

FORWARDING CONDITIONS

GENERAL CONDITIONS CARIBBEAN ALL CARGO CURACAO N.V. (CACC)

Applicability

Article 1.

1. These general conditions shall apply to any form of service which CARIBBEAN ALL CARGO CURAÇAO N.V. (hereafter the forwarder) shall perform. The party, either a natural or juristic person, ordering the forwarder to carry out operations and activities shall be considered the forwarder's principal, regardless of the agreed mode of payment.
2. With respect to the operations and activities, such as those of shipbrokers, stevedores, carriers, insurance agents, warehousing and superintending firms etc. which are carried out by the forwarder, the conditions customary in the particular trade, or conditions stipulated to be applicable, shall also be applicable.
3. The forwarder may at any time declare applicable provisions from the conditions stipulated by third parties with which he has made contracts for the purpose of carrying out the orders given to him.
4. The forwarder may have his orders and/or the work connected therewith carried out by third parties or the servants of third parties. In so far as such third parties or their servants bear statutory liability towards the forwarder's principal, it is stipulated on their behalf that in doing the work for which the forwarder employs them they shall be regarded as solely in the employ of the forwarders. All the provisions (interalia) regarding non-liability and limitation of liability and also regarding indemnification of the forwarder as described herein shall apply to such persons.
5. Instructions for delivery C.O.D., against banker's draft etc., shall be deemed to be forwarding work.
6. The forwarder may refer to these conditions by the name of 'Forwarding Conditions' and/or 'General Conditions' and/or 'Payment Conditions'. In case the English translation differs from the Dutch text, the latter will prevail.

Contracts

Article 2.

1. All quotations made by the forwarder shall be without any obligation on his part and have a limited validity of 30 days after date of issuance.
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 applying at the time of quotation or contract.
3. Upon any change in any or more of these factors the quoted or agreed prices shall likewise be altered in accordance therewith and retroactively to the time such change occurred.

Article 3.

1. If the forwarder charges all-in or fixed rates, as the case may be, these rates shall be deemed to include all costs that in the normal procedure of handling the order are for the account of the forwarder.
2. Unless provided otherwise, all-in or fixed rates shall not include at any rate: duties, taxes and levies, consular and attestation fees, cost of preparing bank guarantees and insurance premiums.
3. For work of a special nature, unusual job or work requiring a special amount of time or effort, an additional reasonable amount may at all times be charged.

Article 4.

1. In the event of loading and/or unloading time being inadequate -- regardless of the cause thereof -- all costs resulting therefrom, such as demurrage, etc., shall be borne by the principal, even when the forwarder has accepted the bill of lading and/or charter party from which the additional costs arise without protestation.
2. Expenses of an exceptional nature and higher wages arising whenever carriers by virtue of any provision in the shipping documents load or unload goods in the evening, at night, on Saturdays or on Sundays or public holidays, shall not be included in the agreed prices, unless specifically stipulated. Any such costs shall therefore be refunded by the principal to the forwarder.

Article 5

1. Insurance of any kind shall be arranged only upon specific instructions in writing and at the principal's expense and risk. The risks to be covered shall be clearly stated. A mere statement of the value is not enough.
2. If the forwarder has taken out any insurance in his own name he shall be bound -- if so requested -- only to transfer his claims against the insurer to his principal.
3. The forwarder shall not be responsible as regards the choice of the insurer and the latter's solvency.
4. When the forwarder uses derricks and any other such equipment for carrying out his orders he shall be entitled to take out insurance at his principal's expense to cover the forwarder's risk arising through the use of such equipment.

Article 6.

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

Performance of the contract

Article 7.

If the principal has not given any specific instructions with his order, the mode and route of transport shall be at the forwarder's option. The forwarder may at all times accept the documents customarily used by the firms with which he contracts for the purpose of carrying out his orders.

Article 8

FORWARDING CONDITIONS

GENERAL CONDITIONS CARIBBEAN ALL CARGO CURACAO N.V. (CACC)

1. The principal shall ensure that the goods are tendered at the agreed place and time.
2. The principal shall ensure that the documents required for receipt and for dispatch, as well as the instructions, are in the forwarder's possession in proper time.
3. The forwarder shall not be obliged but shall be entitled to investigate whether the specifications stated to him are correct and complete.
4. In the absence of documents, the forwarder shall not be obliged to receive against a guarantee. Should the forwarder furnish a guarantee, he shall be saved harmless by his principal from and against all the consequences thereof.

Article 9.

1. All operations such as inspecting, sampling, tarring, tallying, weighing, measuring etc., and receiving goods subject to appraisal by a court-appointed expert shall take place only on the principal's specific instructions and upon reimbursement of the costs thereof.
2. Nevertheless, the forwarder shall be entitled, but not obliged, on his own authority and at his principal's expense and risk to take all such action as he deems necessary in the principal's interest.
3. The forwarder shall not act as an expert. He shall in no way be liable for any notification of the state, nature or quality of the goods; nor shall he be under any obligation to ensure that the shipped goods correspond with the samples.

Article 10.

The addition of the word "approximately" shall allow the principal the freedom to supply 2.5% more or less than submitted.

Liability

Article 11.

1. All operations and activities shall be entirely at the principal's expense and risk.
2. The forwarder's liability shall in all cases be limited to FIFTY United States Dollars (USD 50.00) per occurrence or series of occurrences with one and the same cause of damage, unless specifically otherwise agreed upon in writing or the principal shall prove that gross negligence on the part of the forwarder or the latter's servants has caused the damage.
3. In case of proven gross negligence on the part of the forwarder or the latter's servants, the loss to be indemnified by the forwarder shall never exceed the invoice value of the goods, to be proved by the principal, in default whereof the market value -- to be proved by the principal -- at the time when the damage has occurred shall apply. The forwarder shall not be liable for lost profit, consequential loss, and immaterial damages such as (physical and/or psychological) pain and suffering.
4. If during the execution of the order damage occurs for which the forwarder is not liable, the forwarder shall make efforts to recover the principal's damage from the party that is liable for the damage.
5. The forwarder shall be entitled to charge to the principal the cost incidental thereto. If so requested, the forwarder shall waive in his principal's favor his claims against third parties engaged by him for the purpose of carrying out the order.
6. The principal 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 data, the failure to tender the goods or not doing so in time at the agreed place and time, as well as the failure to supply -- or to do so in time -- documents and/or instructions, and fault or negligence in general on the part of the principal and the latter's servants and third parties called in or engaged by him.
7. The principal shall indemnify the forwarder against third-party claims connected with the damage referred to in the foregoing paragraph, such third parties including servants of both the forwarder and the principal.
8. Even where all-in or fixed rates, as the case may be, have been agreed, the forwarder, who is not a carrier, shall be liable under the present conditions and not as a carrier.

Article 12.

To be regarded as force majeure are all circumstances, which the forwarder could not reasonably avoid, and the consequences of 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 the event of force majeure.
2. All additional costs caused by 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 principal.

Article 14.

1. The mere statement by the principal of a time for delivery shall not be binding upon the forwarder.
2. The forwarder does not guarantee arrival- and departure times, unless otherwise agreed upon in writing.

Article 15.

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

Payment

Article 16.

FORWARDING CONDITIONS

GENERAL CONDITIONS CARIBBEAN ALL CARGO CURACAO N.V. (CACC)

1. The principal shall pay to the forwarder in cash the freights, duties, remuneration, etc., upon arrival or dispatch of goods which are being received or forwarded respectively. The risk of exchange rate fluctuations shall be borne by the principal.
2. If, in contravention of paragraph 1 of this article, the forwarder allows deferred payment, the forwarder shall be entitled to make an additional credit limit charge.
3. If the principal does not pay the amount due immediately upon notice to that effect or, as the case may be, after lapse of the term of deferred payment, the forwarder shall be entitled to charge an interest percentage of 1,5% per month or part thereof.
4. The principal shall by reason of the forwarding contract and upon demand by the forwarder furnish security for any amount for which the principal is or may be indebted to the forwarder.
5. The forwarder shall not be obliged out of his own means to furnish security for the payment of freight, duties, levies, taxes and/or other costs should the same be demanded. All the consequences of non-compliance or of failure to comply forthwith with a demand to furnish security shall be borne by the principal. If the forwarder has furnished security out of his own means, he may demand that the principal pay the amount for which security has been furnished forthwith.
6. The principal shall at all times be obliged to indemnify the forwarder for any amounts to be levied or additionally demanded by any authority in connection with the order, as well as any related fines imposed upon the forwarder. The principal shall also reimburse the said amounts to the forwarder if a third party called in by the forwarder demands payment within the framework of the forwarding agreement.
7. The principal shall at all times indemnify the forwarder for any amounts that may be claimed or additionally claimed from the forwarder in connection with the order as a result of incorrectly charged freight rates and costs.
8. The principal shall not be entitled to apply any set-off in respect of sums charged by the forwarder to the principal under any contract existing between them.

Article 17.

1. Cash payments shall be deemed in the first place to have been made on account of non-preferential debts, regardless of 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, the amount of the indebtedness shall be increased by 15% for collection expenses, increased by applicable taxes, while all the legal and other costs shall be borne by the principal.
3. The forwarder shall be at liberty to bring before the Court of First Instance of the Netherlands Antilles claims for sums of money due payable, the indebtedness of which has not been disputed in writing by the opposing party within four weeks after the invoice date.

Article 18.

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

Final provisions

Article 19.

No legal or arbitration proceedings shall be taken against third parties by the forwarder unless he states his readiness to take the same at the principal's request and expense.

Article 20.

1. Without prejudice to the provisions of paragraph 5 of this Article, all claims shall be barred by the mere lapse of a period of nine months.
2. All claims against the forwarder shall be barred by the mere lapse of a period of eighteen months.
3. The terms mentioned in paragraphs 1 and 2 shall commence on the 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 provisions, the said terms shall commence on the day following the day of delivery with respect to claims regarding damage to, decrease in value or loss of the goods. The day of delivery shall be understood to be the day on which the goods are delivered from the means of transport or, if they have not been delivered, the day on which they should have been delivered.
4. In case any public authority or third parties as referred to in paragraph 6 of Article 16 claim payment from the forwarder, the term mentioned in paragraph 1 of this Article shall commence on the first of the following days:
 - the day following the day on which payment is claimed from the forwarder by any public authority or third party;
 - the day following the day on which the forwarder has settled the claim existing against him.
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 - of three months commences, unless the situation referred to in paragraph 4 of this Article occurs.

FORWARDING CONDITIONS

GENERAL CONDITIONS CARIBBEAN ALL CARGO CURACAO N.V. (CACC)

Article 21.

1. The law of the Netherlands Antilles shall govern all agreements to which the present conditions apply.
2. The place for settlement and adjustment of damage shall be in the Netherlands Antilles, on the island where the forwarder's business is situated. Parties choose domicile on the island where the forwarder's business is situated.

Disputes

Article 22.

1. The Court of First Instance of the Netherlands Antilles shall in case no amicable settlement through negotiations can be reached between parties, decide all disputes, which may arise between the forwarder and the other party.
2. A dispute shall exist whenever any of the parties declares this to be so.