

# General conditions of the Belarusian forwarders

## Section 1. General Provisions

### Article 1. Subject Matter and Scope

1. These General Terms and Conditions of the Belarusian Forwarders (hereinafter referred to as the "General Terms and Conditions") are developed in accordance with the legislation and international treaties of the Republic of Belarus, as well as international customs in the area of transport and forwarding activities and regulate the relationship of forwarders and customers in the implementation of this type of activity.
2. Unless otherwise agreed, these General Terms and Conditions shall apply to all contracts concluded by the members of the Belarusian Association of Forwarders.
3. In addition, these General Terms and Conditions apply in cases where a forwarding contract contains a written reservation on the application of the General Terms and Conditions. In this case, the provisions of the General Terms and Conditions shall apply insofar as they do not conflict with the contract.
4. In the event that the provisions of these General Terms and Conditions are contrary to the rules of an international treaty or national legislation that are to be applied to the relationship between the forwarder and the customer and which can not be changed by agreement of the parties (mandatory rules), such rules shall take precedence over the provisions of these General Terms and Conditions.
5. The definitions of the concepts and terms used in these General Terms and Conditions are given in appendix 1.

## Section 2. Execution of the contract

### Article 2. Status of the forwarder.

1. When executing a forwarding contract, the forwarder may act as:
  - a representative of the customer;
  - a self-acting entity.
2. If the forwarding contract does not specify in which of the said capacities the forwarder is acting, it shall be deemed that it has the status of an independent actor.

### Article 3. The forwarder as a representative of the customer.

1. The forwarder shall be deemed to be acting as a representative of the customer, if during execution of the forwarding contract it acts on behalf of and at the expense of the customer in relations with third parties .
2. Rights and obligations under contracts concluded by the forwarder and related to the execution of the forwarding contract arise for the customer.
3. At the request of the forwarder, the customer shall give it the power of attorney required to execute the forwarding contract.

#### Article 4. Forwarder as an independent actor

1. The forwarder shall be deemed to be an independent actor, if it acts on behalf of itself when executing the forwarding contract in relations with third parties.
2. The forwarder as an independent actor is obliged to issue the relevant forwarding document at the request of the customer.

#### Article 5. General Rights and Obligations of the Forwarder

1. The forwarder has the right to:
  - 1.1. Except for the cases expressly stipulated in the forwarding contract, involve third parties in order to fulfill its obligations.
  - 1.2. Carry out cargo transportation by own transport.
  - 1.3. If it is instructed to arrange the delivery of the cargo, choose the route and the mode of transportation, except for the cases expressly provided for in the forwarding contract.
  - 1.4. If, when executing the forwarding contract, the forwarder needs to act prior to the request for instructions, it acts at the customer's risk and peril with immediate notice thereof to the latter.
  - 1.5. At any time, unload, destroy or render harmless the cargo without paying any compensation to the customer, unless the customer notifies the forwarder that the cargo transferred to the latter is dangerous.
  - 1.6. Require the customer to reimburse the expenses incurred by it when executing the forwarding contract and payment of the agreed compensation.
2. The forwarder is obliged:
  - 2.1. To fulfill its obligations under the forwarding contract assiduously, at the professional level and on time. A specific list of works and services performed by the forwarder shall be established by the forwarding contract.

2.2. Have qualified personnel, the appropriate organizational structure and the knowledge required to perform its functions.

2.3. Strictly follow the orders and instructions of the customer. In the event that the forwarder considers the orders and instructions of the customer to be incomplete, unenforceable or contrary to the interests of the customer, inform the latter of this and fulfill its obligations under the forwarding contract only upon confirmation of the initial or receiving new instructions. If in the above case the customer confirms its initial orders and instructions, all risks associated with the execution of such orders and instructions are referred to the customer.

## Article 6. General Rights and Obligations of the Customer

1. The customer has the right to

1.1. Require the forwarder to fulfill the contractual obligations properly, with due diligence and within the time limit set in the contract.

1.2. If the contract does not provide otherwise, terminate the forwarding contract with compensation to the forwarder of all expenses incurred.

2. The customer is obliged to:

2.1. Inform the forwarder of all the information necessary to fulfill its obligations, including information on the special properties of the cargo, and timely submit to the disposal of the forwarder all necessary supporting documents.

2.2. Reimburse all expenses incurred by the forwarder related to the fulfillment by the latter of its obligations under the contract, and pay the agreed compensation.

## Article 7. Cargo

1. The forwarder accepts and transfers the cargoes according to external characteristics (quantity, type and condition of the package) and accompanying documents, not assuming responsibility for the contents of the colli or shipment units.

2. The forwarder is not obliged to incur obligations associated with the confirmation of the contents, weight, cost of the cargo and special interest in the delivery.

3. An exception to the rules specified in parts one and two of this article shall be allowed in the following cases:

- with a special agreement with the customer;

- if the contents, weight, properties and/or cargo value declaration are checked

#### Article 8. Customs Clearance

1. The customs clearance of the cargo shall be carried out by the customer or the consignee.
2. In the event that this is expressly provided by the forwarding contract, the customs clearance may be carried out by the forwarder.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, if the forwarding contract provides for the obligation to arrange the delivery of the cargo to an agreed place outside of Belarus and such delivery can not be carried out without customs clearance abroad, it is considered that the contract contains the duty of the forwarder to carry out customs clearance.
4. If the contract contains an obligation of the forwarder to carry out the customs clearance of the cargo, the customer shall submit to the forwarder in advance all the documents necessary to fulfill this obligation.
5. If the customs clearance is carried out by the forwarder, the customer is obliged first refund or provide financial guarantees for reimbursement of the forwarder's expenses related to the payment of customs duties, taxes and charges.

#### Article 9. Insurance

1. The insurance of the cargo shall be carried out by the forwarder at the expense of the customer and only with written agreement of the parties.
2. The insurance of the cargo carried out by the forwarder shall be carried out under normal conditions used by insurers.
3. The forwarder is not obliged to conclude an insurance contract for each separate shipment, but it may include it into an open or master policy.

#### Article 10. Reimbursement of expenses and payment of remuneration

1. The customer is obliged to pay all the forwarder's expenses related to the latter's fulfillment of its obligations under the forwarding contract, and to pay the agreed remuneration in terms and on terms and conditions specified in the contract.
2. If the payment term is not specified in the forwarding contract, it shall be deemed that it amounts to 10 days from the date of invoicing, which the forwarder has the right to issue only upon fulfillment of its obligations under the contract.
3. The forwarding contract may provide that the obligation to pay the forwarder's expenses and pay to it remuneration shall be assigned to the consignee. However, if the consignee fails to fulfill this obligation, the forwarder has the right to demand payment from the customer.

## Article 11. Cargo pledge right

To ensure the requirements associated with the execution of the forwarding contract, the forwarder has the right to pledge the cargo.

The forwarder reserves the right to pledge the cargo in the event of its delivery to a warehouse that does not belong to the consignee, provided that the warehouse owner is notified of such a right. ^

The forwarder has the right to sell the cargo in accordance with the legislation provided in the place of delivery of the cargo, having previously notified the consignor, the consignee and the customer thereof.

The relations connected with the pledge of cargo and not regulated in this article shall be regulated by the legislation of the state wherein the place of delivery of the cargo is located.

## **Section 3. Liability and Dispute Resolution**

### Article 12. General Provisions

1. If the forwarding contract contains the obligation of the forwarder to deliver the cargo from the point of departure to the destination and the transportation is carried out by one mode of transport or transportation is carried out by several modes of transport and it is established whereon the circumstances occurred that caused the losses, the provisions of the relevant international treaty or national legislation governing relations on this mode of transport shall be applied.

2. In any other case, the provisions of this section shall apply.

## **Chapter 1. Customer responsibility**

### Article 13. Attribution of responsibility

1. The customer is liable for any losses incurred by the forwarder, if such losses were caused by the fault or negligence of the customer, as well as its employees or agents acting within the limits of the powers and authority granted to them.

2. If the agent or employee of the customer, due to fault or negligence of which the forwarder was caused losses, acted without powers and authority or with exceeding thereof, the responsibility shall be borne by such agent or employee.

### Article 14. Scope of responsibility

1. For the losses caused by the inaccuracy or inadequacy of the data on the general nature of the cargo, its brands, the number of colli or items, weight or quantity, and, where appropriate, the data on the dangerous or significant nature of the cargo, the customer shall be liable for such losses.

2. For the delay in payment of the forwarder's expenses and remuneration, the customer shall pay to it an interest fine of 0.2% of the overdue amount in foreign currency or 1% of the overdue amount in Belarusian rubles for each day of delay.

3. In all cases not specified in parts one and two of this article, the customer shall be liable in accordance with the rules established by international treaties or national legislation, which should be applied.

## **Chapter 2. Responsibility of the forwarder as a representative of the customer**

### Article 15. Attribution of responsibility

1. The forwarder acting as a representative of the customer shall be liable to the customer for losses caused by its fault or negligence or by the fault or negligence of its employees or agents acting within the powers and authority granted to them.

2. If the agent or employee, due to fault or negligence of which the customer was caused losses, acted without powers and authority or with exceeding thereof, the responsibility shall be borne by such agent or employee.

3. The forwarder specified in the first part of this article shall not be liable for the acts or omissions of third parties during transportation, loading, transfer, customs clearance, collection of money or other services performed by third parties provided that it can prove that in choosing such third party, it showed due care of a good forwarder.

4. By agreement between the customer and the forwarder, the latter may be transferred the right to lay claims and suits to the guilty third parties on behalf of the customer.

### Article 16. Scope of responsibility

In cases stipulated in Article 15 of these General Terms and Conditions, the scope of the forwarder's responsibility shall be determined by the amount of losses incurred by the customer.

## **Chapter 3. Responsibility of the forwarder as an independent actor.**

### Article 17. Attribution of responsibility.

1. The forwarder as an independent actor shall be liable for losses resulting from loss of or damage to the cargo, as well as resulting from delays in delivery if the circumstances causing such losses occurred while the cargo was in charge of the forwarder.

2. The forwarder specified in the first part of this article shall be responsible for actions or omissions of its employees or agents acting within the powers and authority granted to them, as well as for the actions of any third party whose services it uses to execute the forwarding contract.

3. The cargo shall be deemed in charge of the forwarder upon its delivery to the forwarder by the consignor or the person authorized by it and until the cargo are delivered to the consignee or it authorized person. If the consignee refuses to receive the cargo, the cargo shall be deemed to be delivered to the consignee at the time it is placed at the disposal of the consignee in accordance with the forwarding contract or with the law or custom of this branch of trade applicable at the place of delivery of the cargo.

4. The cargo shall be deemed to be detained if it has not been delivered within the time specified in the forwarding contract, and in the absence of the term agreed upon in the contract - within the term that it would be reasonable to demand from a careful forwarder taking into account the specific circumstances.

5. Upon 90 calendar days from the date when the cargo was to be delivered, the person authorized to claim the forwarder may deem the cargo lost.

#### Article 18. Scope of responsibility.

1. Liability for consideration caused by damage or loss of cargo shall be limited to its declared value. If the declared value of the cargo is higher than its actual value, the forwarder's responsibility shall be limited to the actual value.

2. The value of the cargo specified in part one of this article shall be declared prior to the delivery of the cargo to the forwarder and specified in the relevant forwarding document if it was issued.

3. If the value of the cargo is not declared in accordance with parts one and two of this article, the responsibility of the forwarder shall be limited to an amount not exceeding 666.67 units of account per collo or another shipping unit, or 2 units of account per kilogram of the gross weight of the lost or damaged cargo whichever is the higher.

4. A collo or another shipping unit shall be understood, inter alia, as a container, pallet or the like for transport, except where the colli and other shipping units are listed in the forwarding document as packed in such a transport device.

5. Notwithstanding the provisions of part three of this article, if the delivery of the cargo exclude carriage by sea or by inland waterways, the forwarder's responsibility shall be limited to an amount not exceeding 8.33 units of account per kilogram of the gross weight of the lost or damaged cargo.

6. The responsibility of the forwarder for damage resulting from the delay in the delivery of the cargo shall be limited to an amount not exceeding the freight charges due for the delayed delivery of the cargo.

7. The aggregate responsibility of the forwarder for the loss or damage and delay in the delivery of the cargo calculated in accordance with the rules specified in parts three and six or five and six of this article may not exceed the limits of the responsibility for the total loss of the cargo calculated in accordance with the rules specified in parts three or five of this article.

8. The forwarder shall lose the right to limit the responsibility established by this article if it is proved that losses caused by loss, damage or delay in delivery resulted from actions or omissions of the forwarder, its employees or agents acting within the powers and authority granted to them, any third persons whose services the forwarder has used to execute the forwarding contract committed with

the intent to cause such losses or is irresponsibly and with understanding of their likelihood of occurrence.

#### Article 19. Grounds for Exemption from Responsibility

1. Neither the forwarder nor the customer shall be responsible for the full or partial failure to perform any of its duties if the failure to perform is a consequence of circumstances that were beyond their control and could not be prevented, in particular those circumstances that arose upon the conclusion of the forwarding contract, such as flood, fire, earthquake and other natural disasters, embargoes, a war or military actions.

2. If any of these circumstances directly affect the fulfillment of the obligation within the term specified in the contract, then this term shall be proportionally postponed for the duration of the relevant circumstance.

3. The party for which it was impossible to fulfill the obligation, is obligated immediately notify the other party in writing of the occurrence, the expected duration and termination of the above circumstances, but not later than 3 days from the date of their occurrence and termination. The facts stated in the notice shall be confirmed by the Chamber of Commerce (Chamber of Commerce and Industry) or other competent authority or organization of the country concerned. Failure to notify or untimely notice shall deprive the party of the right to refer to any of the above circumstances as a ground exempting from responsibility for failure to perform the obligation.

4. If the impossibility of full or partial performance of the obligation of one of the parties will exist for more than two months, the other party will have the right to terminate the forwarding contract in whole or in part without the obligation to recover the possible losses of the first party.

5. In addition to the above cases, the forwarder shall be exempted from responsibility for loss, damage or delay in delivery if it proves that it, its employees or agents have taken all measures that could reasonably be required to avoid such losses.

### **Chapter 4. Claims and Suits**

#### Article 20. Claiming

1. In the event of consideration caused by damage, loss or delay in the delivery of the cargo, the consignee is obliged to lay in writing to the forwarder a claim prior to bringing a suit.

2. The claim shall be laid to the forwarder within the following terms:

- in case of express loss or damage to the cargo, upon acceptance by the consignee;

- in case of hidden loss or damage, within six calendar days from the date of delivery of the cargo to the consignee;

- in case of a delay in delivery, within twenty days from the expiry of the agreed or normal delivery term.



3. If the claim was not laid within the term specified in part two of this article, the consignee shall be deprived of the right to sue.

4. The forwarder is obliged to consider the claim laid not more than within thirty days and to give a response to it.

5. In case of rejection of the claim or non-receipt of the response upon the expiration of the term established by part four of this article, the consignee has the right to sue.

6. The transfer of the right to lay a claim and sue shall not be allowed, except for the transfer of such right to the consignor, the customer and the insurer.

#### Article 22. Limitation

1. The limitation period and the procedure for calculating thereof shall be determined in accordance with the international treaties or national legislation.

### **Section 4. Jurisdiction and Applicable Law.**

#### Article 22. Jurisdiction.

1. All disputes and disagreements arising from the forwarding contract falling within the scope of these General Terms and Conditions or in connection with it shall be excluded from the jurisdiction of state courts and shall be referred to the International Arbitration Court under the Belarusian Chamber of Commerce and Industry.

2. Disputes shall be considered in accordance with the regulations of the said court, the judgement of which shall be final and binding on the parties.

#### Article 23. Applicable law.

1. Unless otherwise agreed by the parties, the applicable law shall be determined by the court specified in Article 22 of these General Terms and Conditions.

#### Annex 1

### **The terms and definitions used in the**

### **General Terms and Conditions**

**Forwarder** means a person who performs or arranges the performance of services provided for by the forwarding contract.

**Customer** means a person who, or on behalf of whom a forwarding contract has been concluded with the forwarder.

**Consignor** means a person delivering the cargo to the forwarder.

**Consignee** means a person entitled to receive the cargo.

**Carrier** means a person who has undertaken the obligation to deliver the cargo to the destination and give it to the consignee, regardless of whether it is a forwarder or not.

**Person** means, unless otherwise stipulated in these General Terms and Conditions, by any legal entity or individual.

**Cargo** means any property presented for transportation, including live animals, as well as containers, pallets or similar types of vehicles or packages, except when provided by the forwarder.

**Dangerous cargo** means a cargo that, in accordance with international treaties, the legislation of the country of departure, destination or transit, is dangerous, as well as cargo that is or may be flammable, radioactive or hazardous to the environment.

**Forwarding contract** means a written agreement between the forwarder and the customer, according to which the forwarder undertakes, on behalf of the customer or on its own behalf, to arrange the performance of works and services related to the transportation of the cargo, and the customer shall pay the costs and pay the forwarder a remuneration.

**Written form**, among other things, includes a forwarding document, telegrams, telexes, telefaxes.

**Forwarding document** means a document issued by the forwarder certifying the forwarding contract and acceptance of the cargo by the forwarder in its charge and under its responsibility.

**Unit of account** means a "special drawing right" unit as defined by the International Monetary Fund.