
EFFA 2000 GENERAL CONDITIONS

Estonian Freight Forwarders Association and Estonian Chamber of Commerce and Industry have agreed on August 1st, 2000 to amend and complement the General Conditions of the Estonian Freight Forwarders Association agreed between aforesaid parties on June 6th, 1995 according to the General Conditions of the Nordic Association of Freight Forwarders NSAB 2000, valid since June 1st, 1998. Usage of the General Conditions of the Nordic Association of Freight Forwarders is based on their acceptance given on May 6th, 1995.

Present conditions will be effective from January 1st 2001.

The conditions give the customer in all respects at least the degree of protection stipulated by the FIATA Model Rules for Freight Forwarding Services (1996 version).

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INTRODUCTORY CONDITIONS

The General Conditions of the Estonian Freight Forwarders Association set forth the freight forwarder's and the customer's rights and obligations, including the freight forwarder's liability under various transport law conventions, such as CIM, SMGS, CMR, the Hague-Visby Rules and the Warsaw Convention.

APPLICABILITY

§1

Unless otherwise expressly agreed, these conditions will apply to the members of the Estonian Freight Forwarders Association, as well as other parties having agreed to apply them.

THE FREIGHT FORWARDER CONTRACT

§ 2

The freight forwarder contract is applied on the carriage and storage of goods as well as services in connection with the transport or storage of goods, such as

- 1) customs clearance of goods,
- 2) counseling the customer in the performance of his obligations under public law,
- 3) handling and marking of goods,
- 4) signing of insurance,
- 5) assistance with documents for export and import,
- 6) collection of "cash on delivery" charges and other assistance concerning the payment of the goods,
- 7) advice in matters of transport and marketing.

The freight forwarder may carry out these services either on his own account or as intermediary.

A. The freight forwarder has a liability as carrier under §§ 15-23:

- a) when he performs the carriage of goods by his own means of transport (performing carrier), or
- b) when he has expressly or impliedly accepted liability as carrier (contracting carrier).

The freight forwarder shall be considered as contracting carrier:

- 1) when he has issued a transport document in his own name,
- 2) when in connection with marketing or in his offer he formulated his undertaking in such a way, e.g. quoting his own price for the transport, that it can be assumed that he has undertaken a liability as carrier,
- 3) when in connection with carriage of goods by road.

Under §§ 24 - 26 the freight forwarder has a liability as intermediary, with regard to carriage of goods not covered by article A.

C. The freight forwarder's liability also includes liability for contractors he has engaged to perform the contract and who are independent:

- a) when he has liability as carrier in accordance with article A.,
- b) when the services have been performed by himself with the help of his own equipment or employees, or
- c) when he has accepted responsibility for the services on his own account.

These conditions apply equally to the persons of whose services the freight forwarder makes use for the performance of the contract as to the freight forwarder himself, irrespective of the grounds for the claims against the freight forwarder and such other persons. The aggregate liability of the freight forwarder and such other persons is limited to what applies to the freight forwarder's liability under these conditions. When the freight forwarder has undertaken to render services for his own account, general practice and generally accepted terms are applicable in so far as they do not contradict these conditions.

In other cases than those mentioned under subsections a-c the freight forwarder is responsible as intermediary without liability for other parties than his own employees.

D. With regard to warehousing, the conditions of § 27 apply.

THE CUSTOMER

§ 3

In the present conditions, the customer is the party that has concluded a contract with the freight forwarder, or that has acquired the rights and duties of that party. The liability of the customer is enacted by § 28.

GENERAL CONDITIONS

THE PERFORMANCE OF THE CONTRACT

§ 4

It is incumbent upon the parties to provide each other information necessary for the performance of the contract. The freight forwarder undertakes to collect, take care of and accomplish the transport of goods in accordance with the contract and in a suitable way for the customer with generally used means and routes of transport.

Instructions to the freight forwarder concerning the scope of the contract shall be given directly to him. Information contained in the invoice stating that goods have been sold cash on delivery or a declaration of value specified in the dispatch instructions does not therefore mean that the freight forwarder has undertaken to collect the invoice amount or sign insurance.

§5

It is the duty of the freight forwarder to prove that he has protected the customer's interests according to the contract.

Should the freight forwarder, or any of those for whom he is responsible, wilfully have caused damage, delay or other loss, he may not invoke the rules in these conditions, which exonerate him from or limit his liability, or alter the burden of proof, in cases it is in conflict with § 23.

§6

The freight forwarder is responsible for ensuring that the goods arrive within a reasonable time (without a time guarantee). When assessing such reasonable time, regard shall be had to information as to the expected time of arrival stated by the freight forwarder in his marketing or in connection with the signing of the contract.

The freight forwarder is (with a time guarantee) liable for the goods arriving within the time that:

- has been agreed upon in writing as a special, time guaranteed transport
- delivery at a fixed date has been submitted in writing as a condition of an offer undisputedly accepted by the freight forwarder
- delivery at a fixed date has been presented by the freight forwarder in a written quotation that was accepted by the customer.

§7

If 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, there is a danger to persons, their property or to the environment, and the customer cannot be reached, or should he not, upon being requested to remove the goods, arrange to do so, the freight forwarder may take appropriate measures in respect of the goods, and, if necessary, for example 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 which give rise to danger.

After deduction of reasonable expenses connected with the sale, the sum received from the sale shall be promptly reported to the customer.

The freight forwarder shall notify the customer as soon as possible about measures that have been taken, and, upon request, supply evidence of any expenses in connection herewith, as well as prove that he has exercised due diligence in limiting costs and risks.

For such expenses the freight forwarder may demand a special expense charge.

§8

The freight forwarder has a duty to notify a claim against a third party, when goods have been damaged, delayed or when some other loss has occurred due to third party's acts or omissions. The freight forwarder shall inform the customer and consult with him in order to take such steps as are necessary to present a claim against the party who has caused the damage or who is responsible this. Freight forwarder 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 those rights and claims that the freight forwarder may have under his contract with a third party.

§9

The freight forwarder's quotation is based on information relevant to the contract supplied to the forwarder, or else on circumstances that are normal for the contract. If the circumstances do not indicate otherwise, the freight forwarder should be able to assume that the goods that have been handed over from carriage are of such a nature and such a relation between weight and volume that is normal for the type of goods in question.

Unless otherwise agreed, the customer is obliged, upon request, to make

advance payment for such expenses that may be incurred in the performance of the contract.

§ 10

Notwithstanding the customer's obligations as to payment under contracts of sale or freight contracts with parties other than the freight forwarder, he has a duty upon request, to pay the freight forwarder what is due (advance payment for salary, refund of outlays) against appropriate documentation.

Unless otherwise agreed, when the goods have not yet been delivered for transport in agreed order and condition, and the contract cannot be wholly or partially executed as agreed, the freight forwarder has the right to receive payment for freight and other remuneration. From payment less what the freight forwarder has saved, or could have saved, by not executing the contract.

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, if due to circumstances beyond the freight forwarder's control, the contract cannot be performed as agreed provided such non-performance does not engage the freight forwarder's responsibility under these conditions.

§ 11

The freight forwarder has the right to special compensation for work in addition to what has been explicitly agreed upon or normally follows from the freight forwarder's contract. The compensation is determined in accordance with the same principles as those applying to the compensation for the services under the contract.

As regards a refund of outlays in addition to those expressly agreed upon, or normally follow from the freight forwarder's contract and which have not been paid in advance to him, the freight forwarder has the right to compensation for documented outlays and costs connected therewith.

§12

If the freight forwarder has outlays for the intermediated services, the customer has a duty upon request to refund these amounts subject to appropriate documentation. It is the freight forwarder's duty to check, and if possible, ensure together with the customer, that the services rendered are within the scope of the contract. 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 hindrances beyond the freight forwarder's control, he is entitled to refund of outlays incurred and work carried out against appropriate documentation.

LIEN, ETC.

§ 14

The freight forwarder has a lien to encumber the goods under his control, for assuring payments, remuneration, warehousing charges as well as for all other amounts due from the customer under contract according to § 2 above.

Should the goods be lost or destroyed, the freight forwarder has right to meet his claims in respect of compensation payable by insurance companies, carriers or others.

Should the amount due to the freight forwarder not be paid at stated times, he has the right to arrange the sale, in a satisfactory manner, of as much of the goods as is required 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

§ 15

The freight forwarder is liable as carrier in accordance with §§ 16-23 for loss, depreciation of or damage to goods, occurring between the moments when the goods have been taken over for transport until the moment the goods have been delivered, as well as for delay in delivery.

The carrier's liability ceases 15 days after the freight forwarder has informed the party who has the right to receive the goods that the goods have arrived, or has forwarded a written notice in this respect at the notified address.

Thereafter, the freight forwarder is liable for taking care of the goods as agreed or follows from his duty to protect the customer's interests in a diligent manner under § 5.

§ 16

Freight forwarder is not liable if loss, depreciation of or damage to goods is caused by:

- a) fault or neglect of the customer,
- b) the customer or anyone acting on his behalf who has loaded, unloaded or otherwise handled the goods,
- c) the inherent nature of the goods to become damaged, e.g. by breakage, leakage, spontaneous combustion, rotting, 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 was unable to prevent.

The stipulations of a - f notwithstanding, the freight forwarders is liable to the extent that his fault or neglect has caused or contributed to the loss, depreciation, damage or delay.

When assessing the freight forwarder's liability under points b, d and e, consideration shall be taken of the fact whether, despite his knowledge of the circumstances, the freight forwarder has approved or failed to object to the customer's measures concerning the preservation of the goods.

Unless otherwise 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 from that, 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. The 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 § 17, par.2, first sentence, will also be paid to the same extent, but apart from this, the freight forwarder is not obliged to pay any further compensation.

§ 19

If the freight forwarder has paid the full value of the goods, he may take over title to the goods if he so desires.

§ 20

Delay

A. If the goods are delivered after the date determined under § 6, par. 1, the freight forwarder shall compensate the customer for such direct and reasonable expenses that could have been foreseen as probable consequences of the delay at the time of the conclusion of the contract. The amount cannot exceed a sum corresponding to the amount agreed upon in the contract concerning freight or other compensation.

B. When a time guarantee has been agreed upon, according to § 6, par. 2, and the agreed time of transport has been exceeded, the freight forwarder shall, unless otherwise agreed, credit the customer for the freight or any other compensation agreed upon for the transport. This does not apply if the delay was caused by circumstances beyond the freight forwarder's own control. The customer shall be considered to have suffered a loss equivalent to the amount of the freight, as long as it cannot be shown that the amount of the loss is smaller. In the latter case only the amount equivalent to the actual loss shall be credited.

Compensation for delay shall never exceed the amount of the freight.

§ 21

Delay and total loss

The customer has the right to compensation as if the goods had been lost if no delivery has been made

- with regard to international road transports, within 30 days after the expiry of the agreed period of time, or, if no particular period of time has been agreed upon, within 60 days from the moment the goods were accepted for transport,
- for other types of transport, within 60 days from the time when the goods should have been arrived,

The client has no right to compensation as if the goods had been lost while the freight forwarder can prove within the terms named above that the goods are not being lost and can be over handed over reasonable time.

§ 22

For delay, depreciation of or damage to goods the freight forwarder's liability is limited to SDR 8,33 per kg gross of the part of the goods that has been lost, depreciated or damaged.

§ 23

If a certain mode of transport has been expressly agreed upon, 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 the commonly used and generally accepted conditions of carriage, to the extent that these deviate from what is laid down in § 5, par. 2 or §§ 15-22.

THE FREIGHT FORWARDER'S LIABILITY AS INTERMEDIARY

§ 24

The freight forwarder is liable for damage resulting from his lack of due diligence in the performance of the contract. It is the duty of the freight forwarder to prove that he has exercised such due diligence in order to protect the customer's interests according to the contract.

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

Unless otherwise agreed, the freight forwarder is not liable for money, securities and other valuable.

§ 25

In calculating the extent of compensation for loss, depreciation, damage and delay, the stipulations of §§ 17-19 and § 20 A., shall be applied correspondingly.

§ 26

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

- a) for delay sum corresponding to the amount agreed upon in the contract concerning freight or to the agreed compensation in respect of the contract;
- 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.

STORAGE

§ 27

A. For storage of goods in connection with a transport for which the freight forwarder is liable as carrier, he is liable for a period of 15 days after the transport in accordance with the provisions of §§ 15 - 23.

B. When the freight forwarder arranges storage as intermediary the provisions of §§ 24 - 26 apply.

C. For other storage the freight forwarder is liable also for persons engaged for the performance of the contract. For storage the following additional conditions apply:

1. The freight forwarder shall check for whole packages of goods received and issue receipts, without any liability, however, for the content of the packages and invisible damage. At the request and expense of the customer the freight forwarder shall make an inventory of the stock.

The freight forwarder shall, in case of breakage of package, immediately notify the customer of any defect of damage that he has observed or should have observed.

The freight forwarder shall take care of the necessary delivery control.

2. If the customer has not left any special instructions with regard to the storage of the goods, the freight forwarder may freely choose between various storage possibilities, provided that he exercises due diligence in so doing.

3. Unless otherwise instructed in writing by the customer, the freight forwarder shall sign insurance for the risks of fire, water and burglary in his own name and for account of the customer based upon the invoice value at the time of storage +10%.

For loss, depreciation of or damage to the goods not covered by insurance in accordance with the above, or when no insurance has been taken out, the freight forwarder is liable for negligent acts or omissions in accordance with

§§ 17-19 and § 22. The freight forwarder's liability is limited, however, to SDR 500 000 with regard to damages occurring on one and the same occasion.

The freight forwarder is liable for delay according to §§ 20-21.

4. If goods in store, by reason of their nature, are deemed to be a danger to property or persons, the customer or freight forwarder has a duty to remove the goods.

5. The customer shall inform the freight forwarder at the latest at the time of storage of the address to which notice concerning the goods shall be sent and at which instructions shall be received, and inform the freight forwarder immediately of any changes thereof.

THE CUSTOMER'S LIABILITY

§ 28

The customer has a duty to hold the freight forwarder harmless for damage or loss incurred by the freight forwarder owing to the fact that:

- a) the particulars concerning the goods are incorrect, unclear or incomplete,
- b) the goods are incorrectly packed, marked, declared or remained not packed, or incorrectly loaded or stowed by the customer,
- c) the goods have such harmful properties that could not have been foreseen by the freight forwarder,
- d) due to the errors or negligence committed by the customer the freight forwarder is obliged to pay duty or other official taxes or to provide security.

In assessing the customer's responsibility in accordance with a) and b) regard shall be had to the fact that the freight forwarder, despite his knowledge of the circumstances, has accepted or failed to make an objection to the measures taken by the customer in respect of the goods.

Should the freight forwarder, in his capacity of charterer in connection with carriage of the customer's goods by sea, be obliged to pay general average contribution to the carrier, or become exposed to claims from third parties for reasons stated above, the customer shall prevent any expenditures or losses that may occur to the freight forwarder.

NOTICE OF CLAIM AND DISPUTES

NOTICE OF CLAIMS

§ 29

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.

If notice of claim is given later than within seven days from the day when the goods were received, it is up to the party who gave notice of claim against the freight forwarder to prove that the damage or depreciation of the goods had occurred before the goods were received. If the claimant fails to prove this, the goods will be considered to have been delivered in perfect condition. Notice of claim concerning matters other than damage to, or depreciation or loss of the goods shall be given within fourteen days since the day on which the customer knew or ought to have known about the circumstances forming the basis of the freight forwarder's liability. If such notice of claim has not been given, the customer has lost his right of claim.

When a particular mode of transport has been agreed upon with the freight forwarder, the statutory provisions and the generally approved conditions applicable to such mode of transport shall apply instead, to the extent that they deviate from what is stated in par.1 above.

EXPIRY

§ 30

Legal proceedings against the freight forwarder shall be commenced within period of one year since the right of claim emerges, otherwise the right of claim will become expired. 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 goods or other kind of loss from the time at which the delay, total loss or other loss could at the earliest have been noticed.

This expiry period shall apply when the freight forwarder's place of business is located in Estonia.

When a particular mode of transport has been agreed upon with the freight forwarder, the statutory provisions and the generally approved conditions applicable to such mode of transport shall apply instead, to the extent that they deviate from what is stated in par. 1 above.

ARBITRATION

§ 31

Disputes between the freight forwarder and the customer regarding amounts that do not exceed 500 000 EEK or a dispute that arises with a customer who has entered into the contract mainly for private purposes shall be solved in Estonian court, unless otherwise agreed.

Dispute which amount exceeds 500 000 EEK shall be solved by the Arbitration court of the Estonian Chamber of Commerce and Industry Tallinn.