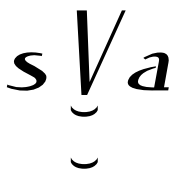


Physical Distribution Conditions



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Physical Distribution Conditions

Article 1 Definitions

In these conditions

1. **p.d.-conditions** means general physical distribution conditions.
2. **AVC** means the most recent version of the Algemene Vervoerscondities 2002 [General Conditions of (Road) Transport 2002 in the Netherlands], established by sVa / Stichting Vervoeradres and deposited at the secretariats of the regional courts in Amsterdam and Rotterdam.
3. **BW** means Burgerlijk Wetboek [Civil Code] of the Netherlands.
4. **CMR** means Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956), as supplemented by the 1978 Protocol.
5. **physical distribution contract** means the contract by which the physical distributor commits himself opposite the principal to perform physical distribution.
6. **physical distribution** means an interrelated series of activities, such as transport, acceptance, warehousing, delivery, stock supervision and control, order execution, order assembling, preparation for dispatch, invoicing, in respect of cargoes, as well as the related data exchange and management, in so far as agreed between the physical distributor and his principal.
7. **supplementary activities** means activities ordered, but not agreed

- when concluding the original physical distribution contract.
8. **addressee** means the person (or entity) to whom the physical distributor must deliver by virtue of the contract.
 9. **acceptance** means the moment when the physical distributor has accepted cargoes.
 10. **delivery** means the moment when the addressee has accepted the cargoes.
 11. **force majeure [force major]** means circumstances in so far as a diligent physical distributor has been unable to avoid and in so far as such physical distributor has been unable to prevent the consequences thereof.
 12. **working days** means all calendar days except Saturdays, Sundays, and generally recognised Christian and national holidays.

Article 2 **Scope of application**

1. The p.d.-conditions apply to the physical distribution contract and supplementary activities in so far as they do not conflict with mandatory law.
2. In so far as not provided for in these p.d.-conditions, the CMR as well as the not with CMR conflicting provisions of Book 8 title 13 BW and the AVC apply to physical distribution and the supplementary activities.

Article 3 **Obligations of the physical distributor**

The physical distributor is obliged to:

1. perform physical distribution and the supplementary activities.

2. accept the cargoes agreed at the agreed location, at the agreed time and in the agreed manner with the transport document and other documents provided by the principal, and to deliver these cargoes in the condition as in which accepted or in the condition agreed.
Failing an agreed period of acceptance or delivery the activities must be carried out within the time which a diligent physical distributor needs, counting from the moment receipt or delivery have been asked for. This period will be the agreed period.
3. designate one of more contact persons and to mention these to the principal.
4. execute stocking and other activities in the space as agreed or otherwise fit for the purpose.
5. take all necessary measures with regard to the cargoes, including measures not directly related to the physical distribution, for account of the principal, and to consult, if possible, the principal on them in advance.
6. insure his third party liability and, on request of the principal but for his own account, his liability deriving from the p.d.-conditions with a reliable insurer, and to provide a copy of the insurance policy to the principal at his request.
7. to insure the cargoes at the written request of the principal and on his behalf, showing also the desired coverage, with a reliable insurer, and to provide a copy of the insurance policy to the principal at his request.
8. to allow access to the space where the cargoes are for the principal and persons designated by him, provided:
 - the physical distributor being present,
 - a request has been made in advance,
 - the visit conforms to the in-house rules of the physical distributor.

9. not displace the cargoes in stock unless the execution of the physical distribution contract or maintenance/repairs of the space concerned necessitate such displacement.
10. ask for instructions from the principal prior to accepting cargoes apparently damaged. If no such instructions can be obtained in due time, the physical distributor is entitled to refuse accepting the cargoes damaged.
11. guarantee the adequacy of materials used in the execution of the physical distribution contract.
12. respect confidentiality vis-à-vis third parties of facts and data known to him through the physical distribution contract.

Article 4

Liability of the physical distributor

1. If cargoes and their packing are not delivered in the same or the agreed order and condition as in which they were accepted by the physical distributor, the latter is liable for this material damage, unless force majeure, and without prejudice to further relevant provisions in these conditions. The onus of proving material damage is on the principal.
2. The physical distributor is not liable for damage to cargoes in so far as such damage has been caused by stocking in the open air on order of the principal.
3. The liability of the physical distributor for material damage as meant in subpara 1 is limited to 8 1/3 special drawing rights (SDR) per kilogram missing or damaged cargoes, subject to an absolute maximum of an amount as to be agreed by the parties when concluding the physical distribution contract. If such amount has not been included, the maximum amount of € 453.780 applies for each event or series of events of one same cause of damage.

4. If the physical distributor does not complete the physical distribution and/or supplementary activities at the agreed time (or within the agreed period) and location and in the agreed manner, he is, without prejudice to subpara 1 of this article, obliged to still complete these in the agreed manner and at no additional cost of the principal.
If the principal has incurred additional cost owing to the failure of the physical distributor to complete the physical distribution and/or supplementary activities in the agreed manner, at the agreed time and location, then he is liable for these cost to a maximum amount as agreed when concluding the physical distribution contract. If no such maximum has been agreed, the physical distributors liability for these cost shall amount € 681 per event.
5. If the physical distributor omits to designate one or more contact persons as meant in art. 3.3, the signatory of the physical distribution contract on behalf of the physical distributor shall be considered the contact person.
6. The physical distributor is not liable for damage caused by information and orders given by or to other persons than those meant in subpara 5 of this article.
7. If the physical distributor fails repeatedly to fulfill his obligations, then the principal may, without prejudice to his right to indemnity as determined in subparas 1, 2, 3 and 4 of this article, terminate the physical distribution contract after giving written notice of termination and at the end of which the physical distributor has yet not fulfilled his obligations.
As indemnity of the losses caused by such termination, the physical distributor is indebted an amount as agreed when concluding the physical distribution contract.
8. Except for the liability laid down in this article and in articles 21 and 23.4 of CMR, the physical distributor is not liable for any damage but to the cargoes.

Article 5
Obligations of the principal

The principal is obliged:

1. to designate one or more contactpersons and to mention their names to the physical distributor.
2. to furnish all information concerning the cargoes and their treatment as he can or as he ought to and which he knows or ought to know to be essential to the physical distributor, unless he may assume that the physical distributor knows or ought to know the information.
The principal guarantees the correctness of information furnished by him.
3. to put the agreed cargoes at the disposal of the physical distributor at the agreed location and time and in the agreed manner, together with a transport document and other documents which the law requires from the principal.
4. to pay, within the credit period agreed, the agreed price for the physical distribution, and all cost spent by the physical distributor in performing the supplementary activities, and to cover the latter's expenses as meant in art. 3.5.
5. to safeguard the physical distributor against all third party damage claims lodged owing to acts and omissions by the principal, his servants and all other persons whose services the principal had made use of.
6. to vouch for material which he has put at the disposal of the physical distributor.
7. at termination of the physical distribution contract, to accept all his objects still in possession of the physical distributor, not later than the last working day of the validity period of the contract, and after payment of any amount still due or to become due.

For amounts which may become due after termination of the contract, the principal may satisfy by providing sufficient security.

8. to observe confidentiality vis-à-vis third parties of all facts and data of which he is aware through the physical distribution contract.

Article 6 **Liability of the principal**

1. The principal is liable for all damage caused by the persons and objects which the physical distributor in conformity with article 3.8 of these conditions is obliged to give access to his premises.
2. If the principal omits to designate one of more contact persons as meant in article 5.1 of these conditions, the signatory on behalf of the principal of the physical distribution contract is considered the contact person.
3. The principal is not liable for damage caused by information and instructions furnished by or to other persons than those meant in subpara 2 of this article.
4. If the principal does not furnish timely information concerning cargoes and their treatment as meant in article 5.2 of these conditions, or does not supply the agreed cargoes at the agreed time (or within the agreed period), in the agreed manner and at the agreed location, accompanied by the documents required as meant in article 5.3 of these conditions, then he is obliged to still perform all this as soon as possible, free of charge and in the agreed manner. If the physical distributor has incurred costs as a result of the failure of the principal as meant in article 5.2 and 3 of these conditions, then the principal is liable for these costs to a maximum to be agreed when concluding the physical distribution contract. If such maximum has not so been agreed, the principals liability amounts to a maximum ammount € 681 per event.

5. If the principal fails to meet repeatedly his obligations, the physical distributor may, without prejudice to his right to indemnity, terminate the physical distribution contract after having put the principal on ultimate written notice and if the principal has not yet met his obligations at the expiry of the notice.
As indemnity of the damage caused by such termination the principal is indebted an amount due as to be agreed when concluding the physical distribution contract.
6. If the principal does not meet his obligations as meant in article 5.7, article 17 AVC applies analogously.

Article 7 **Time limitation**

1. All claims based on the physical distribution contract, including all claims stemming from a cash-on-delivery condition, are subject to the time limitation of twelve months.
2. The time limitation period starts from the day after the day when the cargoes were delivered or ought to have been delivered, failing which from the day after the day when the claim first originated.

Article 8 **Credit conditions**

1. All amounts due by the physical distributor and by the principal, whatever their cause, are payable within the agreed period, or such a period failing within fourteen days from the invoice date.
2. If the principal or the physical distributor does not pay within the agreed period or such period failing within fourteen days from the invoice date, he is liable to pay the legal interest according to art. 6:119 BW with effect from the day when the payment should have been made to and including the day of payment.

3. The physical distributor or the principle is entitled to invoice all necessary extrajudicial and judicial cost made to collect the amount meant in subpara 1. The extrajudicial cost are due from the moment when the principal or the physical distributor fails to pay and the claim for payment has been transmitted to a third party to collect.
4. An appeal for compensation of claims for payment of amounts arising from the physical distribution contract, of amounts due occasioned otherwise by the physical distribution or of amounts related to the cargoes with claims based otherwise is not permitted.
5. In any event, all amounts meant in subpara 1 of this article may be claimed forthwith, and - in deviation of subpara 4 - may be susceptible to compensation if:
 - a. the principal or the physical distributor are in a state of bankruptcy or have been granted suspension of payment;
 - b. the principal or physical distributor
 1. offers an arrangement to his creditors;
 2. essentially fails to meet his obligations;
 3. gives notice of the physical distribution contract under art. 4.7 or art. 6.5;
 4. ceases the operation of his enterprise or - in case of a legal personality or a limited company - if that one is dissolved.

Article 9 **Security**

1. The physical distributor has a right of lien on goods and documents in his possession in connection with the contract of physical distribution against any person who demands delivery of same. This right does not fall to him if, at the moment of receipt of the goods for physical distribution, he had reason to doubt the right of the principal to make the goods available for physical distribution to him.

2. The right of lien applies likewise to what burdens the goods by way of cash on delivery as well as to the cash on delivery fee to which he is entitled, in regard to which he is not obliged to accept security.
3. The physical distributor may also exercise the right of lien against the principal for reason of what is yet due to him in connection with previous contracts of physical distribution.
4. Likewise, the physical distributor may exercise the right of lien against the consignee who in this capacity became a party to previous contracts of physical distribution for reason of what is yet due to him in connection with these contracts.
5. If when settling the invoice a dispute arises over the amount due or if there is need for a calculation to be made for the determination of what is due that cannot be made quickly, then the one who demands delivery is obliged to pay forthwith the part which the parties agree is due and to put up security for the part in dispute or the amount of which has not yet been fixed.
6. All the goods, documents and currency values in possession of the physical distributor in connection with the contract of physical distribution serve him as pawn for all claims which he has against the principal.
7. Except for the cases in which the principal is in a state of bankruptcy or in which he has been granted suspension of payment or in which he has been declared subject to a debt reorganisation scheme for natural persons, the physical distributor has never the right to sell the objects in pawn without permission by the court of justice in accordance with art.3:248 para 2 BW.

Article 10
Competent court of justice

1. All contracts to which the p.d.-conditions apply are subject to Dutch Law.
2. Unless para 3 of this article applies, all disputes which might arise in connection with the physical distribution contract, except those belonging to the competency of the county court (kantongerecht) and except those in appeal, are judged by the competent court in the statutory domicile of the physical distributor. However, if the statutory domicile of the physical distributor is outside the Netherlands, then the Rotterdam court of justice is competent.
3. All disputes arising between the parties in connection with the present agreement, or in connection with further consequential agreements may be solved in accordance with the Reglement of the Stichting Arbitrage voor Logistiek (rules of the foundation arbitration in logistics), domiciling at The Hague, the Netherlands.

Clarification:

On the initiative of the entrepreneurial organisations EVO, Koninklijk Nederlands Vervoer, Nederlandsch Binnenvaartbureau and Transport en Logistiek Nederland, all of them cooperating within sVa / Stichting Vervoeradres, a court of arbitration has been established, named Stichting Arbitrage voor Logistiek (foundation arbitration in logistics), domiciling at The Hague, The Netherlands, tel.: 00 31 70-3066767, telefax 00 31 70-3512025, e-mail: sal@tmsbv.nl, internet: www.arbitrage-logistiek.nl

If the parties wish to avail themselves of the services of this arbitration court for the solution of disputes arising from the Physical Distribution Contract, they should insert the following arbitration clause in their contract of this kind.

All disputes arising between the parties in connection with the present agreement shall be solved in accordance with the Rules of the Stichting Arbitrage voor Logistiek (foundation arbitration in logistics), domici-

ling at The Hague, the Netherlands. Insofar as the present agreement concerns international transport of goods by road, the arbitrators will apply the CMR Treaty accordingly.

**EXAMPLE
PHYSICAL DISTRIBUTION CONTRACT**

The undersigned :

limited company

domiciled

for the purpose of the present contract legally represented by

.....,

hereinafter referred to as "principal"

and

limited company

domiciled

for the purpose of the present contract legally represented by

.....,

hereinafter referred to as "physical distributor",

whereas the principal wants to entrust the physical distribution of (part of) his merchandise to the physical distributor,

have agreed as hereafter :

Article 1
General

The principal gives order to the physical distributor and the latter accepts the order to provide physical distribution of the following commodities:

.....

.....

Article 2
Description of the commodities

The description of the cargoes is as follows :

commodity

weight

value

dimensions

(particular) characteristics

Article 3
Volume

Except for particular circumstances, the principal offers an average of parcels/cubic meter/pallets/liters (other units)* per week/month/year to the physical distributor. In the event of any deviation from this provision, the principal and the physical distributor shall consult each other concerning the consequences.

Article 4

Detailed description of the physical distribution activities

The physical distributor commits himself to perform the following activities :

1. Transport. The following instructions/provisions apply :

.....

2. Stocking and related activities. The following instructions/provisions apply :

.....

3. Stock supervision and control. The following instructions/provisions apply :

.....

4. Reconditioning. The following instructions/provisions apply

.....

5. Sundry activities. The following instructions/provisions apply

.....

Article 5

Prices

The rates are:

- 1.1 for all physical distribution activities the total amount of €,... per (unit to be completed),

or

1.2 for transport activities:

- a. domestic transport €,... per (unit to be completed)
- b. international transport €,... per (unit to be completed) for stocking and other activities enumerated in art. 4
€,... per (unit to be completed)

- 2. During the validity of the present contract, the amounts may/may not* be modified.
- 3. In the positive alternative hereabove, modification takes place only once per annum in the course of the month Price adjustments shall be based on the cost developments as established by NEA, EVO and the physical distributor.
- 4. All prices are exclusive of VAT.

Article 6
Contactpersons

Contactpersons in the sense of art. 3.3 and 5.1 of the physical distribution conditions attached are :

- on the side of the principal
- on the side of the physical distributor

Article 7
Location

The location (space), in the sense of art.3.4 of the physical distribution conditions attached, where stocking and other activities within the framework of the physical distribution contract must be performed is the following:

.....

Article 8
Insurance

Conform to art.3.6 + 7 of the physical distribution conditions, the physical distributor is obliged to take insurance as follows :

1. an insurance against third party liability;
- *** a liability insurance based on the physical distribution conditions attached;
- *** a cargo insurance

Article 9
Duration of the contract

1. The present contract covers a period of years and enters into force on
2. At expiry as per subpara 1 of this article, the present contract is renewed, each time again, by tacit agreement, for years, unless either party gives notice of termination. In such event, a notice period of month(s) must be observed. Notice of termination must be given by registered mail.

Article 10
Liability system

The parties accept/deviate from* the liability system as per the physical distribution conditions**.

In the event of such deviation the physical distributors liability is as under:
the limitation in the sense of:

art.4.3 is €

art.4.4 is €

art.4.7 is €

art.6.4 is €

art.6.5 is €

Article 11
Arbitration

Parties wish/do not wish* to have disputes arising in connection with the present agreement solved in arbitration in accordance with art. 10 para 3 of the Physical Distribution Conditions.

Article 12
Physical distribution conditions

To the exclusion of any other general conditions, the physical distribution conditions as attached are part of and apply to the present contract in so far as it does not explicitly deviates from them. A copy of these conditions has been attached hereto and is considered to constitute part of the present agreement.

date and place

signed
the principal

signed
the physical distributor

- * delete the non-applicable
- ** as published by sVa / Stichting Vervoeradres
- *** tick where appropriate