

General Freight Forwarder's conditions of Association of Logistics and Freight Forwarding of the Slovak republic

in version with the changes approved by ALFF SR member convention on 12th May 2005

Article 1

Subject – mater and purpose, scope of application

- 1.1. These General Conditions of the Freight Forwarders Association of Slovakia (hereinafter referred to as „GFFC ALFF SR“) are issued on the basis of §2, point 4 of the Statute of Association of the Freight Forwarders Association of Slovakia (hereinafter referred to as „FFAS“) and §273/(1) and (2) of the Commercial Code of the Slovak Republic (hereinafter referred to as „CoC“). Their purpose is to regulate in more detail and supplement provisions of §601- 609 of the CoC on the contract of freight forwarding.
- 1.2. The GFFC ALFF SR shall apply to commercial relations between the customers and freight forwarders in the field of national and international freight forwarding provided they are incorporated in the contract of freight forwarding. Those parts of the GFFC ALFF SR which, according to their nature, relate only to international freight forwarding, shall not be applicable to national freight forwarding.
- 1.3. The differing provisions of the contract of freight forwarding shall have priority over the wording of the GFFC ALFF SR. The provisions of the GFFC ALFF SR shall have priority over the CoC and the Civil Code (hereinafter referred to as „CiC“), provided they are not at variance with their mandatory rules or contrary to other rules of imperative law
- 1.4. Slovak version of the GFFC ALFF SR has priority over their English and German translations.
- 1.5. For the purposes of these GFFC ALFF SR – the freight forwarder means an entrepreneur who is holder of a licence authorizing him to operate the trade „freight forwarding“ (§26, §54, Annex 3 of the Act concerning trades No.455/1991 Zb.). In operating this trade he undertakes in the contract of the freight forwarding to procure for his customer the transport of goods in his own name but on the customer's account from a certain place to another certain place (§601/1 CoC). The freight forwarder may also undertake to procure, arrange or to effect other auxiliary services connected with the transport, provided these services are within the scope of his business activities.
 - the customer means a person (juristic or natural) who orders the procurement of the transport with the freight forwarder, eventually also other auxiliary services in connection with the transport, and for this purpose concludes a contract of freight forwarding with the freight forwarder and in the matter of other services the respective further contracts.
 - the procurement of transport means the obligation of the freight forwarder, namely :
 - to determine suited means and route of transport;
 - to choose suited carrier and conclude with him a contract of carriage in his own name but on the account of the customer, eventually, on specific instruction of the customer, to conclude other contracts connected with the transport.
 - the carrier means an entrepreneur who under the contract of carriage has an obligation to the consignor (shipper) to carry the consignment for remuneration from a certain place (the place of despatch) to another place (the place of destination). The carrier actually performs the carriage of the goods.

- the freight forwarder becomes the customer's representative in his position as consignor (shipper), when under the mandate contract he is acting at the conclusion of the contract of carriage in the name of the consignor (the shipper). In this case the participant of the contract of carriage as consignor (the shipper) will be the customer, not the freight forwarder.
- the freight forwarder acts as intermediary of transport, when under a brokerage contract he undertakes for remuneration to engage in activities aimed at enabling his customer to conclude with a certain carrier the contract of carriage alone and in his own name (§642 et seq.CoC). Intermediation is a free trade (§25/1,§33/ch and §41a of the Act No.455/1991 Zb.).

Article 2

Process of conclusion, creation and from of the contract of freight forwarding

2.1 The rights and obligations of the Freight forwarder arise first of all on the basis of a contract of freight forwarding. Under a contract of freight forwarding the Freight forwarder undertakes to procure for the Customer the transport of goods (the consignment) in his own name but on the Customer's account from a certain place to another certain place, and the Customer undertakes to pay remuneration to the Freight forwarder (§601 (1) CoC).

2.2 Formation and coming into existence of the contract of freight forwarding are governed by the provisions of §43 – 51 CiC and §269 – 275 CoC. For the creation of the contract of the freight forwarding an unconditional acceptance of the contract's offer, made in the specified time, is required. Acceptance of an offer which contains amendments, reservations, limitations or other changes is considered as rejection of the offer, representing a new offer which must be accepted in order to create the contract. For a contract's offer is regarded also an offer designated as „forwarding order“ or „order of forwarding services“. The contract's offer must be sufficiently precise and addressed to a certain person. It is necessary to specify in it correctly the services to be procured by the Freight forwarder, especially the arrangement of specified transport; it must be addressed to an identified Freight forwarder.

2.3 Unless otherwise agreed by the parties, under these GFFC ALFF SR written form is required for the validity of the contract of freight forwarding. Written form must be kept for the acts creating the contract, that is for the offer and its acceptance. The contract is considered to be in writing when it is written in a document forming one technical entity, when the manifestations of wills of the parties are made by exchange of documents, correspondence, telegram, telex, telefax or any recording by electronic means. Silence or inactivity alone on the part of the offeree / recipient of the offer / do not constitute acceptance.

Article 3

Forwarding order Legal nature and function

3.1 The forwarding order can represent an offer to conclude a contract of freight forwarding made by the Customer to the Freight forwarder. The contract of freight forwarding is created by its unconditional acceptance.

3.2 The forwarding order issued by the Customer at the request of the Freight forwarder for the purpose of confirmation of the existence and contents of the contract of freight forwarding, which does not have a written form, is applicable in the case, when the parties waived the requirement of the written form for the contract (CoC §601/2).

Article 4

Cooperation of the parties to the contract of freight forwarding

4.1 The Customer and the Freight forwarder are obligated to cooperate closely in the performance of the contract of freight forwarding.

4.2 As long as the Customer is in delay with the performance of the obligations, the Freight forwarder shall not be in default, and vice versa.

4.3 The Freight forwarder who under a reciprocal obligation must perform first (to conclude a contract of carriage with the carrier), may refuse his performance, until he receives the reciprocal performance or a security for this performance (payment of the remuneration), provided the performance of the Customer is threatened by circumstances, of which he had no knowledge when entering into the contract.

Article 5

Basic obligations and rights of the freight forwarder

5.1 The Freight forwarder is obliged :

5.1.1 to procure for the Customer the transport of goods in his own name but on the Customer's account from a certain place of despatch to a certain place of destination; at the request of the Customer he is bound to certify him the taking of delivery of the consignment, the carriage of which he has to arrange;

5.1.2 to take delivery of the consignment at the railway station or in the port of destination, to take the stored consignment from the warehouse – keeper, if he is entrusted with these tasks within the framework of the contract of freight forwarding;

5.1.3 to perform his duties arising out of the contract of freight with Professional diligence, taking care to satisfy the best interests of the Customer;

5.1.4 within the framework of the contract of freight forwarding to fulfill the instructions of the Customer; in fulfilling them he is bound to protect the Customer's interests which include especially :

- the duty to warn the Customer of any obvious incorrectness of his instructions;
- in case of danger of delay to proceed even without such instructions in order to protect – as much as possible – the Customer's interests (which are known to the freight forwarder);

5.1.5 to take care of things (goods), entrusted to him by the Customer, as well as of things taken by him for the Customer, or cash collected for the Customer on delivery of goods from the consignee or by other act of collection;

5.1.6 to ascertain or secure inspection of the quantity of goods delivered to the carrier, or taken from the carrier, provided always that it was agreed with the Customer;

5.1.7 to insure the consignment against dangers during the transport, if it is stipulated in the contract of freight forwarding; the contract of insurance shall be concluded by the freight forwarder either in his own name and on the account of the Customer, or in the name of the Customer;

5.1.8 to inform the Customer, if the consignment is under threat of damage, or of damage which has occurred to the consignment, as soon as he learns of it;

5.1.9 for the needs of the Customer to keep for a reasonable or agreed period of time documents acquired during performance of the contract of freight forwarding.

5.2 The Freight forwarder has a right :

5.2.1 to demand a written order for the procurement of the carriage (forwarding order), if the contract of freight forwarding is not made in writing (§601/2 CoC);

5.2.2 unless otherwise agreed, to arrange the transport, inclusive its mode and choice of the carrier;

5.2.3 to demand from the Customer a reasonable advance to cover costs connected with the performance of the contract of freight forwarding;

5.2.4 to demand payment of the agreed remuneration, or – if it is not agreed – according to the price list of the sender;

5.2.5 to demand the compensation for necessary and reasonable expenses incurred to him in connection with the performance of the contract of freight forwarding; in addition, to request also compensation of expenses which were usefully spent while performing his obligation;

5.2.6 to ask the Customer to correct the incorrect or to supplement the incomplete instructions and the same time to request correct data about the contents of the consignment and its nature;

5.2.7 to demand an express order for the insurance of the consignment and for the specification concerning the kind of insurance;

5.2.8 to demand an express order for collection of cash on delivery from the consignee or for another act of collection;

5.2.9 to effect the transport himself, if it is not at variance with the contract, or if the Customer does not prohibit it at the latest prior to commencing the forwarding (right of selfentry, §605/1 CoC);

5.2.10 to use another freight forwarder (the intermediate freight forwarder) for arranging the transport; in such a case he shall be liable to the Customer as if he procured the transport himself (§605/2 CoC);

5.2.11 to deviate from the instructions of the Customer in order to protect his interests, especially when the danger of delay arises.

Article 6

Basic obligations and rights of the customer

6.1 The Customer is obliged :

6.1.1 to give to the Freight forwarder a written forwarding order, if the contract of freight forwarding is not in writing and asked for by the sender;

6.1.2 if the consignment is under imminent threat of damage to give the Freight forwarder on his call necessary instructions in written form; otherwise the Freight forwarder is entitled to sell the consignment;

6.1.3 to provide the Freight forwarder with Obchodcorrect data about the contents of the consignment and its nature, as well as with other facts required for the conclusion of the contract of carriage, especially the following : kind and quantity of the goods, marks and signs, mode of packing, dimensions and weight of individual pieces, information whether the goods are dangerous in the sense of the ADR, RID Agreements, and the like; to inform the Freight forwarder in time about rules of public law (import and export licences, transit licences, rules concerning customs and the like), unless they must be known to the Freight forwarder;

6.1.4 to pay the Freight forwarder in time the agreed remuneration; if remuneration is not agreed, then remuneration in accordance with the Freight forwarder's tariffs valid at the time of the conclusion of the freight forwarding; if there are not at disposal the Freight forwarder's tariffs, then the Customer is bound to pay remuneration common at the time of the conclusion of the contract;

6.1.5 at the request of the Freight forwarder to provide him with a reasonable advance to cover costs connected with the performance of his obligation;

6.1.6 to compensate the Freight forwarder in time for necessary and reasonable costs incurred to him, as well as expenses usefully spent by him, To pay the Freight forwarder the remuneration and compensate him expenses arisen in the course of the back-transport of the goods, if the consignee rejects to take delivery of the consignment. In this case the amount of remuneration will be the same as in the case of transport to the consignee. The Customer's duty is similar in the case, when he cancels at the Freight forwarder the execution of the agreed collection of cash on delivery or another act of collection, or when the collection of the respective amount, in spite the Freight forwarder's effort, will not be effected and the consignment must be sent back;

6.1.7 to give the Freight forwarder an express order for the insurance of the consignment, if he wishes its insurance and the insurance is not stipulated in the contract of freight forwarding;

6.1.8 to forbid the Freight forwarder's right of self-entry, if the Customer does not wish that the Freight forwarder will effect the transport himself, which he has otherwise only to procure;

6.2 The Customer has a right :

6.2.1 to request procurement of the transport from the Freight forwarder in accordance with the terms of the contract of freight forwarding and these GFFC ALFF SR;

6.2.2 to give the Freight forwarder in the framework of the contract of freight forwarding more detailed instructions with regard to the mode, kind and route of transport and the designation of the consignee;

6.2.3 to give the Freight forwarder instruction to arrange stoppage of transportation performed by the carrier and demand return of the consignment, provided the consignee has not yet taken its delivery;

6.2.4 to request from the Freight forwarder other auxiliary services connected with the procurement or execution of the transport, so far as they are agreed in the contract of freight forwarding or separately;

6.2.5 to repudiate the contract of freight forwarding in case of its fundamental breach by the Freight forwarder.

Article 7

The freight forwarder's liability for damage and its limitation

7.1 The Freight forwarder who breaches his obligation arising out of the contract of freight forwarding or other commercial contract, or breaches other non-contractual duty stated in the CoC, shall compensate the damage thus caused to the other party, unless he will prove that the said breach was caused by circumstances excluding responsibility (§373, 374 and 757 of the CoC; article 9 of the GFFC ALFF SR). The breach of the obligation by the Freight forwarder, the existence of damage and the link of causation between the breach of the obligation and the damage thus caused must be proven by the party who suffered the damage (the Customer). The existence of a circumstance excluding responsibility must prove the Freight forwarder.

7.2 If the Freight forwarder is liable for damage, his duty to compensate it is limited as follows :

7.2.1 In the event of damage which occurred on the consignment during carriage by means of transportation or at the handling operations connected with carriage (at loading, transloading, unloading), the amount of damage is limited to 8,33 XDR per 1 kg gross weight of the goods damaged, destroyed or lost; the maximum amount being 20 000,-per one case of damage;

7.2.2 If the damage is caused by late delivery of the consignment, the Freight forwarder's duty to compensate the damage is limited by the agreed amount of remuneration to the carrier;

7.2.3 In case of storage the liability of the Freight forwarder for the goods lost, damaged or destroyed is limited to the amount 3,925 XDR per 1kg of gross weight of the goods damaged, lost or destroyed; however, the maximum amount being – 3 925,- XDR for one case of damage (one consignment), - 19 625,- XDR, if damage caused to the depositor (the Customer) consists of the difference between required and actual state of the stored goods;

7.2.4 In cases of the other damages the Freight forwarder's duty to compensate the damage is limited to the amount of 20 000,- XDR per one damage case.

7.3 In case of a consignment of the high value or in the case of special interest of the Freight forwarder on delivery, it is possible, in deviation from the provisions of point 7.2 of the present GFFC ALFF SR, to agree in the contract of freight forwarding on a higher amount of Freight forwarder's liability.

7.4 The lost profit and indirect damage shall not be compensated.

7.5 If during the performance of the contract of freight forwarding the Freight forwarder cause the damage intentionally, he shall be obliged to compensate it in full amount (that is without limitation, inclusive the lost profit).

Article 8

The customer's liability for damage and its limitation

8.1 As regards the Customer's liability and its limitation, the same principles of liability and the provisions of article 7, points 7.1, 7.4 and 7.5 of these GFFC ALFF SR, concerning the Freight forwarder's liability, shall apply.

8.2 The provisions of article 7, points 7.2 and 7.3 of these GFC ALFF SR shall not be applicable to the Customer's liability.

Article 9

Circumstances excluding the freight forwarder's and customer's liability

9.1 Under circumstances excluding the Freight forwarder's and Customer's liability for the breach of their contractual obligations shall be deemed to fall such obstacles which include all the elements specified in §374 of the CoC.

9.2. The liability is not excluded by an obstacle which occurred during the time when the obliged party was already in delay with the performance of its obligation or arose out of its economic situation. Unless otherwise agreed by the parties, the non-granting of an official license (export, transit, import, Exchange licence) which should be applied for, shall not be regarded as circumstance excluding liability.

9.3 The obliged party must notify the other party without delay of the occurrence of the obstacle preventing it from performing its obligation.

9.4 The effects excluding liability are limited to the period of time during which exists the obstacle, with which such effects are connected. If the obstacle lasts longer than one month from the time until which should have been performed the contractual obligation influenced by the obstacle (e.g. the procurement of the transport, storage of goods, payment of advance for covering the costs, payment of remuneration), each of the parties to the contract of freight forwarding is entitled to repudiate the same, even in such a case when the obligation has been partially performed. In the case of the contract's repudiation the Freight forwarder has a claim for compensation of the costs already incurred to him and for the payment of proportional part of the remuneration. The Customer has a claim to demand return of part of the advance for costs, not spent to the moment of the repudiation of the contract, and a claim for return of a proportional part of remuneration if it was already paid in full amount at the conclusion of the contract.

9.5 The existence of an obstacle excluding liability must be proved by the contracting party which claims this obstacle.

Article 10

Auxiliary services of the freight forwarder

10.1 The Freight forwarder, in addition the transport of goods, often provides for the Customer other auxiliary and supplementary services connected with transportation. This may be effected on the basis of an agreement with the Customer, incorporated either directly into the contract of freight forwarding or in a separate agreement existing besides the contract. The such services belong, for example, storage of goods, inspection of goods, insurance of consignments, acts concerning collection of money, participation, on customs clearance. Some of them are regulated by special types of commercial contracts (e.g. contract of storage, inspection contract, insurance contract, contract of collection). If these contracts are included into one document together with the contract of freight forwarding, we speak of „mixed contracts“.

10.2 So far as these GFFC ALFF SR regulate also auxiliary services, they shall be applicable regardless the fact, whether the agreement on such service is included into the contract of freight forwarding or exists besides it. The Freight forwarder may procure the auxiliary services in his own name and on the Customer's account, or he may arrange them in the Customer's name, or as his representative or the effect them himself. The freight forwarder procures auxiliary services for remuneration which may be included in the total remuneration concerning of the transport of goods or may be designated separately.

Article 11

Storage of goods

11.1 If the Freight forwarder, within the scope of his business activities stores or arranges the storage of goods, this activity is governed by the following provisions :

11.1.1 The goods shall be stored in accordance with the Freight forwarder's choice, either in his own or in the third party's warehouse. If the freight forwarder does not store the goods in his own warehouse, he shall notify the Customer (depositor) the name of the warehouse-keeper and the place of storage.

11.1.2 The Customer is entitled himself to inspect the warehouse premises or he may arrange to be inspected. Objections and claims with regard to the condition of the warehouse or concerning the placing of goods therein, must be notified without delay. If the Customer does not exercise his right of inspection, he is deemed to have waived subsequent objections with regard to the kind and mode of placing of the goods, as far as the choice and placing of the goods we made by the Freight forwarder with due diligence. The Customer may enter the warehouse only in the presence of the Freight forwarder or the warehouse-keeper.

11.1.3 If the Customer during the storage manipulates with the goods /e.g.taking samples/. The Freight forwarder shall have the right to request that the number, weight and quality of the goods are to be ascertained in his presence. If this request is not met by the Customer, the Freight forwarder shall not be liable for damages later ascertained, with the exception of cases when it is proven that there is no connection between the damages and manipulation.

11.1.4 The Customer is liable for all damages caused by him, by his employees or by persons authorized by him on entering the warehouse to the Freight forwarder, other warehouse-keepers or to third parties /depositors/ he is also liable for damages caused by his defective goods to the Freight forwarder as warehouse-keepers, eventually depositors.

11.1.5 By inventory differences concerning the stored goods of the same Customer, the Freight forwarder may, in cases of shortage and surplus occurring at the same time, execute compensation on with the value balance of the stored goods.

11.1.6 If the Freight forwarder has doubts, whether his claims against the Customer are secured by the value of the stored goods, he is entitled to determine for the Customer a reasonable period of time, within which he must secure the Freight forwarder's claims by other means. If the Customer does not fulfil the Freight forwarder's request in the designated period of time, the Freight forwarder is entitled to give immediate notice of the contract of storage or to repudiate the same.

11.2 As to other questions concerning the relation between the Freight forwarder as warehouse-keeper and the Customer as depositor, the provisions of the Commercial Code shall be applicable (§527 -535).

Article 12

Invoicing and payment

12.1 The basis for settlement of the Freight forwarder's claims in his invoice, which is payable within 15 days from its delivery to the Customer /unless otherwise agreed by the parties/; it is assumed that the delivery of the invoice in domestic connections lasts 3 days, in international relations 10 days.

12.2 The Customer is bound to settle pecuniary obligation – the invoice at his own risk and costs on the Freight forwarder's current account in the bank designated in the invoice or in the contract of freight forwarding. A pecuniary obligation of the Customer paid through a bank shall be performed when the paid sum is deposited into the Freight forwarder's bank account. If pecuniary obligation is paid through post, it is performed when the sent sum is paid to the Freight forwarder. In exceptional case of performance pecuniary obligation personally in cash, the Customer is bound to effect cash payment at his own risk and costs at the Freight forwarder's seat.

12.3 If the Customer is in delay with the performance of his pecuniary obligation, he is bound to pay the Freight forwarder for each day of delay a conventional fine in the amount of 0,07 on the unpaid sum, however, at least in the interest rate prevailing at the time of the Customer's delay.

Article 13

Securing of contractual obligations

13.1 Conventional fine The parties may agree in the contract of freight forwarding on conventional fine for the purpose to secure their contractual duties; the conventional fine represents compensated damages. The claim to pay a conventional fine arises on the breach of the secured contractual obligation, notwithstanding the fact, whether the entitled party suffered damage or not. Agreement on

conventional fine requires written form, designation of the secured obligation and the amount of the fine (in more detail see §544 – 545 CiC. and §300 – 302 CoC).

13.2 Lien In order to assure all his rights against the principal, the forwarder has the lien on the consignment, as long as the consignment is present with the forwarder. The lien is carried out by selfhelping retention. The forwarder is obligated to inform the principal about the lien immediately, the latest within three days. The forwarder must look after, protects from damage, destruction or loss of stuck consignment. It is possible to use the thing with debtor's consent, only.

Article 14

Final provisions

14.1 Place of performance it is required for the duly performance of the obligations of the parties to the contract of the freight forwarding that the obligation is performed at the Freight forwarder's seat or at his workplace to which the order or the forwarder's order was addressed, unless follows from the nature of the obligation that it may or must be performed at the other place.

14.2 Repudiation of contract The contract of freight forwarding may be repudiated only for reasons stipulated in it, provided for by these GFFC ALFF SR, by the Commercial Code (§344 – 354) or by other statutory law. Unilateral termination of the contract of freight forwarding, without legal cause, shall not be admitted. The parties of the contract can agree upon a compensation though.

14.3 Prescription of rights

14.3.1 Rights against the Freight forwarder and the Carrier, arising out of damage on transported goods and out of delayed delivery of the consignment, are subject to limitation on the expiration of one year. In case of rights arising out of whole destruction or of the loss of the consignment the limitation period begins to run from the day on which the consignment had to be delivered, in the case of the other rights from the day when the consignment was delivered. For claims of international damage the general limitation period of four years shall apply.

14.3.2 For other rights of the Freight forwarder and of the Customer, arising out of the contract of freight forwarding, the general limitation period of four years shall apply.

14.3.3 Further questions concerning the prescription of rights are regulated in §387 – 408 of the CoC.

14.4 Governing substantive law

14.4.1 The contract of freight forwarding in the field of national freight forwarding is always governed by the Slovak law.

14.4.2 Also in the field of international freight forwarding the contract of freight forwarding shall be governed by the Slovak law, unless the parties to this contract have expressly chosen a law of another state.

14.5 Settlement of disputes

14.5.1 All disputes arising out of the contract of freight forwarding or in connection with it, inclusive the question of its validity and its termination, shall be settled, in the first place, by negotiation and agreement of the parties.

14.5.2 If the agreement is not reached, and it is the question of dispute between national parties to a forwarding contract, each one of parties is authorised to submit the dispute for decision – according to its choice – either to the Permanent Arbitration Court of the Slovak Chamber of Commerce and Industry in Bratislava, or to the authorised state court in Slovak Republic.

14.5.3 If an agreement is not reached and the dispute is one between parties to an international contract of freight forwarding, the disputes shall be settled by arbitration in accordance with the Rules of the Arbitration Court of the Slovak Chamber of Commerce and Industry in Bratislava. The parties may agree on the jurisdiction of a foreign permanent court of arbitration. The parties undertake to fulfil the award within periods therein designated.

14.5.4 Instead of arbitration, in disputes arising out of an international contract of freight forwarding each of the parties is authorised

- to submit the dispute for decision to the competent state court in the defendant's state, or
- to submit the dispute for decision to other state agreed upon by the parties.

14.6 Validity and entrance into effect of the GFFC ALFF SR

These General Freight Forwarding Conditions of the Freight Forwarders Association of the Slovakia were approved by the Meeting of the Members of the Freight Forwarders Association of Slovakia on November 18, 1999 and shall enter into effect on April 1, 2000. They shall substitute the former General Freight Forwarding Conditions of November 6, 1992, as amended on February 4, 1994.

Notice :

These general conditions of the sender were discussed and positively judged by the Slovak Chamber of Commerce and Industry.

Source : www.zlz.sk

