



MODEL LAW ON FREIGHT FORWARDING ACTIVITY

Chapter 1. General Provisions

Article 1. Definitions

“**Freight forwarding contract**” (hereinafter referred to as the **Contract**) means a civil law contract, one party of which (forwarder) undertakes obligation on its own behalf for a compensation and at the expense of the customer to provide or organize freight forwarding services stipulated by the Contract.

“**Customer**” means any natural or legal person, using the freight forwarding services in accordance with the contract concluded with the forwarder.

“**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 law, or with the Contract of multimodal transport or the [usage of the particular trade] applicable at the place of delivery, or the handing over of the goods to the authorities or other third parties to whom, pursuant to the law applicable at the place of delivery, the goods must be handed over.

“**Freight forwarding services**” means the provision of services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the goods as well as ancillary and advisory services in connection therewith, including customs and fiscal matters, declaring the goods for official purposes, procuring insurance of the goods and collecting or procuring payment of documents relating to the goods.

“**Forwarder**” means any natural or legal person, which undertakes Freight Forwarding Services in accordance with the Contract.

“**Principal**” means any natural or legal person who through the authorized representative or agent assumes responsibility for freight forwarding operations, if required.

“**Agent**” means any natural or legal person, mediator, who acts as a representative or assistant of the principal, who is the main person to the agent, effecting deals on behalf of and at the expense of the principal.

“**Subcontract**” means a contract made by the Forwarder, who acts as a principal to transport operators, agents, brokers and other participants of a transport process, establishing legal relationships between them regarding the execution of the main Freight Forwarding Contract made between the Forwarder and the Customer.

“**SDR**” means special drawing rights as defined by the International Monetary Fund (SDR).

Article 2. Scope of application

1. Freight Forwarding activities shall be regulated by this Law and other laws and bylaws of (name of the country). In the event that the participants (name of the country) to international contracts or agreements

determine another order not applicable by the present Law, the provisions of the international contract/agreement shall be applied.

2. The parties pursuant to the Contract may determine the terms of the Contract not stipulated by this Law, other laws of (name of the country)_or other normative legal acts adopted in (name of the country).

3. The provisions of this Law shall not cover Freight Forwarding activity in the field of postal communication.

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

Article 3. 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 Freight Forwarding Contract 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 doing so 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 or the law

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 the information about the properties of the goods, 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, as well as 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. Rights of the Customer

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) choose the itinerary of travel of the goods and the type of transport.

Article 5. 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 within reasonable time.

2. When accepting the goods, at the Customer's request, 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 6. 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 transit, Customs, sanitary and other types of state control.

2. The Customer must pay the remuneration due to the Forwarder for the Freight Forwarding Services in accordance with the procedure stipulated by the Contract and also reimburse the reasonable unforeseen expenses incurred by the Forwarder in the interests of the Customer.

Chapter 3. Liability of the Forwarder and the Customer

Article 7. General Basis of Liability of the Forwarder as agent

1. 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 10 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. 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. The Forwarder shall not be liable to the Customer for acts and omissions of third parties, such as, but not limited to, carriers, warehouse-keepers, 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 8. General Basis of liability of the Forwarder as principal

1. The Forwarder shall be liable:

- 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 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. The date of acceptance by the Forwarder of the goods shall be the date of acceptance of the goods by the Carrier acting within the scope of the existing subcontract between the Forwarder and the Carrier.

3. 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, the Forwarder shall also be responsible for any other person whose services it makes use for the performance of the Contract as if such acts of omissions were its own.

4. The Forwarder shall be liable to the Customer, subject to the limits of liability set out in Article, 10 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 9. General Basis of liability of the Customer

1. The Customer must at the request of the Forwarder promptly submit to the latter the relevant certificates of the goods, give the instructions that are necessary for registration of the traffic documents, submit the required certificates for execution of customs and other procedures, and for payment of the goods customs fees if required.

2. The Customer must warn the Forwarder about the nature of danger if there are dangerous goods to be transported and provide security measures if required.

3. If the Forwarder did not know about the availability of dangerous goods it may at any time and in any place unload, destroy or neutralize the goods without the liability of payment of damages.

4. The Customer must pack the goods in accordance with the traffic requirements if it is demanded by the kind of goods.

5. The Customer shall be liable for the loss resulting from non-performance of the clauses 1-4 of the present Article, except the events when the Customer informed the Forwarder in advance and provided the relevant certificate on the nature of goods.

6. 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 the legislation of (name of the country) and this Law.

Article 10. 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 commodity transport document, the Forwarder shall, subject to establishment of its liability in accordance with Articles 7 or 8 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 7 or 8 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 price of goods according to the Contract.

5. In the case of all other losses whatsoever and howsoever arising, the Forwarder's liability subject to the provisions of Articles 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 value according to the invoice enclosed with the waybill.

Article 11. 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 12. 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 13. 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 until the time of signing of the traffic document for receipt of the goods, such handing over shall be the Delivery of the goods in good order and condition, and in sufficient supply.

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 in writing. The date of notification to the Forwarder shall be deemed to be the date of receipt of notification in writing.

Article 14. Forwarder's lien

1. Unless otherwise agreed in the Contract, the Forwarder shall have a general lien to distrain on the 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 distraintment on the property, including but not limited to storage costs.

In case of damage to the perishable goods in distraintment the losses of the Customer shall not be indemnified (ATP).

2. The distraintment on the goods shall be effected by the Carrier –subcontractor in accordance with the

relevant request in writing of the Forwarder.

Article 15. 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. Prior to commencing a suit to the forwarder derived from the Contract the claim shall be made to the Forwarder in written form. 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 the 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 16. Time-bar

The parties of the Contract shall, unless otherwise expressly agreed, be discharged of all liability under the contract unless a claim brought within [12 months] of the goods being delivered, or the date when the goods should have been delivered, or the date when in accordance with this Agreement, failure to deliver the goods would give the consignee the right to treat the goods as lost as described in paragraph 2 of Article 12.

Chapter 5. Entry into Force

Article 17. Entry into Force

1. This Law shall enter into force from [enter provision according to legislation]

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