

GENERAL CONDITIONS

Application

1. All activities and any business undertaken or services performed by the Forwarder as freight forwarder, carrier, warehouse operator, ship agent, husbandry agent, ship broker, clearing agent as well as all additional and ancillary activities and services offered, undertaken and carried out shall exclusively be governed by these General Conditions (hereinafter called GC), unless they should be held contrary to the provisions of a mandatory law.

Activities of the Freight Forwarder

2. A distinction is made between four fields of activity:
 1. The Forwarder as an Intermediary or Agent In this function the Forwarder acts purely as an intermediary or Agent. For the account of his customers, he concludes contracts with carriers, shipping lines, airlines, forwarders, customs agents, warehousing companies, stevedores and other logistics providers.
 2. The Forwarder as a Carrier In the cases listed below, and in no others, the Forwarder has the status of a Carrier: - If he carries out transport orders with his own trucks and equipment. - If he issues a transport document of his own containing a delivery undertaking, such as a through bill of lading (Multimodal Transport Document) etc.
 3. The Forwarder as Warehouse Operator The Forwarder shall act as Warehouse Operator if a separate contract of warehousing is concluded with the customer and the goods are stored in his own premises, yards or warehouses.
 4. The Forwarder as a Provider of other services (customs clearance, logistics, etc.) These may be directly or indirectly connected with transport, or unconnected therewith.

Offers

3. Offers shall cease to be valid if not accepted within 30 days after being issued.

Placing of Orders

4. The order shall be transmitted to the Forwarder in writing or by electronic means. If it is transmitted orally or by telephone, the customer shall bear the risks of incorrect or incomplete transmission until the Forwarder has received written confirmation.
5. The order shall contain all the data required for carrying it out properly, such as information relating to goods subject to regulation (e.g. hazardous goods) and goods that require special handling.
6. The text of documents attached to the order shall not be deemed to constitute a part of the order, unless the customer expressly designates them as such.
Special Provisions
7. **(Examination)** The Forwarder shall carefully examine the orders placed with him; however, he shall not be obliged to verify the contents of transport containers or shipments, or to check weights or dimensions. If any ambiguities come to the notice of the Forwarder, he shall clarify them as soon as possible with the customer.
8. **(Delivery times)** Guarantees of delivery times are in general excluded, unless agreed upon in advance and in writing. In such a case, they must at least state the latest time of delivery and the agreed surcharge to be paid by the customer.
9. **(Interest in delivery)** Agreements which set aside limits on the amount of liability must be in writing. The agreement must at least state the maximum amount of liability and the surcharge payable by the customer.
10. **(Origin marks)** If the true destination of the goods is not to be known to the consignor, or their origin to the consignee, the Forwarder must be informed of this in writing. The Forwarder shall remove the origin marks only if requested to do so in writing.
11. **(Valuable goods)** The customer must designate valuable goods (goods that require special treatment as a result of their value) as such in his order.
12. **(First loading/last unloading)** Insofar as there are no agreements to the contrary, the first loading of the means of conveyance and the transport containers is the responsibility of the consignor, and the last unloading of the same is the responsibility of the consignee. If the driver assists in the first loading or last unloading, or performs this handling operation alone at the express request of the consignor or consignee, the driver shall be deemed auxiliary personnel of the consignor or consignee.
13. **(Transport insurance)** The Forwarder shall arrange transport insurance only at the express written request of the customer. The function of the Forwarder is limited to the procurement of suitable transport insurance. If the instructions of the customer are simply to arrange for transport insurance, the Forwarder shall take out transport insurance «against all risks». If this is not possible, or if the desired extent of cover is not clear, the Forwarder shall clarify the matter with the customer.
14. **(Storage)** If the Forwarder accepts an order for the storage of goods, the regulations of the warehousing company used shall be deemed to constitute a part of the contract between the Forwarder and the customer.
15. **(Unforeseen intermediate storage)** If the consignee does not take delivery of the shipment at its destination, or if the shipment is held up in transit due to factors beyond the control of the Forwarder, it shall be placed in storage for the account of and at the risk of the customer. The Forwarder shall, as soon as possible, inform the customer (in all cases) and the transport insurer (if transport insurance has been taken out) of such unforeseen intermediate storage. The costs shall be paid by the customer as they accrue.
16. **(Cash-on-Delivery (C.O.D.))** The collection on delivery of the value of the goods is affected only on the written instructions of the customer. The goods are handed over only against an irrevocable bank confirmation in favor of the customer or a banker's certified check payable to the customer in the prescribed currency. The Forwarder is not liable for exchange- rate losses. A C.O.D. commission is charged to the customer for the handling of cash-on-delivery shipments.
17. **(Additional charges and reimbursements)** The Forwarder is not liable for the incorrect charging of freight, customs duties, levies, etc. for which he is not himself responsible. On presentation of the appropriate vouchers, the customer is required to effect immediate payment of additional amounts for freight, customs duties, levies, etc. which were originally too low. The Forwarder shall immediately reimburse those entitled to freight, customs duties, levies, etc. which were originally excessive.

Customer's Liability

18. The customer is liable for his own errors and omissions and for those of his sub-contractors, in particular in respect of all consequences arising from:
 - Packing which is not suitable for the requirements of the transport agreed upon
 - Incorrect, inaccurate or missing information in the order, on the packing or on the goods for shipment, in particular for goods which, as a result of their characteristics, would be accepted for transport only under special conditions if at all, or whose handling is the subject of special regulations
 - Absence or delayed submission of the necessary documents.

Liability

19. **(Basic Principle)** The Forwarder is liable to his customer for carefully carrying out the order.
20. **(Liability exclusions and Force majeure)** The Forwarder shall in no circumstance be liable for any indirect loss or consequential damages or expenses, such as loss of profit, loss of clients, penalties, claims for losses due to depreciation and conventional fines, exchange rate, fluctuations, increased levies or taxes by authorities for whatsoever reason. Irrespective, in which capacity the Forwarder may act or which kind of services may be performed under these GC, the Forwarder shall not be liable for whatsoever reason and be relieved of any liability if the loss or damage, property or financial damage has been caused by the following liability exemptions:
 - a) an act or omission of the Customer, a Contractor or any company or person acting on behalf of the Customer,
 - b) failure, incompleteness and/or lack of compliance with legal information requirements, non-observance of provisions and necessary instructions in respect of security, safety and environmental provisions or Codes; c) handling, loading, stowage or unloading of the goods by the Customer or a person acting on his

- behalf;
- d) inherent vice of the goods;
- e) lack, insufficiency or defective condition of the packing of goods, containers or transport units;
- f) insufficiency or inadequacy of marks and/or numbers on the goods or unit loads;
- g) war, strike, lockout, stoppage or restraint of labor, social disturbances and civil commotions;
- h) act of God
- i) fire, explosion and
- j) Any incident or circumstance the Forwarder could not avoid by reasonable care and the consequences of which he was unable to foresee and prevent by the exercise of due diligence.

Liability as an Intermediary or Agent (in accordance with 2, No. 1)

21. **(Sub-contractors)** If sub-contractors (carriers, shipping lines, airlines, forwarders, customs agents, warehousing companies etc.) are employed, the Forwarder is liable only in respect of their careful selection and instruction. In the event of loss or damage for which a sub-contractor is responsible, the Forwarder shall assert the claim of the customer against the responsible party. At the wish of the customer, and insofar as this is expedient, the Forwarder shall proceed against the sub-contractor for the account and at the risk of the customer. The Forwarder shall be entitled to the payment of his expenses and to an appropriate commission. On request, the Forwarder shall assign his rights against the subcontractor to the customer.
22. **(Limitation of the amount of liability)** The liability of the Forwarder is limited:
- In the case of loss of or damage to the goods, to not more than US \$ 1 per kilo gross weight of the affected part of the shipment.
 - In the case of losses due to delay, to the amount of the freight.
 - In the case of property or financial damage with a maximum of US \$ 1000.
 - The total liability of the Forwarder shall in no case exceed US \$ 10'000 per claim, incident or occurrence.

Liability as a Carrier (in accordance with 2, No. 2)

23. **(Basic Principle)** The Forwarder bears carrier's liability for the whole transit route if the transport is effected by the Forwarder with own trucks, vehicles and equipment.
24. **(Expiry of liability)** The liability of the Forwarder expires at the point in time when the consignee or his representative takes receipt of the transported goods. However, the relevant time limits for bringing claims relating to hidden defects shall apply.
25. **(Limitation of liability)** In the event of the goods being lost or damaged during the care, custody and control of the Forwarder, the liability of the Forwarder as a carrier shall be limited as follows:
- In the case of loss or damage to the goods, to not more than US \$ 1 per kilo gross weight of the affected part of the shipment.
 - In the case of losses due to delay, to the amount of the freight.
 - In the case of property or financial damage with a maximum of US \$ 1000.
 - The total liability of the Forwarder shall in no case exceed US \$ 10'000.- per claim, incident or occurrence.

Liability as a Warehouse Operator (in accordance with 2, No. 3)

In the event of the goods being lost or damaged during the care, custody and control of the Forwarder, the liability of the Forwarder as a warehouse operator shall be limited as follows:

- In the case of loss or damage to the goods, to not more than US \$ 1 per kilo gross weight of the affected part of the shipment.
- In the case of losses due to delay, to the amount of the freight.
- In the case of property or financial damage with a maximum of US \$ 1000.
- The total liability of the Forwarder shall in no case exceed US \$ 10'000.- per claim, incident or occurrence.

Liability as a provider of other Services Customs Clearance, Logistics Transactions, etc. (in accordance with 2, No. 4)

26. **(Limitation of the amount of liability)**
The liability of the Forwarder is limited:
- In the case of loss or damage to the goods, to not more than US \$ 1 per kilo gross weight of the affected part of the shipment.
 - In the case of losses due to delay, to the amount of the freight.
 - In the case of property or financial damage with a maximum of US \$ 1000.
 - In the case of customs clearance to the amount of the loss or damage incurred.
 - The total liability of the Forwarder shall in no case exceed US \$ 10'000.- per claim, incident or occurrence.

Conditions of Payment

27. Payment to the forwarder is due upon invoicing. The Client shall pay the forwarder's fee punctually in accordance with these conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Interest of 2% per month will be charged after the due date of payment.
28. The Forwarder is under no obligation to advance sums in payment of freight, customs duties, levies etc. He may require the customer to make advances payments in the appropriate currency. In respect of any such disbursement by the Forwarder, he shall be paid a commission and be reimbursed for exchange rate losses which are substantiated.
29. Upon delivery of a given shipment, the Forwarder may collect sums owing to him in respect of the same shipment.
30. If the customer instructs the Forwarder to collect freight, customs duties, levies etc. from the consignee of the goods or third parties, and if the relevant party cannot or will not make the payment demanded by the Forwarder, the customer shall be liable for same.

Right of Retention

31. The Forwarder shall have a lien on the goods handed over to him or which otherwise come into his possession for the outstanding sums owed to him in respect of all business transactions with the customer. If payment has not been effected within a time limit set by the Forwarder with the threat to dispose of the goods, the Forwarder shall be free, without further formalities, to sell the relevant goods at the best obtainable price.

Notification and Time Limitation of Claims

32. Claims for apparent loss of or damage to the goods shall be reported by the Customer immediately upon delivery of the goods or performance of the services in writing to Forwarder or to the carrier by giving clear and detailed specific reserves in the transport document or delivery note. Claims for non-apparent loss of or damage to the goods shall be reported by the Customer in writing, at latest within 3 days after delivery, or in case of loss or non-delivery, misdelivery or delay from the date that the goods should have been delivered, or in case of international transportation as per mandatory applicable claims notification provisions of the international Transportation Conventions. Subject to compulsory provisions of the law, all claims against the Forwarder shall lapse after a period of nine months. The limitation period shall commence from the time of delivery of the goods, or in the event of destruction, loss or delay, on the day on which the goods should have been delivered. In the case of other services, the limitation period shall run from the day on which the service was provided or should have been provided.

Place of Jurisdiction and Applicable Law

33. All disputes arising out of or in connection with the interpretation or application of the provision of these general conditions of the Forwarder shall exclusively be governed and construed in accordance with the applicable laws of the Republic of Kenya. The place of performance of the rights shall be the domicile of ECU Worldwide (Kenya) Limited, which has signed and executed the agreement. The forwarder reserves the right to bring suit against the customer at his domicile or place of business.