaging, invoicing with regard to goods as well as the related exchange of information and the management thereof, customs orders, fiscal representation, ...
- 1.7 Additional activities: Assigned work not agreed upon at the conclusion of the original logistics service agreement.
- 1.8 Consignee: the person to whom the Logistics Service Provider has to deliver goods under the agreement.
- 1.9 Principal: the person who has concluded an agreement with the Logistics Service Provider.
- 1.10 Reception: the moment when the Logistics Service Provider has accepted the goods.
- 1.11 Delivery: The time at which the consignee has accepted the goods.



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- 1.12 Force majeure: All circumstances that are or should be beyond the control of the Logistics Service Provider and which humanly put him in the practical impossibility to meet his obligations.
- 1.13 Business days: All calendar days, except Saturdays, Sundays, legally recognised public holidays as well as any bridge days.

## 2 Scope of application

- 2.1 The L.D. conditions apply, unless expressly agreed otherwise in writing, to the logistics service agreement and ancillary activities, insofar as they do not conflict with mandatory law and public order.
- 2.2 All transports carried out within the framework of this logistics service agreement are subject to the provisions of the international treaties and mandatory legislation applicable to the transport in question. (CMR, supplemented by the general conditions for road transport as stated on the back of the cmr waybills insofar as they are Belgian waybills and insofar as they do not conflict with the relevant mandatory legislation, CIM, ....
- 2.3 All forwarding, customs and VAT assignments carried out under this logistics service agreement are subject to the provisions of the CEB terms and conditions and any assignment of fiscal representation is subject to the CEB contract model.
- 2.4 All stowage activities performed within the framework of a maritime transport carried out under these logistics service conditions are subject to the provisions of the KVBG conditions.

## 3 Obligations of the Logistics Service Provider

The Logistics Service Provider is obliged:

- 3.1 To perform logistics services and, where appropriate, additional work agreed with the client.



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- 3.2 To take delivery of the agreed goods at the agreed place, time and manner accompanied by the transport document and/or other documents provided by the customer and to deliver them in the same condition as they received them, or in the agreed condition.

If there is no agreed period for taking reception or delivery, these agreed activities must take place within the time which a Logistics Service Provider reasonably needs, counting from the moment that taking reception or delivery is requested. This period shall then be deemed to be the agreed period.

Receiving the goods, making any reservations on the transport document and informing the Principal about it so that they can take the necessary measures.

- 3.3 Designate one or more contact persons and declare them to the Principal.
- 3.4 If the Logistics Service Provider fails to designate one or more contacts as referred to under Article 3 paragraph 3, the one who has entered into the logistics service agreement on behalf of the Logistics Service Provider shall be deemed to be the contact.
- 3.5 Ensure that the storage and handling of goods is performed in appropriate premises, with the necessary permits where applicable. The appropriate premises are not necessarily at the official address of the head office as the storage capacity may be spread over several locations.
- 3.6 Behave with due diligence in respect of the goods and if this should be necessary for the preservation of the goods at the Principal's expense, take all measures, including those not directly arising from the provision of logistics services.
- 3.7 To insure their liability arising from the L.D. conditions with an authorised insurance company in accordance with the Insurance Control Act of 9 July 1975.
- 3.8 Only to permit the presence of the Principal or persons designated by the Principal in the rooms or premises where the goods are located but only at the latter's own risk and only during normal working hours, provided, however, that this:

- . takes place in the presence of the Logistics Service Provider;
- . was communicated and approved in advance;



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. takes place in accordance with the Logistics Service Provider's internal regulations.

3.9 To ensure the proper functioning of the equipment they use for the performance of the agreement for the provision of logistics services.

3.10 Maintain confidentiality towards third parties with respect to facts and data known to them on the basis of the logistics service agreement.

#### 4 Liability and indemnification of the Logistics Service Provider

4.1 If goods received by the Logistics Service Provider in their possible packaging are not delivered to the Principal and/or consignee in the same or in the agreed condition, the Logistics Service Provider shall be held liable for the damage and/or loss caused by this, except in case of force majeure and the further provisions in these conditions. The Principal bears the burden of proof that the damage and/or loss occurred between the time of acceptance and the time of delivery in these conditions.

4.2 The Logistics Service Provider shall not be liable for damage and loss to and of goods, to the extent that such damage/loss is due to special risks associated with open-air storage, by order of the Principal.

4.3 The liability of the Logistics Service Provider for the property damage/loss referred to in paragraph 1 shall be limited to 8.33 Special Drawing Rights (S.T.R.) per kilogram of lost or damaged goods with the absolute maximum of an amount to be further agreed between the parties at the time of entering into the logistics service agreement. Possibly with additional insurance at the Principal's expense. If no such amount has been agreed, a maximum amount of 25,000 EUR per event or series of events with one and the same cause of damage shall apply.

4.4 If the Logistics Service Provider does not perform the logistics services and/or additional activities at the agreed time or within the agreed period, manner and place they shall, without prejudice to the provisions of paragraph 1 of this article, be bound to still perform these activities as soon as possible and at no additional cost to the Principal, in the agreed manner.

If in addition the Principal has incurred costs in relation with the fact that the logistics service and/or additional activities were not performed in the agreed manner, time and place, the Logistics Service Provider shall be liable for these costs up to a maximum



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amount to be agreed at the time of entering into the logistics service agreement. If such an amount has not been agreed, the liability of the Logistics Service Provider for these costs shall not exceed EUR 500 per event.

A death, illness of the driver, oversleeping of the driver, traffic jams, waiting hours, accident and the like shall be considered as force majeure and shall not be considered as a cause of a late delivery.

- 4.5 The Logistics Service Provider is not liable for damage resulting from information and orders provided by persons other than those referred to in Article 3 paragraph 3.
- 4.6 If the Logistics Service Provider repeatedly fails to meet its substantial obligations, the Principal may, without prejudice to their right to compensation for damages as described in paragraphs 1.2.3 and 4 of this article, terminate the logistics service agreement after they have notified the Logistics Service Provider in writing of a period of 30 days and if the Logistics Service Provider has still not met their obligations at the expiry of this period. For compensation of the damage resulting from this cancellation the Logistics Service Provider shall owe at most an amount to be determined at the time of entering into the logistics agreement.
- 4.7 Apart from the liability specified in this article, the Logistics Service Provider is not liable for any damage other than the goods themselves, unless the damage was caused intentionally.
- 4.8 Any damages, losses and/or stock differences will be evaluated once a year. In case of a positive difference, no compensation will be requested.

In case of a negative difference, no compensation will be paid if this difference is less than 2.5% of the total annual volume treated.

If there is a piece-rate, the 2.5% will also be applied to the piece-rate. If a rate based on weight has been agreed, the 2.5% will be applied to the weight handled.

In the event that 2.5% will nevertheless be exceeded, the Logistics Service Provider will pay to the Principal a compensation equal to the actual value of the lost/damaged product in excess of 2.5%.

- 4.9 The Logistics Service Provider may proceed to the sale of the goods without waiting for instructions from the cargo interest if the perishable nature or the condition of the goods justifies it or if the storage costs are disproportionate to



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the value of the goods. The value of the goods is the manufacturing cost or, failing this, the current market price or, failing this, the usual value of goods of the same quality.

They may also proceed with the sale in case of surrender of the goods by the Principal.

In the other cases, they may also cause the sale to be made if they have not received other instructions from the cargo interest within a reasonable time whose execution can reasonably be demanded.

If the goods were sold in application of the present article, the proceeds of the sale will have to be put at the disposal of the cargo interest, after deduction of the costs taxing the goods. If these costs are higher than the proceeds of the sale, the provider of logistics services will be entitled to the difference.

The method of dealing in case of sale is determined by the law and customs of the place where the goods are located.

In all cases, in the case of perishable goods or goods whose cost of storage is out of proportion to the value of the goods, a simple notice of sale will be addressed to the cargo interest.

If the latter does not respond immediately, the sale may proceed.

In case of non-perishable goods, a simple notice of sale will also be addressed to the cargo interest.

If the latter does not respond within 15 days, the sale may proceed.

## 5 Obligations of the Principal.

The Principal shall be obliged:

5.1 To designate one or more contact persons and declare them to the Logistics Service Provider.

5.2 If the Principal fails to designate one or more contact persons as referred to in article 5 paragraph 1 of these conditions, the person who signed the logistics service agreement on behalf of the Principal shall be deemed to be the contact person.

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5.3 To provide in due course to the Logistics Service Provider all information regarding the goods and their handling.

For dangerous goods, the Principal is obliged to provide or communicate to the logistics service provider all documents and instructions as stated in the conventions and regulations in this regard such as ADR, ADN, IMDG, .....

The Principal is responsible for all costs and damages the Logistics Service Provider would suffer as a result of the inaccuracy or deficiency of the information or documents mentioned above.

He is also responsible for any damage to the environment, damage or personal injury the Logistics Service Provider would suffer as a result of insufficient information regarding the nature of the goods.

5.4 To inform the Logistics Service Provider of the permits needed to carry out their activities.

5.5 To submit the agreed goods to the Logistics Service Provider at the agreed place, time and manner, accompanied by a transport document and the other documents required by or under the law.

5.6 In addition to the agreed price for the logistics services, reimburse the costs incurred by the Logistics Service Provider with respect to the additional activities, as well as the costs, as referred to in Article 3 paragraph 6, within the set payment period.

5.7 To indemnify the Logistics Service Provider against claims of third parties with respect to damage caused directly or indirectly by the goods, an act or omission by the Principal, his subordinates, as well as other persons whose services the Principal uses.

5.8 To guarantee the equipment provided by him to the Logistics Service Provider.

5.9 Upon termination of the logistics service agreement the Principal is obliged to take receipt of the goods still held by the Logistics Service Provider no later than the last working day of that agreement, this after payment of all that is or will be due. For what will be due after termination of the logistics service agreement the Principal may suffice with the provision of sufficient security.



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- 5.10 To observe confidentiality towards third parties with respect to the facts and data known to him on the basis of the logistics service agreement.
- 5.11 To accept any adjustment of rates in respect of incurring expenses and/or bearing costs (including new taxes) that are unprecedented at the time of entering into this agreement and that the Principal would also have had if the Principal were carrying out the activities specified in this agreement on its own account.
- 5.12 Pay the cost of disposal and recycling of packaging and waste resulting from the provision of services at cost price.

## 6 Liability of the Principal

- 6.1 The Principal shall be liable for all damages and costs caused by persons and/or goods that the Logistics Service Provider has had to allow on their premises and/or in their facilities on the part of the Principal in accordance with Article 3 paragraph 9 of these conditions.
- 6.2 The Principal shall not be liable for damage resulting from information and orders provided by or to persons other than those referred to in Article 5(1).
- 6.3 If the Principal does not communicate the information and documents referred to under Article 5 par. 3 of these conditions in due time, or does not make the agreed goods available at the agreed time or within the agreed period, manner and place, accompanied by the required documents as referred to under Article 5 par. 5 of the conditions, he is held to still perform these activities as soon as possible, free of charge and in the agreed manner for the Logistics Service Provider. If the Logistics Service Provider has in addition incurred costs in relation with the fact that the Principal has failed to meet its obligations as referred to under Article 5 paragraphs 3 and 5 of these conditions, the Principal shall be liable for these costs up to a maximum of 30,000 EUR per event.
- 6.4 If the Principal repeatedly fails to meet his obligations the Logistics Service Provider can, without prejudice to their right to compensation for damages, terminate the logistics service agreement, after they have set a deadline in writing to the Principal and if the Principal has still not met his obligations at the expiry of this deadline. By way of compensation of the damage resulting from this termination the Principal shall owe a maximum amount to be agreed at the time of entering into the agreement.





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6.5 Unless expressly agreed otherwise in writing in accordance with Article 3(7) of the present conditions, the Principal shall insure the goods inter alia against fire, storm and hail, water damage, labour disputes and attacks, electricity hazards, smoke, theft, vehicular collision, lightning, explosion, aircraft crash, flooding, .... including waiver of recourse against the logistics service provider and all other third parties. Moreover, the Principal shall notify its fire insurer(s) of this waiver of recourse and shall be strongly committed to the insurer(s) recognising this waiver of recourse.

In any case, he will also be responsible for the collection and handling of the goods damaged by one of the causes mentioned in article 6 paragraph 5. He shall also pay all costs caused by the collection and handling of the damaged goods as well as all costs howsoever arising therefrom, such as the costs of cleaning or remediation of the premises or installations, without prejudice to what is stated in article 6 paragraph 1.

## 7 Statute of limitations

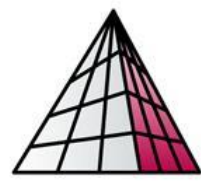
7.1 All claims to which the service agreement gives rise, including those arising from a cash on delivery clause, shall lapse one year from the day following the day on which the Principal learns of the fact or event giving rise to the claim.

## 8 Terms of payment

8.1 All amounts due by the Logistics Service Provider and the Principal, of whatever nature, shall be paid within a period of 30 days after the invoice date.

8.2 In the absence of payment of the invoice on the due date, the amount due will accrue interest ipso jure and without formal notice at the interest rate determined by the BCE, determined by the law of 2 August 2002 in implementation of European Directive 2000/35/CE of 29 June 2000, increased by seven per cent and rounded up to the higher half per cent.

8.3 If the debtor remains in default within a period of fifteen days after a formal notice has been sent by e-mail and/or by registered letter, the amount due will be further increased by 10% with a minimum of EUR 125 and a maximum of EUR 4,000 by way of fixed compensation for additional administrative costs, debt monitoring and disruption of commercial operations.



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8.4 Except in the situations required by art. 1289 et seq. BW, recourse to set-off of claims for payment of indemnities resulting from the logistics service agreement, of what is due for other reasons with respect to the logistics service or of further costs affecting the goods against claims for other reasons shall not be permitted.

8.5 In case of default or cessation of activities on the part of the Principal or the Logistics Service Provider, all amounts referred to in paragraph 1 of this article shall be immediately due and payable and with the exception of bankruptcy, as the case may be, also subject to compensation if:

- The Principal or the Logistics Service Provider have been granted suspension of payment.
- The Principal or the Logistics Service Provider:
  - o Offer a composition to their creditors
  - o Are substantially in breach of their obligations
  - o Terminate the logistics service agreement
  - o Cease to carry on their business or - in the case of a legal entity or company - if the latter is dissolved

## 9 Assurances

9.1 The Logistics Service Provider has a right of retention on goods and documents it holds in relation to the logistics service towards anyone who demands delivery thereof.

9.2 Towards the Principal or the consignee the Logistics Service Provider can only exercise the right of retention for what is or will be due to them with respect to the logistics service. They can also exercise their right for what is due on the goods by way of cash on delivery.

9.3 The Logistics Service Provider can also exercise the right of retention granted in paragraph 2 of this article for what is still due to them by the Principal in relation to previous agreements for logistics services.

9.4 If, when settling the invoice, a dispute arises over the amount due or if a calculation is required for its determination which cannot be carried out quickly, the Principal claiming delivery shall be obliged to pay immediately the part on which the amounts due are agreed and to provide security for the payment of the part disputed by them or of the part whose amount has not yet been established.



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9.5 The Logistics Service Provider may also exercise the right of retention for a commission due to them in connection with a cash on delivery, for which it does not have to accept security.

9.6 All goods, documents and monies, which the Logistics Service Provider holds on account of the logistics service agreement, serve as a collateral for all claims they have against the Principal.

9.7 If the Principal is in default to pay the sums due by him to the Logistics Service Provider and in respect of which the Logistics Service Provider have a right of retention and/or a right of pledge under the preceding paragraphs, the Logistics Service Provider shall have the right, after having obtained the consent of the judge, to sell the goods stored with them at the expense of the Principal and to pay themselves from the proceeds all the sums due with respect to the goods, all this in accordance with the Act of 05.05.1872.

9.8 The Logistics Service Provider can have the collateral replaced by an equivalent security at their sole discretion if they so request.

## 10 Applicable law/jurisdiction

10.1 All agreements, to which the logistics service conditions apply, will be subject to Belgian law.

10.2 Any dispute regarding the validity, interpretation or execution of an agreement to which the logistics service conditions apply shall fall within the competence of the courts having territorial jurisdiction over the Logistics Service Provider's registered office, unless there is an explicit agreement between the Principal and the Logistics Service Provider whereby the disputes are subject to arbitration.

## 11 Miscellaneous provisions

11.1 The non-application of one or more provisions of these terms and conditions does not affect the applicability of the other provisions. Both parties shall immediately take the necessary steps to replace the relevant provision with a valid one that approximates the original intention of the parties.

11.2 The fact that one of the parties would not respond to the other party's non-compliance with the contractual provisions could never be considered by the other party as a final deviation from the provision(s) in question.

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12 Deposit

12.1 These conditions, drawn up by BELOTRA/logistics cell of FEBETRA and the Royal Association of Flow Controllers, were filed at the registry of the Chamber of Commerce and Industry of Antwerp and Waasland on 27 November 2003.

13 Entry into force

13.1 Current logistics service conditions take effect from 27 November 2003.