

## **Association of Hungarian Forwarding and Logistic Service Providers**

### **General Hungarian Forwarding Conditions (Valid, assembled and verified text 10th August, 2006.)**

#### **§ 1**

##### **Territory of Application**

1. These conditions must be applied to all contracts between contractor and forwarder, the subject of which fall under the criteria of forwarding according to Hungarian law.
2. In case the forwarder issues a combined freight document (MTO/CTO), these conditions are not applicable.

#### **§ 2**

##### **Forwarding Contract**

1. In the forwarding contract the forwarder undertakes to conclude contracts for transportation and other services according to his commission in his own name and in favour of the contractor and also to carry out complementary activities pertaining to the commission.
2. These conditions shall also apply if the forwarder concludes transportation /complementary contracts in his contractor's name or if his commission is to take over goods.
3. The forwarder's offer is valid only in case of immediate acceptance, excepted the case that the binding validity is stated in the offer. In this case the forwarder must receive his commission until the final day of the validity.
4. The commission must be put in writing; commissions given by telephone or verbally must be confirmed by the contractor in writing immediately. Any consequences arising from the contractor failing to do so are the contractor's responsibility.
5. The commission has to contain the exact data requested for the conclusion of the forwarding contract. Consequences arising from incomplete or inexact data are the responsibility of the contractor.
6. Forwarder has no obligation to verify data received from the contractor.
7. The forwarding contract is not considered to have been concluded, if the contractor does not issue a declaration of acceptance, which is of identical contents with the offer. Should the commission not be detailed enough or should be inexact, the legal relationship will commence only after receipt of the corrected/completed commission.
8. Contractor's instruction ordering the consignment to be held at the disposal of a third party can not be withdrawn if the third party is already entitled to the right of disposal over the consignment.

#### **§ 3**

##### **Fulfilment of the Commission**

1. During compliance with the commission the forwarder is expected to act with the professional care of a good businessman and shall as his paramount duty represent his contractor's interests.

2. The forwarder must follow the contractor's orders, he shall however draw his attention to unprofessional instructions. Consequences of impractical, unprofessional instructions, or of those received with delay are contractor's responsibility.

3. Forwarder shall keep contractor informed on circumstances obstructing the fulfilment of the commission, or which should necessitate the amendment of same.

4. Should the contractor withdraw the commission and should the forwarder have already started acting in the interest of fulfilment of the same, the damages and costs so arising as well as freight costs shall be born by the contractor.

5. Should circumstances arise, due to which compliance or part-compliance with forwarder's obligations becomes impossible, forwarder is entitled to terminate the contract, and claim payment of his costs and proportional fee.

6. Should the contractor change his original commission so that the execution of same becomes impossible, forwarder is entitled to terminate the contract, and claim payment of his costs and fee.

7. Forwarder is entitled to act on his own judgement, should he not receive instructions in due time from the contractor although having asked for those. When so acting, forwarder must consider minimising damages arising to the contractor and observe points of rationality.

8. In the absence of a definite prohibitive instruction from the contractor, forwarder is entitled to forward goods by grouped transport.

9. The forwarder must only be familiar with those regulations of the authorities which are directly pertaining to forwarding and has to comply with those. He is not responsible for the compliance with other authorities, regulations.

**10. The forwarder may also undertake to fulfil the commission (it agrees on a main contractor's fee), and/or it may also employ subcontractors.**

11. In the absence of a definite declaration to the contrary, the forwarder shall not warrant to forward the consignment on a predetermined day or by a predetermined scheduled vehicle.

12. On request of the contractor forwarder will issue an acceptance certificate.

**13. As need arises, forwarder provides for storing the consignment prior to dispatching, delivering and for transit storing.**

**Storing may take place in a warehouse owned or operated by forwarder or in one used by it from time to time.**

**Upon notice in advance, in normal business hours, without disturbing forwarder's operation, contractor may inspect the consignment accompanied by forwarder, at its own expense. As required, contractor or its agent may take samples of the goods, or may perform other actions with the same if agreed thereon with forwarder in advance. The expenses in connection with sampling and other actions shall be borne by the contractor.**

**Contractor shall be responsible for damage caused to forwarder or third persons in connection with inspection, sampling or other actions.**

**Should contractor allege that the inspected consignment is failing, incomplete or damaged, it may ask for drawing up minutes which may not be refused by forwarder. Should contractor wish to employ an expert due to the shortage, deficiency or damage of**

**the consignment, forwarder shall consent thereto, but the expenses in connection therewith shall be borne by contractor.**

#### **§ 4**

##### **Handing Over the Consignment to the Forwarder**

1. The forwarder is entitled, however not obliged to check himself - except for the number of colli - the real data of the consignment, when same is handed over to him, or to his representative.
2. Should the checked data deviate from those contained in the commission to an extent, that it calls for a new agreement of settling accounts, forwarder shall inform contractor immediately about the fact that data contained in the offer/commission are not identical with those of the consignment. All consequences arising from this fact (delay, rate level, costs, etc.) will be to the charge of the contractor.
3. Should the data of the consignment for any reason whatsoever require correction, forwarder shall inform contractor accordingly and if necessary shall ask for instructions.
4. Forwarder has no obligation to pack or bundle the consignment or to repair the packing of the consignment, except in cases where no delay is permissible. In these cases the contractor must pay the costs of these services.

#### **§ 5**

##### **Hazardous Consignments, Consignments Requiring Special Handling**

1. Consignments representing a hazard to other consignments, other goods and persons, or those containing perishables or which are sensitive for other reasons, can be handed over to the forwarder or his representative only based on a prior written agreement and both documents and the consignment have to be marked accordingly showing the consignment being hazardous.
2. The contractor/his representative has to fill in, sign and hand over to the forwarder a declaration on the consignment showing the hazardous/special parameter of the same with the classification according to the regulations of transportation for various means of transportation of hazardous consignments. In case of failing to hand over this declaration, all damages arising from this will be charged to the contractor.
3. If the contractor has failed to comply with his obligation to render information on the hazardous character of the consignment, the forwarder is entitled to take all measures necessary to avert the risks originating from the hazardous character of the consignments. Contractor shall pay forwarder's all cost so arising.

#### **§ 6**

##### **Insurance of Forwarding**

1. Forwarder will take out an insurance policy for the consignment only on contractor's expressed request and to latter's account with insurance conditions specified by the contractor, based on the data of the commission.
2. Stating the value of the consignment itself does not qualify as a request to take out an insurance policy.

#### **§ 7**

## Payment

1. Contractor shall pay forwarder in case of a contract applying firm rates the forwarding fee, in case of a contract with the forwarder acting on commission the costs and forwarding commission.
2. Forwarder's invoices are - in the absence of an agreement stipulating it otherwise - due on the day received by the contractor, delay of payment commences instantly without any separate call for payment or applying any other condition. Interest on delayed payment is payable according to the ruling Hungarian regulations.
3. Forwarder is entitled to request an advance payment, to make a separate agreement on payment with the commissioner or to cash his costs and fee from contractor's bank account by means of an immediate call for payment.
4. If the contractor promises payment by a third party in his forwarding commission for services to be rendered, forwarder may reject acceptance of this condition and in case of non-payment by the third party the contractor shall be obliged to satisfy the forwarder's claims inclusive of interest.
5. **Contractor and** any third person designated by contractor may not apply set-off or retention against forwarder's claims.

**6. Should contractor fail to pay up fees when due, even in a single event, forwarder may at its discretion demand security. Should contractor not provide for the security so demanded within the term appointed by forwarder, forwarder may terminate the forwarding contract. In particular, forwarder may ask for security in the event when contractor had already been in default against it in other cases, under any title whatsoever, or if the expectable costs are not covered by the goods. As far as the value of goods is concerned, forwarder shall set out from the value quoted by contractor if the value of goods was quoted, however, forwarder shall have the right to have the market value of the goods examined and defined by experts. Should the value of goods define in such way be lower than the value of goods quoted, forwarder shall be entitled to set out from such lower value as far as security is concerned.**

## § 8

### Right of Lien, Right of Retention

1. The forwarder has the right lien on all matters and other values being in his possession and over those he holds the right of disposal by means of documents up till the amount of his own claims originating from the given forwarding commission, independently of the fact whether these have already become due or not.
2. The right of lien/right of retention is extended to matters/values which are in no connection with the given forwarding commission, should however the financial situation of the contractor jeopardise the fulfilment of forwarder's claim, or if the debtor does not settle his account for a longer period.
3. Forwarder may enforce his right of lien through commercial channels by excluding legal proceedings before court.

## § 9

### Forwarder's Responsibility

1. Forwarder is responsible for damages caused by breach of contract in case of having acted with negligence. Forwarder is not responsible for those damages caused by carriers, warehouses,

loading labour, indirect forwarders or persons rendering other services, excepting the case that the forwarder has omitted exercising due professional care when selecting them.

2. The partners may agree, that forwarder will enforce claims against the above persons in favour of the contractor to the latter's account and risk either using the legal procedure before court or excluding it. As a compensation for this activity forwarder is entitled to a fee to be agreed upon by the parties independently of the final outcome of the procedure.

3. If the responsibility of the forwarder can be established and the rightful claimant is a person having a legal seat within the country, the Hungarian Civil Code is applicable to his responsibility. If the responsibility of the forwarder can be established and the rightful claimant is a person having a legal seat abroad, his responsibility will be limited in the same way, as it would be limited in the case of forwarding contracts by regulations ruling in the country of the rightful claimant.

**4.1 For damage sustained in the consignment, the forwarder shall be liable as a carrier if:**

**a.) the consignment was carried by himself;**

**b.) he let the consignment sent in groupage service, and damage sustained as a consequence thereof;**

**c.) damage arisen in the consignment sustained within the scope of his forwarding activity.**

**4.2. Where the forwarder is liable as a carrier, the rules of the carrying method actually applied and the general rules shall apply.**

**4.3. Where cannot be established during the period of which carrying method the damage sustained the the extent of liability shall be the one from among the rules of the carrying methods applied in the combined carrying which is the most favourable for the principal.**

**4.4. Where the carrier's liability of forwarder can be established, and the claimant is a person having a legal seat abroad, his liability shall be limited to such an extent in which the carrier's liability is limited in the claimant's country by the rules relating to the particular legal transaction.**

**5.1. The forwarder shall be liable as a carrier even in the case if he undertook this liability expressly and in writting. In this case, the following supplementary rules shall also apply.**

**5.2. Where the forwarder undertook carrier's liability, expressly and in writting, he has to pay up penalty as per hours in case of defaulted taking over or delivery the current amount if which is published by the Association of Hungarian Forwarders and Logistic Service Providers\*. Principal may only claim the reimbursement of his damage exceeding penalty if he announced his interest attached to the delivery within the appointed time, and the forwarder undertook the observance of deadline being aware of the interest in delivery, further, if principal proves that the reason of default had not been caused by an unavoidable reason outside of forwarder's scope of activities.**

**5.3. Further, forwarder may also undertake, in writing, against an extra fee, to reimburse the evidenced damage which had been caused by principal, due to the defaulted performance of the contract of forwarding (carriage), to third parties. Forwarder's obligation according to this article is not based on the actual liability but it qualifies as a business service.**

***5.3.1. In case of such claims, one has to announce in the commission the expectable kinds of damage, the expectable (assessed) amount thereof and the documents proving that the principal owes the damage, if any, to third parties, shall be enclosed. Upon the occurrence of the damage, if any, such documents shall also be enclosed which prove that principal has paid up damage.***

***5.3.2. The damage shall not be reimbursed by forwarder which can be attributed to force majeure, natural disasters, measures of the authorities, strike, circumstance unhinderable by forwarder or his sub-contractor, or which cannot be attributed to other normal forwarding/carriage proceedings.***

***5.3.3. The reimbursement of damage can be subjected by forwarder to the condition that principal - if necessary - shall assign to forwarder any and all rights which are due to the principal towards other persons in connection with the damage, and hand over the documents necessary for that establishing the damage in facts and rights. The reimbursement of damage is depending on forwarder's decision if it can only be rendered probable in facts or in rights. If principal would have paid up damage without the forwarder's prior consent thereto, it shall not be binding on forwarder.***

## **§ 10 Time of Limitation**

1. Claims based on forwarding contracts become prescribed within one year. Prescription commences, when the claim becomes due, however latest on the day of handing over the goods.

## **§ 11 Applicable Law, Competent Court**

1. Contracts of the forwarder shall be governed by Hungarian Law.

2. The partners shall endeavour to settle eventual disputes amicably.

3. In the absence of an agreement to the contrary between the partners, the regular court according to the legal seat of the forwarder shall have exclusive competence of jurisdiction in all cases of dispute. Forwarder reserves the right to depart from individual regulations of these GENERAL CONDITIONS with mutual consent, or in individual contracts.

### **REMARK:**

This version of the General Hungarian Forwarding Conditions is assembled with the modifications approved by the Association of Hungarian Freight Forwarders' General Meeting on the 23rd May, 2000 and on the 29th May, 2002. (The modifications approved on the 23rd May, 2000 are printed in **bold**, the ones approved on the 29th May, 2002 are printed in **bold italics**.)

### **\*Resolution of the Board of the Association of Hungarian Forwarding and Logistic Service Providers:**

The meeting of the Board at 28th January, 2003 has made the following decision: "The board, regarding the 9. § 5.2. point of the General Hungarian Forwarding Conditions, announces the amount of forfeit as follows: 60 EUR/hour, but twice the freight carriage at maximum."