

Polska Izba Spedycji i Logistyki
Polish International Freight Forwarders Association



Ogólne Polskie Warunki Spedycyjne 2010

**Polish General Forwarding
Rules 2010**

Gdynia 2010

Polish General Forwarding Rules 2010

(translation only - without prejudice)

Definitions

§ 1

1.1. The following terms used in this text denote:

1.1.1. Freight Forwarder - a subject who professionally, against remuneration, in his own name but on the account of Customer, or in the name and on account of Customer, covenants to forward or receive goods, to organize partly or wholly the process of translocation of goods, or to render other services related to handling and translocation of goods.

1.1.2. Contractual Carrier - a subject who enters a contract of carriage with the intention to sub-contract the actual carriage to another carrier (actual carrier).

1.1.3. Customer - a person who enters into a contract with Freight Forwarder, or - in case of a successive Freight Forwarder - the Customer of the person who contracts a successive Freight Forwarder.

1.1.4. Written form/in writing - in the understanding of the Polish General Forwarding Rules 2010 is complied with when:

1.1.4.1. a document containing a statement of will is hand-signed by the person making the statement,

1.1.4.2. statement of will in electronic form is affixed with electronic signature, verifiable by means of a valid, qualified certificate,

1.1.4.3. the document referred to in point 1. above is sent by fax or by electronic post (e-mail),

1.1.4.4. statement of will, unsigned by hand, is sent by e-mail from the electronic post address of the person making the statement.

1.2. Whenever the Polish General Forwarding Rules 2010 refer to:

1.2.1. Sender - it also means consignor, shipper, charterer.

1.2.2. Freight Forwarder - it also means a successive forwarder and a sub-forwarder.

1.2.2.1. Successive Freight Forwarder - subject, to whom principal Freight Forwarder sub-contracts execution of the whole of his tasks as ordered by the Customer.

1.2.2.2. Sub-Forwarder - subject, to whom principal Freight Forwarder sub-contracts partial execution of his tasks ordered by the Customer.

General Provisions

§ 2

2.1. Polish General Freight Forwarding Rules 2010 (hereinafter referred to as PGFR) apply to the relationship between the Freight Forwarder and his Customer, and in the case of successive Freight Forwarder also between him and the Customer - if at least one of the parties is a member of the Polish International Freight Forwarders Association.

2.2. PGFR also apply in each case when Freight Forwarder's liability is engaged, including liability in tort, as far as it does not contradict the Mandatory Law.

§ 3

3.1. Other services that the Freight Forwarder can perform in connection with carriage may consist in: advisory services, insurance, transshipment, storage, packing, consolidation, distribution, customs handling, logistics and the like.

3.2. With regard to the forwarding contract concluded by the Freight Forwarder, general conditions or rules of services will also apply if and when their application is widely recognized or when, subcontracting services, the Freight Forwarder has to accept the inclusion of sub-contractor's standard contract pattern into his subcontract.

§ 4

4.1. The Freight Forwarder can perform the carriage himself. In such case he has, simultaneously, the rights and obligations of a Carrier.

4.2. When entering a contract of carriage, the Freight Forwarder becomes a contractual carrier if he does not apply transport means of his own.

4.3. The Freight Forwarder, who by himself performs the services referred to in point 3.1 above, in his relations with the Customer bears responsibility on the grounds of Statutory Law applicable to the respective services, with liability limitations as per § 22 and § 23 of these PGFR.

§ 5

The provisions of these PGFR do not apply to the forwarding of money, art works and human remains.

Offers

§ 6

6.1. The Freight Forwarder's offer covers only the services explicitly listed therein and is valid for the period specified therein.

6.2. The Freight Forwarder's offer and agreements concerning the rates and services (his own or third parties') cover only the goods specified in the order and assume typical conditions of the performance of such offer or agreement.

6.3. Unless validity period is stipulated, each offer or quotation remains valid only when immediately confirmed by the Customer's forwarding order due to be executed forthwith, unless otherwise agreed by both parties.

6.4. In case any component of the offer changes due to circumstances beyond the control of the Freight Forwarder, the prices quoted or agreed upon will be corrected accordingly with effect from the moment the change of circumstances occurred. Any correction of offer made due to circumstances dependent on the Freight Forwarder, needs prior acceptance from the Customer.

6.5. Unless agreed otherwise, the Freight Forwarder's offer contains all costs normally borne by the Forwarder during undisturbed execution of the order, except for any demurrage which, if not caused by the Forwarder, the Customer is obliged to pay separately in the amount charged to the Forwarder by the third parties.

The Forwarding Contract

§ 7

7.1. By a contract of forwarding the Freight Forwarder covenants, against remuneration, within the scope of his commercial activity, to forward or to receive a consignment, or to render other services related to its transportation.

7.2. The forwarding contract is considered to be entered into upon the receipt of the Customer's Forwarding Order by the Freight Forwarder, if its stipulations, together with the previously accepted, valid offer, contain all data essential for the execution of the order. Otherwise the forwarding contract is valid upon settling of all essential conditions by both parties.

7.3. If the Freight Forwarder does not intend to execute the forwarding order, he should immediately inform the Customer.

Forwarding Order

§ 8

8.1. The Freight Forwarder performs his activities on the basis of the Customer's order.

8.2. The order, for its validity, does not require to be in a written form, however, to avoid any errors or misunderstandings in its execution it is recommended to be issued or confirmed in writing.

8.2.1. The Freight Forwarder is not responsible for the consequences of errors and misunderstanding resulting from orders received verbally or by telephone.

8.2.2. The Freight Forwarder is not responsible for the consequences of supplementary instructions provided by the Customer directly to the third parties engaged in the performance of the forwarding process.

8.3. The order should contain all essential information about the consignment and its properties, and in particular marks and numbers of collies (packages),

number of pieces, weights, dimensions, cubic measurements, quantity and number of containers, and also indicate whether the goods are listed as strategic, military or dual-use items, indicate the scope of services ordered and any other data and documents necessary for proper execution of the order.

8.4. The Customer is obliged to ensure that the order is complete and correct. The Customer is responsible towards the Freight Forwarder and third parties for any consequences resulting from inaccurate, incomplete or incorrect data, also with regard to the particulars contained in documents, correspondence or marked on the consignment, such as quantity, weight, dimensions and properties, as well as from defective packing of the goods etc., even if the inaccuracy, incompleteness or incorrectness occurred without his fault.

8.5. The Freight Forwarder is entitled to verify information given in the order for correctness and completeness and to verify the authenticity of signatures and the competence of the persons who sign the orders and other documents.

8.6. In case of dangerous goods, the Customer delivering the order should indicate the exact nature of danger and inform of the necessary precautions. In case of dangerous goods within the meaning of special regulations covering transport of dangerous goods or other goods, to which special regulations apply with regard to their handling during transportation and storage, the Customer is obliged to indicate all particulars indispensable for proper performance of the forwarding order, and in particular their classification in accordance with the regulations concerning such goods.

8.7. The Freight Forwarder may entrust the received order to third parties for execution in whole or in part. In such case, any stipulations in these PGFR concerning liability limitations of the Freight Forwarder, also apply to sub-forwarders and successive forwarders.

Execution of the order

§ 9

9.1. The Freight Forwarder is obliged to perform his services in accordance with the accepted order. In case of necessity to act out of the scope of the order, the Freight Forwarder should protect the interest of the goods, execute due diligence and keep his actions within the law.

9.2. In the absence of explicit, sufficient and feasible instructions or special agreements in the order, the Freight Forwarder has a free choice of the timing, mode of dispatch and tariffs. In each case the Freight Forwarder, protecting the interest of the goods, acts at the risk and expense of the Customer.

9.3. If the Freight Forwarder is obliged to dispatch documentation against confirmation of receipt, then obtaining a confirmation of dispatch renders him free from responsibility for non-delivery or late delivery of such documentation. The Freight Forwarder is not obliged to arrange insurance of documents in transit without Customer's written order.

9.4. Upon taking receipt of a consignment, the Freight Forwarder or a person authorized by him is obliged to ascertain whether the consignment has been delivered intact, without shortages or visible damage and in conformity with the covering documents (Bill of Lading, Waybill etc.).

9.5. If the consignment is stored into a warehouse owned by third parties, the verification of its condition and conformity with the documents of conveyance is made by the warehouse keeper.

9.6. In case of ascertained shortage or damage to the consignment, lack or inadequacy of seals or other protective devices, the Freight Forwarder informs the Customer and secures the rights of the Customer against third parties responsible for such shortage, damage or fault.

9.7. Certificate of receipt of the consignment issued by the Freight Forwarder constitutes a presumption that the goods have been received by the Freight Forwarder in such condition as indicated in the Certificate.

9.8. Executing an order concerning dispatch of a consignment, the Freight Forwarder is obliged to keep the terms of the delivery contract (Letter of Credit validity etc.) indicated in the order, unless it proves impossible due to reasons beyond Freight Forwarder's control. In such case the Customer should be duly notified or informed.

Insurance

§ 10

10.1. The Freight Forwarder shall arrange for „cargo insurance” only upon receipt of an explicit order in writing. Unless otherwise agreed in writing the Freight Forwarder is not obliged to arrange a separate insurance for each consignment. Indication of the value of consignment in the forwarding order is not considered an order for the Freight Forwarder to arrange “cargo insurance”.

10.2. Offering “cargo insurance” to the Customer or arranging it in his name and at his expense, the Freight Forwarder is obliged to submit insurance conditions to the Customer:

10.2.1. in case of general insurance cover of a consignment - prior to conclusion of forwarding contract ;

10.2.2. in other cases - prior to conclusion of insurance contract.

Obstacles in performance of forwarding activities

§ 11

11.1. Circumstances beyond the control of the Freight Forwarder or other person acting upon his order (e.g. force majeure) which make it impossible in part or fully to perform his forwarding duties, exempt him, for the time of their duration, from responsibility for timely execution of forwarding order. The Freight Forwarder

should notify the Customer of such circumstances immediately after they arise. When the duration of such circumstances becomes excessive, the Freight Forwarder may withdraw from the contract, even when the order has been partly executed. Prior to the withdrawal the Freight Forwarder is obliged to secure the consignment and Customer's interests in consultation with the Customer. In case of withdrawal from the contract due to aforesaid reasons, the Freight Forwarder is entitled to reimbursement of expenses incurred in execution of the order, together with an appropriate part of his remuneration for the operations already completed.

11.2. Force Majeure is understood as acts of Nature of a catastrophic character, also extraordinary and external occurrences of a general character, such as war, martial law restrictions, riots, revolution, commotions etc. that cannot be prevented, where inability to prevent such occurrences or their consequences is of external character, independent from taking of or refraining from any preventive action.

Remuneration of the Freight Forwarder, reimbursement of expenses incurred

§ 12

12.1. The Freight Forwarder is entitled to the remuneration from the Customer in accordance with the provisions of the forwarding contract.

12.2. For services not stipulated in the Contract, but duly performed after consultation with the Customer, as well as for services performed without consultation in order to execute the Contract properly, the Freight Forwarder is entitled to an appropriate remuneration as well as to a reimbursement of expenses incurred.

12.3. If there is no separate agreement, the Freight Forwarder's remuneration is defined by the Freight Forwarder's Tariff.

§ 13

The Freight Forwarder may subject the execution of the order to advance payment on account of future expenditures necessary for its execution (e.g. freight charges, port dues, customs dues etc.). He may also demand immediate reimbursement of expenses already incurred before proceeding with further execution of the order. In case of consecutive deliveries the Freight Forwarder is entitled to partial, consecutive settlements of his remuneration.

§ 14

Seizure, damage, loss or partial loss of consignment not caused by the Freight Forwarder or caused by force majeure, confiscation or other act of government authority shall not affect Freight Forwarder's claims towards his Customer, especially the claims for the agreed remuneration or reimbursement of his expenditures.

§ 15

Placing an order with the Freight Forwarder on account of a third party or indicating a third party as payer of the Freight Forwarder's dues does not exempt the Customer from the obligation of payment.

§ 16

The Freight Forwarder is obliged to verify the correctness of charges of his subcontractors. In case of incorrect charges, the Freight Forwarder is obliged to immediately claim them. The Customer is obliged to reimburse Freight Forwarder's expenditures in connection with the claim.

§ 17

17.1. The Customer is obliged to reimburse the Freight Forwarder with any and all expenditures in connection with the execution of his order, including the costs of detention, demurrage and freight paid by the Freight Forwarder in consequence of indicating him, by the Customer or his partner, as the consignee in a Master Bill of Lading or Air Waybill.

17.2. If the Freight Forwarder, upon the order of his Customer, acts as a shipper or a consignee, and claims are lodged against him for which he is liable by law as shipper or consignee (e.g. by way of General Average or by other titles), the Customer is obliged to indemnify and protect him against any consequences resulting thereof.

§ 18

If the Freight Forwarder outlays his own funds when executing an order, he has the right to charge outlay commission to the Customer. If the amount of the commission is not determined by his tariff or agreed with the Customer, the commission shall be equal to the official rate of interest.

Liability of the Freight Forwarder

§ 19

The Freight Forwarder's liability depends on the scope of forwarding contract concluded.

§ 20

20.1. The Freight Forwarder is liable for damages resulting from non-performance or improper performance of his duties arising from the forwarding contract, unless he proves that he could not prevent the damage in spite of exercising due diligence.

20.2. The Freight Forwarder is liable for carriers and sub-forwarders, subcontracted by him for the execution of order, unless he is not at fault in choosing them.

20.3. The Freight Forwarder is obliged to take all necessary steps to enable the Customer to pursue his claims against the parties participating in the execution of

the order, even if the Freight Forwarder is not liable for their acts or omissions. The Freight Forwarder can pursue the claims himself by virtue of a separate agreement, at the risk and expense of the Customer.

§ 21

Acting as a multimodal transport operator, the Freight Forwarder accepts liability according to the conditions of the document of conveyance applicable to the particular transport mode.

Limitations and exclusions of the Freight Forwarder's liability

§ 22

22.1. The Freight Forwarder is not liable for :

22.1.1. valuables or dangerous goods, unless declared as such and accepted by the Freight Forwarder in the forwarding contract ;

22.1.2. damage caused by a delay in delivery, unless the Freight Forwarder takes obligation to deliver the consignment within agreed time;

22.1.3. damage other than actual damage;

22.1.4. loss of weight of bulk cargoes resulting from their properties, not exceeding the limits set in appropriate regulations, and in the absence of such regulations - not exceeding customary limits;

22.1.5. damage resulting from acts or omissions of persons not being in contractual relationship with the Freight Forwarder.

§ 23

23.1. Indemnity paid by the Freight Forwarder, due to the person authorized through the forwarding contract, shall be limited by the commodity value as per relevant commercial invoice. When no such invoice is available, it shall be based on the commodity exchange price, market price or normal value of commodity of the same kind and quality. In no case shall the indemnity exceed the amount of 2 SDR per 1 kilogram gross weight of the lost or damaged consignment or the total amount of 50,000 SDR per each occurrence, unless a higher amount is recovered from the person for whom the Freight Forwarder is responsible.

23.2. Indemnity paid by the Freight Forwarder as per point 23.1. shall not exceed the indemnity that can be lawfully obtained from the person liable for the damage.

23.3. SDR value is based on the current exchange rate established and published by the National Bank of Poland.

23.4. Provisions of § 23 apply also in case of Freight Forwarder's liability engagement for reasons other than contractual.

Claims

§ 24

24.1. Customer's claims should be submitted to the Freight Forwarder in writing within 6 days from the date the Customer learned or should have learned about the damage. Within 14 days of the submission of the claim the Freight Forwarder is obliged to confirm its receipt and inform the claimant of the manner and date of its investigation.

24.2. Claims should be supported by documents providing evidence of the condition of consignment and of the circumstances in which the damage/loss occurred.

24.3. When the Freight Forwarder acts as contractual carrier, the claim procedure is ruled by relevant regulations.

Lien on the goods and retention

§ 25

25.1. In order to secure receivables due from the Customer, the Freight Forwarder has the right to retain the consignment and/or the relevant documents until his dues are paid.

25.2. The Freight Forwarder can also execute his rights as per point 25.1. with regard to unpaid receivables concerning past orders.

25.3. If, according to the forwarding order, the consignment is to be delivered or placed at the disposal of a third party, the Freight Forwarder may also execute the right of lien upon such consignment.

25.4. All costs connected with lien on a consignment and/or documents are on account of the goods.

25.5. In case of third parties laying claims against the Freight Forwarder in connection with his execution of lien on a consignment, the Customer is obliged to immediately relieve him from any liabilities resulting thereof and to indemnify his damages.

Time bar

§ 26

26.1. Claims under the forwarding contract are subject to time bar of one year.

26.2. The prescription period commences:

26.2.1. in case of claims for damage to or shortage of a consignment - from the date of its delivery;

26.2.2. in case of total loss of the consignment or late delivery - from the date when the consignment should have been delivered;

26.2.3 in all other cases - from the date of the completion of the order.

§ 27

In case when the Freight Forwarder, as per § 3 of these PGFR, acquires the status of a carrier, any claims under the contract of carriage expire in accordance with domestic and international regulations governing the subject of carriage.

Settlement of disputes and applicable law

§ 28

The contracting parties may agree that disputes arising from the legal relationship between them, to which these PGFR are applicable, will be settled by the Court of Arbitration accredited with the Polish International Freight Forwarders Association in Gdynia.

§ 29

In the absence of a different agreement between the Parties, disputes arising from the legal relationship between them, to which these PGFR are applicable, shall be settled:

29.1. in case when both Parties have their place of business /domicile/ in Poland - by a common court competent with respect to the Freight Forwarder's registered office;

29.2. if one of the Parties has his place of business or domicile abroad - by a common court, domestic or foreign, selected by the Freight Forwarder (if the lawsuit is brought by the Freight Forwarder) or a common court competent with respect to the Freight Forwarder's registered office (if the lawsuit is brought against the Freight Forwarder).

§ 30

Invalidity or unenforceability of one or more provisions of these PGFR shall not affect any other provision of these PGFR.

§ 31

In the absence of a different agreement between the Parties, the Polish law shall apply.

PIFFA - Polish International Freight Forwarders Association, is a voluntary self - governing organization associating the entrepreneurs who run economic activity in the scope of services in international and domestic freight forwarding, logistics, transport, customs agencies as well as other services related with the goods turnover.

The Association acts within the territory of the Republic of Poland. PIFFA is a National Member of the International Federation of Freight Forwarders Associations “FIATA” and Member of the European Association for Forwarding, Transport, Logistics and Customs Services “CLECAT”.

THE BASIC AIMS OF PIFFA:

- Protection of rights and representation of interests of the Association Members before governmental bodies and local authorities and other organizations associating shippers, carriers and their agents and brokers;
- Representation of the Association Members’ interests before international organizations of forwarders, shippers, carriers, etc., if their activity touches upon professional interests of PIFFA Members;
- Supporting high quality services rendered by the members according to internationally recognized standards;
- Enhancement of professional ethics in the international freight forwarding industry;
- Rendering consultative and advisory support to Members on professional matters;
- Initiating and consulting on legislative activities in the field of freight forwarding, transport, logistics, customs procedures and related matters;
- Publishing of professional literature on freight forwarding and related matters;
- Creation and periodic revision/update of Polish General Forwarding Rules.



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