

## FIATA Model Rules for Freight Forwarding Services

*As adopted by ECU-LINE TUNISIE SARL*

### PART I. GENERAL PROVISIONS

#### 1. Applicability

- 1.1. These rules apply when they are incorporated, however this is made, in writing, orally or otherwise, into a contract by referring to the FIATA Model Rules for Freight Forwarding Services.
- 1.2. Whenever such reference is made, the parties agree that these Rules shall supersede any additional terms of the contract which are in conflict with these Rules, except insofar as they increase the responsibility or obligations of the Freight Forwarder.

#### 2. Definitions

- 2.1. **Freight Forwarding Services** means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the Goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents relating to the Goods.
- 2.2. **Freight Forwarder** means the person concluding a contract of Freight Forwarding Services with a Customer.
- 2.3. **Carrier** means any person actually performing the carriage of the Goods with his own means of transport (performing Carrier) and any person subject to carrier liability as a result of an express or implied undertaking to assume such liability (contracting Carrier).
- 2.4. **Customer** means any person having rights or obligations under the contract of Freight Forwarding Services concluded with a Freight Forwarder or as a result of his activity in connection with such services.
- 2.5. **Goods** means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the Freight Forwarder.
- 2.6. **SDR** means a Special Drawing Right as defined by the International Monetary Fund.
- 2.7. **Mandatory Law** means any statutory law the provisions of which cannot be departed from by contractual stipulations to the detriment of the Customer.
- 2.8. **In writing** includes telegram, telex, telefax, or any recording by electronic means.
- 2.9. **Valuables** means bullion, coins, money, negotiable instruments, precious stones, jewellery, antiques, pictures, works of art, and similar properties.
- 2.10. **Dangerous Goods** means Goods which are officially classified as hazardous as well as Goods which are or may become of a dangerous, inflammable, radioactive noxious or damaging nature.

#### 3. Insurance

No insurance will be effected by the Freight Forwarder, except upon express instructions given in writing by the Customer. All insurances effected are subject to the usual exceptions and conditions of the Policies of the Insurance Company or Underwriters taking the risk. Unless otherwise agreed in writing the Freight Forwarder shall not be under any obligation to effect a separate insurance on each consignment, but may declare it on any open or general Policy held by the Freight Forwarder.

#### 4. Hindrances

If at any time the Freight Forwarder's performance is or is likely to be affected by any hindrance or risk of any kind (including the conditions of the Goods) not arising from any fault or neglect of the Freight Forwarder and which cannot be avoided by the exercise of reasonable endeavour, the Freight Forwarder may abandon the carriage of the Goods under the respective contract and, where reasonably possible, make the Goods or any part of them available to the Customer at a place which the Freight Forwarder may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Freight Forwarder in respect of such Goods shall cease. In any event, the Freight Forwarder shall be entitled to the agreed remuneration under the contract and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.

#### 5. Method and Route of Transportation

The Freight Forwarder shall carry out his services according to the Customer's instructions as agreed. If the instructions are inaccurate or incomplete or not according to contract, the Freight Forwarder may at the risk and expense of the Customer act as he deems fit. Unless otherwise agreed, the Freight Forwarder may without notice to the Customer arrange to carry the Goods on or under deck and choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.

## **PART II. THE FREIGHT FORWARDER'S LIABILITY**

### **6. The Freight Forwarder's Liability (except as Principal)**

#### **6.1. Basis of liability**

##### **6.1.1. The Freight Forwarder's Duty or Care**

The Freight Forwarder is liable if he fails to exercise due diligence and take reasonable measures in the performance of the Freight Forwarding Services, in which case he, subject to Art 8, shall compensate the Customer for loss of or damage to the Goods as well as for direct financial loss resulting from breach of his duty of care.

##### **6.1.2. No Liability for Third Parties**

The Freight Forwarder is not liable for acts and omissions by third parties, such as, but not limited to, Carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties.

### **7. The Freight Forwarder's Liability as Principal**

#### **7.1. The Freight Forwarder's liability as Carrier**

The Freight Forwarder is subject to liability as principal not only when he actually performs the carriage himself by his own means of transport (performing Carrier), but also if, by issuing his own transport document or otherwise, he has made an express or implied undertaking to assume Carrier liability (contracting Carrier).

However, the Freight Forwarder shall not be deemed liable as Carrier if the Customer has received a transport document issued by a person other than the Freight Forwarder and does not within a reasonable time maintain that the Freight Forwarder is nevertheless liable as Carrier.

#### **7.2. The Freight Forwarder's liability as principal for other services**

With respect to services other than carriage of Goods such as, but not limited to, storage, handling, packing, or distribution of the Goods, as well as ancillary services in connection therewith, the Freight Forwarder shall be liable as principal:

1. when such services have been performed by himself using his own facilities or employees or
2. if he has made an express or implied undertaking to assume liability as principal.

#### **7.3. The basis of the Freight Forwarder's liability as principal**

The Freight Forwarder as principal shall, subject to Art. 8, be responsible for the acts and omissions of third parties he has engaged for the performance of the contract of carriage or other services in the same manner as if such acts and omissions were his own and his rights and duties shall be subject to the provisions of the law applicable to the mode of transport or service concerned, as well as the additional conditions expressly agreed or, failing express agreement, by the usual conditions for such mode of transport or services.

### **8. Exclusions, Assessment and Monetary Limits of Liability**

#### **8.1. Exclusions**

The Freight Forwarder shall in no event be liable for:

1. Valuables or Dangerous Goods unless declared as such to the Freight Forwarder at the time of the conclusion of the contract.
2. Loss following from delay unless expressly agreed in writing.
3. Indirect or consequential loss such as, but not limited to, loss of profit and loss of market.

#### **8.2. Assessment of compensation**

The value of the Goods shall be determined according to the current commodity exchange price or, if there is not such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of the Goods of the same kind and quality.

#### **8.3. Monetary limits**

##### **8.3.1. Loss of or Damage to the Goods**

The provisions of Art. 7.3., notwithstanding, the Freight Forwarder shall not be or become liable for any loss of or damage to the Goods in an amount exceeding the equivalent of 2 SDR per kilogram of gross weight of the Goods lost or damaged unless a larger amount is recovered from a person for whom the Freight Forwarder is responsible. If the Goods have not been delivered within ninety consecutive days after the date when the Goods ought to have been delivered, the claimant may, in the absence of evidence to the contrary, treat the Goods as lost.

##### **8.3.2. Limitations of Liability for Delay**

If the Freight Forwarder is liable in respect of loss following from delay, such liability shall be limited to an amount not exceeding the remuneration relating to the service giving rise to the delay.

##### **8.3.3. Other Type of Loss**

The provisions of Art. 7.3. notwithstanding, the Freight Forwarder's liability for any type of loss not mentioned in 8.3.1. and 8.3.2. shall not exceed the total amount of 10,000 SDR for each incident unless a larger amount is received from a person for whom the Freight Forwarder is responsible.

**9. Notice**

- 9.1. Unless notice of loss or damage to the Goods, specifying the general nature of such loss or damage, is given in writing to the Freight Forwarder by the person entitled to receive the Goods when they are handed over to him, such handing over is prima facie evidence of the delivery of the Goods in good order and condition. Where such loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within 6 consecutive days after the day when the Goods were handed over to the person entitled to receive them.
- 9.2. With respect to all other loss or damage, any claim by the Customer against the Freight Forwarder arising in respect of any service provided for the Customer or which the Freight Forwarder has undertaken to provide shall be made in writing and notified to the Freight Forwarder within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this time limit and that he has made the claim as soon as it was reasonably possible for him to do so.

**10. Time Bar**

The Freight Forwarder shall, unless otherwise expressly agreed, be discharged of all liability under these Rules unless suit is brought within 9 months after the delivery of the Goods, or the date when the Goods should have been delivered, or the date when failure to deliver the Goods would give the consignee the right to treat the Goods as lost. With respect to other loss than of or damage to the Goods the 9 months period should be counted from the time when the failure of the Freight Forwarder giving right to the claim occurred.

**11. Applicability to Actions in Tort**

These Rules apply to all claims against the Freight Forwarder whether the claim be founded in contract or in tort.

**12. Liability of Servants and other Persons**

These Rules apply whenever any claim is made against a servant, agent or other person the Freight Forwarder engaged for the performance of the service (including any independent contractor) whether such claims are founded in contract or in tort, and the aggregate liability of the Freight Forwarder and such servants, agents or other persons shall not exceed the limit applicable to the service concerned as expressly agreed between the Freight Forwarder and the Customer or following from these Rules.

**PART III. THE CUSTOMER'S OBLIGATION AND LIABILITY**

**13. Unforeseen Circumstances**

In the event that the Freight Forwarder, in case of unforeseen circumstances, acts in the best interest of the Customer extra costs and charges have to be borne by the Customer.

**14. No Set-Off**

All monies due shall be paid without any reduction or deferment on account of any claim, counter-claim or set-off.

**15. General Lien**

The Freight Forwarder shall, to the extent permitted by the applicable law, have a general lien on the Goods and any documents relating thereto for any amount due at any time to the Freight Forwarder from the Customer including storage fees and the cost of recovering same, and may enforce such lien in any reasonable manner which he may think fit.

**16. Information**

The Customer shall be deemed to have guaranteed to the Freight Forwarder the accuracy at the time the Goods were taken in charge by the Freight Forwarder, of all particulars relating to the general nature of the Goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the Goods, as furnished by him or on his behalf.

**17. Duty of Indemnification**

**17.1. General duty of Indemnification**

Except to the extent that the Freight Forwarder is liable according to the provisions of Part II, the Customer shall indemnify the Freight Forwarder for all liability incurred in the performance of the Freight Forwarding Services.

**17.2. Duty of indemnification in respect of General Average**

The Customer shall indemnify the Freight Forwarder in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder in this connection.

**18. The Customer's Liability**

The Customer shall be liable to the Freight Forwarder for all loss or damage, costs, expenses and official charges resulting from the Customer's inaccurate or incomplete information or instructions or the handing over by the Customer or any person acting on his behalf to the Freight Forwarder, or to any other person to whom the Freight Forwarder may become liable, of Goods having caused death or personal injury, damage to property, environmental damage or any other type of loss.

**PART IV. DISPUTES AND MANDATORY LAW**

**19. Jurisdiction and Applicable Law**

Unless otherwise agreed, actions against the Freight Forwarder may be instituted only in the place where the Freight Forwarder has his principal place of business and shall be decided according to the law of the country of that place.

**20. Mandatory Law**

These Rules shall only take effect to the extent that they are not contrary to the mandatory provisions of international conventions or national law applicable to the Freight Forwarding Services.