

STANDARD TRADING CONDITION OF FFFAI

Standard Trading Conditions for Freight Forwarders Part I

General Provisions

1. Applicability

These are the Standard Trading Conditions applicable to the members of the Federation of Freight Forwarders' Associations in India. Whenever reference is made to these standard trading conditions (hereinafter referred to as 'these Conditions') the parties agree that these conditions shall supersede any additional terms of the contract which are in conflict with these conditions, except in so far as they increase the responsibility or obligations of the freight forwarder.

2. Definitions:

2.1 Freight Forwarder: "Freight Forwarder" (hereinafter called the Forwarder) means a person, licensed by the customs authority under Custom House Agents Licensing Regulations, 2004 or any amendments made there under, to act as agent for the transaction of any business relating to the entry or departure conveyances or the import or export of goods at any custom station, or any other person concluding a contract of freight forwarding services with a Customer.

2.2 Freight Forwarding Services: "Freight Forwarding Services" means the services of customs clearance and forwarding of goods on behalf of the customers, carriage, consolidation, warehousing, handling, packing, documentation, weighing & measurement of cargo, container leasing, insurance, foreign exchange transaction, procurement of licences or permits, distribution of the goods, collecting or procuring payment or documents relating to the goods, logistic and supply chain management or any ancillary and advisory services in connection therewith.

2.3 Carrier: "Carrier" means any person actually performing the carriage of the goods with his own means of transport (Performing Carrier) and any person subject to carrier liability as a result of an express or implied undertaking to assume such liability (Contractual Carrier).

2.4 Customer: "Customer" means any person at whose request or on whose behalf the freight forwarder undertakes any business or provides services, information or advice, and is having rights or obligations under the contract of freight forwarding services concluded with a freight forwarder or as a result of his activity in connection with such services.

2.5 Goods: "Goods" means any property including live animals as well as containers, pallets, or similar articles of transport or packaging not supplied by the Freight Forwarder.

2.6 Owner: "Owner" means the Owner of the goods (including any packaging, containers or equipment) to which any business concluded under these Conditions relates and the consignee or any other Person who is or may become interested in or in possession or entitled to possession of them.

2.7 Person: "Person" includes Corporation, Firms, Associations and Society.

2.8 Mandatory Law: Mandatory law means any statutory law the provisions of which cannot be defaulted from by contractual stipulations to the detriment of the Customer.

2.9 In Writing: In writing includes telegram, telex, fax, reprographic or any recording by electronic means.

2.10 Dangerous Goods: Dangerous goods means goods which are officially classified as hazardous as well as goods which are or may become of a dangerous, inflammable, radioactive noxious or damaging in nature.

2.11 Valuables: Valuables means bullion, coins, money, negotiable instruments, precious stones, jewellery, antiques, pictures, works of art and similar properties.

3. (a) Subject to Sub-Paragraph (b) below, all and any activities of the Freight Forwarder in the course of business whether gratuitous or not are undertaken subject to these Conditions.

(b) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Freight Forwarder of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and not further.

4. The Customer warrants that he is either the Owner or the authorized Agent of the Owner and also that he is accepting these Conditions not only for himself but also as Agent for and on behalf of the Owner and is authorized in this behalf by the Owner.

5. In authorizing the Customer to enter into any contract with the Freight Forwarder and/or in accepting any document issued by the Freight Forwarder in connection with such Contract, the Owner irrevocably accepts these Conditions and on behalf of any parties that the Owner irrevocably accepts these Conditions and on behalf of any parties that the Owner or their agents may act, and in particular but without prejudice to the generality of this clause, the Owner accepts (for himself and on behalf of any parties that the Owner or their agents may act) that the Freight Forwarder shall have the right to enforce the rights herein, jointly and severally against the Owner, the Owner's agents or any parties on behalf of whom the Owner or his agents may act in connection with any liability of the Customer under these Conditions or to recover any sums to be paid to the Freight Forwarder by the Customer which when duly demanded have not been paid.

6. Insurance

No insurance will be effected by the Forwarder, except upon express instructions given in writing by the Customer. All insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risks. Unless otherwise agreed in writing, the Freight Forwarder shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy held by the Forwarder.

7. Hindrances

If at any time, the Forwarder's performance is or is likely to be affected by any hindrance or risk of any kind (including the conditions of the goods) not arising from any fault or neglect of the Forwarder and which cannot be avoided by the exercise of reasonable endeavour, the Freight Forwarder may abandon the carriage of goods under the respective contract and, where reasonably possible, make the goods or any part of them available to the customer at a place, which the Freight Forwarder may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the freight forwarder in respect of such goods shall cease. In any event, the Forwarder shall be entitled to the agreed remuneration under the contract and the customer shall pay any additional costs resulting from the above-mentioned circumstances.

8. Method and Route of Transportation

The Forwarder shall carry out his services according to the Customer's instructions, as agreed. If the instructions are inaccurate, or incomplete or not according to the contract, the Forwarder may carry out the services at the risk and expense of the Customer, as he deems fit.

Unless otherwise agreed, the Forwarder may without notice to the customer arrange to carry the goods on or under deck and choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.

Part II

The Forwarder's Liability

9. The Forwarder's liability as Agent

9.1 Basis of liability

9.1.1. The Forwarder's duty of care

The Forwarder is liable if he fails to exercise due diligence and take reasonable measures in the performance of the freight forwarding services, in which case he, subject to Condition 10, shall compensate the Customer for loss of or damage to the Goods as well as for direct financial loss resulting from breach of his duty of care.

9.1.2 No liability for third party

The Forwarder is not liable for acts and omissions of third parties, such as, but not limited to, carriers, warehouseman, port authorities, and other freight forwarders, unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties.

10. Exclusions, Assessment and Monetary limits of liability

10.1 Exclusions

(a) The Forwarder shall be liable for loss resulting from any loss of or damage to the goods, unless he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss or damage.

(b) The Forwarder shall not be liable for loss resulting from delay in delivery of the consignment and any consequential loss or damage arising from such delay;

10.2 Assessment of Compensation

10.2.1 Assessment of Compensation for loss of or damage to the consignment shall be made with reference to the value of such consignment at the place where, and time on which, such

consignment is delivered to the consignee or at the place and time when in accordance with the contract, it should have been delivered.

The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price, or current market price, by reference to the normal value of the goods of the same kind and quality.

10.3 Monetary Limits

10.3.1 Loss of or damage to the Goods

The Forwarder shall be liable for any loss of or damage to the Goods in an amount not exceeding Rs. _____ per kilo gram of gross weight of the goods lost or damaged, unless he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss or damage.

11. The Forwarder's liability as Principal

11.1 The Forwarder's liability as Carrier

The Forwarder's liability as Carrier will be as provided in the Standard Conditions governing the FIATA Multimodal Transport Bill of Lading.

11.2 The Forwarder's liability as Principal for other Services

With respect to services other than carriage of Goods such as, but not limited to, storage, handling, packing or distribution of the Goods as well as ancillary services, in connection therewith the Forwarder shall be liable as Principal:

- i. When such services have been performed by himself using his own facilities or employees or
- ii. if he has made an express or implied undertaking to assume liability as Principal

11.3. The basis of Forwarder's liability as Principal

The Forwarder as Principal shall, subject to Condition 11.4, be responsible for the acts and omissions of third parties, he has engaged for the performance of the contract of carriage or other services in the same manner, as if such acts and omissions were his own, and his rights and duties shall be subject to the provisions of the law applicable to the mode of transport or service concerned, as well as the additional conditions expressly agreed or, failing express agreement, by the usual conditions for such mode of transport or services.

11.4 Exclusions, Assessment and Monetary limits of liability

11.4.1 Exclusions:

The Forwarder shall not be liable for:

1. Valuables or dangerous goods, unless declared as such to the Forwarder at the time of the conclusion of contract.
2. Loss following from delay unless expressly agreed in writing
3. Indirect or consequential loss such as, but not limited to loss of profit and loss of market

11.4.2 Assessment of compensation :

Assessment of Compensation for loss of or damage to the cargo shall be made with reference to the value of such consignment at the place where, and time on which, such consignment is delivered to the consignee or at the place and time when in accordance with the contract, it should have been delivered.

The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price, or current market price, by reference to the normal value of the goods of the same kind and quality.

11.4.3 Monetary Limits

(i) Loss of or damage to the Goods

Notwithstanding the provisions of Condition 11.3, the Forwarder becomes liable for any loss of or damage to the Goods, then the liability of the Forwarder to pay compensation shall not exceed Rs. _____ per kilogram of gross weight of the Goods, unless a larger amount is recovered by the Forwarder from the defaulting person unless he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss or damage.

(ii) Limitation of liability for delay

The Forwarder is not liable for delay in delivery including any consequential loss or damage arising from such delay, unless the Customer has made a declaration of interest in timely delivery which has been accepted by the Forwarder. In such case, the liability of the Forwarder shall be limited to the freight payable for the Goods so delayed.

If the Goods have not been delivered within ninety consecutive days following the date of delivery expressly agreed upon or the reasonable time required by a diligent Forwarder, having regard to circumstance of the case, to effect the delivery of the Goods, the claimant may treat the Goods as lost.

(iii) Other types of loss

Notwithstanding the provisions of Condition 11.3, the Forwarder's liability for any type of loss not mentioned in Conditions 11.4.3(i) and 11.4.3(ii) shall not exceed the total amount of (Rs. _____) for each incident unless a larger amount is received by the Forwarder from defaulting person unless he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss or damage.

(iv) Limit of Liability of Forwarder for total loss of

Goods

The Forwarder shall not, in any case, be liable for an amount greater than the liability for total loss of Goods for which a person will be entitled to make a claim against him under this Standard Trading Conditions

(v) Loss of right of Forwarder to limit liability

The Forwarder shall not be entitled to the benefit of the limitation of liability under any provisions of any of the conditions, if it is proved that the loss of or damage to the goods resulted from any act or omission of the Forwarder with intent to cause such loss or damage or recklessly and with knowledge that such loss or damage would probably result.

12. Notice

12.1 The delivery of the Goods to the person who is entitled to receive, shall be treated as prima facie evidence of delivery of the Goods in good order and condition, unless notice of the general nature of loss of or damage to the Goods is given in writing, by the person entitled to receive the Goods at the time of handing over of the Goods to the person.

12.2 Where the loss or damage is not apparent, the provisions of Condition 12.1 shall apply unless notice in writing is given by the person of the loss of, or damage to the Goods within six consecutive days after the day, when the Goods were handed over to the person entitled to receive.

12.3 With respect to all other loss or damage, any claim by the Customer against the forwarder arising in respect of any service provided for the customer or which the Forwarder has undertaken to provide, shall be made in writing and notified to the forwarder within 14 days of the date upon which the customer became or should have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made and notified as aforesaid shall be deemed to have been given up by the claimant.

13. Time Bar

The forwarder shall, unless otherwise expressly agreed, be discharged of all liability under these Conditions, unless a suit is brought within 9 months, after the delivery of the Goods, or the date when the Goods should have been delivered or the date when failure to deliver the Goods which would give the consignee the right to treat the Goods as lost.

With respect to other loss, other than the loss of or damage to the Goods, the nine months period should be computed from the time of failure of the Forwarder, thereby giving the right to the Customer to claim against the Forwarder.

14. Applicability to actions in non-contractual liability

The defences and limits of liability provided in these Conditions shall apply in any action against the Forwarder, whether the action is founded in contract, in tort or otherwise.

15. Liability of Forwarder's Servants, Agents and Other persons engaged by him

These Conditions apply, whenever any claims relating to the performance of the contract are made against any servant, agent, or other person, whose services the Forwarder has used in order to perform the contract, whether such claims are founded in contract, in tort or otherwise, and the aggregate liability of the Forwarder, of such servants, agents, or other

persons shall not exceed the limit applicable to the service concerned, as expressly agreed between the Forwarder and the Customer or specified in Conditions 10.3 and 11.4.3.

Part III

Customer's obligation and liability

16. Unforeseen circumstances

In the event, the Forwarder, under unforeseen circumstances, acts in the best interest of the customer and has incurred extra cost and charges therefore, then such costs and charges shall be borne by the Customer.

17. No claim against Partners, Directors, Employees

The Customer undertakes that no claim shall be made against any partner, director, servant, or employee of the Forwarder, which imposes, or attempts to impose upon them any liability in connection with any services, which are the subject of these Conditions, and if any such claim should nevertheless be made, to indemnify the Freight Forwarder against all consequences thereof.

18. The Customer warrants:

(a) that the description and particulars of any goods furnished by or on behalf of the Customer are full and accurate and he will be liable for consequences of any penalties levied by Port, Customs or other authorities arising from incorrect information supplied.

(b) that all goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods.

(c) that where the Freight Forwarder receives the good from the Customer already stowed in or on a container, trailer, tanker, or any other device specifically constructed for the carriage of goods by land, sea or air (each hereafter individually referred to as the "transport unit"), the transport unit is in good condition, and is suitable for the carriage to the intended destination of the goods loaded therein or thereon.

19. Handling Dangerous Goods, etc.

Should the Customer otherwise than under special arrangements previously made in writing, deliver to the Forwarder or cause the Freight Forwarder to deal with or handle goods of a dangerous or damaging nature, or goods likely to harbour or encourage vermin or other pests, or goods liable to taint or affect other goods, he shall be liable for all loss or damage arising in connection with such goods and shall indemnify the Freight Forwarder against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods may be dealt with in such a manner as the Forwarder or any other Person in whose custody they may be at any relevant time shall think fit.

20. No set-off

20.1 The customer shall pay to the forwarder in cash or in

such manner, as may be agreed upon, all sums immediately when due, without deductions or deferment on account of any claim, counter-claims and set-off.

20.2 On all amounts overdue to the forwarder, the Customer shall pay to the forwarder, interest, calculated from the date such amounts are overdue until payment thereof, at the rate of 3% above the banks' lending rate of interest.

20.3 The Freight Forwarder shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to Forwarders.

20.4 Despite the acceptance by the Freight Forwarder of instructions to collect freight, duties, charges or other expenses from the Owner or Consignee or any other person, the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by the Owner or Consignee or such other person when due.

21. General Lien

The forwarder has a right to lien and a right of detention over the Goods or other securities and effects lying within his power of disposal in respect of any amount whether already due for payment or not, which the forwarder is entitled to receive in respect of services to the Customer.

In exercise of the lien under these Conditions, the forwarder shall be entitled to dispose of the goods either by public or private sales upon which lien is exercised, to recover his dues, provided that he gives a written notice of at least 7 days to the customer of his intentions to do so. The forwarder is entitled to recover all the balance amount from the customer after recovery of the dues by the sale of the Goods under these standard conditions and the right exercised by the forwarder under these standard conditions shall not be deemed to have been a waiver of his right to take further legal steps to recover the dues.

22. Non Acceptance of goods by Customer, Consignee or Owner

If delivery of the goods or any part thereof is not taken by the Customer, Consignee or Owner, at the time and place when and where the Freight Forwarder is entitled to call upon such person to take delivery thereof, the Freight Forwarder shall be entitled to store the goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Forwarder in respect of the goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage if paid for or payable by the Forwarder or any Agent or Sub-Contractor of the Freight Forwarder shall forthwith upon demand be paid by the Customer to the Forwarder.

23. Forwarder's right to dispose of the goods

(a) When the goods are liable to perish or deteriorate, the Freight Forwarder's right to sell or dispose of the goods shall arise immediately upon any sum becoming due to the Forwarder subject only to the Forwarder taking reasonable steps to bring to the Customer's attention his intention of selling or disposing of the goods before doing so.

(b) The Forwarder shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):-

(i) On 21 days notice in writing to the Customer, or (where the customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Forwarder to have any interest in the goods) without notice, any goods which have been held by the Forwarder for 30 days and which cannot be delivered as instructed; and

(ii) Without prior notice, goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Third Parties or to contravene any applicable laws or regulations.

24. Indemnity

Indemnity for Freight Forwarding Services:

The Customer shall save harmless and keep the Freight Forwarder indemnified from and against:-

(a) All liability, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods and services) arising out of the Freight Forwarder acting in accordance with the Customer's instructions or arising from any breach by the Customer of any warranty contained in these Conditions or from the negligence of the Customer,

(b) Without derogation from Clause a. above, any liability assumed or incurred by the Freight Forwarder when by reason of carrying out the Customer's instructions the Freight Forwarder has reasonably become liable or may become liable to any other party, and –

(c) All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Freight Forwarder under the terms of these Conditions regardless of whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Freight Forwarder its servants, sub-contractors or agents.

25. Notwithstanding anything to the contrary stated in these

Conditions, the Forwarder shall not be liable for any damage, if such loss or damage is caused by handling, loading, stowage, or unloading by the customer or any person acting on behalf of the customer.

(a) The Forwarder shall not be obliged to make any declaration for the purpose of any statute or contract as to the nature or value of any goods or as to any special interest in delivery unless expressly instructed by the customer in writing.

(b) Where there is a choice of changes according to the services given and extent or degree of the liability assumed by Carriers, Warehousemen or others, goods will be forwarded or dealt with at customer's risk or other minimum charges and declaration of value (where optional) will be made, unless express instructions in writing to the contrary have previously been given by the customer.

26. Notwithstanding the Forwarder being an agent of the

customer, the forwarder shall be entitled to retain and be paid all brokerages, commissions, allowances and other

remunerations customarily retained by or paid to forwarders and insurance brokers.

27. Save where special contracts have been previously made in writing the forwarder will not accept or deal with bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock and plants. Should any customer nevertheless, delivery any such goods to the forwarder or cause the forwarder to handle or deal with any such goods otherwise than under such special arrangements previously made in writing, the forwarder shall be under no liability whatsoever for in connection with damage or loss to the goods, however caused.

28. General Average

The Customer shall indemnify the Forwarder in respect of any claim of general average which may be made on him and shall provide such security as may be required by the Forwarder therefore.

Part IV

29. Jurisdiction

Unless otherwise agreed, an action against the Forwarder may be instituted in a court, which is competent and within the jurisdiction of which, the principal place of business of the defendant is situated.

30. Arbitration

Any dispute which may arise in relation to the performance of the contract between the forwarder and the customer shall be settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the arbitration proceedings shall be instituted at the principal place of business of the forwarder.

31. Validity of agreement between Forwarder and Customer

Any provisions of Agreements which are determined to be invalid / unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of Agreement/affecting the validity/ enforceability of such remaining provisions. In the event of a conflict between any provision of Agreements and any law regulation or decree affecting Agreements the provision of Agreements so affected shall be regarded as null and void or shall, where practicable, be limited to the extent necessary to bring it within the requirements of such law regulation or decree but otherwise it shall not effect or render null and void other provisions of the Agreements.