

Japan International Freight Forwarders Association Inc. Freight Forwarders Standard Trading Conditions (2010)

Prologue

These Conditions are laid down to formalize the business relationship between the Company and its Customers.

Chapter I – General Provisions

1. Definitions

The following definitions shall apply to these Conditions, unless the context otherwise requires:

- (a) “Company” means a member of the Japan International Freight Forwarders Association Inc., which provides the Service as freight forwarder under these Conditions.
- (b) “Customer” means any Person at whose request or on whose behalf the Company provides any Service under these Conditions.
- (c) “Customer’s Instructions” means any statement of the Customer’s requests, whether verbal or written, with regard to the Service.
- (d) “Goods” includes the cargo and any Transport Unit supplied by any Person other than the Company, for which the Company provides any Service.
- (e) “Owner” means the owner of the Goods and any other Person who is interested in them.
- (f) “Person” includes individuals, groups, companies, bodies corporate or any other legal entities.
- (g) “Service” means any activities whatsoever undertaken by the Company for the Customer under these Conditions, including the provision of advice and information.
- (h) “Subcontractor” includes direct and indirect subcontractors and their respective servants, agents and subcontractors.
- (i) “Transport Document” means Ocean Bill of Lading, Multimodal Transport Bill of Lading, Sea Waybill or any document of similar nature, however named, evidencing a contract of carriage of goods.
- (j) “Transport Unit” includes any container, trailer, railroad car, tank or any other unit load device for the carriage of goods.

2. Applicability

- (1) These Conditions shall apply to any Service provided by the Company as freight forwarder, whether gratuitous or otherwise, for and in connection with international carriage of the Goods.
- (2) Notwithstanding the preceding paragraph (1), when a Transport Document is issued in respect of the Goods in the name of the Company as carrier, the provisions of the Transport Document shall, apart from these Conditions, apply to the carriage of the Goods.
- (3) If any legislation is compulsorily applicable to any Service undertaken by the Company for the Customer, these Conditions shall as regards such Service be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company 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 Service be void to that extent and no further.
- (4) Any variation, cancellation or waiver of these Conditions must be specifically authorized or ratified in writing by the Company. No Person other than the Company shall have any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
- (5) The headings of Chapters and Clauses herein are inserted for convenience' sake only and shall not affect the construction of these Conditions.

3. Deviation from Customer's Instructions

- (1) The Company will take reasonable steps to perform the Service in accordance with the Customer's Instructions under these Conditions but, if at any time the Company, at its sole discretion, considers that there is good reason to depart from any of the Customer's Instructions, the Company shall be free to do so without giving prior notice to the Customer and without assuming any additional liability as a result thereof.
- (2) The Company may at any time comply with any orders or recommendations given by any competent authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposal of the Goods in compliance with the orders or recommendations and the Customer shall be liable for payment of any freight, charges or expenses arising out of such delivery or disposal.

4. Contingencies

If at any time the performance of the Service is or is likely to be affected by any hindrance, danger or disturbance of whatsoever kind which cannot be avoided by exercise of reasonable endeavors, the Company may, without any notice to the Customer, treat the Service as terminated and put the Goods at the Customer's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease.

In this case, the Customer shall be liable for payment of any freight, charges or expenses arising out of such treatment.

5. Customer's Failure to Take Delivery of the Goods

(1) If the Customer or Owner fails to take delivery of the Goods at the time and place when and where the Company is entitled to call upon such Person to take delivery thereof, the Company shall be entitled to store the Goods, at the sole risk of the Customer, and the Company's liability for the Goods shall wholly cease upon the commencement of such storage.

After the Goods have been stored for 30 days, the Company may dispose of the Goods, at the expense of the Customer, by sale or otherwise at the Company's sole discretion.

The cost of the storage shall be borne by the Customer and, if paid by the Company or any of its agents or Subcontractors, shall forthwith, upon demand, be reimbursed by the Customer to the Company.

(2) Notwithstanding the preceding paragraph (1), when the Goods, in the sole opinion of the Company, are likely to deteriorate, decay, become worthless, incur charges in excess of their value, cause damage to any property or injury to any person or contravene any applicable laws or regulations, the Company may dispose of such Goods immediately by sale or otherwise without prior notice to the Customer.

(3) The proceeds of sale, after deduction of the cost of sale and any sums whatsoever due by the Customer to the Company for the Service or any previous service, shall be held by the Company to the credit of the Customer.

If, on sale of the Goods, the proceeds fail to cover the amount due and cost incurred, the Company shall be entitled to recover the deficit from the Customer.

6. Lien

The Company shall have a lien on the Goods and any documents relating thereto for all sums payable to the Company in respect of the Service or any previous service and for the cost of recovering these sums. To this effect, the Company shall have the right to sell the Goods and documents by public auction or otherwise, at the Customer's expense and without any notice to the Customer.

If, on sale of the Goods and documents, the proceeds fail to cover the amount due and cost incurred, the Company shall be entitled to recover the deficit from the Customer.

7. Quotations

The Company's quotations shall be given to the Customer on the basis of immediate acceptance and subject to withdrawal or revision. Unless otherwise agreed in writing, the Company shall be, even after the Customer's acceptance of the quotations, at liberty to withdraw or revise them with or without notice in the event of changes beyond the Company's control, occurring in currency exchange rates, rates of freight, insurance premiums or any charges applicable to the Goods.

8. Declarations

Except in accordance with the Customer's Instructions in writing previously received and accepted by the Company, the Company shall not be obliged to make any declaration of the characteristics, nature or value of the Goods for the purpose of complying with any statute, convention, contract or other requirement.

Chapter II – The Company's Roles

9. The Company's Role

All Services shall be provided by the Company as agent for the Customer except in the following cases:

- (a) where the Company undertakes any carriage, storage, packing, transshipment, loading, unloading or handling of the Goods but only to the extent that it is performed by the Company or any servant or agent of the Company and the Goods are in the custody or under the control of the Company, or
- (b) where a Transport Document is issued in respect of the Goods in the name of the Company as carrier, in which cases the Company acts as principal contractor.

10. The Company's Role as Agent

(1) The Company acts as agent for the Customer where the Company procures a Transport Document evidencing a contract of carriage between any Person, other than the Company, and the Customer.

(2) Unless otherwise agreed between the Company and the Customer, the Company shall be expressly authorized by the Customer to enter into contract as agent for the Customer with regard to:

- (a) carriage of the Goods by any route or means or Person,
- (b) carriage, storage, packing, transshipment, loading, unloading or handling of the Goods by any Person or at any place,
- (c) carriage or storage of the Goods with other goods of whatever nature,
- (d) carriage of the Goods in or on a Transport Unit, and
- (e) any act which may in the sole opinion of the Company be reasonably necessary in the performance of the Service.

(3) The Company acts as agent for the Customer and never as principal contractor when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and any other similar matters.

11. Agreement of Price

Any agreement of a price, inclusive or otherwise, for the Service is not of itself an indication or determination of whether the Company provides the Service as principal contractor or as agent for the Customer.

Chapter III – The Customer's Obligations

12. Authorization

In agreeing to these Conditions, the Customer warrants that it is, or has the authorization of, the Owner of the Goods.

13. Details of the Goods

The Customer warrants that the description and particulars of the Goods are complete and accurate and also contain all data necessary for the Company to accomplish the Service safely, effectively and promptly and in accordance with any applicable laws or regulations, including but not limited to customs regulations, import and export restrictions, trade sanctions and health and safety, environmental protection and transport regulations.

14. Preparation of the Goods

The Customer warrants that the Goods are properly and sufficiently prepared, packed, labeled, marked and/or numbered for the Service.

15. Customer-loaded Transport Unit

If the Goods are tendered to the Company in or on a Transport Unit, the Customer warrants that:

- (a) the Goods are suitable for carriage in or on the Transport Unit,
- (b) the Transport Unit is in a suitable condition to carry the Goods loaded therein or thereon, and
- (c) the Goods have been properly loaded and secured in or on the Transport Unit.

16. Special Goods

The Customer warrants that, unless the Customer gives prior written notice to and obtains written agreement from the Company, the Customer will not tender for the Service any Goods which are:

- (a) classified as hazardous or obnoxious goods in the International Maritime Dangerous Goods Code (IMDG Code) of the International Maritime Organization ;
- (b) of a dangerous nature, being likely to damage, taint or otherwise affect any other goods or to be a risk to property, life or health;
- (c) likely to harbour or encourage vermin or other pests;
- (d) items of a valuable nature, including but not limited to bullion, coins, precious stones, jewelry, works of art and antiques;
- (e) perishable;
- (f) in need of temperature control; or
- (g) of a short shelf-life.

17. Breach of Warranty

If the Customer breaches any of the warranties described in these Conditions, the Customer shall indemnify the Company and any servant, agent and Subcontractor of the Company against all liability, penalties, claims, loss, damage, costs and expenses of whatsoever nature and howsoever arising in connection with the Customer's breach of any of such warranties.

18. Customer's Responsibility for Transport Unit

- (1) The Customer shall assume full responsibility for and shall indemnify the Company against any loss of or damage to any Transport Unit or other equipment furnished or arranged by the Company for the Customer which occurs while such Transport Unit or equipment is in the possession or under the control of the Customer.
- (2) The Company shall in no event be liable for, and the Customer shall indemnify the Company against any loss of or damage to the property of any other person or any bodily injury to or death of any other person caused by any Transport Unit or other equipment furnished or arranged by the Company or by the contents of the Transport Unit while such Transport Unit or equipment is handled by or is in the possession or under the control of the Customer.

19. Result of Acting on Customer's Instructions

The Customer shall indemnify the Company against all liability, penalties, claims, loss, damage, costs and expenses of whatsoever nature and howsoever arising as a result of the Company acting in accordance with the Customer's Instructions.

20. Collection of Freight and Charges

Even in the case that the Company accepts the Customer's Instructions to collect freight, duties, charges of any kind or other expenses from any other Person, the Customer shall remain responsible for such freight, duties, charges or expenses and shall pay the same to the Company immediately if they are not paid by such other Person when due.

21. Duties and Fines

The Customer shall comply with all regulations or requirements of customs, port authorities and any other authorities, and bear all duties and taxes due, as well as all fines and expenses incurred or suffered by reason of failure to comply therewith, and indemnify the Company against such duties, taxes, fines, and expenses.

Chapter IV – Liability

22. Exclusions

Whether the Company acts as agent for the Customer or principal contractor, it shall be relieved of liability for loss, damage or expense if same was caused by the following:

- (a) any act or omission of the Customer, Owner or any Person other than the Company acting on behalf of the Customer or Owner;
- (b) compliance with any orders or recommendations given by any competent authority or Person;
- (c) inherent vice or nature of the Goods;
- (d) insufficient packing, marking, labeling or numbering of the Goods, unless the Company had undertaken to carry out the packing, marking, labeling or numbering of the Goods;
- (e) carriage, storage, packing, transshipment, loading, unloading or handling of the Goods by the Customer, Owner or any Person other than the Company acting on behalf of the Customer or Owner;
- (f) terrorism, war, riot, civil commotion, sabotage or vandalism;
- (g) strike, lockout, stoppage or restraint of labor;
- (h) fire;
- (i) nuclear incident;
- (j) act of God;
- (k) any cause or event which the Company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of reasonable diligence; or
- (l) any act or omission of the Company the consequences whereof the Company could not reasonably have foreseen.

23. Limitation of Liabilities

(1) When the Company is liable for compensation in respect of any loss of or damage to the Goods, such compensation shall be calculated on the basis of the value of the Goods at the place and time they were delivered or should have been delivered to the Customer.

To this effect, the Customer's invoice value of the Goods plus freight, charges and insurance premium, if paid by the Customer is presumed to be the value of the Goods,

(2) The Company shall in no event be liable for any loss of or damage to the Goods in an amount exceeding the equivalent of 2 Units of Account per kilogram of gross weight of the Goods lost or damaged.

(3) Except by prior written agreement, the Company shall not in any circumstances, whatsoever or however arising, be liable for any indirect or consequential loss, including but not limited to loss of profits and loss of market, or any consequences of delay.

Without prejudice to the foregoing, if the Company is found liable for delay, liability shall be limited to the charges applicable to the Service.

(4) In the case of all other claims, the amount of compensation shall be limited to the lesser of the following:

- (a) the value of the Goods, the subject of the Service, or
- (b) a sum at the rate of 2 Units of Account per kilogram of the gross weight of the Goods, the subject of the Service.

(5) Upon the Customer's prior written request, the Company may accept liability in excess of the limits prescribed in the preceding paragraphs, provided the Customer pays the Company's additional charges for such increased liability. The Customer can obtain details of such additional charges from the Company.

(6) The Unit of Account mentioned in the paragraphs (2) and (4) above is the Special Drawing Right (SDR) as defined by the International Monetary Fund and shall be converted into Japanese yen at the final exchange rate publicized on the day when the Company pays compensation for damages.

24. Defenses

The defenses, exclusions and limits of liability provided for herein shall apply in any claim or action against the Company for loss, damage or expense whether the claim or action is founded in contract, in tort or otherwise.

25. Liability of Servants, Agents and Subcontractors

(1) If any claim or action for loss, damage or expense is brought against any servants, agents or Subcontractors of the Company, such servants, agents or Subcontractors shall be entitled to avail themselves of the defenses, exclusions and limits of liability which the Company is entitled to invoke hereunder, and in entering into any agreement for the Service the Company does so not only on its own behalf but also as agent and trustee for such servants, agents or Subcontractors.

The aggregate of the amounts recoverable from the Company and such servants, agents or Subcontractors shall in no case exceed the limits provided herein.

(2) The Customer shall indemnify the Company against any claim or action which may be made upon the Company by such servants, agents or Subcontractors in relation to the claim or action made against them by the Customer.

26. Notice of Claim and Time Bar

The Company shall be relieved of all liability unless notice of any claim is received in writing by the Company or its agent within 14 days after the date specified as below, or within a reasonable time after such date if the Customer proves that it was impossible to so notify, and a suit is brought before the Tokyo District Court in Japan by the Customer and written notice thereof is received by the Company within 9 months after the date specified also as below:

- (a) in the case of damage to the Goods, the date of delivery of the Goods,
- (b) in the case of loss or delay of the Goods, the date when the Goods should have been delivered, and
- (c) in any other case, the date of the event giving rise to the claim.

27. Governing Law and Jurisdiction

These Conditions shall be governed by and construed in accordance with Japanese law, unless otherwise specified herein, and any action against the Company shall be brought before the Tokyo District Court in Japan.

Chapter V – Miscellaneous Provisions

28. Payments

- (1) The Customer shall pay to the Company in cash or as otherwise agreed all sums by the due date, without reduction or deferment on account of any claim, counterclaim or setoff.
- (2) The due date of payment shall be fixed by mutual consent between the Customer and the Company and, in the absence of such fixed due date, it shall be the 30th day after the date of the Company's invoice.
- (3) If any sum still remains unpaid past the due date, the Company shall be entitled to add interest on the sum at the rate of 6 % per annum throughout the period in excess of the due date.

29. Service to Other Person's Goods

The Company may provide the Service to the Goods in conjunction with services to the goods of other Persons, unless otherwise specifically agreed upon in writing prior to commencement of the Service.

30. Remunerations

The Company shall be entitled to retain and be paid all brokerages, commissions or other remunerations as is customary in the trade.