

# **Physical Distribution Conditions**

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# Physical Distribution Conditions

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# **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 Freightage 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 litres, 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.