

General conditions of transport and services governing the activity of freight forwarding companies

Article 1 – Preamble

1.1 These general conditions of transport and services governing the activity of freight forwarding companies are standard rules that apply to the performance of transport and auxiliary services by the freight forwarding companies. These include valid stipulations for all modes of transport and auxiliary services (road, air, rail, sea, naval, multimodal, logistics services, customs etc).

1.2 The stipulations of the freight forwarding contract or the order followed by the execution are considered completed with the stipulations of these general conditions, which are an integral part of them. The parties are free to expressly agree in the concluded contracts also other clauses than those provided in these general conditions.

1.3 The general conditions of transport and services that are the basis of the activity of the freight forwarding companies members of the Freight Forwarders Association of Romania will be hereinafter referred to, abbreviated: “General conditions”.

1.4 The Freight Forwarders Association of Romania will be hereinafter referred to as “USER”.

1.5 Fédération Internationale des Associations de Transitaires et Assimilés – The International Federation of Freight Forwarders Associations will be hereinafter referred to as “FIATA”.

1.6 These rules transpose a number of national and international regulations governing the activity of freight forwarding, such as:

- The Romanian Civil Code;
- Government Ordinance no. 27/2011 on road transport, with subsequent amendments;
- Convention on the Contract for the International Carriage of Goods by Road (CMR) – adopted in Geneva in 1956, to which Romania acceded by Decree no. 451/1972;
- The Convention concerning International Carriage by Rail (COTIF) – adopted in Bern on 9 May 1980, ratified by Romania by Decree no. 100/1983;
- The Hague Rules – International Convention for the Unification of Certain Rules of Law relating to Bills of Lading- concluded in Brussels in 1924, to which Romania became a party in 1937;
- The Brussels Protocol of 1968, which amended the Hague Rules, known as the “Hague-Visby Rules”;
- Montreal Convention – Convention for the Unification of Certain Rules for International Carriage by Air – adopted in Montreal on May 28, 1999, ratified by Romania by Government Ordinance no. 107/2000, approved by Law no. 14/2001;

- European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) – concluded in Geneva on September 30, 1957, to which Romania acceded by Law no. 31 of May 18, 1994;
- FIATA Model Rules for Freight Forwarding Services;
- FIATA documents.

Article 2 – Definitions

2.1 “Freight Forwarder” means the company which concludes with a customer a contract of carriage and/or auxiliary services.

2.2 “Auxiliary services/operations” means customs brokerage, storage, handling, packaging, distribution of goods, conclusion of Cargo insurance policies “all risks” in the name and at the request of the customer, collection of documents relating to the goods and/or others like that.

2.3 “Customer” may be the shipper/consignor, the consignee/receiver or the owner of the goods and means any individual or legal person who concludes a contract of carriage and/or auxiliary services with the freight forwarding company and who can prove that it has the right of disposal over the transport of the goods.

2.4 “Consignor (shipper)” means the person who hands over the goods to the freight forwarding company for the carriage and/or auxiliary services.

2.5 “Consignee (receiver)” means the person entitled to receive the goods from the freight forwarding company and/or its agent.

2.6 “Carrier” means any individual or legal person, party to a contract of transport, who executes the transport of goods by his own means of transport or by other means whom he has a right of use.

2.7. “Goods” means any movable tangible property, including live animals, and/or containers, pallets and/or similar transport and/or packaging items delivered to the freight forwarding company for transport.

2.8 “Dangerous goods” means goods that are classified in the specialized conventions/regulations (ADR, RID, IMDG, IATA DGR) as dangerous (flammable, radioactive, harmful).

2.9 “SDR – Special Drawing Rights” means a monetary instrument of the International Monetary Fund, with the role of unit of account and reserve, frequently used as a monetary standard (since the restriction of the role of gold as a unit of reference).

Article 3 – Freight forwarding contract

3.1 The freight forwarding contract is a contract by which the freight forwarding company undertakes to conclude, in its own name and on behalf of the customer, a contract of carriage and/or to perform auxiliary operations.

3.2 The freight forwarding company which assumes the obligation to carry out the transport, with its own or another's means, in whole or in part, has the rights and obligations of the carrier.

3.3 In the freight forwarding contract are provided clauses both for the transport itself and for the auxiliary services.

3.4 The transport order confirmed by the freight forwarding company shall be considered a concluded contract, as provided in point 3.1.

3.5 The USER may make available to its members, upon request, framework freight forwarding contracts.

3.6 The freight forwarding contract shall be completed with the General conditions of transport and services governing the activity of freight forwarding companies, as provided in point 1.2.

3.7 Freight forwarding companies that conclude contracts of intermediation or agents, according to the Romanian Civil Code, will follow the norms provided by it.

Article 4 – Communication of the freight forwarding company with the customer

4.1 The freight forwarding company may communicate with the customer or the person designated for communication by the customer, in verbal or written form, using all means of communication available to him. If the customer does not communicate to the freight forwarding company any change of address or other contact information, it will be considered that the freight forwarder has communicated its message to the customer correctly, if it sent it using the address or other information available at that time.

4.2 The customer shall immediately notify the freight forwarding company of any change in the information that is relevant in any way for the correct execution of the transport of goods. Otherwise, the customer will bear all the consequences of such an omission.

4.3 The freight forwarding company has the right to use modern technology in the execution of its activities, including devices that allow the execution of the transport of goods without completing and issuing transport documents and other documents in a physical form.

Article 5 – Obligations of the freight forwarding company

5.1 The freight forwarding company will submit the necessary diligence to organize and/or perform the transport and the auxiliary services, according to the customer's instructions, as agreed, as well as to protect the customer's interests throughout the performance of activities.

5.2 The freight forwarding company must be organized and have the necessary means to carry out its mission.

5.3 Unless otherwise agreed, the freight forwarding company has the right to freely choose the subcontractors, as well as the modes of transport and the means used. Intermediaries or subcontractors used by the freight forwarding company to carry out its obligations shall be deemed to have been accepted by the customer if he has not objected before the start of the carriage.

5.4 The freight forwarding company will provide the services in accordance with the customer's instructions and as agreed with him. If those instructions are incorrect or incomplete or do not comply with the contract, the freight forwarding company may act as it considers appropriate, on the customer's risk and expenses, in the customer's interest.

5.5 The freight forwarding company has the obligation to advise only on the activity of transport and/or auxiliary services, without issues related to goods in relation to different authorities (import/export licenses, authorizations, dual use etc).

5.6 The freight forwarding company has the obligation to pay the invoices within the terms established by contracts with its subcontractors.

Article 6 – Obligations of the customer

6.1 The customer shall guarantee to the freight forwarding company, when the goods have been taken over, the accuracy of all details concerning the general nature of the goods, the marks, the number, the weight, the volume and the quantity and, where appropriate, the dangerous nature of the goods as provided by him or on his behalf.

6.2 The customer is responsible for the preparation, correctness and apparent legality of the documents he makes available to the freight forwarding company, such as, but not limited to commercial invoices, specific lists etc.

6.3 The customer is obliged to send precise instructions in writing to the freight forwarding company if he requests special conditions of transport of the goods. The instructions are subject to the acceptance of the freight forwarding company. However, they shall be deemed to be accepted if, after their receipt by the freight forwarding company, they have been executed. The duty of proof on the special instructions given to the freight forwarding company is responsibility of the customer.

6.4 The customer will be liable to the freight forwarding company and will compensate it for all costs, expenses and official fees related to all damages, as a result of incorrect information or instructions, incomplete or provided late by the customer, or delivery by the customer or by any person acting on his behalf, to the freight forwarding company or to any other person for whom the freight forwarding company may be liable, for goods which have caused the death or personal injury of any person, damage to property and the environment or any other loss.

6.5 The customer must deliver the packaged, marked, labeled goods so that they can withstand transport and/or accessory operations and can be delivered to the consignee according to the contract.

6.6 In the event of loss or any damage to the goods, including those caused by delayed shipments, being established at the destination, when it has been agreed to carry out the shipment within a certain time, the consignee or recipients of the goods shall fulfill the necessary formalities, including the formulation of legal reservations to the carrier, as well as taking other measures to ensure the preservation of the right to complaints and actions for the recovery of damages, in terms of international transport regulations.

6.7 In case of refusal of the goods by the consignee or in case of absence thereof, for any reason, the customer is obliged to bear the price of transport, auxiliary services and additional costs engaged or incurred by the freight forwarding company until the carriage is finished.

6.8 If the freight forwarding company engages in customs operations on behalf of the customer, the customer is the one who guarantees to the customs commissioner the payment of the customs debt and/or fines that would be due, determined by the provision of erroneous instructions or documents.

6.9 In the event that the freight forwarding company, in case of unforeseen circumstances, acts in the interest of the customer, the additional costs and fees will be borne by the customer.

6.10 The customer will inform the freight forwarding company about a possible assignment of rights and obligations resulting from the freight forwarding contract to a third party.

6.11 If the customer cancels the order or withdraws from the contract before the start of transport, and the freight forwarding company has already incurred expenses for organization (e.g. crane rental, truck deployment etc), he must compensate the freight forwarding company for the costs incurred.

6.12 The cancellation of the order or the cancellation of the transport can be made by the customer until the date on which the consignee expressed his will to capitalize his rights resulting from the contract of carriage or as soon as the consignor handed over to the consignee the duplicate of the transport document. In this case, the customer must compensate the freight forwarding company for the expenses incurred for the execution of the contract, being obliged to fully cover the damage caused by the cancellation of the order or the cancellation of the transport.

Article 7 – Obligations of the subcontractor

7.1 Subcontractors of freight forwarding companies are, usually, transport operators (road, air, rail, sea, river), within the meaning of point 2.6.

7.2 Subcontractors have the obligation to hold licenses, valid authorizations established by law for the respective mode of transport and to present them to the freight forwarding company at its request.

7.3 Subcontractors must have liability insurance policies for the carrier.

7.4 Subcontractors must comply with the terms of the contracts concluded with the freight forwarding company, as well as the terms of the contracts concluded by the freight forwarding company with its customers, if those terms have been communicated to them.

Article 8 – Liability of the freight forwarding company

8.1 The freight forwarding company is responsible for the situations in which it does not exercise due diligence and does not take the appropriate measures in providing the services agreed by contract, in which case it will compensate the customer for the loss or damage of goods and direct financial losses resulting from such non-compliance with the duty of care. Compensation shall be subject to the provisions of Article 9.

8.2 The liability of the freight forwarding company for the total or partial loss or damage or alteration of the goods shall cover the period from the time when it took over the goods for carriage until the time of delivery.

8.3 The freight forwarding company is not liable for the actions or omissions of third parties, such as, but not limited to, carriers, storage operators, dockers, customs brokers and any other subcontractors, unless the freight forwarding company did not fulfill the obligation of diligence in the selection, training or supervision of the respective third parties. In the latter case, the liability of the freight forwarding company may not exceed the limits of the liability of third parties.

8.4 If a deadline for the execution of the transport has not been expressly requested by the customer and accepted by the freight forwarding company, it does not guarantee a specific date of arrival at the destination and does not owe any compensation for the delay of the transport.

8.5 If the goods have not been delivered within ninety consecutive days from the agreed date of delivery or, in the absence of an agreement on the delivery time, from a date which would be reasonable for a freight forwarding company to deliver the goods in the circumstances of that transport, the customer may, in the absence of evidence to the contrary, refer to the goods as lost.

Article 9 – Exclusions, exemptions and limitations of the liability of the freight forwarding company

9.1 If the liability of the freight forwarding company is incurred for damage to or loss of the goods as a result of its fault, the amount of compensation due shall be determined in relation to the normal value of the goods at the time they are received for transport. The value of the goods will be documented by the applicant through the purchase invoice or other evidence attesting to this value from the time the goods are received by the freight forwarding company.

9.2 However, in cases where the liability of the freight forwarding company is incurred under the terms of paragraph 9.1, it shall be strictly limited and may not exceed:

a) for the transport activity, for the damages caused to the goods, from losses or damages and for all the consequences that could result from them:

a.1) domestic road transport: the equivalent in lei of 2.5 USD / kg gross weight of missing or damaged goods;

a.2) international road transport: 8.33 SDR / kg gross weight of missing or damaged goods;

a.3) rail transport:

a.3.1) for international traffic: 17 SDR / kg gross weight of missing goods;

a.3.2) for local traffic in Romania: 70 Romanian lei / kg gross weight of missing goods;

a.4) air transport: 17 SDR / kg gross weight of missing or damaged goods;

a.5) shipping: 666.67 SDR / package or unit or 2 SDR / kg gross weight of missing or damaged goods, whichever is higher.

b) for the storage activity, for the damages caused to the goods, from losses or damages and for all the consequences that could result from them: the equivalent in Romanian lei of 2.5 USD / kg gross weight of missing or damaged goods;

c) for all other damages, including those resulting from the delay of delivery, where applicable, its liability is limited to the price of transport of the goods.

9.3 If the value of the goods exceeds the limits of the liability of the freight forwarding company, the customer is free to choose one of the following measures:

a) bear, in case of damage, the risk resulting from the difference between the liability of the freight forwarding company and the value of the goods;

b) to make, at the conclusion of the contract, a declaration of value of the goods which, if accepted by the freight forwarding company, will raise the limit of its liability up to the declared value; in such situations the corresponding price differences will be due. The declaration of special interest is an express clause;

c) to instruct the freight forwarding company to conclude on its account an insurance that covers totally or partially the risk, indicating the risk and the insured value. These instructions must be given for each shipment separately, the costs for Cargo insurance "all risks" being borne by the customer.

9.4 The freight forwarding company is not liable if the total or partial loss or, as the case may be, the alteration or damage occurred due to:

a) facts related to the loading or unloading of the good, if this operation was performed by the customer;

b) the lack or defect of the packaging, if according to the external appearance it could not be observed upon receipt of the goods for transport;

c) defect or inadequacy of containers or other transport units provided by the customer;

d) the shipment under an inappropriate, inaccurate or incomplete name of some goods excluded from transport or admitted to transport only under certain conditions, as well as the non-compliance by the customer of the security measures provided for the latter;

e) natural events inherent in the transport in open vehicles, if, according to the provisions of the special law or the contract, the good must be transported in this way;

f) the nature of the transported good, if it exposes it to loss or damage by crushing, breaking, rusting, spontaneous internal alteration and the like;

g) weight loss, whatever the distance traveled, if and to the extent that the goods transported are among those which by their nature suffer, usually, by the simple fact of transport, such a loss;

h) the inherent danger of the transport of live animals;

i) the fact that the customer's agent, who accompanies the good during the transport, has not taken the necessary measures to ensure the preservation of the good;

j) an act or omission of the customer or of a person other than the freight forwarder, acting on behalf of the customer or from whom it took over the goods;

k) outdoor storage, if this storage method has been agreed by the customer;

l) facts or actions that cannot be attributed to the freight forwarding company (e.g. force majeure,

weather conditions, strike, traffic jam, quarantine, state of war/siege etc);

m) theft/robbery/piracy, if all the necessary diligences regarding the protection of the goods have been taken;

n) delay in the delivery of the goods, except when otherwise agreed in writing;

o) indirect or collateral losses, such as, but not limited to, loss of profit or loss of market;

p) to any other circumstance provided by special law.

Article 10 – Insurance

10.1 Freight forwarding companies conclude the policy of contractual liability insurance. This policy covers the liability of the freight forwarding company for the loss, damage or total or partial destruction of the goods, as well as for other financial losses related to the shipment (storage, damage limitation, redirection of goods etc) produced between the time of taking on receipt of the goods for dispatch and the time of delivery to the consignee, if the damage, loss or expense is the consequence of his own fault or of the subcontractors engaged in the execution of the transport.

10.2 If the goods are insured by a Cargo “all risks” insurance policy concluded by the freight forwarding company in the name and at the request of the customer, the customer understands the bearing of the costs of issuing the insurance, this being concluded in his interest. In case of damage, the freight forwarding company is considered to have fulfilled its obligations once the damage has been notified to the insurer, at the customer’s request. The subsequent management of the damage file can be done by the freight forwarding company only on the basis of firm instructions from the customer and on the risk and costs of the latter.

10.3 The freight forwarding company is entitled to an administrative fee, other than the insurance premium and, of course, in addition to the transport fee, in order to conclude the Cargo “all risks” insurance, to handle complaints and any other administrative tasks related to complaints and assessments.

Article 11 – Storage and Special Transport

11.1 The choice of storage location (own or third party’s) is the responsibility of the freight forwarding company. In the case of a third-party warehouse, the freight forwarding company must inform the customer in writing and immediately about the company providing the storage, indicating its address, and in the case of a warehouse receipt, indicate this on the receipt.

11.2 The customer has the right to inspect the warehouse. Objections or complaints about the storage of goods must be made immediately. If the customer does not exercise his right of inspection, he waives all

rights to object to the storage, as long as the choice of warehouse is in accordance with the normal business diligence of a freight forwarding company.

11.3 Access to the warehouse is guaranteed only to the customer, during the normal working hours of the freight forwarding company and only in his presence.

11.4 If the customer handles goods (e.g. sampling) the freight forwarding company may request that the number, weight and condition of the goods be inspected together with the customer. If the customer does not agree to this, the freight forwarding company will be relieved of any liability for damages discovered later, unless the damage was not clearly caused by the handling of the goods by the customer.

11.5 In the event of inventory discrepancies, the freight forwarding company has the right to balance the deficit and surplus of the same product.

11.6 In case of special transports (perishable goods, live animals, dangerous goods), the freight forwarding company will provide the customer with the necessary information for the execution of the transport, transport options, tariff, insurance etc, on the basis of which the customer can agree the forwarding contract.

11.7 If the special goods endanger other goods, property, the environment, people or are a potential source of any damage, the freight forwarding company will be entitled to act and deal with the goods in such a way as to reduce or eliminate such hazards, on the risk and cost of the customer, if he fails to properly communicate instructions within two days from the time the information is provided by the freight forwarding company, or within another time limit in writing.

Article 12 – Customs clearance

12.1 The freight forwarding company may also stipulate in the shipment contract the operations of a customs broker, if it has the legal authorizations, or it may hire a customs broker. For this activity, the freight forwarding company must comply with all the requirements of the applicable customs legislation, agree in writing with the customer the necessary guarantees and the presentation of the documents required by law.

12.2 For this activity, the customer owes the tariffs agreed between the parties, in addition to the fees provided in point 6.8.

Article 13 – FIATA documents and forms

13.1 FIATA has created several documents and forms to set a uniform standard for use by forwarders worldwide. These are: FBL – FIATA Multimodal Transport Bill of Lading, FWB – FIATA Multimodal Transport Waybill, FCR – Forwarder’s Certificate of Receipt, FCT – Forwarder’s Certificate of Transport,

FWR – FIATA Warehouse Receipt, SDT – Shipper’s Declaration for the Transport of Dangerous Goods, SIC – Shipper’s Intermodal Weight Certification, FFI – FIATA Forwarding Instructions.

13.2 FIATA documents and forms may only be used by members of national freight forwarding company organizations (USER).

13.3 In Romania, FIATA documents and forms are printed and distributed by USER, which is authorized for this purpose by FIATA. USER keeps track of the documents distributed, having the responsibility of using them for the purpose for which they were issued.

13.4 FIATA documents and forms, as well as their use, are described on the USER website and in a brochure that is made available to members.

Article 14 – Terms of payment

14.1 Payment for transport and other services is made by the customer on the basis of the invoice issued by the freight forwarding company. The term for paying the invoiced amounts is the one provided in the forwarding contract/transport order, but it cannot exceed the legal terms.

14.2 All amounts owed by the customer will be paid without deductions or deferrals on account of any claim for damages.

14.3 For late payment, the customer owes penalties of 0.15% of the amount, for each day of delay, unless otherwise agreed between the parties.

Article 15 – Right of lien and right of retention

15.1 The freight forwarding company will have a general right of lien and retention on the goods and on any documents related to them, for any amount of money due at any time to the freight forwarding company by the customer, including storage fees for the retention of goods and any related costs for their recovery, and it may exercise that right in any reasonable manner it deems appropriate.

15.2 The right of retention shall cease if the person concerned records the amount claimed or provides the retentor with a sufficient guarantee.

Article 16 – Force majeure

16.1 The contracting parties shall not be liable for the timely and/or improper performance, in whole or in part, of any of their obligations, if the non-performance of that obligation was caused by an unforeseeable event at the time of conclusion of the contract and whose consequences are inalienable by the party invoking it.

16.2 The party invoking force majeure is obliged to inform the other party, immediately and fully, of its occurrence and to take all measures available to it to limit the consequences of that event.

16.3 Force majeure exempts the freight forwarding company, during their term, from the obligations that are affected by these circumstances. In these cases, the freight forwarding company or the customer has the right to terminate the contract, even if it has been partially fulfilled. If the freight forwarding company or the customer requests the termination of the contract, the freight forwarding company is entitled to receive all costs incurred by it for the performance of the contract until the date of its termination.

16.4 The party invoking force majeure must prove it within a maximum of 5 days from the date of its termination.

Article 17 – Complaints

17.1 Complaints arising from the freight forwarding contract shall be submitted in writing, with documents attesting to the content of the complaint (proving documents) attached.

17.2 The freight forwarding company must respond within a reasonable time, but not more than 30 days from receipt of the complaint with the necessary documentation.

17.3 If the complaint gives rise to a dispute, the parties shall seek an amicable settlement.

17.4 Unless otherwise agreed, disputes between the customer and the freight forwarding company or between it and the legally entitled parties, which remain unresolved amicably, shall be within the jurisdiction of the courts of the locality where the freight forwarding company has its registered office. Arbitration may be invoked, preferably to an authority specialized in transport, if an arbitration clause has been expressly provided for in the freight forwarding contract or if the parties subsequently agree to settle disputes between them through arbitration.

17.5 The legal relations between freight forwarding companies and customers, generated from the application of these general conditions, are regulated by Romanian law.

17.6 The right of action arising from the freight forwarding contract shall expire within one year from the date of delivery of the goods to the place of destination or from the day on which they should have been delivered, except for the right of action for shipments commencing or ends outside Europe, which expires within 18 months.

These General conditions were approved by the General Assembly of Members on May 6, 2021.