

## GENERAL TERMS AND CONDITIONS OF FREIGHT FORWARDING

of SWIFTER s.r.o., registered office: Stráňavy 362, 013 25, Company ID: 47029161  
registered in the Business Register of the District Court Žilina, Section: Sro, Insert no: 58473/L  
(hereinafter referred to as 'GTCFF')

### Article 1

#### Subject Matter, Purpose and Scope of Application

- (1) The following GTCFF are issued by SWIFTER s.r.o., registered office: Stráňavy 362, 013 25, Company ID: 47029161 (hereinafter referred to as 'GTCFF') pursuant to § 273 of Act no. 513/1991 Zb. Obchodný Zákonník (the Commercial Code) as amended (hereinafter referred to as 'ComC').
- (2) The purpose of these GTCFF is to provide a detailed modification, specification and amendment of §§ 601 through 609 of ComC on freight forwarding contracts.
- (3) These GTCFF apply to commercial relations between principals and a forwarder in domestic and international freight forwarding and constitute an integral part of any particular freight forwarding contract between a principal and a forwarder. The provisions of these GTCFF pertinent by their nature to international freight forwarding only do not apply to domestic freight forwarding.
- (4) Any derogating provisions of a freight forwarding contract prevail over these GTCFF. The provisions of these GTCFF prevail over ComC and over Act no. 40/1964 Zb. Občiansky zákonník (the Civil Code) as amended (hereinafter referred to as 'CivC'), unless they contradict mandatory provisions of these Codes or mandatory provisions of any other regulations.
- (5) The Slovak language version of these GTCFF prevails over their English and German language versions.
- (6) In general these GTCFF are attached to the draft forwarding contract. If the GTCFF are declared an integral part of the freight forwarding contract, or, if the freight forwarding contract explicitly refers to the GTCFF and these are not attached thereto, the GTCFF published on the website of SWIFTER s.r.o (www.swifter.sk) and applicable at the time of concluding the freight forwarding contract will be binding, in their entirety, both on the forwarder and the principal.
- (7) For the purpose of these GTCFF
  - a) **Forwarder** means SWIFTER s.r.o., i.e. a legal entity that as a business holds relevant trade licences authorising it, according to Slovak law, to operate the trade of 'freight forwarding'.
  - b) **Principal** means a person (legal or natural) who orders the arrangement of transport from the Forwarder and, from time to time, also auxiliary transport-related services and for this purpose enters into a freight forwarding contract or other relevant contracts on auxiliary services with the Forwarder.
  - c) **Arrangement of transport** means rendering transport by the Forwarder based on a contract of carriage of goods between the Forwarder (acting as a consignor) and a Carrier.
  - d) **Carrier** means an entrepreneur who, under the contract of carriage of goods, undertakes to transport freight from a specific place (place of dispatch) to another (place of destination) for the consignor for remuneration. The Carrier carries out the transport.

- e) Forwarder becomes **Agent of a Principal** as a consignor if the Forwarder acts in the name of the consignor, under an agency agreement, when concluding a contract of carriage with a Carrier. In such a case, the Principal becomes a party to the contract of carriage of goods as a consignor, not the Forwarder.
- f) Forwarder becomes **Transport Intermediary** if the Forwarder, under a contract of intermediation and for remuneration, undertakes to perform activities giving interested persons an opportunity to conclude a contract of carriage of goods with a specific Carrier by themselves and in their own name (§§ 642 et seq. of ComC). Forwarder holds a trade license to provide 'intermediation services'.
- (8) When performing this activity, the Forwarder undertakes in a freight forwarding contract to arrange the transport of objects (goods) from a specific place to another specific place in his own name and on the account of the Principal pursuant to §§ 601 et seq. of ComC).
- (9) The Forwarder may also undertake to procure, arrange, or carry out auxiliary transport-related services provided that such services fall within the scope of the Forwarder's business activities.

### Article 2

#### Conclusion, Establishment and Form of a Freight Forwarding Contract

- (1) The rights and obligations of the Forwarder arise primarily from a valid freight forwarding contract.
- (2) Under a freight forwarding contract, the Forwarder undertakes to arrange the transport of an object (goods) from a specific place to another specific place in his own name and on the account of the Principal, and the Principal undertakes to pay remuneration to the Forwarder.
- (3) The establishment of a freight forwarding contract requires timely and unconditional acceptance of a draft contract. Acceptance of a draft that contains amendments, derogations, restrictions, or other modifications will be deemed as a rejection of the original draft and considered to be a new draft which must be accepted in order to establish a contract. A draft designated as 'forwarding order' or 'order of forwarding services' will also be considered to constitute a draft contract. Typically, the Principal submits a draft contract, nevertheless, it may also be initiated by the Forwarder. The draft contract must be specific and explicitly addressed. Services to be provided by the Forwarder thereunder must be clearly defined, particularly as to the arrangement of a specific transport, and must be addressed to an identified Forwarder.
- (4) Unless otherwise agreed by the parties, according to these GTCFF a freight forwarding contract will be deemed valid only if made in writing. The written form requirement applies to all actions leading to the establishment of a contract, i.e. draft contract and its acceptance. Written form means drawing up a deed containing the contract that constitutes one technical

entity, statements of parties by exchange of documents, correspondence, telegraph and telex messages, telefax and electronic means of communication (e.g. e-mail). Silence or inactivity alone on the part of the addressee of the draft does not in itself constitute acceptance of the draft.

- (5) If any contract performance by one party takes place in line with the existing draft freight forwarding contract, despite the Principal's failure to accept the draft freight forwarding contract in writing, and such performance is accepted by the other party, the draft forwarding contract is deemed approved by both contracting parties as of the date of the actual performance save for circumstances of revocation or cancellation of the draft freight forwarding contract by the Principal preceding any contract performance on the part of the Principal or Forwarder.

### **Article 3 Forwarding Order**

- (1) Rights and obligations of the Forwarder arise primarily from a valid freight forwarding contract.
- (2) A forwarding order may constitute a draft of a freight forwarding contract submitted by the Principal to the Forwarder. By virtue of its unconditional acceptance the respective freight forwarding contract will be deemed concluded.
- (3) If the requirement of a written form was waived by the parties, the Forwarder is entitled to demand a forwarding order issued by the Principal for the purpose of confirming the existence and content of an already concluded forwarding contract, which was not made in writing.

### **Article 4 Cooperation of Parties to a Freight Forwarding Contract**

- (1) The Principal and the Forwarder are obliged to cooperate closely during the performance of a freight forwarding contract. They must fulfil their obligations under this contract duly and on time.
- (2) If the Principal's fulfilment of obligations is in delay, the Forwarder will not be considered in default in relation to the Principal, and vice versa.
- (3) The Forwarder, who under reciprocal obligations is to be the first to perform (e.g. to conclude a contract with a Carrier), is entitled to decline such performance until reciprocal performance is rendered or secured (particularly payment of remuneration) should the performance of the Principal be jeopardized by circumstances unknown to him at the time of contract conclusion.

### **Article 5 Basic Rights and Obligations of Forwarder**

- (1) The Forwarder is obliged:
- a) to arrange for the Principal agreed transport of objects from a specific place of dispatch to a specific place of destination in his own name and on the account of the Principal; at the request of the Principal the Forwarder is obliged to issue a confirmation of receipt of consignment, the transport of which he is to arrange;
- b) to accept the consignment of goods from the Carrier at the place of destination; to accept the consignment in storage from a warehouse operator if entrusted with such tasks under the freight forwarding contract;

- c) to perform his obligations under the freight forwarding contract with professional care and endeavour to provide quality and cost-effective carriage services that best suit the Principal's interests;
- d) to comply with the instructions of the Principal within the scope of the freight forwarding contract and to protect the interests of the Principal when doing so, which includes:
- i) to notify the Principal of any obvious incorrectness of his instructions;
- ii) to take action in the absence of such instructions, if there is a risk of a delay, in order to best protect the Principal's interests (if these are known to the Forwarder).
- e) to take due care of the objects (goods) entrusted to him by the Principal as well as the objects that he accepted on behalf of the Principal;
- f) to check or ensure inspection of the quantity of goods handed over to the Carrier, or received from the Carrier, if agreed so with the Principal;
- g) to insure the consignment of goods against risks during transport if the freight forwarding contract so stipulates; an insurance contract is concluded by the Forwarder either in his own name or in the name of the Principal and on the account of the Principal;
- h) to inform the Principal of any threat of damage to the consignment or actual damage to the consignment as soon as he becomes aware of it;
- i) to archive documents acquired during performance of the freight forwarding contract for the needs of the Principal for a reasonable or agreed period of time and to maintain their confidentiality.

- (2) The Forwarder is entitled:
- a) to require a written order to arrange transport (forwarding order) if the freight forwarding contract is not made in writing;
- b) to arrange transport, including the choice of transport method and of Carrier, unless otherwise agreed;
- c) to require from the Principal a reasonable advance payment to cover costs related to the performance of a freight forwarding contract;
- d) to require payment of remuneration;
- e) to require reimbursement of necessary and reasonable expenses incurred by the Forwarder for the purposes of fulfilling his obligations under the freight forwarding contract; also to require reimbursement of expenses he reasonably incurred while performing his obligations;
- f) to ask the Principal to rectify the incorrect or incomplete instructions and, at the same time, to require correct data about the contents of the consignment and its nature;
- g) to require an explicit order to insure the consignment and specification of the type of insurance;
- h) to require an explicit order to collect cash on delivery or perform any other collection activity;
- i) to render the transport, which he undertook to arrange, himself unless it contradicts the contract, or unless prohibited by the Principal prior to the commencement of transport;
- j) to use another forwarder (an intermediate forwarder) for the arrangement of transport, while being liable to the Principal as if he arranged the transport on his own;
- k) to deviate from instructions of the Principal in order to protect the interests of the Principal, particularly when at risk of a delay.

## Article 6 Basic Rights and Obligations of Principal

- (1) The Principal is obliged:
  - a) to instruct the Forwarder in writing to arrange transport if the freight forwarding contract was not made in writing and if so requested by the Forwarder;
  - b) to give the Forwarder necessary written instructions without delay in response to his warning of imminent threat of substantial damage to the consignment; otherwise the Forwarder is entitled to sell the consignment;
  - c) to provide the Forwarder with correct data about the contents and nature of the consignment, method and conditions of consignment handling, as well as to other facts necessary for the conclusion of a contract of carriage of a consignment, namely data on the type and quantity of goods, marks and signs, type of packaging, dimensions and weight of individual pieces, data regarding the dangerous nature of goods under the ADR and RID conventions, etc.;
  - d) to notify the Forwarder in a timely manner of obligations arising from generally binding regulations (import and export permits, transit permits, customs regulations, etc.) if they may not be known to the Forwarder;
  - e) to pay the Forwarder the agreed remuneration on time; if it was not agreed, to pay an amount corresponding to the rates of the Forwarder effective at the time of conclusion of the freight forwarding contract. If no such rates are available, to pay remuneration customary at the time of conclusion of the contract;
  - f) to make a reasonable advance payment upon request of the Forwarder to cover the costs related to the fulfilment of his obligations;
  - g) to reimburse necessary and reasonable expenses incurred to the Forwarder on time;
  - h) to pay the Forwarder remuneration and also cover the costs of return transport of goods if a consignee refuses to accept a consignment. In such a case the remuneration will be equal to the amount for the rendered transport to the consignee. The Principal has a similar obligation in cases when he cancels the Forwarder's performance of the agreed collection of cash on delivery or other collection activity, or if the amount concerned is not collected despite the Forwarder's effort and the consignment has to be returned;
  - i) to explicitly order the Forwarder to insure a consignment if the Principal wishes to insure it and if insurance was not stipulated in the freight forwarding contract;
  - j) to prohibit the Forwarder to act as Carrier if the Principal does not want the transport, which the Forwarder undertook to arrange, to be carried out by him.
- (2) The Principal is entitled:
  - a) to require the arrangement of transport from the Forwarder under the terms of the freight forwarding contract and these GTCFF;
  - b) to give more detailed instructions to the Forwarder within the scope of the freight forwarding contract as to the method, type and route of transport, and identification of the consignee;
  - c) to instruct the Forwarder to arrange the stoppage of transport with the Carrier and the return of consignment provided that the consignment has not yet been accepted by the consignee;

- d) to require further auxiliary services connected with the arrangement or performance of transport from the Forwarder if they are stipulated in the freight forwarding contract, or separately;
- e) to withdraw from the freight forwarding contract in the case of a fundamental breach of contract by the Forwarder.

## Article 7 Liability of Forwarder for Damage and Its Extent

- (1) A Forwarder who breaches his obligations under a freight forwarding contract or other commercial contract, or other binding obligation, or breaches any other obligation arising from a generally binding regulation, is obliged to compensate for damage caused to the injured party, unless the Forwarder proves that the breach of his obligations was caused by circumstances excluding liability (sections 373, 374 and 757 of CivC; Article 9 of GTCFF). The breach of obligations by the Forwarder, the damage and causal link between the breach and damage must be proven by the injured party (Principal). The existence of circumstances excluding liability (an exculpatory reason) must be proven by the Forwarder.
- (2) If the Forwarder is liable for damage, his obligation to compensate for damage is limited as follows:
  - a) In the case of a consignment damaged during carriage by means of transport or during handling in relation to carriage (e.g. during loading, reloading, unloading), damages are limited to 8.33 SDR per 1 kg of gross weight of damaged, destroyed or lost goods, whereby the maximum amount may not exceed 20,000 SDR per one damage incident;
  - b) In the case of damage caused by delayed delivery of a consignment, the obligation of the Forwarder to compensate for damage is limited by the agreed carriage fee.
- (3) During storage, the liability of the Forwarder for lost, damaged or destroyed goods is limited to 3.925 SDR per 1 kg of gross weight of damaged, destroyed or lost goods, whereby the maximum amount may not exceed:
  - a) 3,925 SDR per one damage incident (one consignment),
  - b) 19,625 SDR if the damage caused to the Principal (customer) represents the difference between the required and actual state of stored stocks.
- (4) As regards other damage, the liability of the Forwarder to compensate for damage is limited to 20,000 SDR per one damage incident.
- (5) In the case of a high-value consignment, or in the case of the Principal's special interest in delivery, a higher limit of the Forwarder's liability may be agreed in the freight forwarding contract by way of derogation from the provisions of 7(2) and 7(4) of the GTCFF.
- (6) Lost profit will not be compensated.
- (7) If during the performance of a freight forwarding contract the Forwarder causes any intentional damage, he will be obliged to compensate for it in full (no limits, including lost profit).

## Article 8 Liability of Principal for Damage and Its Extent

- (1) The Principal's liability for damage and its extent shall be governed by the provisions of 7(1), 7(4) and 7(5) hereof.

- (2) The provisions of 7(2) and 7(3) shall not apply to the liability of the Principal

**Article 9**  
**Circumstances Excluding Liability of Forwarder and Principal**

- (1) The circumstances excluding liability of the Forwarder and the Principal shall be governed by the provisions of ComC.
- (2) Liability is not excluded by an obstacle which occurred at a point when the party concerned was already in default of its obligation, or as a result of its economic situation. Failure to obtain official licences (export, transit, import, foreign exchange), which should be applied for, is not deemed to be a circumstance excluding liability unless otherwise agreed by the parties.
- (3) The party that encounters an obstacle must notify thereof the other party without delay.
- (4) The effects excluding liability are limited to a period of time during which the obstacle causing such effects exists. If the obstacle exists longer than one month from the point in time by which the contractual obligation hindered by the obstacle (e.g. arrangement of transport, storage of goods, advance payment against costs, payment of remuneration) should have been fulfilled, each contracting party is entitled to withdraw from the contract, even in cases when the obligation had been partially fulfilled. In the case of a withdrawal from the contract, the Forwarder is entitled to receive reimbursement for the costs already incurred by him and a reasonable part of the remuneration. The Principal is entitled to a refund of the part of advance payment unspent by the point of withdrawal from the contract and to a refund of a reasonable part of the remuneration if it was paid in full upon contract conclusion.
- (5) The existence of an obstacle excluding liability has to be proven by the party which claims such obstacle.

**Article 10**  
**Auxiliary Services of Forwarder**

- (1) The Forwarder may provide to the Principal auxiliary and supplementary services connected to the transport of goods.
- (2) The provision of services according to 10(1) herein must be agreed upon with the Principal and as such stipulated directly in the freight forwarding contract or in a separate agreement outside of it. These services include:
  - a) storage of goods,
  - b) inspection activities,
  - c) insurance of consignments,
  - d) collection activities,
  - e) participation in custom clearance procedures.
- (3) Some auxiliary services may be regulated by a specific contract (e.g. contract of storage, contract on inspection activities, insurance contract, contract on collection activities). This fact is without prejudice to their connection with other types of contracts.
- (4) Auxiliary services may be arranged by the Forwarder in his own name and on the account of the Principal, or in the name of the Principal as his agent, or by himself. Auxiliary services are arranged by the Forwarder for remuneration, which will be included in the total remuneration for the arrangement of transport, or will be specified separately.

**Article 11**  
**Storage of Goods**

- (1) The storage of goods, if provided or arranged by the Forwarder within the scope of his activities, shall be governed by the following provisions.
- (2) The Forwarder may choose to store the goods in his own or other warehouses. If the Forwarder stores the goods in other than his own warehouse, he is obliged to notify the Principal of the name of the warehouse operator and the storage location.
- (3) The Principal is entitled to inspect the warehouse premises. The Principal may authorise a third person for this purpose. Any reservations or complaints the Principal may have concerning the warehouse premises must be raised without delay. If the Principal fails to exercise his right to inspect the warehouse premises, he thereby waives the right to raise complaints as to the type and manner of placing and stocking goods provided that the premises and the placing and stocking of the goods were chosen with due care by the Forwarder. The Principal is entitled to enter the warehouse only if accompanied by the Forwarder or warehouse operator.
- (4) If the Principal handles the goods during storage (e.g. sampling), the Forwarder is entitled to require that the quantity, weight and characteristics of goods are verified in his presence. If the Principal fails to meet this requirement, the Forwarder cannot be held liable for any damage detected later save for damage demonstrably unrelated to such handling.
- (5) The Principal assumes liability towards the Forwarder - warehouse operator, other warehouse operator, or third parties (depositors) for any damage caused by the Principal, his employees, or persons authorised by him after entering the warehouse, or incurred by his defective goods.
- (6) In the case of inventory differences concerning the stored goods of the same Principal, the Forwarder may calculate a value balance of stored goods if shortage and surplus occur at the same time.
- (7) If the Forwarder has reasonable doubts as to whether his claims against the Principal are secured by the value of stored goods, he is entitled to set a time limit within which the Principal has to secure the claims of the Forwarder by any other means. If the Principal fails to meet such a requirement of the Forwarder within the set time limit, the Forwarder is entitled to immediately terminate or withdraw from the storage contract.
- (8) Other matters in the relationship between the Forwarder as a warehouse operator and the Principal as a depositor shall be governed by the provisions of ComC.

**Article 12**  
**Invoicing and Methods of Payment**

- (1) Monetary claims of the Forwarder are settled based on an invoice issued by the Forwarder that is payable within (fifteen) days of its receipt by the Principal, unless otherwise agreed by the parties.
- (2) Delivery of invoice is assumed to take 3 days for domestic and 10 days for international invoices.
- (3) The Principal is obliged to settle a monetary claim (invoice) at his own risk and expense on the Forwarder's bank account identified in the invoice or freight forwarding contract. A monetary obligation of the Principal paid through a bank is deemed settled after

the due amount has been credited to the Forwarder's bank account. A monetary obligation paid by the Principal by post is deemed settled after payment of the due amount to the Forwarder. In exceptional cases of settling a monetary obligation in cash in person, the Principal is obliged to settle his dues at his own risk and expense in the registered office of the Forwarder.

- (4) If the Principal defaults in paying his monetary obligation, he is obliged to pay the Forwarder for every day in delay a penalty for late payment of 0.07% of the due amount which must be at least at the level of the interest rate effective during the Principal's default period.

#### **Article 13** **Securing the Performance of Contractual Obligations**

- (1) To secure the performance of contractual obligations, the parties may stipulate a contractual penalty in the freight forwarding contract that represents a flat-rate compensation for damages. The right to claim a contractual penalty results from a breach of contractual obligations secured by it, regardless of whether the entitled party has suffered any damage or not. Agreement on contractual penalty must be made in writing, specify the secured obligation and the penalty amount.
- (2) To secure all his claims against the Principal, the Forwarder has a right of lien on a consignment as long as the Forwarder holds it. A right of lien is enforced by retaining the possession of the object. The Forwarder is obliged to notify the Principal of retaining the possession of the object without delay, in any case no later than within 3 days. The Forwarder is obliged to take care of the retained object and protect it against destruction, damage, or loss. The Principal is obliged to reimburse the costs for care and protection of the consignment. The object may be used only with the consent of the debtor.

#### **Article 14** **Place of Performance**

Obligations of parties to a freight forwarding contract are deemed to be duly performed if the obligations are fulfilled at the place of the Forwarder's registered office or establishment to which the order or forwarding order was addressed unless the nature of the obligation allows optional or mandatory fulfilment at another place.

#### **Article 15** **Withdrawal from Contract**

Parties may withdraw from the freight forwarding contract only under circumstances laid down in the freight forwarding contract itself, these GTCFF, the ComC, the CivC or any other generally binding regulations. A unilateral withdrawal from the freight forwarding contract without a legal reason is not permitted. However, the contracting parties may agree on compensation.

#### **Article 16** **Limitation of Rights**

- (1) The limitation period pertaining to the rights arising from damage to transported objects and late delivery of consignment against the Forwarder and the Carrier expires after one year. The limitation period pertaining to the rights arising from total destruction or loss of the consignment starts to run from the original date of delivery of the consignment to the consignee, and in the case of other rights, from the date of delivery of the consignment.

- (2) The general limitation period of four years applies to rights arising from intentionally caused damage and to other rights of the Forwarder and Principal.

#### **Article 17** **Governing Substantive Law**

- (1) A domestic freight forwarding contract shall at all times be governed by Slovak law. An international freight forwarding contract shall be governed by Slovak law unless the contracting parties have expressly chosen the law of another state.

#### **Article 18** **Dispute Resolution**

- (1) Any disputes between the Forwarder and Principal arising from the freight forwarding contract or in relation to it, including its validity and termination, will be resolved by the parties primarily by negotiation and agreement.
- (2) Should the parties fail to reach an agreement and the dispute persists between domestic parties to a freight forwarding contract, each party is entitled to submit the dispute, based on its own choice, either to the Permanent Court of Arbitration in Banská Bystrica established by the company Rozhodcovský súd Banská Bystrica, s.r.o., Company ID: 44103956, registered in the Business Register of the District Court Banská Bystrica, Section: Sro, Insert no: 14652/S, or to a competent general court in the Slovak Republic. If the dispute is submitted to a permanent court of arbitration, the parties undertake to comply with the arbitration award and consider it final and binding upon them.
- (3) Should the parties fail to reach an agreement and the dispute persists between the parties to an international freight forwarding contract, disputes will be resolved in arbitration proceedings pursuant to the provisions of 18(2) herein. The parties may agree in writing on the jurisdiction of a foreign permanent court of arbitration. The parties undertake to enforce the arbitration award within the time period stipulated therein.
- (4) In disputes arising from international freight forwarding contracts, instead of arbitration, each contracting party has the right
  - a) to submit the dispute for resolution to the competent state court in the defendant's state, or
  - b) to submit the dispute for resolution to some other state court agreed upon by the parties.

#### **Article 19** **Validity and Entry into Force**

These GTCFF shall become valid and effective on 1 April 2013.