

# **BELGIAN FREIGHT FORWARDERS**

## **STANDARD TRADING CONDITIONS**

(Free translation)

### **Definition and Scope of the Contract**

#### **Article 1**

Unless otherwise agreed these Conditions shall be applicable to any form of service provided by the Freight Forwarder.

They may be quoted as “Belgian Forwarding Conditions”. They represent a recognized custom of the trade.

#### **Article 2**

In these Conditions:

- Customer: is the Freight Forwarder’s Principal at the instructions of whom and on behalf of whom the Freight Forwarder provides services, information or advice, whether gratuitous or for reward.
- Freight Forwarder: is a CEB member or each Freight Forwarder conducting business under these Conditions.
- service: is any instruction to forward goods offered, accepted for performance, or performed by the Freight Forwarder, and any related act, any information or advice in respect thereof.
- goods: are all and any goods including their packaging, entrusted to the Freight Forwarder by the Customer. Such goods include all and any merchandise as well as all and any titles or documents that represent or may represent such goods.
- owner: is the owner of the goods to which the service provided by the Freight Forwarder pertains.
- third parties: are any non-contracting parties, in particular any natural or legal persons whom the Freight Forwarder deals with in the performance of his duties.

#### **Article 3**

Where the performance of services is concerned, a distinction is made between the Freight Forwarder who acts:

- 1) as a forwarding agent under Belgian law (*commissionnaire – expéditeur*): his duties consist of, *inter alia*, forwarding goods either in his own name or in his Principal’s name, but always on the latter’s behalf, and pursuant thereto in providing all and any such services as may be necessary in respect thereof, performing all and any required formalities and concluding any such agreements as are necessary for such purpose
- 2) as a principal under Belgian law (*commissionnaire de transport*): in the following cases only, and in no other cases, the Freight Forwarder shall be regarded as a principal:
  - a) when he performs the carriage of goods in his own name and by his own means of transport,
  - b) when he issues a transport document in his own name,
  - c) when the instructions explicitly show that the Freight Forwarder assumes such obligation.

#### **Article 4**

These Conditions do not imply any waiver of any right by the Freight Forwarder and they cannot give rise to a more extensive liability than that to which he would be subject pursuant to any legislation or regulation applicable in addition to these Conditions.

**Article 5**

The Customer warrants that the goods entrusted by him to the Freight Forwarder under his instructions are his property or that as an authorized agent of the owner he has the right of control of such goods, and that consequently he accepts these Conditions not only for himself but also for and on behalf of his Principal and for and on behalf of the owner.

**Formation and Performance of the Contract****Article 6**

Unless otherwise agreed, or unless an event constituting force majeure arises beyond the Freight Forwarder's control, an offer made by the Freight Forwarder shall be valid for 8 days. Such an offer shall be based upon existing rates, remunerations, freight charges, currency rates and estimated dates, which are in force at the time when the offer is communicated to the Customer. Should one or more of these elements be varied, the prices offered shall be adapted accordingly and retroactively. The Freight Forwarder shall at all times be entitled to charge to the customer all and any amounts charged to him by third parties as a result of improperly calculated freights, costs and rates.

**Article 7**

The Customer shall undertake to supply to the Freight Forwarder, in advance and not later than at the time of confirmation of the order, any useful information including, but not limited to, the nature of the goods, the method of shipment, the place of taking over and delivery, and the required route and procedure, and in particular any information which the Principal may be presumed to have at his disposal as manufacturer, merchant, owner or consignor of the goods, and which may ensure their preservation, shipment, taking over at the place of departure and delivery at the place of destination.

**Article 8**

The Freight Forwarder shall not be presumed to examine the correctness of the particulars or the information given by the Customer or the authenticity or regularity of the documents furnished by the Customer. Such information shall be accepted in good faith.

**Article 9**

In the absence of precise instructions to the contrary or special agreements, the Freight Forwarder shall be at liberty in his choice of means to be used to organise and perform the services to the best of his abilities according to normal business practice, including the groupage of goods.

**Article 10**

The Freight Forwarder shall be entitled to charge any amounts or fees for his expenses and interventions on a fixed basis, i.e. as a lump sum or an inclusive price.

**Article 11**

In the performance of his duties, the Freight Forwarder may employ third parties, servants and agents who show normal professional qualifications.

**Article 12**

Unless instructed to the contrary, the Freight Forwarder shall be entitled to keep possession, control or custody of any goods that for some reason could not be delivered, or to take custody of them, and to store the goods at the Principal's cost and risk or at the expense and risk of the goods themselves.

In accordance with the provisions of the Act of 5 May 1872 , the Freight Forwarder may sell the goods and apply the proceeds in or towards the payment of his claims.

In the case of dangerous, perishable, flammable, explosive goods or goods that may otherwise cause damage to persons, animals or property, subject to prior notification in writing to the Customer and subject to accountability the Freight Forwarder may destroy, remove or sell the goods on the Customer's behalf and at the Customer's risk.

**Article 13**

The Freight Forwarder shall be entitled to suspend the performance of his duties if the Customer fails to fulfil or insufficiently fulfils his obligations in any way.

In the event of force majeure, the Contract shall remain in force. The Freight Forwarder's duties shall, however, be suspended for the duration of the event constituting force majeure.

In case of specific duties, or activities that are uncommon, particularly time-consuming or that require specific effort, additional fees may be charged at any time. All additional costs caused by force majeure shall also be borne by the Principal.

**Article 14**

Unless otherwise and previously agreed in writing, the Freight Forwarder shall not be under a duty to guard the goods to be forwarded, nor to have them guarded, nor to have them insured, wherever they are, even out in the open.

**Payment****Article 15**

The amounts or fees charged shall be payable in cash at the Freight Forwarder's registered office, within eight days from the date of the invoice.

Any loss resulting from exchange rate fluctuations is for the Customer's account. Payments not allocated by the Customer himself to the payment of a specific debt, may be applied at the Freight Forwarder's choice to the payment of any amount owed by the Customer.

**Article 16**

Any protest against the invoicing or any services and amounts charged must have been received by the Freight Forwarder in writing within 14 days from the date of invoice.

**Article 17**

The Customer waives any right to rely on any circumstance which might entitle him to suspend payment in whole or in part and waives any right to set-off or counterclaim with regard to all amounts charged to him by the Freight Forwarder.

**Article 18**

The Freight Forwarder shall not be required to provide security for the payment of freight, duties, levies and taxes or any liabilities whatsoever, should this be required by third parties. Where the Freight Forwarder has provided security, the Customer is under a duty, at the Freight Forwarder's first request in writing, to pay to the Freight Forwarder, by way of security, any amount for which the Freight Forwarder has provided security to third parties.

**Article 19**

Any debt not paid on its due date shall, without any prior notice, be increased with compensatory interests calculated at the statutory interest rate and increased by liquidated damages equal to 10 % of the debt, so as to cover any economic and administrative loss, without prejudice to the Freight Forwarder's right to prove the existence of more extensive damage.

**Customer's Duties and Liability****Article 20**

The Customer shall undertake and accept liability for the following:

- that his instructions and his description of the goods are complete, correct and accurate;
- that the goods to be entrusted by him to the Freight Forwarder shall be made available in time, completely and in a useful way, that they are loaded, stowed, packed and marked in accordance with the nature of the goods, the place of receipt or destination, and for the purposes for which they are entrusted to the Freight Forwarder;
- that all documents submitted to the Freight Forwarder by the Customer are complete, correct, valid, authentic and not improperly prepared or used;
- that, unless the Freight Forwarder has been informed thereof previously and in writing, the goods entrusted to him are not of a dangerous, perishable, flammable or explosive nature or liable to otherwise cause damage to third parties, persons or property;
- that he will examine all documents submitted by the Freight Forwarder upon receipt and that he will verify whether they are in accordance to the instructions given to the Freight Forwarder.

**Article 21**

The Customer shall be liable to the Freight Forwarder and he shall indemnify him at his first request:

- against any damage and/or loss resulting from the nature and the packaging of the goods, the incorrectness, inaccuracy or incompleteness of instructions and information, the non-delivery or untimely delivery of the goods to the Freight Forwarder at the agreed time and place of receipt, the failure to provide, or timely provide, documents and/or instructions, and the fault or negligence in general of the Customer and of the third parties employed by him;
- against any damage and/or loss, costs and expenditure which is claimed from the Freight Forwarder by authorities, third parties or servants and agents, for whatever reason, with regard to the goods, any damage, expenditure, costs, duties, claimed directly or indirectly as a result of the service provided on the instructions of the Customer, unless the Customer shows that such claim was directly caused by a fault or negligent act or omission for which only the Freight

- Forwarder is liable;
- against any damage and/or loss, costs and expenditure which is claimed from the Freight Forwarder in cases where, under Community or national laws and regulations, he is under any personal and/or joint and several liability for the payment or settlement of customs duties and/or other taxes.

#### **Article 22**

If the claim for which the Freight Forwarder requires compensation or indemnity from the Customer pertains to a customs or other tax claim, and if it is based on instructions with regard to customs received from the Customer or on his behalf, the Customer shall undertake, at the Freight Forwarder's request, to provide a financial guarantee to unconditionally warrant the Customer's liability towards the Freight Forwarder, to the benefit of the Freight Forwarder or to the benefit of a third party designated by the Freight Forwarder.

### **Freight Forwarder's Duties and Liability**

#### **1) Provisions common to Agents and Principals**

##### **Article 23**

The Freight Forwarder shall not be liable for damage caused by an event constituting force majeure, including, but not limited to, war, riots, strikes, lockouts, boycotts, work congestion, scarcity of cargo or weather conditions.

##### **Article 24**

The Freight Forwarder shall not be liable for damage or loss as a result of theft of goods in his possession, custody or control, unless the Customer shows that the theft took place as a result of circumstances which the Freight Forwarder, in view of the Contract with the Customer, should have avoided or which he should have foreseen, provided that the risk of theft is not for the account of the goods under local regulations or business practice.

##### **Article 25**

The Freight Forwarder shall not be liable for any indirect loss or damage, including economic loss or damage, consequential loss or damage and immaterial loss or damage.

##### **Article 26**

The Freight Forwarder shall not be responsible for the lack of or bad result of any instructions to collect money, unless this is proved to have been caused by gross negligence.

#### **2) Liability of the Freight Forwarder acting as Agent (art. 3.1)**

##### **Article 27**

The Freight Forwarder shall perform his duties with reasonable care, dedication and perception, and he shall be under a duty of normal professional performance of the instructions given to him.

##### **Article 28**

The Freight Forwarder's liability shall be limited to that for fault, negligence or omission in the performance of the instructions given to him. To the extent that such fault, negligence or omission has caused any direct material damage or financial loss to the

Customer or third parties, the Freight Forwarder shall be entitled to limit his liability to € 5 per kilogramme gross weight of the goods lost or damaged, with a maximum of € 25,000 per contract.

**Article 29**

The Freight Forwarder shall not be liable for the performance of any contract entered into by him for and on behalf of his Customer with third parties, servants or agents, pertaining to storage, transport, customs clearance or the handling of goods, unless it is shown by the Customer that the defective performance thereof was directly caused by the Freight Forwarder's fault.

**Article 30**

The Freight Forwarder does not guarantee any fixed time or date for delivery, dates of arrival and departure, unless otherwise previously agreed in writing. The indication of a time or date for delivery by the Principal is not binding upon the Freight Forwarder.

**3) Liability of the Freight Forwarder acting as Principal (art. 3.2)**

**Article 31**

The Freight Forwarder shall be liable as a carrier in the cases provided for in article 3.2. His liability shall be determined according to national law and the international conventions applicable to the mode of transport concerned.

**Privilege and Lien**

**Article 32**

Any amounts charged by the Freight Forwarder shall be privileged in accordance with Belgian law and with these Conditions.

**Article 33**

Any claims of the Freight Forwarder as against his Principal shall be privileged under Article 14 of the Act of 5 May 1872, Article 20,7° of the Mortgage Act, and Article 136 of the General Customs and Excise Act with regard to all goods, documents or monies currently or in the future in his possession, custody or control, regardless of the fact whether the claim pertains in whole or in part to the taking in charge or forwarding of other goods than those in his possession, custody or control.

**Article 34**

The Freight Forwarder shall have the right to retain the goods and he shall be entitled to sell or dispose of the goods and to apply the proceeds to his claim in full; they shall also serve as security, regardless of the fact whether the Principal is the owner of the goods.

**Insurance**

**Article 35**

The Freight Forwarder may make insurance (AREX 21) available to the Principal upon his request in writing, for any business related to international carriage at the Freight Forwarder's risk. The costs of such insurance shall be borne by the Principal.

## **Prescription and Extinction of Right**

### **Article 36**

The Freight Forwarder must be given notice in writing of any claim for damages as against him, with reasoned grounds, within 14 days from either the delivery of the goods or the sending of the goods. Any potential liability of the Freight Forwarder shall be extinguished automatically and definitively when the Customer has retaken delivery of the documents pertaining to a specific operation within the framework of services after the performance thereof without having formulated a reasoned reservation not later than on the 10th day after the sending of these documents by the Freight Forwarder.

### **Article 37**

Any liability action against the Freight Forwarder shall be time-barred as a result of prescription if it is not brought in the Court having jurisdiction within a period of six months. Prescription shall run from the day following the day on which the goods were delivered or should have been delivered, or, in the absence of delivery, from the day following the day the event giving rise to the action took place.

## **Jurisdiction and Administration of Justice**

### **Article 38**

Exclusive jurisdiction is deferred to the Courts of the Freight Forwarder's registered office, which is presumed to be the place of formation and performance of the Contract, without prejudice to the Freight Forwarder's right to bring the action before another Court.

### **Article 39**

Legal and arbitration proceedings against third parties shall not be conducted by the Freight Forwarder unless he agrees to do so at the Principal's request and for and on the Principal's behalf.

### **Article 40**

All legal relations governed by these Conditions shall exclusively be governed by the laws of Belgium

## **Entry into force**

These Conditions were published in the Supplements to the Belgian Official Gazette (*Belgisch Staatsblad – Moniteur belge*) of June 24, 2005 under number 0090237 and replace all other General Terms and Conditions of the Belgian Freight Forwarders from the date of entry into force.