

General Terms and Conditions of Freight Forwarding

ARTICLE 1

Subject Matter

- 1.1 These Terms and Conditions of Freight Forwarding shall apply to any business relationship between the Principal and the Freight Forwarder, Forwarder SK s. r. o., ID No. (IČO): 48 250 481, having its registered office at Puškinova 9, 085 01 Bardejov.
- 1.2 Any diverging provisions of the forwarding contract shall prevail over the General Terms and Conditions of Freight Forwarding (GTC). Provisions of GTC shall prevail over the Commercial Code and the Civil Code, but shall neither be contrary to mandatory provisions thereof nor peremptory provisions of other legislation.
- 1.3 Definitions for the purposes of GTC:

- The **Freight Forwarder** means Forwarder SK s. r. o., ID No. (IČO): 48 250 481, having its registered office at Puškinova 9, 085 01 Bardejov. In freight forwarding, the Freight Forwarder undertakes to, under a **forwarding contract, arrange for** carriage of articles (goods) from a certain place to another for its customer, the Principal, in its own name and on behalf of the Principal (Commercial Code, s 601(1)). Forwarder SK s. r. o. may also undertake to arrange for, fix, or render ancillary services related to the carriage. The main business contract on the domestic and the international market is the **contract of sale** made by and between the buyer and the seller. International contracts of sale usually include INCOTERMS.

- The **Principal** is any person (legal or natural) that/who places an order for the Arrangement of Carriage, or, as the case may be, also for other carriage-related ancillary services with the Freight Forwarder, and enters with the Freight Forwarder into the forwarding contract and other respective contracts on ancillary services.

- The **Arrangement of Carriage** means carriage effected by the Freight Forwarder on the basis of a contract of carriage of articles concluded between the Freight Forwarder (acting as the consignor) and the Carrier.

- The **Carrier** means any business that agrees to transport an article from the place of departure to the place of destination for remuneration under a contract of carriage made with the consignor. The Carrier shall **carry out** the transport.

ARTICLE 2

Entering Into, Establishment, and Form of the Forwarding Contract

2.1 The Freight Forwarder's rights and responsibilities shall be established primarily by way of a valid forwarding contract. Under the forwarding contract, Forwarder SK s. r. o. agrees to **arrange for** carriage of articles from a certain place to another in its own name and on behalf of the Principal, and the Principal agrees to pay remuneration to the Freight Forwarder (Commercial Code, s 601(1)).

2.2 Conclusion and establishment of the forwarding contract are governed by the provisions of the Civil Code, ss 43–51, and of the Commercial Code, ss 269–275. Establishment of the forwarding contract requires timely and unqualified acceptance of a draft contract. Any draft described as a “forwarding order” or an “order for forwarding services” shall also be considered a draft contract. The draft contract shall be **definite and addressed to**

a certain party. Services to be arranged by the Freight Forwarder, particularly the arrangement of a specific type of carriage, shall be defined precisely in the draft contract, which shall be addressed to a specific forwarding agent.

2.3 In accordance with these General Terms and Conditions of Freight Forwarding, **written form is required** for the forwarding contract to be valid unless otherwise agreed by the parties. Written form means that the contract is drawn up as a document constituting a uniform technical unit and the parties' manifestations have the form of exchange of documents, correspondence, telegraphic and telex messages, and electronic communication.

ARTICLE 3

Cooperation of the Parties to the Forwarding Contract

3.1 The Principal and the Freight Forwarder shall cooperate closely in the performance of the forwarding contract. They shall fulfill their contractual obligations in due form and time.

3.2 If the Principal fails to fulfill its obligations in due time, the Freight Forwarder cannot be in default in relation to the Principal, and vice versa.

3.3 The Freight Forwarder, which shall, in reciprocal performance, fulfill its obligations in advance (conclude a contract with the Carrier), has the right to withhold performance until such time when reciprocal performance (the payment of remuneration) is provided or guaranteed to the Freight Forwarder if performance by the Principal is compromised due to circumstances that were unknown at the time of conclusion of the contract.

ARTICLE 4

Fundamental Rights and Responsibilities of the Freight Forwarder

4.1 The Freight Forwarder shall:

4.1.1 Arrange, in its own name and on behalf of the Principal, the agreed carriage of articles from the specified place of departure to the specified place of destination for the Principal, and, upon Principal's request, issue a receipt to confirm the takeover of the goods the carriage whereof the Freight Forwarder shall arrange;

4.1.2 Take over the goods from the Carrier at the station or port of destination; take over stored goods from the storer if authorized under the forwarding contract;

4.1.3 Carry out its obligations under the forwarding contract with professional care and ensure that interests of the Principal are satisfied in a quality and cost-effective manner;

4.1.4 Follow any instructions issued by the Principal within the terms of the forwarding contract while taking care to protect interests of the Principal, which, in particular, implies:

- the obligation to notify the Principal of evident incorrectness of any instructions issued by the Principal;

- in case of any risk of delay, proceed in such a way as to protect, as far as possible, interests of the Principal (if known to the Freight Forwarder) even without the instructions;

4.1.5 Take due care of any articles (goods) entrusted to the Freight Forwarder by the

Principal, as well as any articles taken over from the Principal, or any money cashed on delivery or otherwise collected for the Principal;

4.1.6 Determine, or arrange for checking of, the amount of goods handed over to, or taken over from, the Carrier, but only if agreed so with the Principal;

4.1.7 **Have the consignment of goods insured against risks during carriage** where stipulated in the forwarding contract; the insurance policy shall be taken out by the Freight Forwarder either in its own name and on behalf of the Principal, or in the name of the Principal;

4.1.8 Report any damage to the Principal which is about to occur or has already occurred in relation to the goods immediately after learning about such damage;

4.1.9 Archive any documents obtained in the performance of the forwarding contract for Principal's needs for a reasonable or agreed period of time while maintaining confidentiality.

4.2 The Freight Forwarder is entitled to:

4.2.1 Request a written order for the Arrangement of Carriage (forwarding order) if the contract is not in writing (Commercial Code, s 601(2));

4.2.2 Organize the carriage, including the choice of the means of carriage and of the Carrier, unless otherwise agreed;

4.2.3 Request a reasonable advance payment from the Principal to cover any expenses associated with the performance of the forwarding contract;

4.2.4 Request the payment of remuneration under the contract;

4.2.5 Request reimbursement for any necessary and useful costs incurred by the Freight Forwarder in connection with the fulfillment of obligations arising from the forwarding contract, as well as for any costs efficiently incurred in the fulfillment thereof;

4.2.6 Request that the Principal correct any incorrect instructions or complete any incomplete instructions and, simultaneously, request correct data pertaining to the content and nature of the consignment;

4.2.7 Request an express order for insurance of the consignment and specification of the type of insurance;

4.2.8 Request an express order for payment on delivery or other money collection operation;

4.2.9 Employ the services of another forwarding agent (inter-forwarder) for the Arrangement of Carriage while being answerable to the Principal as if the carriage were arranged by the Freight Forwarder;

4.2.10 Deviate from the Principal's instructions if such deviation is required to protect the Principal's interests, particularly in case of risk of delay.

ARTICLE 5

Fundamental Rights and Responsibilities of the Principal

5.1 The Principal shall:

5.1.1 Issue a written order to the Freight Forwarder for the Arrangement of Carriage if the forwarding contract is not in writing and if requested by the Freight Forwarder;

5.1.2 Upon notice by the Freight Forwarder, forthwith issue necessary instructions to the Freight Forwarder in writing if the goods are at immediate risk of substantial damage or in case of knowledge of the inability of the company to pay for the Arrangement of Carriage; otherwise the Freight Forwarder has the right to sell the goods;

5.1.3 Provide correct data to the Freight Forwarder pertaining to the content and nature of the consignment, as well as any other circumstances relevant to the conclusion of the contract of carriage, namely information about the type and quantity of goods, brand names and identification marks, the method of packaging, dimensions and weight of individual pieces, information on whether the consignment contains any dangerous goods as defined in the ADR agreement, etc.; advise the Freight Forwarder in a timely manner of any public regulations (import and export permits, transit permits, customs regulations, etc.) if possibly unknown to the Freight Forwarder;

5.1.4 Report any change of the address of loading and/or unloading, and of the weight or dimensions of the consignment at least 12 hours prior to the agreed time and date;

5.1.5 Ensure adequate and necessary conditions, including any required equipment (forklifts; quays; drive-up ramps), staff, and good access for the Carrier's vehicle for loading and/or unloading of the goods; in case of breach of this obligation resulting in a delay (waiting time) for the Carrier in excess of three (3) hours, the Freight Forwarder is entitled to a contractual penalty of €40 for each and every started hour of the additional delay of each vehicle;

5.1.6 Pay the agreed remuneration to the Freight Forwarder in a timely manner;

5.1.7 Upon Freight Forwarder's request, provide a reasonable advance payment to the Freight Forwarder to cover any expenses associated with the fulfillment of the Freight Forwarder's obligation;

5.1.8 In a timely manner reimburse the Freight Forwarder for any necessary, useful, and efficiently incurred costs; pay to the Freight Forwarder the remuneration and reimburse the Freight Forwarder for any costs incurred in return carriage of the goods if the consignee refuses to accept the goods and in case of a so-called futile drive, when the goods have not been handed over to the Carrier (loaded) at all and/or when the Carrier has been prevented from leaving the place of loading of the goods due to reasons on the part of the Principal or third parties. The amount of remuneration in such case shall be the same as in the case of transport to the consignee. The Principal has a similar obligation if the Principal revokes the order for the Freight Forwarder to collect payment on delivery or carry out any other money collection operation, or if the collection of a respective amount fails despite the Freight Forwarder's effort, and the consignment has to be returned;

5.1.9 Expressly direct the Freight Forwarder to insure the goods if such insurance is desired, but not stipulated in the forwarding contract.

5.2 The Principal is entitled to:

5.2.1 Request the Arrangement of Carriage from the Freight Forwarder in accordance with the terms of the forwarding contract and these General Terms and Conditions of Freight Forwarding;

5.2.2 Within the scope of the forwarding contract, give more detailed instructions to the Freight Forwarder as regards the manner, type and route of carriage, and the designation of the consignee;

5.2.3 Instruct the Freight Forwarder to stop the Carrier from executing the carriage and return the consignment provided that the consignee has not yet accepted the consignment, or that the right of disposal over the consignment has not been transferred to a person whom the Freight Forwarder is not authorized to give orders to;

5.2.4 Request from the Freight Forwarder other ancillary services related to the Arrangement of Carriage or execution of the same if such services are stipulated in the forwarding contract or separately;

5.2.5 Terminate the forwarding contract in case of substantial breach thereof by the Freight Forwarder or in case that the Principal notifies the Freight Forwarder of the termination at least 24 hours prior to the scheduled time of loading of the goods on condition of paying a compensation to the Freight Forwarder for lost profit due to the aborted transport.

ARTICLE 6

Freight Forwarder's Liability for Damage and the Extent of Liability

6.1 If the Freight Forwarder breaches an obligation arising from the forwarding contract or any other commercial contract, or breaches a non-contractual obligation provided for by the Commercial Code, the Freight Forwarder shall compensate the other party for damage caused by the breach unless it is proven that the breach has been caused by circumstances excluding liability (Commercial Code, ss 373, 374 and 757). The breach of an obligation on the part of the Freight Forwarder, the occurrence of damage, and the causal connection between the breach and the damage shall be proven by the aggrieved party (the Principal). The existence of any circumstance excluding liability (grounds for liberation) shall be proven by the Freight Forwarder.

6.2 Where the Freight Forwarder is liable for damage, **its obligation to compensate for the damage shall be limited as follows:**

6.2.1 In case of damage to the goods that occurs in the course of carriage or in any handling operations related to the carriage (such as loading, transshipment, or unloading), damages shall be limited to 8.33 XDR per 1 kg of shipping weight of the damaged or destroyed goods, but not exceeding 10,000 XDR per claim.

6.2.2 In case of damage caused by late delivery of the goods, the Freight Forwarder's liability for damages shall be limited by the agreed freight rate.

6.3 In the case of goods of high value or special interest of the Principal in the delivery, a higher limit may be stipulated in the forwarding contract for the Freight Forwarder's liability.

6.4 Lost profit and indirect damage shall not be compensated for.

ARTICLE 7

Principal's Liability for Damage and the Extent of Liability

7.1 The same principle of liability shall apply to the Principal's liability for damage and the extent of such liability as stipulated in Article 6.1 above for the Freight Forwarder's liability.

7.2 The provisions of Articles 6.2 and 6.3 above shall not apply to the Principal's liability.

7.3 The Principal shall, if liable, compensate the Freight Forwarder also for lost profit and indirect damage.

ARTICLE 8

Ancillary Services Provided by the Freight Forwarder

8.1 In addition to the Arrangement of Carriage of goods, the Freight Forwarder may often provide to the Principal ancillary and additional services related to the carriage of goods. Such services are subject to an agreement with the Principal, either laid down directly in the forwarding contract or elsewhere. Insurance of consignments belongs to such services in particular.

ARTICLE 9

Invoicing and Payment Method

9.1 The basis for payment of the Freight Forwarder's monetary claims shall be an invoice issued by the Freight Forwarder payable within 14 days of its delivery to the Principal (**unless otherwise agreed by the parties**), assuming that a domestic delivery takes three (3) days and an international delivery ten (10) days.

9.2 The Principal shall pay any financial obligation (invoice) at its own risk and expense to the Freight Forwarder's business (current) account in the bank specified in the invoice or in the forwarding contract. Any financial obligation paid by the Principal via a bank transfer shall be discharged when the amount paid has been credited to the Freight Forwarder's bank account. If the Principal pays any financial obligation by post, such obligation shall be discharged upon payment of the amount to the Freight Forwarder. In case of cash payment in person in exceptional circumstances, the Principal shall fulfill its financial obligation at its own risk and expense at the registered office of the Freight Forwarder.

9.3 If the Principal is in arrears with the fulfillment of its financial obligation, the Principal shall, for each day of the delay, pay to the Freight Forwarder a contractual penalty amounting to the current interest rate at the time of the delay.

ARTICLE 10

Securing of Contractual Obligations

10.1 Contractual Penalty

The parties may agree on a contractual penalty in the forwarding contract to secure the obligations under the contract, which penalty represents lump sum damages. The contractual penalty shall be claimable in the event of breach of the contractual obligation which it secures, regardless of whether the entitled party has suffered damage or not. The penalty clause shall be made out in writing, define the secured obligation, and specify the amount of penalty (details in the Civil Code, ss 544–545, and the Commercial Code, ss 300–302).

10.2 Lien

To secure all its claims against the Principal, the Freight Forwarder is entitled to a lien over the consignment while the consignment is with the Freight Forwarder. The lien shall be exercised by self-help retention of the goods. The Freight Forwarder shall notify the Principal forthwith, but no later than within three (3) days, of such retention. The Freight Forwarder shall take care of the retained goods and protect the same against damage, destruction, or loss. The Principal shall pay the costs of care and protection of the goods. The goods may be used only with the consent of the debtor.

ARTICLE 11

Final Provisions

11.1 Place of Performance

Due fulfillment of obligations of the parties to the forwarding contract requires that the obligations be fulfilled at the registered office or place of business of the Freight Forwarder which the order or forwarding order has been addressed to unless it follows from the nature of the obligation that it may or shall be fulfilled at another place.

11.2 Repudiation of the Contract

The forwarding contract may be repudiated solely in the cases provided for in the forwarding contract, these General Terms and Conditions of Freight Forwarding, the Commercial Code (ss 344–354), or another act. Unilateral repudiation of the forwarding contract without any legal justification is not permitted. The parties to the contract may, however, agree on compensation for repudiation.

11.3 Statute of Limitations

11.3.1 Rights arising from damage to transported articles and from delayed delivery in relation to the Freight Forwarder and to the Carrier shall be statute-barred after a period of one (1) year. In the case of rights arising from damage or loss of the entire consignment, the limitation period starts to run from the date of scheduled delivery to the consignee, and in the case of other rights from the date of actual delivery. The general limitation period of four (4) years shall apply to any deliberately inflicted damage.

11.3.2 The general limitation period of four (4) years shall apply to other rights of the Freight Forwarder and the Principal.

11.3.3 Other limitation issues are regulated by Commercial Code ss. 387–408.

11.4 Governing Substantive Law

11.4.1 In the case of domestic forwarding services, the forwarding contract shall always be governed by the law of the Slovak Republic.

11.4.2 In the case of international forwarding services, the forwarding contract shall also be governed by the law of the Slovak Republic unless the parties to the contract expressly choose the law of another country.