

General Conditions

Introduction

Richard Kempers S.A., member of the Freight Forwarding Association of Chiasso, applies the General Condition of SPEDLOGSWISS (Swiss Freight Forwarding and Logistics Association) SPEDLOGSWISS first issued General Conditions (GC) on 30 March 1922. These were revised on January 29, 1932, May 21, 1966, October 23, 1980 and January 1, 1994. The purpose of the General Conditions is to supplement the provisions of the law.

Scope of Application Art. 1

The GC apply to all orders executed by members of SPEDLOGSWISS and its sections, insofar as they are not contrary to mandatory provisions of the law. They encompass all fields of activity of the forwarder as specified below. Agreements whose terms differ from the GC may be concluded.

Fields of Activity Art. 2

A distinction is made between four fields of activity:

1. *The forwarder as an intermediary*

In this function the forwarder acts purely as an intermediary. For the account of his customers, he concludes contracts with carriers, forwarders, customs agents, warehousing companies and other sub-contracting parties.

2. *The forwarder as a carrier*

In the cases listed below, and in no others, the forwarder has the status of a carrier:

- In the case of contracting in his own name, i.e. if he effects transport with own equipment
- If he issues a transport document of his own containing

- a delivery undertaking, such as a through bill of lading Multimodal Transport Document) etc.
- In purely European land transport (except in transport purely by rail), unless the forwarder expressly designates himself as an intermediary and acts as such.

3. *The forwarder as pure warehouse keeper*

For warehousing (putting in storage, taking out of storage, storing, storage administration) in Switzerland and the Principality of Liechtenstein, the General Conditions for Warehousing of SPEDLOGSWISS shall apply (GC SPEDLOGSWISS Warehousing)

4. *The forwarder as a provider of other services (customs clearance, logistics transactions, etc.)*

These may be directly or indirectly connected with transport, or unconnected therewith.

Offers Art. 3

Offers shall cease to be valid if not accepted within 30 days after being issued.

Placing of Orders Art. 4

The order shall be transmitted to the forwarder in writing or by electronic means. If it is transmitted orally or by telephone, the customer shall bear the risks of incorrect or incomplete transmission until the forwarder has received written confirmation.

Art. 5

The order shall contain all the data required for carrying it out properly, such as information relating to goods subject to regulation (e.g. hazardous goods) and goods that require special handling.



Art. 6

The text of documents attached to the order shall not be deemed to constitute a part of the order, unless the customer expressly designates them as such.

Art. 7 Examination

The forwarder shall carefully examine the orders placed with him; however, he shall not be obliged to verify the contents of transport containers or shipments, or to check weights or dimensions. If any ambiguities come to the notice of the forwarder, he shall clarify them as soon as possible with the customer.

Art. 8 Delivery times

Guarantees of delivery times must be agreed upon in writing. They must at least state the latest time of delivery and the agreed surcharge.

Art. 9 Interest in delivery

Agreements which set aside limits on the amount of liability must be in writing. The agreement must at least state the maximum amount of liability and the surcharge payable.

Art. 10 Origin marks

If the true destination of the goods is not to be known to the consignor, or their origin to the consignee, the forwarder must be informed of this in writing. If the consignee instructs the forwarder to send the shipment on to a third party, the forwarder shall not, even in the absence of special instructions, make known to the third party the name of the original consignor and the origin of the goods. The forwarder shall remove the origin marks only if requested to do so in writing.

Art. 11 Valuable goods

The customer must designate valuable goods (goods that require special treatment as a result of their value) as such in his order.

Art. 12 First loading/last unloading

Insofar, as there are no agreements to the contrary, the first loading of the means of conveyance and the transport containers is the responsibility of the consignor, and the last unloading of the same is the responsibility of the consignee. If the driver assists in the first loading or last unloading, or performs this handling operation alone at the express request of the consignor or consignee, the driver shall be deemed auxiliary personnel of the consignor or consignee.

Art. 13 Transport insurance

The forwarder shall arrange transport insurance only at the express written request of the customer. The function of the forwarder is limited to the procurement of suitable transport insurance. If the instructions of the customer are simply to arrange for transport insurance, the forwarder shall take out transport insurance «against all risks». If this is not possible, or if the desired extent of cover is not clear, the forwarder shall clarify the matter with the customer.

Art. 14 Storage

If the forwarder accepts an order for the storage of goods, the regulations of the warehousing company used shall be deemed to constitute a part of the contract between the forwarder and the customer.

Art. 15 Unforeseen intermediate storage

If the consignee does not take delivery of the shipment at its destination, or if the shipment is held up in transit due to factors beyond the control of the forwarder, it shall be placed in storage for the account of and at the risk of the customer. The forwarder shall, as soon as possible, inform the customer (in all cases) and the transport insurer (if transport insurance has been taken out) of such unforeseen intermediate storage. The costs shall be paid by the customer as they accrue.



Art. 16 Cash-on-Delivery (C.O.D.)

The collection on delivery of the value of the goods is effected only on the written instructions of the customer. The goods are handed over only against an irrevocable bank confirmation in favour of the customer or a banker's certified check payable to the customer in the prescribed currency. The forwarder is not liable for exchange-rate losses. A C.O.D. commission is charged to the customer for the handling of cash-on-delivery shipments.

Art. 17 Additional charges and reimbursements

The forwarder is not liable for the incorrect charging of freight, customs duties, levies, etc. for which he is not himself responsible. On presentation of the appropriate vouchers, the customer is required to effect immediate payment of additional amounts for freight, customs duties, levies, etc. which were originally too low. The forwarder shall immediately reimburse those entitled to freight, customs duties, levies, etc. which were originally excessive.

Customer's Liability Art. 18

The customer is liable for his own errors and omissions and for those of his sub-contractors, in particular in respect of all consequences arising from:

- Packing which is not suitable for the requirements of the transport agreed upon
- Incorrect, inaccurate or missing information in the order, on the packing or on the goods for shipment, in particular for goods which, as a result of their characteristics, would be accepted for transport only under special conditions if at all, or whose handling is the subject of special regulations
- Absence or delayed submission of the necessary documents.

Forwarder's Liability Art. 19 Basic Principle

The forwarder is liable to his customer for carefully carrying out the order.

Art. 20 Force majeure

The forwarder shall be absolved of all liability in the event of loss or damage which occurs as a result of circumstances beyond the control of either the forwarder or his sub-contractors and/or whose consequences they are unable to avert.

Liability as an Intermediary (in accordance with Art. 2, No. 1)

Art. 21 Sub-contractors

If sub-contractors (carriers, forwarders, customs agents, warehousing companies etc.) are employed, the forwarder is liable only in respect of their careful selection and instruction. In the event of loss or damage for which a sub-contractor is responsible, the forwarder shall assert the claim of the customer against the responsible party. At the wish of the customer, and insofar as this is expedient, the forwarder shall proceed against the sub-contractor for the account and at the risk of the customer. The forwarder shall be entitled to the payment of his expenses and to an appropriate commission. On request, the forwarder shall assign his rights against the sub-contractor to the customer.

Art. 22 Limitation of the amount of liability

The liability of the forwarder is limited:

- In the case of loss of or damage to the goods, to not more than 8.33 special drawing rights per kilo gross weight of the affected part of the shipment
- In the case of losses due to delay, to the amount of the freight
- In the case of losses resulting from other services (customs clearance etc.), to the amount of the loss incurred.

The total amount of liability shall not exceed 20'000 special drawing rights per occurrence.

Liability as a Carrier (in accordance with Art. 2, No. 2)

Art. 23 Basic Principle

The forwarder bears carrier's liability for the whole transit route, except where the forwarder himself is responsible for the transport of the goods over only a part of the route.



Art. 24 **Expiry of liability**

The liability of the forwarder expires at the point in time when the consignee or his representative takes receipt of the transported goods. However, the relevant time limits for bringing claims relating to hidden defects shall apply.

Art. 25 **Limitation of the amount of liability**

In the event of the goods being lost or damaged, the liability of the forwarder as a carrier shall be limited as follows:

- In accordance with the rules of liability applying to the section of the transit route during which the loss or damage occurred, or if appropriate, in accordance with any stipulations of liability which result from the transport document itself.
- Up to a maximum of 8.33 special drawing rights per kilo gross weight of the affected part of the shipment in the case of European cross-border and Swiss domestic transport, provided that carriage is not effected purely by rail.

For loss or damage due to delay, the forwarder's liability shall not exceed the amount of the freight. The total liability shall not exceed 20'000 special drawing rights per claim.

Liability as a provider of Other Services (Customs Clearance, Logistics Transactions, etc.) (in accordance with Art. 2, No. 4)

Art. 26 **Limitation of the amount of liability**

The liability of the forwarder is limited:

- For loss of or damage to the goods, to not more than 8.33 special drawing rights per kilo gross weight of the affected part of the shipment
- For other services (customs clearance, logistics transactions, etc.), to the amount of the loss or damage incurred.

Total liability shall not exceed 20'000 special drawing rights

Conditions of Payment

Art. 27

Payment to the forwarder is due upon invoicing. Interest of 1.2% per month is chargeable as from the beginning of the month in which notice of default is given.

Art. 28

The forwarder is under no obligation to advance sums in payment of freight, customs duties, levies etc. He may require the customer to make advances payments in the appropriate currency. In respect of any such disbursement by the forwarder, he shall be paid a commission and be reimbursed for exchange rate losses which are substantiated.

Art. 29

Upon delivery of a given shipment, the forwarder may collect sums owing to him in respect of the same shipment.

Art. 30

If the customer instructs the forwarder to collect freight, customs duties, levies etc. from the consignee of the goods or third parties, and if the relevant party cannot or will not make the payment demanded by the forwarder, the customer shall be liable for same.

Right of Retention Art. 31

The forwarder shall have a lien on the goods handed over to him or which otherwise come into his possession for the outstanding sums owed to him in respect of all business transactions with the customer. If payment has not been effected within a time limit set by the forwarder with the threat to dispose of the goods, the forwarder shall be free, without further formalities, to sell the relevant goods at the best obtainable price.

Time Limitation of Claims Art. 32

Subject to compulsory provisions of the law, all claims against the forwarder shall lapse after a period of one year. The limitation period shall commence from the time of delivery of the goods, or in the event of destruction, loss or



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delay, on the day on which the goods should have been delivered. In the case of other services, the limitation period shall run from the day on which the service was provided or should have been provided.

Place of Jurisdiction and Applicable Law Art. 33

For all disputed claims between the contracting parties, the domicile of the forwarder shall be deemed to be the place of jurisdiction. If the forwarder has more than one business establishment, the place of jurisdiction shall be the location of the establishment which received the order. However, the forwarder may also bring court proceedings to enforce its claims at the place or residence of the debtor. Swiss law shall apply.

Original Text Art. 34

The General Conditions of SPEDLOGSWISS have been drawn up in German, French, Italian and English and may also be translated into other languages. The German version shall be deemed to be the binding text. Copyright 2001, SPEDLOGSWISS (Swiss Freight Forwarding and Logistics Association).

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