

Vos Logistics - General Terms and Conditions

Article 1. Applicability

1. These General Terms and Conditions (hereinafter called: the 'General Terms and Conditions') apply to Vos Logistics Beheer B.V., Vos Logistics Nederland B.V., Vos Logistics International B.V. and their subsidiary companies as well as to all their affiliated companies, hereinafter in the General Terms and Conditions all jointly referred to as 'Vos Logistics'.
2. Unless expressly agreed otherwise in writing beforehand, the General Terms and Conditions apply to all offers and/or confirmations of orders issued by Vos Logistics as well as to all agreements with Vos Logistics and to all activities carried out by another subsidiary company and/or company affiliated with Vos Logistics and/or third parties.
3. Once a contract has been concluded under applicability of the General Terms and Conditions, the General Terms and Conditions without exception also apply to future offers and confirmations of orders to be issued by Vos Logistics and to future agreements with Vos Logistics. The General Terms and Conditions are then considered to be known and accepted between parties.
4. When Vos Logistics as the occasion arises does not invoke the provisions of the General Terms and Conditions, this does not mean that Vos Logistics has thus waived its right to invoke the provisions of the General Terms and Conditions in other cases.
5. The applicability of any general (purchase) terms and conditions of the principal or a party who joins the agreement concluded between Vos Logistics and the principal (hereinafter called: 'contracting party') is expressly rejected, even if they are referred to in the order issued to Vos Logistics.

Article 2. Branch terms and/or conditions applied by Vos Logistics

1. In addition to the General Terms and Conditions the latest versions of the following general branch terms and/or conditions apply:
 - a. To national road transport: the *Algemene Vervoercondities* (General Transport Conditions) (AVC 2002);
 - b. To national and international tank and bulk road transport: the *Algemene Tankvervoercondities voor het Vervoer van Bulkgoederen over de Weg* (General Tank Transport Conditions for Bulk Road Transport), issued by sVa/Stichting Vervoeradres;
 - c. To international road transport: the CMR Convention, supplemented by the AVC 2002 and - for tank and bulk transport - supplemented by the *Tankvervoercondities* referred to above;
 - d. To forwarding activities: the *Nederlandse Expeditievoorwaarden* (Dutch Forwarding Terms and Conditions) - the General Conditions of the FENEX;
 - e. To storage and deposits: the *Algemene Opslagvoorwaarden* (General Storage Conditions), issued by sVa/Stichting Vervoeradres;
 - f. To Physical Distribution activities: the *Physical Distribution Voorwaarden* (Physical Distribution Conditions), issued by sVa/Stichting Vervoeradres;
 - g. To cleaning of materials and equipment instructed to - and carried out by - Vos Logistics: the *Algemene Tankreinigingsvoorwaarden 2001* (General Terms and Conditions of Tank Cleaning) of the Association of Tankcleaning Companies Netherlands.
2. In so far as any provision of the general branch terms and/or conditions referred to above is inconsistent with a provision of the General Terms and Conditions, this provision of the General Terms and Conditions shall prevail (this applies in particular to the jurisdiction clause of article 12 section 2 where exclusive jurisdiction is conferred on the Court of Rotterdam), with the exception of the provisions of the branch terms and/or conditions concerning the liability of Vos Logistics that prevail over the provisions concerning liability of article 4 of the General Terms and Conditions with the understanding that when Vos Logistics should prove to be liable for an amount exceeding € 1,000,000.- on the basis of these branch terms and/or conditions, in all cases the liability of Vos Logistics, with the exception of intent or conscious recklessness on the part of the management of Vos Logistics, is nevertheless limited to that amount of € 1,000,000.- per event or series of events with the same cause.

Article 3. Execution of the order by Vos Logistics

1. Vos Logistics is entitled to use alternatives and/or to use another subsidiary company and/or a company affiliated with Vos Logistics and/or third parties if this is required for the correct and timely performance of the orders issued to Vos Logistics, either with or without prior permission from the principal. The principal is obligated to provide all necessary assistance to Vos Logistics so that Vos Logistics can correctly fulfil its obligations towards the principal.
2. Vos Logistics is entitled to charge additional costs to the principal if such unforeseen additional costs were necessary for the correct and timely performance of the orders issued to Vos Logistics.
3. If the principal, when Vos Logistics invokes the provision of section 1 of this article, does not provide due assistance, or otherwise hinders Vos Logistics or makes it impossible for Vos Logistics to fulfil its obligations towards the principal, Vos Logistics shall not be responsible for any damage, irrespective of its nature and/or cause.

Article 4. Liability

1. With respect to the activities to which the branch terms and/or conditions referred to in article 2 apply, the liability of Vos Logistics with due regard for the provisions in article 2 section 2 of the General Terms and Conditions, shall be determined by those branch terms and/or conditions. However, if in any case the (scope of the) liability has not been determined, subject to article 4 section 3 Vos Logistics shall not be liable for any damage unless the principal or contracting party can prove that the damage was caused by a failure in the fulfilment of the obligations towards the principal or contracting party attributable to Vos Logistics by law.
2. Under no circumstances shall Vos Logistics be liable for damage resulting from the non-performance or late performance of its obligations as a result of force majeure. Force majeure is among other things understood to be, but not exclusively limited to: war/riots/sabotage, government measures (national or international), labour unrest (in the broadest sense), theft/burglary/fire, outage of facilities (like water and energy), natural events, tunnel blockades and ferries that do not sail, regardless of how they came into being and where they took place.
3. When during or as a result of the unloading of the goods damage of any kind is caused to things belonging to the principal, contracting party and/or third parties, other than damage to or loss of the goods themselves, or if financial losses are caused to that principal, contracting party and/or third parties, Vos Logistics shall not be liable for such damage, with the exception of intent or conscious recklessness on the part of the management of Vos Logistics. (Financial) losses also include losses caused by death or injury.
4. With the exception of intent or conscious recklessness on the part of the management of Vos Logistics, the liability of Vos Logistics is always and in all cases limited to a maximum of € 1,000,000.- per event or series of events with the same cause.

Article 5. Hazardous substances

1. If the goods are hazardous according to the regulations concerning the road transport of hazardous substances, the ADR and the applicable national regulations, such as the VLG (*'Regeling vervoer over land van gevaarlijke stoffen'*) (Regulation on the land transport of dangerous substances) apply to such transport. If Vos Logistics suffers damage as a result of the non-fulfilment of obligations by the principal or contracting party as prescribed in (one of) these regulations on hazardous substances, the principal or contracting party is obligated to compensate Vos Logistics for this damage in full.
2. The principal and contracting party are obligated to compensate Vos Logistics for the damage that the hazardous substances or their handling have caused to Vos Logistics, except in so far as this damage resulted from acts or omissions on the part of the management of Vos Logistics, carried out with either the intent to cause that damage or recklessly and with the knowledge that that damage would probably result therefrom. Damage is also understood to include damage to third parties, which damage Vos Logistics is obligated to compensate; damage is also understood to include damage caused by death or injury as well as any type of financial losses.

Article 6. Indemnification and Himalaya clause

1. Subject to article 6 section 2 the principal and contracting party are obligated to indemnify and hold harmless Vos Logistics against all claims from third parties with respect to damage caused by the performance of the activities by Vos Logistics except in so far as this damage was caused by acts or omissions on the part of the management of Vos Logistics, carried out with either the intent to cause that damage or recklessly and with the knowledge that that damage would probably result therefrom. Damage also includes damage caused by death or injury as well as any type of financial losses.
2. At all times and in all cases the principal and contracting party are obligated to indemnify Vos Logistics against the claims from third parties referred to in article 6 section 1 in so far as the total amount of these claims exceeds € 1,000,000.- per event or series of events with the same cause, except in so far as this damage was caused by acts or omissions on the part of the management of Vos Logistics, carried out with either the intent to cause that damage or recklessly and with the knowledge that that damage would probably result therefrom.
3. When representatives of Vos Logistics as well as persons whose services are used by Vos Logistics to perform the agreement are held liable, these persons can invoke any limitation and/or exemption of liability that Vos Logistics can invoke on account of the General Terms and Conditions (including the branch terms and/or conditions referred to in article 2) or any other legal or contractual provision.

Article 7. Prices

In the event of changes in the cost price factors after the agreement has been concluded, Vos Logistics is entitled to increase the agreed price accordingly. Vos Logistics shall inform the principal of any price increases in writing.

Article 8. Payment and proof of delivery

1. The principal has to pay the price invoiced by Vos Logistics within 14 days after the invoice date. Vos Logistics does not accept any (unilateral) terms of payment stipulated by the principal, unless expressly confirmed by Vos Logistics in writing.
2. If the principal has not disputed or returned the invoice within 14 days of receipt, Vos Logistics considers the invoice undisputed.
3. The price quoted by Vos Logistics is in any case owed immediately after delivery of the cargo at the place of destination. At all times a proof of delivery or (CMR) waybill can be requested from Vos Logistics. Under no condition shall the fact that the principal does not have proof of delivery or (CMR) waybill give the principal a right to suspend performance with respect to its indebtedness of the price.
4. The principal is not entitled to set off the price against any claim he believes to have on Vos Logistics and/or to suspend payment.
5. If the principal has not paid the price to Vos Logistics within the term of payment referred to in section 2, the principal shall be in default without any prior notice of default being required.
6. If the principal has defaulted in accordance with section 5, then from the day on which the default commences until the day of payment in full to Vos Logistics the principal shall owe the statutory commercial rate of interest on the basis of article 6:119a jo. 6:120 section 2 *Burgerlijk Wetboek* (Dutch civil code). The principal also owes to Vos Logistics the judicial and extrajudicial costs incurred by Vos Logistics in order to keep the principal to its (payment) obligations, which extrajudicial costs are set at 12% of the claimed amount.

Article 9. Right of pledge and right of retention

1. Towards anyone who requires their handing over, Vos Logistics has a right of pledge and a right of retention to all goods, documents and monies that Vos Logistics has or shall have in its possession on account of the agreement, regardless of the destination of the goods referred to above, for all claims of Vos Logistics towards the principal or contracting party.
2. Vos Logistics can also exercise the rights mentioned under section 1 for what is still owed to it by the principal or contracting party on account of earlier agreements.

3. If the principal fails to pay the claim, the sale of the collateral shall take place in the context of the right of pledge invoked by Vos Logistics on the basis of section 1 in the way prescribed by law or privately, if the parties reach agreement on this.

Article 10. Dissolution

If the principal or contracting party is and remains in default to observe any obligation resting with it towards Vos Logistics or in case of bankruptcy, suspension of payments or liquidation, Vos Logistics has at its option the right to dissolve the agreement in whole or in part without any notice of default or judicial intervention being required, without prejudice to its right to claim compensation.

Article 11. 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 12. Applicable law and competent court

1. The legal relationship between Vos Logistics and its principal and/or contracting party is subject to the law of the Netherlands.
2. All disputes between the parties shall be settled exclusively by the competent court in Rotterdam.

Article 13. Language

These General Terms and Conditions have been drawn up in the Dutch and in the English language; in the event of any difference in content or purport the Dutch text shall prevail.

Deposited by Vos Logistics with the Chamber of Commerce in Brabant.
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