

Agreement for the introduction of these conditions on 1st January 1985 has been reached consequent upon negotiations between the NORDIC ASSOCIATION OF FREIGHT FORWARDERS and the following organisations:

DENMARK: Danish Shippers' Council. NORWAY: Transportbrukernes Fellesorgan. FINLAND: Industrins Centralförbund, Centralhandelskammaren, Centralutskottet för Handeln, Centralförbundet för Teknisk Partihandel. SWEDEN: Sveriges Grossistförbund, Svenska Handelskammarsförbundet, Sveriges Hantverks- och Industriorganisation - Familjeförbundet, Sveriges Industriförbund, ICA Aktiebolag, Kooperativa Förbundet, Sveriges Köpmannaförbund, Lantbrukarnas Riksförbund.

## INTRODUCTORY CONDITIONS

### APPLICABILITY

#### § 1

Unless otherwise expressly agreed, these conditions will apply to the performance of all contracts concluded with members of the Nordic Association of Freight Forwarders.

### THE FREIGHT FORWARDER CONTRACT

#### § 2

The freight forwarder contract includes performance of the carriage of goods with liability either as carrier or as intermediary.

Liability as carrier shall imply that the freight forwarder, in relation to the customer, accepts responsibility for the transport, irrespective as to whether he carries the goods by his own means of conveyance or not.

A) The freight forwarder has a liability as carrier:

- 1) When he issues his own B/L or Waybill
- 2) When the freight forwarder markets the carriage of goods as his own product, e.g. cargo consolidation
- 3) When he undertakes international carriage of goods by road

The freight forwarder's liability as carrier is governed by §§ 15-22.

B) The freight forwarder has a liability as intermediary, without liability as carrier:

- 1) When he undertakes to procure carriage by sea, air, rail or multimodal transport in other circumstances than those mentioned in A)
- 2) When he undertakes to perform departure clearance (fob clearance) and arrival clearance, i.e. where the freight forwarder has agreed to dispatch or receive goods without liability as carrier
- 3) When the freight forwarder, as agent for the carrier, issues the carrier's transport document
- 4) When it is agreed, or the customer has ordered, that a specific carrier is to be used

The freight forwarder's liability as intermediary is governed by §§ 23-25.

C) The freight forwarder can undertake to perform other services with or without connection with the functions mentioned in A) and B) above, such as:

- 1) Arranging clearance of goods or assisting the customer in connection therewith
- 2) Handling and marking of goods
- 3) Arranging cargo insurance for the account of the customer
- 4) Assisting the customer with the necessary documents for export and import
- 5) Arranging the collection of the "cash on delivery" charge and assisting the customer in arranging the payment of consignments of goods
- 6) Giving advice to the customer in matters of transport and distribution
- 7) Arranging the storage of goods

The freight forwarder's liability in respect of these services is governed by §§ 23-26.

### THE CUSTOMER

#### § 3

In the present conditions, the customer is the party which has concluded the contract with the freight forwarder, or has acquired the rights of that party. The liability of the customer is governed by the conditions of § 27.

Instructions to the freight forwarder under the contract shall be given directly to him. Information in the invoice, showing that the goods are sold "cash on delivery" or a declaration of value contained in the despatch instructions, shall not imply that the freight forwarder is committed to collecting the amount of the invoice or to arranging insurance.

## GENERAL CONDITIONS

### THE PERFORMANCE OF THE CONTRACT

#### § 4

It is the duty of the freight forwarder to prove, according to the contract, that he has protected the customer's interests in a diligent manner (i.e. checking that necessary permits according to the statute on commercial road traffic SFS 1979:559 and corresponding permits for road traffic to and from Sweden have been obtained).

Should the freight forwarder, or any of those for whom he is responsible, wilfully have caused loss or damage, then he cannot invoke the rules in these conditions, which exonerate him from or limit his liability, or alter the burden of proof, unless otherwise stated in § 22.

#### § 5

Where an agreed time of arrival has not been guaranteed in writing, the freight forwarder is responsible for ensuring that the goods arrive within a reasonable time according to § 20 (carrier) and § 23 (intermediary).

It is incumbent upon the parties to provide the other with such information which is necessary for the performance of the contract. The freight forwarder agrees, in accordance with the customer's instructions, to take care of and arrange for the carriage of the goods in a manner satisfactory to the customer.

Unless otherwise agreed, the freight forwarder is entitled to choose freely between customary means of conveyance and routes.

#### § 6

If it becomes necessary for the freight forwarder in the performance of the contract to act before seeking instructions, he does so at the customer's risk and for his account.

If the risk of depreciation of goods already taken over arises or, if by reason of the nature of the goods, there is a danger to persons, property or to the environment, and the customer cannot be reached or should he not, upon being requested to remove the goods, neither do so nor arrange to do so, the freight forwarder may take appropriate measures in respect of such goods, and, if necessary, sell the goods in an appropriate manner. The freight forwarder can, depending on the circumstances and without notice, sell, render harmless or destroy goods which are in danger of becoming worthless or extensively depreciated, or give rise to imminent danger.

The freight forwarder shall, if so requested, supply evidence of expenses in connection therewith, if any, and prove that he has exercised the utmost care in limiting costs and risks.

#### § 7

The freight forwarder has a duty to claim against a third party, where goods have been lost or damaged owing to his acts or omissions. The freight forwarder shall inform the customer and consult with him in order to take such steps as are necessary to ensure the customer's right to compensation from the party who has caused the damage or loss, or who is responsible therefore, and shall, when requested to do so, assist the customer in his relation to the third party.

If so requested, the freight forwarder shall transfer to the customer all rights and claims that the freight forwarder may have under agreements with third parties.

### QUOTATIONS, REMUNERATION, REFUND OF OUTLAYS, ETC.

#### § 8

Unless it is otherwise evident from the circumstances, the quotation will be based upon goods of normal kind and of normal relationship between weight and volume.

#### § 9

Notwithstanding the customer's obligations as to payment under contracts of sale or freight agreements with parties other than the freight forwarder, he has a duty, when so requested, to pay the freight forwarder what is due (remuneration, advance payment,

refund of outlays, etc.) against appropriate documentation.

Although the freight forwarder has given the customer the right to defer payment until the arrival of the goods at destination, the customer has nevertheless a duty, when so requested, to pay the freight forwarder what is due, provided the freight forwarder can prove that the consignment has become lost or is substantially delayed without his fault.

#### § 10

The freight forwarder has the right to debit the customer a commission on documented outlays made on his behalf.

#### § 11

The freight forwarder is entitled to special remuneration for work which is necessary over and above the normal, e.g. when conducting negotiations with authorities, banks and insurance companies, preparing consular documents and certificates of origin, notice of claims against carriers, insurance companies and the like.

The freight forwarder can also charge a special fee for collecting "cash on delivery" amounts, control of remittances through banks, clearing, arranging acceptance of Bills of Exchange, preparation of delivery orders and similar activities.

#### § 12

Should the freight forwarder receive an additional account covering services provided, the customer has a duty, when so requested, to refund these amounts subject to appropriate documentation. The freight forwarder has a duty to ensure that the services rendered are within the scope of the contract, and that the amounts debited are reasonable. The freight forwarder shall, if possible, inform the customer prior to such payment being made.

#### § 13

Should the performance of the contract be interrupted by reason of causes beyond the control of the freight forwarder, he is entitled to refund of outlays incurred and work carried out against appropriate documentation.

LIEN, ETC.

#### § 14

The freight forwarder has a lien on the goods which are under his control for fees and expenses in respect of such goods – remuneration and warehousing charges included – and for all other amounts due to the freight forwarder under contracts according to § 2.

Should the goods be lost or destroyed, the freight forwarder has similar rights in respect of compensation payable by insurance companies, carriers or others.

Should the amount due to the freight forwarder not be paid, he will be entitled to arrange the sale, in a satisfactory manner, of as much of the goods as is sufficient to cover the total amount due to him including expenses incurred. The freight forwarder shall, if possible, inform the customer well in advance what he intends to do with regard to the sale of the goods.

### SPECIAL CONDITIONS

#### THE FREIGHT FORWARDER'S LIABILITY AS CARRIER ACCORDING TO § 2 A)

#### § 15

The freight forwarder's liability as carrier commences as soon as he has taken over the goods for transport. Liability ceases upon the goods being delivered to the consignee, or being placed at his disposal at destination as directed. In any case, liability ceases 15 days after the freight forwarder has informed the consignee that the goods have arrived or has forwarded a written notice in this respect to the customer at the notified address.

#### § 16

There is no liability if, loss, depreciation or damage is caused by:

- a) fault or neglect of the customer,
- b) handling, loading, stuffing or unloading of the goods by the customer or any one acting on his behalf,
- c) the inherent nature of the goods e.g. by breakage, leakage, spontaneous combustion, internal deterioration, rust, fermentation, evaporation or being susceptible to cold, heat or moisture,
- d) lack of or insufficient packing,
- e) faulty or insufficient address or marking of the goods,

f) faulty or insufficient information about the goods,

g) circumstances which the freight forwarder could not avoid and the consequences of which he could not prevent.

The stipulations of a–f notwithstanding, the freight forwarder is liable to the extent that fault or neglect by himself or by those for whom he is responsible, has contributed to the loss, depreciation or damage. Unless specifically agreed, the freight forwarder is not liable for money, securities and other valuables.

#### § 17

Compensation for loss or depreciation of goods shall be calculated on the basis of their invoice value, unless it is proved, that their market value, or the current value of goods of the same kind and nature at the time and place the freight forwarder took over the goods was different from the invoice value. Compensation will not be paid for antique value, sentimental value or other special value.

Freight charges, customs charges and other outlays connected with the transport of the goods lost, will also be compensated. Apart therefrom, the freight forwarder is not obliged to pay any compensation, e.g. for loss of profit, loss of market or other loss of any kind whatsoever.

#### § 18

Compensation for damaged goods shall be paid with an amount equivalent to the extent of depreciation in value. This amount is arrived at by using the percentage of depreciation in value consequent upon damage to the goods, in relation to the value of the goods, as laid down in § 17 par. 1. Expenses referred to in the first part of § 17 par. 2 will also be paid to the same extent, but apart from this, the freight forwarder is not obliged to pay any further compensation.

The freight forwarder's liability is, however, limited to the amount of compensation which would have been paid, had the consignment become totally lost, or if only a part of the consignment had diminished in value as a result of the damage, then as if this part had been lost.

#### § 19

The freight forwarder takes over title to the goods, upon his paying the full value thereof.

#### § 20

Compensation for delay shall be paid, when the time taken to perform the contract exceeds what is reasonable under the circumstances. The freight forwarder is then obliged to pay the customer such direct and reasonable expenses, which, at the time of the conclusion of the contract, could be foreseen as a probable consequence of the delay.

The customer is entitled to compensation, as if the goods had been lost, provided it is not possible to deliver them:

- for domestic transports – within 30 days from the time the goods were received for transportation,
- for transports within Europe – within 60 days from the time the goods were received for transportation,
- for transports beyond Europe – within 90 days from the time when the goods ought to have arrived.

There is no liability, if delay has been caused by such circumstances as stated in § 16.

#### § 21

The freight forwarder's liability as carrier is limited:

- a) for loss, depreciation of or damage to goods, to SDR 8.33 per kg gross of the part of the goods which has been lost, depreciated or damaged,
- b) for delay, to an amount not exceeding the freight paid.

#### § 22

If a certain mode of transport has been expressly agreed, or if it is proved, that loss, depreciation, damage or delay has occurred whilst the goods were being carried by a particular mode of transport, the freight forwarder shall instead be liable in accordance with the law applicable to such mode of transport and commonly used general conditions of carriage, to the extent that these deviate from what is laid down in § 4 par. 2 or §§ 15–21.

#### THE FREIGHT FORWARDER'S LIABILITY AS INTER-MEDIARY, ETC. ACCORDING TO § 2 B) AND C)

#### § 23

The freight forwarder is liable for damage resulting from his lack of due diligence in the performance of the contract.

The freight forwarder is not liable for acts or omissions of third parties in carrying out the transport, loading, unloading, delivery, clearance, storage, collection or other services rendered by the freight forwarder, provided he can prove, that he has acted with due diligence in choosing such third party.

Unless specifically agreed, the freight forwarder is not liable for money, securities and other valuables.

#### § 24

In calculating the extent of compensation for loss, depreciation, damage and delay in delivery of goods, the stipulations of §§ 17–19 and § 20 par. 1 shall be applied correspondingly.

#### § 25

The freight forwarder's liability as intermediary, etc., is limited to SDR 50,000 in respect of each contract, always provided that compensation cannot exceed:

- a) for *delay*, the agreed remuneration,
- b) for *loss, depreciation of or damage to goods*, SDR 8.33 per kg gross of the part of the goods which has been lost, depreciated or damaged, and
- c) for *loss and/or misuse of documents* placed at the disposal of the freight forwarder, the amount which would have been payable, had the goods become lost.

### STORAGE

#### § 26

The following *additional conditions* apply for storage of goods:

- 1 Upon storage, the freight forwarder shall, if requested by the customer, issue a receipt or warehouse warrant. Such document is evidence of the quantity of goods received.
- 2 If the customer has not given special instructions with regard to storage of the goods, the freight forwarder can choose between different means of storage, provided he acts with due diligence.
- 3 The freight forwarder's liability for storage is governed by §§ 23–25, compensation being calculated, however, on the basis of the value of the goods on the day, the loss, depreciation or damage occurred.
- 4 If the freight forwarder stores goods in connection with a transport in respect of which he is liable as carrier, his liability shall be subject to the same conditions which apply to his liability as carrier according to §§ 16–22, for a period of 15 days after the completion of the transport.
- 5 If goods in store, by reason of their nature, are found to be a danger to property or persons, the customer has a duty to remove the goods immediately.
- 6 The customer shall inform the freight forwarder, at the latest at the time of delivery, to which address notices concerning the goods shall be sent, and inform the freight forwarder immediately of any changes thereof.

#### § 27

Where authorities have issued special instructions as to the marking, packing, declaring, etc. of particular goods (e.g. dangerous goods), the customer has a duty to ensure that the obligations so placed upon him are in every respect complied with.

The customer has a duty to hold the freight forwarder harmless for all consequences of:

- a) incorrect, unclear or incomplete information concerning the goods,
- b) the goods being insufficiently packed, marked, declared, etc.,
- c) his having badly loaded and stowed the goods, e.g. on lorry, railway waggon, pallet or container and the like,
- d) the goods having such dangerous characteristics which the freight forwarder could not reasonably have foreseen,
- e) the freight forwarder – except when he has incurred liability according to §§ 15–23 – being obliged to pay duty or official taxes or providing security or otherwise being exposed to claims from third parties, provided it can be proved that the customer has been the cause thereof.

Should the freight forwarder, in his capacity as charterer or shipper in connection with carriage by sea, be obliged to pay general average to the shipowner or the carrier, or become exposed to claims from third parties for reasons stated above, the customer shall hold the freight forwarder harmless.

### NOTICE OF CLAIMS

#### § 28

Notice of claim shall be given to the freight forwarder without undue delay. In case of apparent depreciation or damage, notice should be given immediately upon the receipt of the goods, or otherwise within 7 days thereof.

When, according to § 22, a particular mode of transport has been agreed with the freight forwarder, the statutory provisions or the general conditions applicable to such mode of transport shall nevertheless apply to the extent that they deviate from what is stated in par. 1 above.

TIME BAR (applicable only in Denmark, Finland and Sweden)

#### § 29

Legal proceedings against the freight forwarder shall be commenced within a period of 1 year, otherwise the right of claim will have become lost. The time limit period runs

- a) upon *depreciation of or damage to goods* – from the day upon which the goods were delivered to the consignee,
- b) upon *delay, loss of the whole consignment or other kind of loss* – from the time at which the delay, total loss or other loss could at the earliest have been noticed.

When, according to § 22, a particular mode of transport has been agreed with the freight forwarder, the statutory provisions or the general conditions applicable to such mode of transport shall nevertheless apply to the extent that they deviate from what is stated in par. 1 above.

ARBITRATION (only in Finland, Norway and Sweden)

#### § 30

##### Finland:

Disputes between the freight forwarder and his customer shall not, except as stated below, be referred to the courts, but shall be decided by arbitration and according to Finnish law. The arbitrators shall be appointed by the Arbitration Committee of the Central Chamber of Commerce in Finland, and the arbitration shall be conducted according to the Rules of this Committee. The arbitration shall take place in the City of Helsingfors. The commencement of legal proceedings for the collection of undisputed claims does not imply a waiver of arbitration with respect to disputed counter-claims which may not be litigated, enforced or set-off other than by arbitration.

Disputes as to amounts which do not exceed Finnish marks 20,000 or concern customers, who have entered into the contract mainly for their own private account, shall not however be subject to arbitration.

##### Norway:

Disputes relating to agreements made in accordance with these conditions, or to agreements made in consequence thereof, shall be finally decided by arbitration according to the Rules of the Arbitration Institute of the Oslo Chamber of Commerce.

##### Sweden:

Disputes between the freight forwarder and his customer shall not, except as stated below, be referred to the courts, but shall be decided in Stockholm by Swedish law in accordance with the Swedish Arbitration Act in force. The commencement of legal proceedings for the collection of undisputed claims does not imply a waiver of arbitration with respect to disputed counter-claims which may not be litigated, enforced or set-off other than by arbitration.

Disputes as to amounts which do not exceed Swedish kronor 10,000 or concern customers, who have entered into the contract mainly for their own private account, shall not however be subject to arbitration.

JURISDICTION (only in Denmark)

#### § 31

Legal proceedings against the freight forwarder may only be instituted before a court in the country of his habitual place of business and with the application of the laws of such country.