

## **POLISH GENERAL FORWARDING RULES 2002**

(translation only –without prejudice)

### ***General Provisions***

#### **§ 1**

The Polish General Forwarding Rules apply to the relationship between the Freight Forwarder and his Customer.

#### **§ 2**

2.1. A Freight Forwarder is a person who professionally, against remuneration, on his own name but on the account of a Customer or in the name of a Customer, covenants to forward or receive goods, to organize a part or whole process of translocation of goods, as well as to render the other services related with attendance and translocation of the goods.

2.2. The other services as mentioned in point 2.1. above consist of : advisory services connected with transport, insurance, loading, storage, packing, consolidation, distribution, logistic and others similar to;

2.2.1. performed by the Freight Forwarder with his own equipment and staff ;

2.2.2. organized by the Freight Forwarder but entrusting the performance of the operation to the third parties – in case he assumed the liability of the direct performer.

2.3. With relation to these activities performed by the Freight Forwarder, the general rules regulating a special kind of activity or other mandatory rules will apply, provided that the Freight Forwarder declares that the aforementioned rules, agreed upon by the third parties, with whom the Freight Forwarder has entered into agreement in order to perform an accepted forwarding order, are mandatory.

#### **§ 3**

3.1. The Freight Forwarder can perform the carriage himself. In such case he has the rights and obligations of a Carrier at the same time.

3.2. The Freight Forwarder has the rights and duties of the carrier provided that:

3.2.1. he performs carriage by his own means of transportation and issues his own transport document;

3.2.2. he acts as sea carrier or multimodal transport operator issuing his own bill of lading or FIATA bill of lading called the Negotiable FIATA Multimodal Transport Bill of Lading ;

3.2.3. he performs a carriage by means of transportation owned by the third party, but issues his own transport document (contracting carrier) ;

3.2.4. he accepts transport order.

#### **§ 4**

Within the meaning of this Rules a Customer is a person / party concluding a contract with the Freight Forwarder, ordering to the Freight Forwarder the performance of services or activities, or a person entering into the rights of that party.

#### **§ 5**

The provisions of these Rules do not apply to the forwarding of money, securities, documents, jewelry and other valuables.

### ***OFFERS***

#### **§ 6**

The Freight Forwarder's offer covers only that services which are explicitly listed therein and is valid only to the date specified for its acceptance.

6.1. The Freight Forwarder's offer and agreements concerning the rates and services (his own, or third parties) cover only the goods specified in the order and assume typical conditions of the performance of such offer or agreement.

6.2. Unless otherwise stipulated each offer or quotation remains valid subject to immediate acceptance by the Customer and if the order refers to that offer.

6.3. In case either component of the offer changes, due to the external circumstances and beyond the control of the Freight Forwarder, the prices quoted or agreed upon will be corrected accordingly up to the moment the change occurred. The correction made due to the circumstances the Freight

Forwarder is liable for should be accepted by the other party – i.e. the Customer.

6.4. In case the Freight Forwarder, depending on the situation, applied “all inclusive” rates, it is understood that unless otherwise agreed upon, the said rates contained all costs born by the Forwarder during performance of the forwarding process.

## ***The Forwarding Contract***

### **§ 7**

7.1. By a Contract of Forwarding the Freight Forwarder is obliged -against remuneration - within the frameworks of his commercial activity, to forward or receive the goods, or to organize other services related with transport.

7.2. The Forwarding Contract is considered to be concluded upon receipt of the order by the Freight Forwarder unless he informs the Customer without delay about the refusal of its acceptance.

## ***Forwarding Order***

### **§ 8**

8.1. The Freight Forwarder performs the activities on the basis of the Customer’s order.

8.2. The order does not require for its validity to be in a written form, however, in order to avoid any misunderstandings and misrepresentation it is recommended the order to be issued or confirmed in writing or by fax, e-mail.

8.2.1. The Freight Forwarder is not liable for the consequences of errors and misunderstanding resulting from orders received verbally or by telephone.

8.2.2. The Freight forwarder is not liable for the consequences of supplementary instructions provided by the Customer directly to the third parties engaged in the performance of the forwarding process.

8.3. The order should indicate the scope of services ordered, the kind and properties of goods, marks and numbers of the collies (packages), number of pieces, weight, cubic measurements and any others particulars and documents necessary for its proper executions.

8.4. The Customer is obliged to ensure that the order is correct and complete. The Customer is liable to the Freight Forwarder and third parties for any consequences resulting from inaccurate, incomplete or incorrect data, also with regard to the particulars contained in documents, correspondence or indicated on the goods /e.g. weight, dimensions and properties/ as well as from defective packing of the goods etc., even if the inaccuracy, incompleteness or incorrectness occurred without his fault.

8.5. The Freight Forwarder is not obliged but is entitled to verify whether information given in the order are complete and correct.

8.6. The Freight Forwarder is entitled but not obliged to verify the genuineness of the signatures and power of attorney of the signatories to sign the orders, notices, transfers, assignments and other documents.

8.7. In case of dangerous goods, the Customer delivering the order should indicate their properties, degree and nature of danger, as well as necessary precautions. In case of dangerous goods within the meaning of special regulations covering transport of dangerous goods, the Customer is obliged to indicate all particulars needed for the performance of the forwarding order, especially their classification being in accordance with the regulations concerning dangerous goods.

8.8. The Freight Forwarder is entitled to entrust the performance of the received order and /or particular operations to third parties or their subcontractors. In such case all regulations concerning limitation of the Freight Forwarder's liability pertaining to this General Forwarding Rules, apply to the further forwarders.

### ***Completion of the order***

#### **§ 9**

9.1. The Freight Forwarder is obliged to perform his services in accordance with the accepted order. In case the Forwarder is forced to act in the absence of detailed instructions he should protect the goods observing proper care and rules.

9.2. In the absence of detailed instructions from the Customer the Freight Forwarder can act at his own discretion choosing the most favorable for the Customer : time, means, conditions and mode of transportation. In any case the Freight Forwarder acts taking into account the interest of the goods but at the risk and the expense of the Customer.

9.3. Unless otherwise agreed the Freight Forwarder has always the option to dispatch the goods by groupage transport.

9.4. The Freight Forwarder is not obliged to take over the consignment without respective documents, but in case he undertakes to do it at the request of the Customer he has the right to demand from the Customer adequate guarantees and whilst waiting for such - to hold the consignment or documents as well as the title for the indemnity covering the arisen costs.

9.5. The Freight Forwarder informs the Customer of realization of the order, of any alterations in the time table and obstacles having influence on the realization, informs him and the persons indicated by him of arrival or dispatch of the goods, prepares the required documents and undertakes necessary steps to obtain such documents from third parties in due time.

9.6. If the Freight Forwarder is obliged to send documents as registered letters in such case he is not responsible for non – delivery or delay in delivery.

9.7. By taking over the consignment the Freight Forwarder, or person authorized by him, is obliged to check whether it arrived in proper, undamaged state without shortages and in conformity with accompanied documents (Bill of Lading, Waybill, etc.).

9.8. If the consignment is discharged to the warehouse belonging to the third persons checking of its state and conformity with the transport document is arranged by the warehouse – keeper.

9.9. Should damage, or shortage in the goods, lack of seals or other protection means be stated – the Freight Forwarder shall secure Customer's rights in relation to third parties responsible for damages, informing Customer accordingly.

9.10. Certificate of Receipt of the goods issued by the Freight Forwarder constitutes a presumption that the goods have been received by the Freight Forwarder in such condition as indicated in the Certificate.

9.11. Executing the order covering export of the consignment the Freight Forwarder is responsible for meeting the terms of dispatch and delivery stipulated in the delivery contract (Letter of Credit etc.) unless it was caused by the reasons beyond the control of the Freight Forwarder. In such case the Freight Forwarder is obliged to notify and inform Customer accordingly.

## ***Insurance***

### **§ 10**

10.1. The Freight Forwarder concludes „cargo insurance” agreement only upon receipt of a explicit order in writing. Unless otherwise agreed in writing the Freight Forwarder is not under any obligation to effect a separate insurance for each consignment.

10.2. Indication of the value of the consignment in the order is not considered as an order to effect “cargo” insurance.

10.3. Offering to his Customer “cargo” insurance, or concluding it in his name and on his account the Freight Forwarder ought to acquaint him with the insurance conditions.

10.3.1. The Customer as well as all other persons in which interest or account acts the Freight Forwarder subordinate to all conditions of the concluded insurance, subject that they were informed accordingly by the Freight Forwarder.

## ***Storage***

### **§ 11**

11.1. The Freight Forwarder concludes contract for storage in the name and on Customer’s behalf in accordance with the received order. The Freight Forwarder, storing the goods entrusted to him in his own or third parties warehouses, is obliged to notify the Customer thereof, indicating the name of the warehouse and the conditions of storage.

11.2. The Customer is entitled to know the conditions of storage. He is obliged to submit without delay his objections concerning the storage of goods and choice of the warehouse in case they occurred. If he neglects this opportunity, he resigns at the same time from all eventual claims concerning the kind and manner of storage, subject that the selection and storage are carried with Freight Forwarder’s due diligence.

11.3. The Customer is not allowed to execute any manipulation connected with the goods ( for instance sampling) before previous notice given to the Freight Forwarder, otherwise the Freight Forwarder shall be entitled to decline from any liability for later ascertained damages.

11.4. If the consignee refuses to take over the consignment at the place of destination, or the consignment has been stopped during transportation due to

the circumstances beyond the control of the Freight Forwarder – then the consignment will be stored at the costs and risk of the Customer. The Freight Forwarder is obliged to inform without delay the Customer and the insurer (in case he insured transported consignment) that the consignment is stored unexpectedly during the course of transportation.

11.5. In case the Freight Forwarder stores temporarily the consignment in the warehouse belonging the third party, his relations with the Customer are governed by the same rules, which governs the relationship between the Freight Forwarder and above mentioned third party. At the request of the Customer the Freight Forwarder is obliged to send him the storage conditions.

11.6. In case of perishable goods which are in danger to be spoiled, the Customer has to instruct the Freight Forwarder with regard to further behavior with the goods.

11.7. In case of reasonable doubts of the Freight Forwarder whether the value of goods covers his claims the Freight Forwarder is entitled to establish for the Customer a reasonable time limit during which the Customer should secure Freight Forwarder's claims. If the Customer does not accept that request, the Freight Forwarder is authorized to cancel the contract without notice of termination.

## **Obstacles in carrying out of Forwarding activities**

### **§ 12**

Obstacles which are beyond the control of the Freight Forwarder or other party acting on his order (acts of governmental authorities, natural disasters, strikes etc. and other circumstances which can be regarded as force majeure) and which make it, fully or in part, impossible for the Freight Forwarder to fulfill his obligations, exempt him for the time of the duration of these obstacles from responsibility for the execution of the order. Notice of such obstacles should be given by the Freight Forwarder to the Customer without any delay. Should the obstacles last too long, the Freight Forwarder can withdraw from the contract, even if it has been partly executed. However, prior to the withdrawal, the Freight Forwarder is obliged to protect the goods and secure the interests of the Customer upon consulting him. In case of canceling the contract for the aforesaid reasons, the Freight Forwarder is entitled to reimbursement of expenses incurred in execution of the order and to appropriate part of remuneration for operations already performed. In case the parties refer to the "force majeure" then the interpretation of the force majeure of the International Chamber of Commerce in Paris (ICC 650\*) should be applied.

\* ICC interpretation February 2003

## ***Remuneration of the Freight Forwarder, reimbursement of expenses incurred***

### **§ 13**

13.1. The Freight Forwarder is entitled to the remuneration from the Customer in accordance with the provisions of the Contract.

13.2. For the services not agreed upon in the Contract, but duly performed by the Freight Forwarder upon consultation with the Customer, the Freight Forwarder is entitled to appropriate remuneration as well as to reimbursement of expenses occurred.

13.3. In case of lack of separate agreement the Freight Forwarder's remuneration is defined by Freight Forwarder's Tariff.

### **§ 14**

The Freight Forwarder is entitled to demand advance payment (e.g. freights, port charges, custom dues etc.) before execution of the order. The Freight Forwarder is also entitled to demand immediate reimbursement of expenses already incurred, before proceeding with further execution of the order.

### **§ 15**

15.1. Unless otherwise agreed the amounts due to the Freight Forwarder are due at the moment of execution of the order. In case of consecutive deliveries the Freight Forwarder is entitled to demand partial payments of his dues.

15.2. If the customer does not pay due amount within the time limit the Freight Forwarder is entitled to debit him with the interests.

### **§ 16**

Seizure, loss of the consignment due to force majeure, confiscation or other acts of government authorities shall not affect the claims of the Freight Forwarder against the Customer unless they have not resulted from the negligence of the Freight Forwarder.

### **§ 17**

Placing of an order with the Freight Forwarder on account of a third party does not exempt the Customer from the obligation to pay the amounts due in connection with the execution of the order.



## **§ 18**

The Freight Forwarder is obliged to check whether the amounts due to subcontractors for services connected with the execution of the order, have been calculated correctly. In case of any incorrectness the Freight Forwarder is obliged to lodge a claim without delay. The Customer is obliged to reimburse the Freight Forwarder his expenses connected with the claim.

## **§ 19**

19.1. The Customer is obliged to reimburse the Freight Forwarder all expenses connected with the execution of the order including detention, demurrage and freight which were born by the Freight Forwarder in the result of indicating him by the Customer or his contracting party in the sea carrier's Bill of Lading or Airway Bill of Lading as a consignee.

19.2. If the Freight Forwarder on the basis of Customer's order is presented in the sea carriage in the B/L as shipper or consignee, the customer shall indemnify him in respect of any claims of General Average or other nature, which, according to the Law, may be charged on him and shall provide such security as may be required by the Freight Forwarder in this respect.

19.3. The obligation (as written in par. 19.2.) is in force when the Freight Forwarder on the basis of Customer's order is presented in the Air Waybill as shipper or consignee in the air carriage and claims are made towards him upon the airfreight transport rules.

## **§ 20**

20.1. In relation with the claims of the Freight Forwarder arising from the Forwarding Contract, contract of carriage, and any other claims it is allowed to deduct or detain only the exactable counterclaims.

20.2. If the Freight Forwarder during executing the order disburses his own funds, he has the right for special commission (outlay commission) from the outlaid amount. The amount of the commission is fixed in the tariff or agreed upon with the Customer.

## ***Liability of the Freight Forwarder***

### **§ 21**

The Freight Forwarder's liability depends on the scope of the contract concluded.

### **§ 22**

22.1. The Freight Forwarder is liable for damages resulting from non-performance or improper performance of the duties arising from the Forwarding Contract, unless he proves that he could not prevent the damage in spite of exercising due diligence.

22.2. The Freight Forwarder is liable for carriers and subsequent freight forwarders and other parties chosen by him, unless he is not at fault in their choice.

22.3. The Freight Forwarder is obliged to take all necessary steps to enable the Customer to pursue his claims against the parties participating in the execution of the order, even if the Freight Forwarder is not liable for their activities or non – activities. Upon the assignment of rights the Freight Forwarder shall pursue these claims at the risk and expense of the Customer.

### **§ 23**

23.1. If the Freight Forwarder is entitled to the statutes of the carrier then his rights and duties are subject to the provisions of the law applicable to the mode of transport or service concerned, as well as the additional conditions expressly agreed upon or - failing expressed agreement - by the usual conditions for such mode of transport or service.

23.2. Acting as multimodal transport operator the Freight Forwarder is liable according to the Bill of Lading conditions applicable to the respective mode of transport.

## ***Limitations and exclusions of the Freight Forwarder's liability***

### **§ 24**

24.1. The Freight Forwarder is not liable for :

24.1.1. Valuables or Dangerous Goods unless declared as such to the Freight Forwarder in the concluded contract ;

24.1.2. loss following the delay of delivery unless expressly agreed in writing ;

24.1.3. indirect and/or consequential loss such as, but not limited to, loss of profit , loss of market, etc.;

24.1.4. decrease of weight by break bulk cargoes resulted from their propriety, not exceeding the limits for the said kind of cargoes specify in the respective provisions and in case of lack of such , limits customary accepted.

## **§ 25**

25.1. The indemnity paid by the Freight Forwarder to the person authorized by the conditions of concluded forwarding contract shall be determined according to the current commodity value, stated in the commercial invoice, and in case of lack of it - according to the current commodity exchange price, market price or basing on the normal value of the goods of the same kind and quality.

In no case the indemnity payable by the Freight Forwarder shall exceed the equivalent of 2 SDR per 1 kilograms of the gross weight of the goods lost or damaged, and totally the amount of 50.000 SDR for each event, unless a higher amount is recovered from a party for whom the Freight Forwarder is responsible.

25.2. The valid value of SDR is fixed on the basis of the rate of exchange noted and published by the Polish National Bank on the day of the damage.

25.3. The limits of the Freight Forwarder's liability and indemnification having the status of the carrier are subjected to the provisions of the Law applicable to the mode of transport concerned.

## ***Claims***

### **§ 26**

The Customer is solely entitled to submit to the Freight Forwarder a claim related to the forwarding services ordered.

### **§ 27**

27.1. Customer's claim against the Freight Forwarder should be handed over in writing within 6 days after the date in which the Customer learned or had to learn of the damage.

The Freight Forwarder is obliged to reply to the claim within 14 days of its receipt at the latest. In special cases the said time – limit can be reasonably extended, while in the time – limit of 14 day from the day of receiving of

claim, the Freight Forwarder is obliged to confirm its receipt and inform the interested party concerning the manner and date of his investigation.

27.2. Claim for damage or shortage in the goods should be supported by the documents stating the condition of the consignment and the circumstances in which damage or shortage occurred.

27.3. The evidence that the damage of the consignment occurred during transport on the précised means of transportation is the obligation of the claimant. In case when the place of the damage is unknown, the Freight Forwarder, at the demand of the Customer or consignee, should supply documentary evidence concerning the route of transport, specifying the places of reloading of the consignment from one means of transport to another.

### ***Lien on the goods and retention***

#### **§ 28**

28.1. In order to secure the collection of his outstanding debts against the Customer (present and overdue) the Freight Forwarder is entitled to keep the Customer's goods and / or documents until his outstanding debts have been paid by the Customer.

28.2. The Freight Forwarder has the statutory right of lien on the goods, documentation and monies as long as they remain in his possession due to any reason or for any reason, in case the Freight Forwarder is or may be entitled to lodge a claim against the Customer and/ or the owner of the goods or any other party demanding handing over such consignment, documentation or monies.

28.2.1. The Freight Forwarder is entitled to realize his rights guaranteed to him in point 28.2. concerning the amounts due to the Freight Forwarder from the Customer for the previously executed orders.

28.3. In case if according to the order of the Customer the consignment should be placed at the disposal of the third party or handed over to the third party, the Freight Forwarder is entitled to lien on the consignment.

28.4. All costs connected with the lien of the consignment and / or documents are debiting the goods.

## ***Time bar***

### **§ 29**

29.1. Claims under the forwarding contract are subject to time bar of one year.

29.2. The limitation period commences:

29.2.1. In case of claims for damage to or shortage in the goods – from the date of their delivery,

29.2.2. In case of total loss of the goods or their delayed delivery – from the date when the goods should have been delivered,

29.2.3 In all other cases – from the date of the completion of the order.

### **§ 30**

In case when the Freight Forwarder subject to § 3 acquires the status of the carrier, any claims under the contract of carriage are subject to limitation of the provisions of domestic and international Law regulating the said issue.

## ***Settlement of disputes and applicable law***

### **§ 31**

The contracting Parties may arrange for that the claims resulted from the contracts of forwarding regulated by the present Rules shall be submitted for the jurisdiction of the Court of Arbitration accredited by the Polish International Freight Forwarders Association.

### **§ 32**

In the absence of a separate agreement between the Parties, all disputes arising from the forwarding contract to which the present Polish General Forwarding Rules apply, shall be settled :

32.1. in case where both Parties of the contract have their place of business /domicile/ in Poland – by the Polish common courts in accordance with general regulations to be applied in this respect.

32.2. in case when one of the Parties has his place of business or domicile abroad, the competence of the court is to be established by the agreement of the both Parties, and in case of its absence the respective provisions of the Law.

### **§ 33**

In the absence of a different agreement between the parties, the Polish Law shall apply.