



**SSL - SVAZ SPEDICE A LOGISTIKY ČESKÉ REPUBLIKY
ASSOCIATION OF FORWARDING & LOGISTICS
OF THE CZECH REPUBLIC**

General Conditions of Freight Forwarding - Version 2014

The Association of Forwarding and Logistics of the Czech Republic being a professional and special interest organisation has issued, within the meaning of sec. 1751 para 3 of the Act No. 89/2212, Coll. of Laws (hereinafter „ New Civil Code „ or „NCC“ only), the following **General Conditions of Freight Forwarding (2014) „ :**

Preamble :

Sec. 2471 of the New Civil Code defines the Freight Forwarding Contract as follows:

„Under the Freight Forwarding Contract, the Freight Forwarder undertakes to arrange for the Principal, in his own name and for the Principal ´s account, the carriage of the consignment from a certain place to another certain place, or, as the case may be, to arrange or perform services connected with the carriage, and the Principal undertakes to pay a remuneration to the Freight Forwarder“.

Further provisions in respect of the Freight Forwarding Contract are contained in Sec. 2471 para 2 and Sec. 2472 to 2482 of the New Civil Code.

Art. I.

Freight Forwarder ´s Obligations

1. The Freight Forwarder shall be obliged
 - 1.1. to execute his activity with a needed care and to see to a qualitative and economical satisfaction of Principal ´s interests

known to him. Within the scope of such activities the Freight Forwarder shall :

- a) properly care for the things entrusted to him by the Principal and for the things obtained by him for the Principal,
- b) deposit for the Principal's needs, for an adequate or agreed period, documents obtained in the course of performing the Freight Forwarding Contract,
- c) draw the Principal's attention to any apparent incorrectness of his instructions. In case the Principal insists on his instructions, the Freight Forwarder shall not be liable for damage, if any. The Freight Forwarder is further entitled to ask for a completion of Principal's orders if insufficient or incomplete instructions have been given to him by the Principal. The Freight Forwarder shall, however, not be obliged to check the correctness of particulars provided by the Principal,
- d) in case of threatening danger due to delay, the Freight Forwarder shall arrange the carriage in a manner complying to the utmost with the Principal's interests known to the Freight Forwarder. If it is, however, possible to ask for the Principal's approval, further steps shall be taken after such approval only,
- e) arrange for the insurance of the consignment upon explicit instruction of the Principal only. A mere value indication of the consignment shall not be considered as an order to arrange the insurance.

Should the insurance be agreed upon, the Freight Forwarder shall arrange insurance in compliance with the insurance conditions customary at the place of fulfilment. If the insured event occurs, the Freight Forwarder shall fulfil his obligations by assigning his claims against the insurer to the Principal upon his request. This does not affect the

Freight Forwarder's own decision concerning his own liability insurance,

- f) let the Principal know, upon his request, the name of the carrier with whom the contract of carriage was concluded,
- g) inform the Principal without any unnecessary delay of an imminent damage threatening the consignment or already arisen thereon, as soon as the Freight Forwarder has learned thereof.

- 1.2. In the course of fulfilment of his engagements, the Freight Forwarder shall be bound to provide, with the needed care, for the mode and conditions of carriage that suit best to the Principal's interests as they follow from the contract and his orders and instructions, or are known to the Freight Forwarder.
- 1.3. The Freight Forwarder shall be liable for a damage on the consignment taken over which has arisen in the course of arranging for the carriage, or, as the case may be, in the course of arranging for and/or performing services connected with the carriage, unless he proves that he could not either prevent it by exercising a needed care, or minimize its extent.
- 1.4. In case of a danger of delay, he shall proceed in the interest of the protection of the consignment even without Principal's instruction in such a manner that the interests of the Principal are protected as much as possible in accordance with the information known to the Freight Forwarder.
- 1.5. The Freight Forwarder shall ascertain the weight of the consignment only if agreed so with the Principal. In case of doubts, the certificate issued by the Freight Forwarder shall be valid as far as the indication of kind, contents, price, weight and, if appropriate, packing is concerned. The Freight Forwarder shall be obliged to advise the Principal of any new facts without delay.

- 1.6. The Freight Forwarder shall examine the authorization of the person representing the Principal that produces such an authorization.
- 1.7. Unless anything else has been agreed in writing, the Freight Forwarder shall examine and seek out for a more suitable procedure in carriage of the consignment within the scope of the commercial usage.
- 1.8. The Freight Forwarder shall follow the Principal's instructions relating to the customs clearance. In case it is not possible to perform customs clearance in accordance with the Principal's instructions, it is necessary to inform him thereof without delay.

Art II.

Freight Forwarder's Rights

2. The Freight Forwarder shall be entitled
 - 2.1. to ask for the order for providing carriage (Freight Forwarding Order) to be given in writing unless the contract has been concluded in a written form,
 - 2.2. to sell in the self-help way, in accordance with Sec.2126 and Sec. 2127 NCC, the consignment for the Principal's account if a substantial immediate damage threatens to the consignment and there is no time for asking for the Principal's instructions, or if the Principal is in delay with such instructions and does not take the necessary measures himself (see Art. IV, item 4.9.),
 - 2.3. to demand from the Principal an adequate advance payment covering the expenses connected with the fulfilment of the contract, viz. before commencement of the fulfilment thereof,
 - 2.4. to demand from the Principal the agreed remuneration or, if it is has not been agreed, a remuneration to be paid according to the Freight Forwarder's tariff, or, as the case may be, an adequate remuneration usually granted at the time of conclusion

of the contract and under similar contractual conditions. In addition thereto, the Freight Forwarder has the right to be reimbursed by the Principal for the necessary and useful expenses as well as for those expended reasonably in the course of fulfilment of the Forwarding Contract,

- 2.5. to demand from the Principal payment of the remuneration as soon as he has concluded the contract with the carrier and handed over the consignment to him,
- 2.6. to apply, upon request of the preceding forwarders, all their appropriate rights resulting from their lien on the consignment in order to enable him to satisfy their claims. If he satisfies them, they pass over to him together with the right of lien ensuring them.
- 2.7. to apply the statutory lien on the consignment as security for the Principal's debts arisen from the Contract as well as from other Freight Forwarding Contracts concluded with him, as long as the consignment is in his custody or in the custody of someone who holds it on the Freight Forwarder's behalf or as long as documents entitling him to dispose of the consignment are in his possession,
- 2.8. to consider the instruction relating to the consignment for binding upon himself until it has been withdrawn by the Principal. The order for putting the consignment at the disposal of a third person may not be withdrawn after the Freight Forwarder has received the instruction of the third person concerned,
- 2.9. to act according to his own discretion, by observing the Principal's interests known to him, in particular when choosing the mode of carriage, type of transport means and route of transportation, in case he has not received a sufficient or feasible instruction,

- 2.10. if not contradictory to the contract or not prohibited by the Principal prior to the commencement of the performance of the carriage at the latest, the Freight Forwarder himself may perform the carriage which he has to arrange for, in such a case, he is entitled to obtain the freight payment ,
- 2.11. if the Freight Forwarder makes use of a further freight forwarder (an intermediate forwarder) for arranging the carriage, he shall be liable as if he had arranged for the carriage himself.

Art III.

The Principal ´s Obligations

3. The Principal shall be obliged to
 - 3.1. give to the Freight Forwarder in writing an order for arranging the carriage (Freight Forwarding order) in case the contract is not in a written form and if the Freight Forwarder has asked for it,
 - 3.2. in case of an imminent substantial danger threatening to the consignment, after receipt of an information thereon, transmit to the Freight Forwarder further instructions without delay, otherwise the Freight Forwarder shall have the right to sell the consignment in compliance with the Art II. item 2.2.,
 - 3.3. pay to the Freight Forwarder the agreed remuneration, as soon as the latter has concluded the contract with the carrier, or if appropriate, grant him an adequate advance-payment on expenses connected with the fulfilment of the Freight Forwarding Contract,
 - 3.4. remit to the Freight Forwarder the agreed remuneration, or, if this has not been agreed, pay the remuneration according to the Freight Forwarder ´s tariff, or, if appropriate, an adequate remuneration usually granted at the time of conclusion of the Contract and under similar contractual conditions as well as reimburse the expences reasonably expended by the Freight Forwarder in the course of fulfilment of the contract,

- 3.5. withdraw the order if such order for arranging for the carriage has not been accepted without undue delay (unless otherwise agreed between the Freight Forwarder and the Principal).
- 3.6. put at the Freight Forwarder's disposal correct particulars regarding the contents and nature of the consignment as well as other facts required for concluding a contract of carriage, such as e.g. weight, kind, number of pieces, dimensions and weight of individual pieces, marks and numbers, kind of packing and information whether the goods are dangerous in the sense of the ADR Convention, RID, etc. as well as advise the Freight Forwarder upon higher value of the consignment, in particular if the Principal requires special measures to be taken in the performance of the carriage or if the insurance of the consignment is to be extended due to its higher value. Otherwise, he shall be liable for damages arisen to the Freight Forwarder due to breach of that obligation.
- 3.7. draw in time the Freight Forwarder's attention, in a customary way, to the obligations under public law or, if appropriate, customs law connected with the carriage of the consignment, unless these obligations are known to the Freight Forwarder. The Principal shall be responsible to the Freight Forwarder for all consequences of failure to fulfil such obligation,
- 3.8. grant to the Freight Forwarder, in case of cancelling the order for arranging the carriage, the agreed remuneration after deducting the expenses saved. If the Principal proves that he has cancelled the order due to reasons for which the Freight Forwarder is responsible, the Freight Forwarder has the right to claim the compensation of his expenses only,
- 3.9. grant to the Freight Forwarder, besides the agreed remuneration, a compensation for necessary and useful expenditures as well as a compensation for the costs reasonably expended in the course of the fulfilment of the contract,

- 3.10. reimburse to the Freight Forwarder the expended costs and an appropriate remuneration for the arrangement of the return carriage of the consignment, if the consignee refuses to take over the consignment destined to him. He is also obliged to pay to the Freight Forwarder a remuneration in such a case if the order for a „cash on delivery“, or another mode of collection, has been additionally withdrawn, or the amount destined for the collection before the delivery of the consignment has not been paid by the consignee of the consignment,
- 3.11. reimburse to the Freight Forwarder his outstanding amounts for freight, customs charges, taxes and other charges settled by the Freight Forwarder, in particular if being authorized to dispose, or as a possessor, of another´s consignment unless the Freight Forwarder is responsible for them.

Art.IV.

General provisions

4.1. Place of fulfilment

The place of fulfilment for all participants is the place of the Freight Forwarder´s place of business to which the order has been addressed or, as the case may be, the Freight Forwarding order has been delivered.

4.2. Terms of fulfilment under Freight Forwarding Contract

Except for a special agreement in writing concluded before the commencement of the carriage, the Freight Forwarder shall neither be responsible for time limits of loading and discharging of the consignment nor for a particular turn in despatch of the consignment by the same mode of transport. A specific indication of the consignment, e.g. as "exhibition goods", does not qualify it

for a priority despatch unless such priority has been explicitly agreed upon.

4.3. Breach of contractual obligations

4.3.1. If a party to the Contract commits an obligation resulting from the Freight Forwarding Contract it shall be obliged to compensate the loss resulting therefrom .

4.3.2. Warranty of the consignee

By the fact of the receipt of the consignment the carriage of which was arranged by the Freight Forwarder, the consignee thereof becomes guarantor for claims (receivables) of the Freight Forwarder from the Freight Forwarding Contract existing towards the Principal in case he had knowledge of Freight Forwarder ´s claims (receivables) or must have had knowledge thereof.

4.3.3. Exemption from the liability for damages

a) the Freight Forwarder shall be relieved from liability for damages if he proves that he was prevented from the fulfilment of the contract temporarily or permanently by an extraordinary unforeseeable and insurmountable obstacle arisen independently of his will.

b) if the damage has arisen or has been increased in consequence of circumstances that are attributable to the aggrieved person, the liability for damages shall be reduced proportionally.

4.4. The Scope of the Freight Forwarder´s Liability

4.4.1. If the Freight Forwarder is liable for damage under the Freight Forwarding Contract, his obligation to pay compensation for damage shall be limited:

a) in all cases, to an amount equivalent to SDR 20,000 per event or multiple events having the same cause of rise of damage; and/or

b) in case of loss or destruction of, or damage to, the consignment in the course of arranging for the carriage, or, as the case may be, to the consignment taken over by the Freight Forwarder for the carriage or services connected with the carriage, to an amount equal to SDR 8.33 per one kilogram of the gross weight of the lost, destroyed or damaged consignment; and/or

c) in case of damage resulted from delayed delivery, to an amount equal to the remuneration (payment) as defined in Art. III. item 3.4 as above

4.4.2 Neither indirect damage nor loss of profit shall be compensated for.

4.4.3. The Freight Forwarder is not entitled to the benefit of the limitation of liability as defined in items 4.4.1 and/or

4.4.4 above in case of damage caused by himself with intent or due to gross negligence.

4.5. Impediments excluding liability

4.5.1. Such an obstacle shall be considered as a circumstance excluding the liability which occurred regardless of the will of the party under obligation and which prevents it from the fulfilment of the obligation if it cannot be reasonably presumed that the party under obligation would prevent or overcome such an obstacle or its effects, as well as that this party would have anticipated such an obstacle at the time of origin of the undertaking.

4.5.2. In such cases, the Freight Forwarder shall be entitled (but not obliged) to withdraw from the contract even if the contract has been partly performed. However, the Freight Forwarder's obligation to take care of the Principal's interests shall continue.

4.5.3. In such cases, the Principal has the right to withdraw from the contract, too, if it is not justified to require from him to persist in the contract.

4.5.4. If the Freight Forwarder or the Principal withdraws from the contract according to item 4.5.2 or 4.5.3., the Freight Forwarder shall be entitled to get a compensation for the expenses expended and to receive an adequate remuneration.

4.6. Liability under the Contract of carriage

4.6.1. The Freight Forwarder shall not be responsible for the execution of the carriage of the consignment arranged for by him unless he has executed himself the carriage of the consignment that should have been arranged by him according to the Freight Forwarding Contract or, if appropriate, unless he has taken over contractual responsibility for the execution of the carriage of the consignment on the basis of an explicit agreement with the Principal. In such a case, the Freight Forwarder shall be liable as a carrier in accordance with the relevant provisions.

4.6.2. A contractual agreement in respect of a fixed remuneration of the Freight Forwarder, or, as the case may be, charging the Freight Forwarder's remuneration in a firm rate (the so- called „takeover price/rate“) shall not be deemed to represent a contractual taking over of the liability for the carrier.

4.6.3. Claims against carriers, if any,

(a) shall be put forth by the Freight Forwarder, upon the Principal's request, in his only name and on the Principal's account who shall be obliged to render a needed co-operation to the Freight

Forwarder, in particular to provide documents relating to the consignment, its value, etc., or
(b) shall be assigned by the Freight Forwarder to the Principal for direct enforcement of rights towards the carrier and the Freight Forwarder shall give a needed co-operation to the Principal,
(c) if the Principal does not raise his requirement towards the Freight Forwarder according to (a) or the claims towards the carrier according to (b) or, as the case may be, if he does not give a needed co-operation to the Freight Forwarder, consequences resulting therefrom shall be to the detriment of the Principal.

4.7. Liability for Warehousing of consignment

If the Freight Forwarder performs the warehousing of goods (consignment) within the scope of his activities, such activity shall be governed by the terms and conditions of a contract of warehousing (Sec.2415 and subsequent of the NCC).

4.8. Lien and right of retention

4.8.1. a) The Freight Forwarder has a statutory lien on the consignment as a security for his claims resulting from the Freight Forwarding Contract as long as the consignment is in the Freight Forwarder's custody, or in the custody of someone holding it on the Freight Forwarder's behalf, or as long as the Freight Forwarder is in possession of the documents entitling him to dispose of the consignment.

b) When exercising the right of lien the Freight Forwarder proceeds in accordance with the provisions of Sec.1359 and subsequent of the NCC.

The Freight Forwarder is not obliged, in the sense of Sec.1360 of the NCC, to sell the consignment in a public auction. When making use of his right to sell it in another way he shall use

services of certificated auctioneer with condition that the sale of the consignment must be published twice at least in some countrywide journal with interval of at least 14 calendar days before the date of the sale of the pledge.

4.8.2. a) The Freight Forwarder may, according to his own will, withhold other person's movable thing (consignment) which is in his possession for the purpose of securing a due or, as the case may be, even an undue debt of the person to which such thing (consignment) should be otherwise handed over by him.

b) When exercising the right of retention the Freight Forwarder proceeds in accordance with the provision of Sec.1397 and subsequent of the NCC.

4.8.3. The right of retention may be exercised by the Freight Forwarder on the basis of the title of securing the recovery of his due receivables towards the Principal as well as receivables not yet due, if there is a justified suspicion that they will not be paid by the Principal and the Principal has not given a proper security despite the Freight Forwarder's request.

4.8.4. In case of coincidence of both rights (lien and retention) it is up to the Freight Forwarder in which way he will realize the consignment.

4.9. The Self-help Sale

The Freight Forwarder shall be entitled to sell the consignment if substantial immediate damage is threatening to the consignment and there is no time for requesting instructions from the Principal, or, if the Principal is in default in giving instructions, viz. in the self-help sale in accordance with Sec.2126 and Sec.2127 of the NCC (compare Art.II.item 2.2.).

4.10. Interest on overdue payments

4.10.1. The delay in payment towards the Freight Forwarder occurs, unless agreed otherwise, 15 days after the delivery of the Freight Forwarder's invoices

4.10.2. In case of delay in payment, the Freight Forwarder shall be entitled to charge interest at the agreed interest rate and, if not agreed, the interest at the rate determined by the Government's Order in the sense of Sec. 1970 of the New Civil Code.

4.11. Time bar (Prescription) of rights resulting from the Freight Forwarding Contract

4.11.1. Common time bar (Prescription term) is three years.

4.11.2. Rights arisen from the total destruction or loss of the transported thing (consignment) or from damage to the thing, or delayed delivery, shall be time-barred within one year. The period of time bar (Prescription) shall start to run from the day on which the consignment was delivered or, as the case may be, when it should have been delivered.

4.11.3. One year prescription period according to point 4.11.2. shall not be valid in respect of the right resulted from an intentional breach of obligation or, in case when one year prescription period has been agreed upon to the detriment of a weaker party (Sec. 630 para 2 NCC).

4.11.4. Remaining rights resulting from Freight Forwarding Contract shall be time-barred within three years unless a shorter or longer prescription period has been agreed upon by the parties. The agreed prescription period may not be shorter than one year and longer than 15 years (Sec. 630, para 1, NCC).

4.12. The form of orders given to the Freight Forwarder

4.12.1. An order to the Freight Forwarder is being given in writing and, if given in a different way, the Principal shall be

obliged , upon Freight Forwarder´s request, to confirm it in writing.

4.12.2. The acceptance of an order may also be confirmed by the Freight Forwarder in another way than in writing.

Art V.

Final and Transitory Provisions

5.1. The present General Conditions of Freight Forwarding (2014) were approved by the General meeting of the Association of Forwarding and Logistics of the Czech Republic on 17th April 2013 with entry into force and effective from January 1th, 2014 or, if appropriate, from a date of the day of a later effectiveness of the New Civil Code.

5.2. These Conditions form an integral part of a Freight Forwarding Contract concluded after the date of effectiveness of the present Conditions, if the parties refer to them in the Freight Forwarding Contract.

5.3. In the course of conclusion of the Freight Forwarding Contract between entrepreneurs (businessmen) it is possible to determine a part of the contract by a mere reference to the present General Conditions (Sec. 1751, para 3, NCC).

5.4. If the Principal of the Freight Forwarder is a natural person-non-entrepreneur (consumer) in the sense of the Sec.419 NCC, the present General Freight Forwarding Conditions shall become a part of the concluded Freight Forwarding Contract on the basis of an explicit agreement of the parties subject to observance of the procedure according to the provisions of Sec.1810 and subsequent of the NCC (Consumer contracts).

5.5. Deviating agreements in the Contract shall have preference over the wording of the present General Freight Forwarding Conditions even if they form an integral part of the concluded Contract (Sec. 1751,para 1, second sentence of the NCC) .

5.6. Relations arising from Freight Forwarding Contracts and /or other contracts entered into before December 31,2013 or , if appropriate , before effectiveness of the present General Freight Forwarding Conditions, in case such concluded contracts refer to General Freight Forwarding Conditions as forming an integral part thereof, shall be still governed by the General Conditions of Freight Forwarding issued by the Association of Forwarding and Logistics of the Czech Republic in the version as effective from July 1, 2005.

Martin DRÁBEK
President of the Association