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MODEL NATIONAL LAW ON FREIGHT FORWARDING ACTIVITY

Chapter 1. General Provisions

Article 1. Definitions

“**Contract**” means the contract of freight forwarding concluded by the Forwarder and Customer

“**Customer**” means any natural or legal person at whose request or on whose behalf the Forwarder undertakes its professional activities or provides advice, information or services.

“**Delivery**” means the handing over of the goods to the consignee, or the placing of the goods at the disposal of the consignee in accordance with the Contract or with the law or usage of the particular trade applicable at the place of delivery, or the handing over of the goods to a third party to whom, pursuant to the law or regulations applicable at the place of delivery, the goods must be handed over.

“**Freight Forwarding**” means the provision of advice, information or services for the organisation of carriage of goods by any type of transport and the drawing up of the documents of carriage, documents for Customs purposes and other documents necessary for effecting the carriage of goods.

“**Forwarder**” means a natural or legal person which undertakes Freight Forwarding (whether as an agent or a principal)

“**Services**” means any activity undertaken by the Forwarder in the course of its business on behalf of the Customer.

Article 2. Scope of application

1. This Law regulates Freight Forwarding activities in the Republic of xxx
2. The parties to the Contract may determine the terms of the Contract not stipulated by this Law, other laws of the Republic of xxx or other normative legal acts adopted in accordance with the Civil Code of the Republic of xxx.
3. The provisions of this Law shall not cover Freight Forwarding in the field of postal communication.

Chapter 2. The Rights and Duties of the Forwarder and the Customer

Article 3. The Rights of the Forwarder

1. The Forwarder shall be entitled to undertake any or all of its services as an agent or as a principal.
2. When the Forwarder contracts as principal for any services, it may perform such services itself or it may subcontract the whole or any part of such services as stipulated in the Contract.
3. Unless the Contract of freight forwarding stipulates otherwise, the Forwarder may, in the interest of the Customer, choose or change the type of transport, the route of the carriage of the goods, or the sequence of the carriage of the goods by various types of transport. In so doing the Forwarder must immediately

notify the Customer about changes made in accordance with this sub-article.

4. Except as provided in Article 3(3) above, the Forwarder may deviate from instructions of the Customer only if

- i) this becomes necessary in the interests of the Customer due to unforeseen circumstances, or
- ii) the Customer's instructions are inexact or incomplete, or
- iii) the Customer's instructions do not conform to the Contract

and the Forwarder cannot obtain the Customer's further instructions or consent within a reasonable time.

5. If incomplete information is submitted, the Forwarder must request the necessary additional data from the Customer. The Forwarder may abstain from fulfilling the Services stipulated by the Contract pending the submission by the Customer of the necessary documents, and also information about the properties of the goods, about the conditions for their carriage and other information necessary for the fulfilment of the Forwarder's Services.

6. The Forwarder may check the accuracy of the documents submitted by the Customer, and also the information about the properties of the goods, the conditions for their carriage and other information necessary for the fulfilment by the Forwarder of the Services stipulated by the Contract.

Article 4. The Rights of the Customer

1. The Customer may:

- i) request from the Forwarder relevant information about the carriage of the goods;
- ii) give instructions to the Forwarder in accordance with the Contract;
- iii) If the Contract so stipulates, choose the itinerary of travel of the goods and the type of transport.

Article 5. The Duties of the Forwarder

1. The Forwarder must provide Services in accordance with the Contract and with a reasonable degree of care, diligence, skill and judgement.

2. When accepting the goods, the Forwarder must issue a certificate of receipt to the Customer.

3. When acting as agent, the Forwarder must also submit to the Customer the originals of the contracts concluded by the Forwarder in the name of the Customer, on the basis of a power of attorney issued by him, in accordance with the Contract.

4. The Forwarder may not conclude in the name of the Customer a contract of insurance of the goods unless that is directly stipulated by the Contract.

Article 5. The Duties of the Customer

1. The Customer must promptly submit to the Forwarder full, exact and accurate information about the properties of the goods, about the conditions for their carriage and other information necessary for the fulfilment by the Forwarder of the Services stipulated by the Contract and also the documents necessary for fulfilling Customs, sanitary and other types of state control.

2. The Customer must pay the remuneration due to the Forwarder In accordance with the procedure stipulated by the Contract and also reimburse the expenses incurred by the Forwarder in the interests of the Customer.

Chapter 3. Liability of the Forwarder and the Customer

Article 6. General Basis of Liability of the Forwarder as agent

1. When acting as agent, the Forwarder shall be liable to the Customer, subject to sub-articles 2 and 3 below and to the limits of liability set out in Article 9 below, for loss resulting from loss of or damage to the goods as well as from delay in Delivery if it fails to exercise a reasonable degree of care, diligence, skill and judgement in the performance of the Contract.
2. When acting as agent, the Forwarder shall be responsible for acts and omissions of its servants and agents, when any such servant or agent is acting within the scope of his employment.
3. When acting as agent, the Forwarder shall not be liable to the Customer for acts and omissions of third parties, such as, but not limited to, carriers, warehousekeepers, stevedores, port authorities and other Forwarders, unless the Forwarder has failed to exercise a reasonable degree of care, diligence, skill and judgement in selecting, instructing or supervising such third parties on behalf of the Customer.

Article 7. General Basis of liability of the Forwarder as principal

1. The Forwarder shall be liable as a principal
 - i) when it performs Services by itself using its own facilities, installations or transport means, or
 - ii) when, by issuing its own transport document it has made an express or implied undertaking to assume liability as a principal.
2. The period of responsibility of the Forwarder, when acting as a principal, shall extend from the time when it takes the goods in its charge until their Delivery. Goods shall be deemed to be taken in charge when they are handed over to and accepted for carriage by the Forwarder.
3. When acting as a principal, the Forwarder shall be responsible for acts and omissions of its servants and agents, when any such servant or agent is acting within the scope of his employment and shall also be responsible for any other person of whose services it makes use for the performance of the contract as if such acts of omissions were its own.
4. When acting as a principal, the Forwarder shall be liable to the Customer, subject to the limits of liability set out in Article 9, for loss resulting from loss of or damage to the goods as well as from delay in Delivery unless it proves that no fault or neglect of its own, its servants agents or sub-contractors has caused or contributed to the loss, damage or delay in Delivery.
5. However, if the Forwarder proves that a violation of an obligation has been caused by breach of the contract of carriage and the stage of transport where the loss, damage or delay occurred is known, the liability of the Forwarder shall instead be determined on the basis [and in the amount] set by the rules applicable by law to that stage of transport.
6. Delay in Delivery occurs when the goods have not been delivered within the time expressly agreed upon by the parties to the Contract or, in the absence of such agreement, within a reasonable time, having regard to the circumstances of the case.

Article 8. General Basis of liability of the Customer

1. For non-fulfilment or improper fulfilment of the duties stipulated by the Contract and by this Law, the Customer shall be liable on the basis and in the amount determined in accordance with Chapter xxx of the Civil Code of the Republic of xxx and this Law.

Article 9. Limitation of liability of the Forwarder

1. If the nature and value of the goods have been declared by the Customer before the goods have been taken in charge by the Forwarder and inserted with the agreement of the Forwarder in the transport document, the Forwarder shall, subject to establishment of its liability in accordance with Articles 6 or 7

hereof, be liable in full for the loss of the goods and shall be liable for goods damaged in the amount equivalent to the value of the goods damaged, or, in cases where the damage to the goods is such that none of the goods can be recovered, the Forwarder shall have to compensate the loss in full.

2. In all cases when the nature and value of the goods have not been declared by the Customer in accordance with sub-article 1 hereof, the Forwarder's liability subject to the provisions of Articles 6 or 7 hereof for loss of, or damage to the goods shall be limited to 2 [8.33] SDRs per kilogram of gross weight of the goods lost or damaged unless a higher amount has been reimbursed by the person for whom the Forwarder is responsible.

3. In addition to compensation for loss or damage in accordance with sub-articles 1 or 2 hereof, the Forwarder shall refund any Contract remuneration paid by the Customer in full in case of total loss of the goods, and in proportion to the loss sustained in the case of partial loss, but no further compensation shall be payable.

4. Liability for loss resulting from delay in Delivery shall be limited to 5 percent of the Contract price for every day of delay. However, in any event, the liability of the Forwarder for delay may not exceed the amount of the Contract price.

5. In the case of all other losses whatsoever and howsoever arising, the Forwarder's liability subject to the provisions of Articles 6 or 7 hereof shall be limited to the lesser of
i) the loss incurred, or
ii) 2 [8.33] SDRs per kilo of the gross weight of any goods subject to the Contract, or]
iii) 25000 SDRs [50000] [75000]

6. The value of goods shall be deemed to be their Invoice value.

Article 10. Loss of the right to limit liability

1. The Forwarder shall not be entitled to the benefit of the limits of liability provided in this Law if the Customer proves that loss, damage or delay in Delivery resulted from an act or omission of the Forwarder done with intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 11. Agreement on Changing the Measure of Liability of the Forwarder

1. The Contract may stipulate increases in the responsibilities and limits of liability of the Forwarder compared to those established by this Law.

2. Any agreement on the elimination or reduction of the liability of the Forwarder established by this Law shall be null and void.

Chapter 4. Claims and Actions

Article 12. Notification of Loss or Damage to the Goods

1. Unless notice of loss or damage, specifying in writing the general nature of such loss or damage, is given to the Forwarder or its agent at the time of handing over of the goods to the consignee indicated in the Contract, such handing over shall be prima facie evidence of the Delivery of the goods in good order and condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this Article shall also apply if notice in writing is not given within [6] [15] [30] consecutive days after the day when the goods were handed over to the consignee. The date of notification to the Forwarder shall be deemed to be the date of receipt.

Article 13. Forwarder's lien

1. Unless otherwise agreed in the Contract, the Forwarder shall have a general lien to distrain on goods, and any documents relating thereto, that are in its possession for any amount due at any time to the Forwarder from the Customer in relation to Services provided to the Customer. In this case the Customer shall also pay the expenses associated with the distraint on the property, including but not limited to storage costs.

Article 14. Claims and Actions Made against the Forwarder

1. The right to make a claim and action against the Forwarder shall be enjoyed by:

- i) the Customer or a person authorised by him to make a claim and action,
- ii) the consignee indicated in the Contract,
- iii) the insurer that has acquired the right of subrogation.

2. The claim shall be made in writing. Documents confirming the right to make a claim and documents confirming the quantity and value of the goods (originals or copies thereof attested according to established procedure) must be attached to the claim.

3. The value of the Special Drawing Right (SDR) in units of the [insert national currency] shall be calculated in accordance with the method for determining the value applied by the International Monetary Fund. The conversion into [insert national currency] shall be effected on the date of the rendering of a court judgement or on the date established by agreement of the parties.

Article 15. Limitation of Action

1. The time-bar set for all purposes of this Law shall be one year.

2. In the case of loss, damage or delay to goods, time shall begin to run for the purposes of the time-bar on the day following the day of delivery of the goods or the date when the goods should have been delivered. With respect to other losses, time shall begin to run from the date of the event or occurrence alleged to give rise to a right to make a claim against the Forwarder.

Chapter 5. Entry into Force

Article 16. Entry into Force

1. This Law shall enter into force from [*enter provision according to Civil Code*]

2. The provisions of this Law shall be applicable to those rights and obligations which arise after its entry into force.