NSAB 2015

GENERAL CONDITIONS OF THE NORDIC ASSOCIATION OF FREIGHT FORWARDERS

NORDISK SPEDITØR FORBUND

EFFECTIVE AS OF JANUARY 1ST, 2016

Note: Authentic text in English.

These conditions, effective as of January 1st 2016, are the result of negotiations between the Nordic Association of Freight Forwarders and the following organisations:

DENMARK:
The Danish Chamber of Commerce (Dansk Erhverv)

FINLAND:
ICC Finland and Finnish Shippers' Council

NORWAY:
Confederation of Norwegian Enterprise (NHO) and Federation of Norwegian Industries (Norsk Industri)

SWEDEN:
The Confederation of Swedish Enterprise (Svenskt Näringsliv)

INTRODUCTORY CONDITIONS

These General Conditions of the Nordic Association of Freight Forwarders set forth the freight forwarder's and the customer's rights and obligations towards each other, including the freight forwarder's liability under various applicable transport law conventions valid from time to time, such as CIM, CMR, the Hague-Visby Rules and the Montreal Convention, or any amendments, annexes or protocols of any such transport law convention.

Special Regulations and / or Provisions may apply in the applicable member countries of the Nordic Association of Freight Forwarders Association due to national legislation.

APPLICABILITY

§ 1

These conditions shall only and exclusively apply to members of the Nordic Association of Freight Forwarders.

However, upon explicit notice given by a member association of the Nordic Association of Freight Forwarders with effect for the concrete member associations' country, these provisions may also be used by non-member companies.

NETWORK CLAUSE

§ 2

If a certain mode of transport has been expressly agreed upon, or if it is proved that loss, depreciation, damage or delay has occurred whilst the goods were being carried by a particular means of transport, the freight forwarder shall be liable in accordance with the law applicable to such mode of transport and commonly used conditions of carriage, to the extent that these deviate from what is laid down in § 6, section 2 and 3 or §§ 15 – 21.

THE FREIGHT FORWARDER CONTRACT

§ 3

A. Services
The freight forwarders contract may include:
- carriage of goods, agency services and intermediary services,
- logistic services, supply chain services and advisory services,
- storage of goods and warehousing services,
- stevedoring services and ship brokering,
- other services, such as – but not limited to – customs clearance, other customs and VAT-related services, co-operation in the performance of the customers obligations under public law, assistance in handling insurance-related issues and assistance in relation to export and import documents.

B. The freight forwarder as contracting party
1) In accordance with §§ 2 and 15-21, the freight forwarder will be responsible as a contracting party for all services undertaken by the freight forwarder excluding instances under section 3 C below. The freight forwarder is furthermore responsible for other contracting parties that the freight forwarder has engaged to perform or carry the contract on behalf of the freight forwarder.

2) These conditions apply equally to the persons that provide services for the freight forwarder in order to perform the contract as to the freight forwarder himself, irrespective of the grounds for the customer's claims against the freight forwarder and such other persons. The aggregate liability of the freight forwarder and such other persons is limited to the amount that applies to the freight forwarder's liability under these conditions.

C. The freight forwarder as intermediary

Notwithstanding article 3 B.1 above, the freight forwarder can in accordance with §§ 22 – 24 below, undertake services – or parts of services – as intermediary, if the freight forwarder does not undertake such services in his own name or on his own account and on the condition that the freight forwarder specifies to the customer that the services are undertaken solely as intermediary. As intermediary, the freight forwarder is not responsible for parties other than his own employees.

D. Warehousing
The responsibility of the freight forwarder with regards to warehousing or storing is governed by and in accordance with § 25 below.

E. General practice etc.
In addition to what has been expressly agreed upon, general practice and commonly used terms shall be applicable in so far as they do not deviate from these conditions.

THE CUSTOMER

§ 4

Under the present conditions, the customer is the party that has concluded a contract with the freight forwarder, or that has acquired the rights of that party. The liability of the customer is governed by § 26 of these conditions.

GENERAL CONDITIONS

THE PERFORMANCE OF THE CONTRACT

§ 5

The parties recognize the importance of and shall provide each other with information necessary for the performance or fulfilment of the contract. The freight forwarder undertakes to perform services, to pick up, take care of or procure the handling of the goods in accordance with the contract terms and in a suitable way for the customer with generally used means and routes of transport.

A contract between the freight forwarder and the customer (for carriage or other services) evidenced by electronic transport documents shall be deemed to have been concluded only when the freight forwarder issues an electronic receipt which includes an acceptance thereof.

Instructions to the freight forwarder concerning the scope of the contract shall be given directly to him. Information contained in the invoice stating that goods have been sold cash on delivery or against a declaration of value specified in the dispatch instructions does not therefore mean that the freight forwarder has undertaken to collect the invoice amount or to take out an insurance.

Unless otherwise agreed it is the customer's obligation to arrange for loading and unloading of the goods and it is the freight forwarder's obligation to arrange for stowing and securing of the goods.

§ 6

It is the duty of the freight forwarder to prove that, according to the contract, he has protected the customer's interests in a diligent manner.

The freight forwarder may not invoke the rules in these conditions which exonerate him from or limit his liability, or alter the burden of proof, if it is proven that the freight forwarder's subcontractor has wilfully, or the freight forwarder himself or his own employees have wilfully or grossly negligent, caused the damage, delay or other loss, unless otherwise stated in § 2.

If the exact circumstances that resulted in loss, depreciation of, damage to or delay of goods which occurred when the goods was in the custody of the freight forwarder cannot be demonstrated, this shall not in itself be considered as gross negligence on part of the freight forwarder.

§ 7

The freight forwarder shall be responsible for ensuring that the goods are picked up, carried and delivered within a reasonable time (without a time guarantee). When assessing such reasonable time, information as to the expected time of pick up, carriage and arrival stated by the freight forwarder in his marketing or in connection with the signing of the contract, shall be taken into account.

The freight forwarder is responsible (with a time guarantee) for the goods being picked up, carried and delivered within the time that:

– has been agreed upon in writing as a special, time-guaranteed transport, or

– has been submitted in writing as a condition of an offer expressly accepted by the freight forwarder, or

– has been presented by the freight forwarder in a written quotation that was accepted by the customer.

§ 8

If it becomes necessary for the freight forwarder in the performance of the contract to act before seeking instructions, he does so at the customer's risk and for his account

If the risk of depreciation of goods already taken over arises or, if by reason of the nature of the goods, there is a danger to persons, property or to the environment, and the customer cannot be reached, or should he not, upon being requested to remove the goods, arrange to do so, the freight forwarder may take appropriate measures in respect of the goods, and, if necessary, sell the goods in an appropriate manner. The freight forwarder may, depending on the circumstances and without notice, sell on behalf of the customer, render harmless or destroy goods which are in danger of becoming worthless or extensively depreciated, or which give rise to imminent danger.

After deduction of reasonable expenses connected with the sale, the sum received from the sale shall be immediately reported to the customer.

The freight forwarder shall notify the customer as soon as possible of measures that have been taken, and, upon request, supply evidence of any expenses in connection herewith, as well as prove that he has exercised due diligence in limiting costs and risks.

For such expenses the freight forwarder may debit a special expense charge.

§ 9

The freight forwarder has a duty to promptly inform the customer and notify a claim against a third party, where goods have been damaged, delayed or when some other loss has occurred due to that party's acts or omissions, but only if the freight forwarder or his own employees have – or ought to have had – knowledge of such damage, delay or loss. The freight forwarder shall in such case inform the customer and consult with him in order to take such steps as are necessary to secure the customer's claim to compensation from the party who has caused the damage or loss, or who is responsible therefore, and shall, when requested to do so, assist the customer in his relation to the third party.

If so requested, the freight forwarder shall transfer to the customer all rights and claims that the freight forwarder may have under his agreement with a third party.

§ 10

The offer made by the freight forwarder is based on information relevant to the contract supplied to the freight forwarder by the customer, or otherwise as the case may be, on circumstances that the freight forwarder may assume as being normal for the intended contract.

§ 11

Notwithstanding the customer's obligation as to payment under contracts of sale or freight agreements with parties other than the freight forwarder, he has a duty upon request, subject to terms being agreed upon, to pay the freight forwarder what is due as per the contract (remuneration, advanced payment, refund of outlays) including advance payment to the freight forwarder for such expenditures, against appropriate documentation.

Unless otherwise agreed upon the freight forwarder is entitled to – when the goods have not been delivered for transport under the terms of the contract and the contract therefore cannot be executed, wholly or partially, as agreed upon, and further in the event the contract is interrupted and cannot be executed as agreed upon due to circumstances beyond the control of the freight forwarder or his subcontractors – receive the agreed charges for freight and other remuneration subject to deductions for what the freight forwarder has saved, or could reasonably have saved, by not having to execute the contract.

The above should also apply in the event the freight forwarder agreed to allow the customer to defer payment until the arrival of the goods at the place of destination.

§ 12

For services which are clearly necessary in addition to what has been explicitly agreed upon or normally follows from the freight forwarder's contract, including additional expenses for services rendered by the freight forwarder but under the scope of the agreement and contract, the freight forwarder is entitled to additional compensation. Such compensation shall be subject to the same principles as compensation for services agreed upon under the scope of the agreement.

CONFIDENTIALITY AND INFORMATION SECURITY

§ 13

The parties undertake to treat all material information received from the other party as confidential.

Each party is responsible for that its employees and advisers comply with the obligations of the party as set forth in the freight forwarding contract.

The parties shall take appropriate technical and organizational measures to safeguard the information security of its services and the storage and use of information processed in its information system having regard to the security of the functions, telecommunication, hardware and software as well as the confidentiality and integrity of the data content.

All access to the information systems of the freight forwarder or the customer must be conducted in a manner which safeguards the security of the accessed information system.

The parties shall exercise reasonable care in observing the obligations above taking into account technology available and the risks and costs involved.

The obligations set forth above in this § 13 shall survive termination of the contract between the freight forwarder and the customer.

RIGHT OF RETENTION AND LIEN

§ 14

The freight forwarder has a right of retention and a lien on the goods under his control, for fees and expenses in respect of such goods – remuneration and warehousing charges included – as well as for all other amounts due from the customer under contracts according to § 3 above.

Should the goods be lost or destroyed, the freight forwarder has similar rights in respect of compensation payable by insurance companies, carriers or others.

Should the amount due to the freight forwarder not be paid, he has the right to arrange the sale, in a satisfactory manner, of as much of the goods as is required to cover the total amount due to him, including expenses incurred. The freight forwarder shall, if possible, inform the customer well in advance what he intends to do with regard to the sale of the goods.

SPECIAL CONDITIONS

THE FREIGHT FORWARDER'S LIABILITY AS A CONTRACTING PARTY

§ 15

The freight forwarder is liable as contracting party in accordance with §§ 2 and 16 – 21 for loss, depreciation of or damage to goods, occurring between the moment when the goods have been taken over until the moment the goods have been delivered, as well as for delay in pick-up or delivery.

If for any reason outside the control of the freight forwarder it is or becomes impossible for the freight forwarder to carry out the contract in accordance with the terms agreed, or where circumstances prevent the freight forwarder from making delivery of the goods after their arrival at the place designated for delivery, then the freight forwarder has a liability for the goods in accordance with § 6, section 1, unless other agreement is entered into with the customer.

§ 16

There is no liability if loss, depreciation, damage or delay is caused by:

a) fault or neglect of the customer;

b) handling, loading, stowage, securing or unloading of the goods by the customer or anyone acting on his behalf;

c) the inherent nature of the goods to be easily damaged, i.e. by breakage, leakage, spontaneous combustion, rotting, rust, fermentation, evaporation or being susceptible to cold, heat or moisture;

d) lack of or insufficient packing;

e) faulty or insufficient address or marking of the goods;

f) faulty or insufficient information about the goods;

g) the use of open transport equipment, where this is usual or has been agreed;

h) circumstances which the freight forwarder could not avoid and the consequences of which he was unable to prevent.

Unless specifically agreed, the freight forwarder is not liable for money, securities and other valuables.

§ 17

Compensation for loss or depreciation of goods shall be calculated on the basis of their invoice value, unless it is proved that their market value, or the current value of goods of the same kind and nature at the time and place the freight forwarder took over the goods was different from the invoice value taking into account that the customer must demonstrate that there is no residual value of the

goods. Compensation will not be paid for antique value, sentimental value or other special value.

Freight charges, customs charges and other outlays connected with the transport of the goods lost will also be compensated. Apart from that, the freight forwarder is not obliged to pay any compensation, i.e. for loss of profit, loss of market or other loss of any kind whatsoever.

§ 18

Compensation for damaged goods shall be paid to an amount equivalent to the extent of depreciation in value. The amount is arrived at by using the percentage of depreciation in value consequent upon damage to the goods, in relation to the value of the goods, as laid down in § 17, section 1. Expenses referred to in § 17, section 2, first sentence, will also be paid to the same extent, but apart from this, the freight forwarder is not obliged to pay any further compensation.

§ 19

Delay

A. If the goods are picked up, carried or delivered too late under § 7, section 1, the freight forwarder shall compensate the customer for such direct and reasonable expenses as could have been foreseen as a probable consequence of the delay at the time of the conclusion of the contract, although with an amount not exceeding a sum equivalent to the freight or other compensation agreed upon in the contract.

B. When a time guarantee has been agreed, according to § 7, section 2, and the agreed time of transport has been exceeded, the freight forwarder shall, unless otherwise agreed, credit the customer for the freight or any other compensation agreed upon for the transport. This does not apply if the delay was caused by circumstances beyond the freight forwarder's own control, except that with regard to carriage of goods by road within Europe the freight forwarder is liable also for circumstances within the control of persons engaged by him for the performance of the contract. The customer shall be considered to have suffered a loss equivalent to the amount of the freight, as long as it cannot be shown that the amount of the loss is less In the latter case only the amount equivalent to the loss shall be credited.

§ 20

Delay and total loss

A. The customer has the right to compensation as if the goods had been lost if no delivery has been made

– with regard to international road transports, within 30 days after the expiry of the agreed period of time, or, if no particular period of time has been agreed upon, within 60 days from the moment the goods were accepted for transport

– for other modes of transport, within 60 days from the time when the goods should have arrived.

The customer has no right to compensation as if for total loss if the freight forwarder can prove within the above mentioned time limits that the goods have not been lost and that they can be delivered within a reasonable period of time.

B. In case of cross-labelling or delivery to wrong destination, the freight forwarder shall use his best reasonable efforts to transport the cargo to its original destination using same or similar means of transportation as originally agreed upon or used by the freight forwarder. If the freight forwarder fails for reasons within the freight forwarder's control to redeliver the goods to the agreed destination, the freight forwarder shall compensate the customer with the full value in accordance with §§ 17 and 18 of the goods at the time and place of the destination originally agreed upon, but shall be under no further liability or bear any further costs related to the goods regardless of the circumstances.

§ 21

A. For loss, depreciation of or damage to goods the freight forwarder's liability is limited to SDR 8.33 per kg (gross) of the part of the goods which has been lost, depreciated or damaged.

B. For delay in pick up, carriage or delivery the freight forwarder's liability is limited to the amount of the freight.

C. For all other loss the freight forwarder's liability is limited to SDR 100,000 in respect of each assignment.

D. If a declaration of a special interest in delivery has been agreed upon, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independently of the compensation provided for in sections A-C above.

E. In calculating the extent of compensation for loss, depreciation, damage and delay, and all other loss, the principles of §§ 17-20, shall apply correspondingly. The freight forwarder is not obliged to pay any compensation i.e. for loss of profit, loss of market or other loss of any kind whatsoever.

THE FREIGHT FORWARDER'S LIABILITY AS INTERMEDIARY

§ 22

The freight forwarder is liable for damage resulting from his lack of due diligence in the performance of the contract. The freight forwarder is not liable for acts or omissions of third parties in performing the transport, loading, unloading, delivery, clearance, storage, collection or other services rendered by the freight forwarder. When assessing whether the freight forwarder has acted with due diligence it shall be taken into consideration what the freight forwarder knew or should have known regarding the third party as well as which information was given by the customer regarding the character of the task as well as other information with relevance to the selection of a suitable third party.

Unless specifically agreed, the freight forwarder is not liable for money, securities and other valuables.

§ 23

In calculating the extent of compensation for loss, depreciation, damage and delay, and all other loss, the principles of §§ 17-21, shall apply correspondingly.

§ 24

The freight forwarder's liability for services mentioned in § 3 C is limited to SDR 50,000 in respect of each assignment, and totally in the event of any one occurrence SDR 500,000.

However, in any event compensation shall not exceed:

a) for delay a sum equivalent to the agreed payment in relation to the individual assignment,

b) for loss, depreciation of or damage to goods, SDR 8,33 per kg (gross) of the part of the goods which has been lost, depreciated or damaged,

c) for all other loss five (5) times the agreed payment in relation to the assignment.

STORAGE

§ 25

A. Responsibility for tasks performed by the freight forwarder as contracting party, cf. § 3 B:

Unless otherwise instructed in writing by the customer, the freight forwarder shall take out insurance for the risks of fire, water and burglary in his own name and for account of the customer based upon the invoice value at the time of storage + 10 %. Unless the customer has informed the freight forwarder of the value of the goods, the freight forwarder may asses the value. The customer bears the risk of errors in such assessment of the freight forwarder.

For loss, depreciation of or damage to the goods not covered by insurance in accordance with the above, or when no insurance has been taken out by the freight forwarder, the freight forwarder is liable for negligent acts or omissions with the determination and limitation of liability specified in §§ 17-18 and 21.

The freight forwarder's liability in relation to all customers is limited to SDR 500,000 with regard to damages occurring on one and the same occasion.

The freight forwarder is liable for delay according to §§ 19 – 20 and 21B.

B. Furthermore, the following applies:

1. The freight forwarder shall check and issue receipts for whole packages of goods received, without any liability, however, for the content of the packages and invisible damage. At the request of the customer the freight forwarder shall make an inventory of the stock.

The freight forwarder shall, upon opening the packages, immediately notify the customer of any defect or damage that he has observed or should have observed.

The freight forwarder shall take care of the necessary delivery control.

2. If the customer has not left any special instructions with regard to the storage of the goods, the freight forwarder may freely choose between various storage possibilities, provided that he exercises due diligence in so doing.

3. If goods in store, by reason of their nature, are deemed to be a danger to property or persons, the customer has a duty to remove the goods immediately.

4. The customer shall inform the freight forwarder at the latest at the time of delivery of the address to which notice concerning the goods shall be sent and at which instructions shall be received, and inform the freight forwarder immediately of any changes thereof.

C. This provision does not apply for any storage of goods cf. § 15, section 2.

THE CUSTOMER'S LIABILITY

§ 26

The customer shall indemnify and hold the freight forwarder free and harmless for damage, loss or liability incurred by the freight forwarder owing to the fact that:

a) the particulars concerning the goods, information and documents relating to the assignment are incorrect, unclear or incomplete,

b) the goods are incorrectly packed, marked or declared, or incorrectly loaded, stowed or secured by the customer or another party acting on his behalf,

c) the goods have such harmful properties as could not have reasonably been foreseen by the freight forwarder,

d) the freight forwarder is obliged to pay customs duty or other official fees or provide a security, unless such obligation is caused by the freight forwarder's negligence,

e) the goods are illegal, defective, deficient or noncompliant with applicable rules or regulations, are suspected of being or is shown to be in violation of intellectual or industrial property rights of a third party; or the necessary official permits are not in place for the import, export, handling, storage or transport of the goods,

f) the freight forwarder suffers a direct financial loss, fines or penalties, incurs administrative charges, incurs loss or damage related to the freight forwarder's authorizations or licenses.

In assessing the customer's responsibility in accordance with a) and b) regard shall be made to whether the freight forwarder, despite his knowledge of the circumstances, has accepted or failed to make an objection to the measures taken by the customer in respect of the goods.

Should the freight forwarder, in his capacity as charterer or shipper become liable in connection with carriage of the customer's goods by sea, to pay general average contribution to the shipowner or the carrier, or become exposed to claims from third parties for reasons stated above, the customer shall hold the freight forwarder harmless.

NOTICE OF CLAIM AND DISPUTES

NOTICE OF CLAIM

§ 27

Notice of claim shall be given to the freight forwarder without undue delay.

In case of apparent loss, depreciation of or damage to the goods, notice shall be given immediately upon receipt of the goods, and in case of non-apparent loss, depreciation of or damage to the goods no later than seven (7) calendar days from the date of delivery.

If notice is not given as described above, the burden of proving that the loss, depreciation of or damage to the goods has occurred while the goods was in the custody of the freight forwarder rests on the customer.

Notice of claim concerning matters other than damage to, or depreciation or loss of the goods shall be given within fourteen (14) days from the day on which the customer knew or ought to have known about the circumstances forming the basis of the freight forwarder's liability. If such notice of claim has not been given, the customer has lost his right of claim.

If a certain mode of transport has been expressly agreed upon, or if it is proved that loss, depreciation, damage or delay has occurred whilst the goods were being carried by a particular means of transport, the law applicable to such mode of transport and commonly used conditions of carriage shall apply instead, to the extent that they deviate from what is laid down in this § 27.

TIME-BAR (DENMARK, FINLAND AND SWEDEN)

§ 28

Legal proceedings against the freight forwarder shall be commenced within a period of one (1) year; otherwise the right of claim will have become lost.

The time limit period runs:

a) upon depreciation of or damage to goods from the day upon which the goods were delivered to the consignee,

b) upon delay, loss of the whole consignment or other kind of loss from the time at which the delay,

total loss or other loss could at the earliest have been noticed,

c) in all other cases from the time at which the cause on which the claim is based could at the earliest have been noticed.

This time-bar shall apply when the freight forwarder's principal place of business is located in Denmark, Finland or Sweden.

If a certain mode of transport has been expressly agreed upon, or if it is proved that loss, depreciation, damage or delay has occurred whilst the goods were being carried by a particular means of transport, the law applicable to such mode of transport and commonly used conditions of carriage shall apply instead, to the extent that they deviate from what is laid down in this § 28.

DISPUTE RESOLUTION

§ 29

In the event of a dispute between the freight forwarder and the customer, the parties shall in the first instance attempt to find a solution through negotiation. If the parties are unable to reach a solution via negotiation, the dispute shall be decided in the general courts in the freight forwarder's principal place of business. Legal proceedings shall be subject to the law of the freight forwarder's principal place of business.