

Splošni pogoji poslovanja mednarodnih špediterjev Slovenije

Ljubljana, februar 2011

Splošni pogoji poslovanja mednarodnih špediterjev Slovenije

Izdala:

Gospodarska zbornica Slovenije
Združenje za promet
Dimičeva 13
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Oblikovanje in priprava za tisk: GZS

Tisk: ???

Naklada: ?? izvodov

Ljubljana, februar 2011

Nagovor

Združenje za promet je prostovoljna organizacija pravnih oseb in deluje v okviru Gospodarske zbornice Slovenije, ki letos praznuje že 160 letnico svojega obstoja. Danes je v združenje vključenih 771 podjetij, ki se ukvarjajo z mednarodnim prevozom in špedicijo ali opravljanjem drugih logističnih storitev.

Cilj združenja je zastopanje in zaščita skupnih poslovnih interesov svojih članov, preprečevanje neloyalne konkurence v panogi, prispevati k razvoju podjetij članov združenja, sprejemanje ustrezne zakonodaje povezane s področjem delovanja naših članov in izobraževanje ter posredovanje ustreznih informacij in svetovanj našim članicam. Da bi dosegli zastavljene cilje, združenje za promet organizira posvete, pripravlja predstavitve in sodeluje z organizacijami in institucijami iz Slovenije ter iz drugih držav. Smo nepridobitna organizacija.

Članstvo v International Federation of Freight Forwarders Associations (FIATA), in European Association for Forwarding, Transport, Logistic and Customs Services (CLECAT) združenju za promet omogoča dostop do informacij povezanih z špedicijo na globalnem trgu, možnost izdajanja FIATA dokumentov za multimodalni transport in dodatne možnosti za strokovno usposabljanje zaposlenih v špediterskih podjetjih.

Splošni pogoji poslovanja mednarodnih špediterjev Slovenije na sodoben način urejajo pravno formalne odnose med špediterji in njihovimi strankami. V takšni obliki pa so začeli veljati s 25. avgustom 2009 po objavi v Uradnem listu RS št. 67/2009. Splošni pogoji poslovanja mednarodnih špediterjev Slovenije so posodobljeni po vzoru in dobrih praks razvitih držav Zahodne Evrope in so v uporabi z vednostjo in soglasjem članov združenja za promet.

Robert Sever
direktor združenja

Janko Pirkovič
predsednik združenja

Address

Transport Association is a voluntary association of legal entities and operate under the Slovenian Chamber of Commerce, which is celebrating 160 years of its existence. Today Transport Association included 771 firms engaged in international transport and Freight Forwarding services, or other logistics services.

Main objectives of Transport Association is to represent and protect the common business interests of its members, to prevent unfair competition, contribute to the business development of association members, adopting the relevant legislation relating to the scope of our members and education and communication of relevant information and advice to our members. In order to achieve this objectives, a Transport Association organized conferences, presentations and working with organizations and institutions from Slovenia and other countries. We are a non-profit organization.

Membership in the International Federation of Freight Forwarders Associations (FIATA) and the European Association for Forwarding, Transport, Logistic and Customs Services (CLECAT) for Transport Association provides access to information related to the global freight forwarding market, the possibility to issue FIATA multimodal transport documents and additional options to train employees in the freight forwarding companies our members.

General terms and conditions of international freight forwarders of Slovenia is a modern way of formal law governing relations between forwarding companies and their customers. In this form it came into force on 25th August 2009 following its publication in the Official Gazette No. 67/2009. General terms and conditions of international freight forwarders of Slovenia are updated on the model and best practices of developed countries of Western Europe and are used with the knowledge and consent of the members of the Transport Association.

Robert Sever
Director of Association

Janko Pirkovič
President of Association

Kazalo

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Na podlagi sprejema Splošnih pogojev poslovanja mednarodnih špediterjev Slovenije na seji Izvršilnega odbora Sekcije špediterjev in skladiščnikov, Združenja za promet pri Gospodarski zbornici Slovenije ter potrditve Upravnega odbora Združenja za promet objavljamo v skladu z določbami 6. člena Zakona o gospodarskih zbornicah in 5. alineje drugega odstavka 10. člena Statuta GZS nove Splošne pogoje poslovanja mednarodnih špediterjev Slovenije.

SPLOŠNI POGOJI POSLOVANJA MEDNARODNIH ŠPEDITERJEV SLOVENIJE

I. UVODNE DOLOČBE

1. člen (Pomen izrazov)

Izrazi, uporabljeni v teh pogojih, imajo naslednji pomen:

- **špedicijske in logistične storitve:** katerekoli storitve, ki jih špediter v obsegu, določenem v pogodbi in teh pogojih, izvaja za naročitelja in so povezane z organizacijo ali izvedbo prevoza (izvedenega na en način ali kot kombinirani ali multimodalni način), zbiranja, skladiščenja, pakiranja ali distribucije tovora, manipulacij z njim, kakor tudi pomožne in svetovalne storitve, povezane s temi storitvami; špedicijske in logistične storitve vsebujejo tudi storitve pri urejanju zavarovanja tovora, preskrbovanju dokumentacije, plačevanju stroškov, pobiranju oziroma urejanju plačil, druge finančne storitve, potrebne za izvedbo špedicijskega ali logističnega podjema, storitve, potrebne v carinskih, inšpekcijskih, davčnih in drugih administrativnih postopkih, logistične storitve z moderno informacijsko in komunikacijsko tehnologijo pri prevozu blaga, manipulacijah z njim in njegovi hrampi, prav tako pa obsegajo tudi popolno organizacijo dobave v celotni logistični verigi;
- **špediter:** gospodarska družba ali samostojni podjetnik, ki v obsegu, določenem v pogodbi in teh pogojih, za naročitelja izvaja špedicijske storitve in vsi pravni nasledniki take gospodarske družbe ali samostojnega podjetnika;
- **naročitelj:** oseba, ki špediterju bodisi sama bodisi preko pooblaščenec ali izpolnitvenih pomočnikov poda naročilo oziroma se z njim pogaja za sklenitev špedicijske pogodbe ali z njim na katerikoli način iz 6. člena teh pogojev, sklene špedicijsko pogodbo;

- **prevoznik:** oseba, ki se zaveže izvesti določen prevoz, oziroma ta prevoz izvede, ne glede na to, s kakšnim prevoznim sredstvom se prevoz opravi in ne glede na to, ali ga opravi sama ali pa ga zaupa drugemu izvajalcu;

- **tretja oseba:** vsaka oseba, ki ni stranka špedicijske pogodbe;

- **tovor:** katerakoli stvar, snov ali blago, vključno s kontejnerji, paletami ali drugo embalažo oziroma napravami, na ali v katerih je nameščeno, ki ga naročitelj natančno in nedvoumno specificira ter preda špediterju zaradi izvedbe špedicijske oziroma logistične storitve in s katerim je skladno z vsakokrat veljavnimi predpisi in temi pogoji dopustno izvajati vse storitve in manipulacije, ki so potrebne za izvedbo špedicijskega oziroma logističnega podjema;

- **tovorek:** če predpis, ki ga je v konkretnem primeru potrebno uporabiti, ne vsebuje definicije tovorka, se kot tovorek šteje posamezen kos tovora, ki je individualiziran in pripravljen tako, da omogoča manipulacijo z njim kot s samostojno enoto tovora; če je tovor nameščen v kontejnerje, na palete ali na oziroma v druge podobne naprave, se kot tovorek šteje kontejner, paleta ali druga podobna naprava, razen če je na prevoznih dokumentih, ki spremljajo tovor, oziroma, če ti dokumenti še niso bili izdelani, na dokumentih, na podlagi katerih je naročitelj špediterju tovor predal, izrecno navedeno, da se kot tovorek štejejo posamezni tovorki znotraj take naprave; posamezni tovorki znotraj take naprave se štejejo za tovorke le, če so natančno opredeljeni v prevoznih dokumentih in je špediter imel ob prevzemu tovora dejansko možnost njihovega pregleda in štetja;

- **FIATA:** mednarodna zveza špediterskih združenj (ang.: International Federation of Fright Forwarders Associations);

- **SDR:** posebne pravice črpanja; obračunska enota, katere vrednost izračunava in objavlja Mednarodni Denarni Sklad.

2. člen (Veljavnost in razlaga pogojev)

Splošni pogoji veljajo za vse špedicijske in logistične storitve ter predstavljajo sestavni del sklenjene špedicijske oziroma logistične pogodbe oziroma druge pogodbe, katere predmet je tudi opravljanje špedicijskih ali logističnih storitev.

Šteje se, da sta se pogodbeni stranki sporazumeli o uporabi teh splošnih pogojev, če je bil sporazum o tem izrecno vključen v pogodbo. Prav tako se šteje, da sta se pogodbeni stranki sporazumeli o uporabi teh splošnih pogojev, če je bila klavzula o tem, da špediter posluje po teh pogojih, zapisana v špediterjevi ponudbi ali na špediterjevem obrazcu naročila, ki ga je uporabil naročitelj ali v špediterjevi izjavi o sprejemu naročiteljevega naročila ali v katerikoli drugi korespondenci med strankama, na podlagi katere je prišlo do sklenitve špedicijske pogodbe.

V kolikor je v teh pogojih določeno, da ima špediter pravico nekaj storiti ali opustiti, to ne pomeni, da je zavezan k taki storitvi ali opustitvi.

Določb teh pogojev, ki se nanašajo na omejitve višine špediterjeve odgovornosti, v primeru, ko je oškodovancev več, ni mogoče razlagati tako, da ima vsak od njih pravico do odškodnine, določene v teh pogojih, temveč le tako, da imajo vsi skupaj pravico do take odškodnine, ki se mednje razdeli v sorazmerju z višino škode, ki so jo utrpeli.

3. člen (Kolizije predpisov)

V primeru kolizije med določbami teh pogojev in običaji, uzancami ali določbami vsakokrat veljavnih predpisov, veljajo določbe teh pogojev, razen v primeru ko so predpisi kogentni.

Teh pogojev v nobenem primeru ni mogoče razlagati tako, da razširjajo odgovornost špediterja na podlagi veljavnih predpisov.

4. člen (Naslovi členov in poglavij)

Naslovi posameznih členov in poglavij so namenjeni preglednosti teh pogojev in jih ni mogoče uporabljati za razlago posameznih določb teh pogojev.

II. SPLOŠNE DOLOČBE O ŠPEDICIJSKI POGODBI

5. člen (Vsebina in način izvrševanja špedicijske pogodbe)

S špedicijsko pogodbo se špediter zavezuje, da bo za izvedbo prevoza sklenil v imenu in na račun naročitelja oziroma v svojem imenu in na račun naročitelja prevozno pogodbo in/ali druge za to potrebne pogodbe ter opravil druge dogovorjene posle in dejanja, naročitelj pa se zavezuje, da bo izpolnil vse pogoje, določene v veljavnih predpisih, pogodbi in teh pogojih za to, da bo izvršitev pogodbe mogoča ter da bo skladno z določbami XII. poglavja teh pogojev in skladno z veljavnimi predpisi špediterju dal določeno plačilo in mu povrnil stroške.

V kolikor način zastopanja v pogodbi ni izrecno in pisno določen, velja, da lahko špediter ravna tudi v imenu in na račun naročitelja.

Špediter ni dolžan sklepati pogodb v svojem imenu in na svoj račun, razen v primeru iz 15. člena teh pogojev (špedicija s fiksnim plačilom) ali v primeru, ko nastopa v vlogi podjemnika multimodalnega prevoza in z izdajo FIATA nakladnice za multimodalni prevoz izrecno prevzame obveznosti, ki iz te vloge izhajajo.

Dejstva, da je plačilo določenih obveznosti do oseb, ki so sodelovale pri izvajanju prevoza in drugih manipulacij s tovorom ali storitev v zvezi z njim, izvedel špediter, ni mogoče razlagati kot dokaz, da je pogodbo z njimi sklenil v svojem imenu in za svoj

račun, če za to, da je bila pogodba sklenjena na tak način, niso izpolnjeni pogoji iz prejšnjega odstavka tega člena.

Ne glede na določbo tretjega odstavka tega člena špediter nikoli ne nastopa v svojem imenu in na svoj račun, ko izvaja storitve zastopanja v carinskih, davčnih, inšpekcijskih, sodnih in drugih postopkih, vključno s postopki pred zavarovalnicami, bankami ipd.

6. člen

(Način sklenitve in prenehanja veljavnosti špedicijske pogodbe)

Špedicijska pogodba se lahko sklene s podpisom listine, v kateri je zapisana njena vsebina ali z naročiteljevim sprejemom špediterjeve ponudbe oziroma s špediterjevim sprejemom naročiteljevega naročila.

Ne glede na druge določbe teh pogojev lahko špediter ali naročitelj sprejem ponudbe druge stranke podata s konkludentnim ravnanjem, ki sledi prejemu take ponudbe in iz katerega je razvidno, da tako ponudbo sprejemata.

Da špediter ravna v skladu z določbo drugega odstavka tega člena, se šteje zlasti, če začne opravljati naročeno storitev, razen če tako ravna da bi preprečil, da bi naročitelju nastala škoda ali da bi slednji zamudil očitno korist.

Da naročitelj ravna v skladu z določbo drugega odstavka tega člena, se šteje zlasti, če špediterju po prejemu ponudbe izroči tovor ali dokumente v zvezi z njim ali potrebne podatke ali navodila ali mu na drug način omogoči, da začne izvajati špedicijsko storitev ali začetek izvajanja te storitve dopusti, če špediterju plača avans za stroške in/ali plačilo za njegovo delo, če ne prepreči, da bi špediter opravil storitev, pa ve ali bi moral vedeti, da jo je špediter že začel opravljati ali da jo bo začel opravljati ipd.

Špedicijska pogodba preneha veljati v primerih, določenih v njej, v veljavnih predpisih ter v teh pogojih. V kolikor je sklenjena za nedoločen čas, pa preneha veljati tudi v primeru, če je katerakoli stranka od nje odstopila (jo odpovedala) v pisni obliki. V primeru takega odstopa stranki, ki ga je podala, ni potrebno navajati nikakršnih razlogov za odstop. V kolikor v špedicijski pogodbi ni določeno drugače, za tak odstop velja odpovedni rok 3 mesecev, ki teče od trenutka, ko je stranka, ki ji je bil odstop posredovan, le- tega prejme.

Določba prejšnjega odstavka tega člena ne posega v druge določbe teh pogojev, ki špediterju omogočajo odstop od špedicijske pogodbe s takojšnjim učinkom (brez odpovednega roka). V primeru takega odstopa se šteje, da pogodba preneha veljati v trenutku, ko naročitelj prejme špediterjevo izjavo, da odstopa od pogodbe.

7. člen

(Nastop in prenehanje špediterjeve obveznosti)

Obveznost špediterja nastopi v trenutku sklenitve pogodbe oziroma v drugem trenutku, določenem v veljavnih predpisih, teh pogojih ali pogodbi vendar ne pred tem, ko naro-

čitelj špediterju na dogovorjenem kraju, v dogovorjenem času, v dogovorjenem obsegu in na dogovorjeni način dostavi tovor, v zvezi s katerim je bila pogodba sklenjena in vso potrebno dokumentacijo in podatke ter izpolni vse druge pogoje, predpisane s temi pogoji in vsakokrat veljavnimi predpisi, preneha pa v trenutku izpolnitve špediterjevih obveznosti iz pogodbe oziroma v trenutku prenehanja veljavnosti špedicijske pogodbe oziroma v drugem trenutku, določenem v veljavnih predpisih, teh pogojih in pogodbi. Obveznost špediterja v vsakem primeru preneha v trenutku uničenja tovora ali v trenutku, ko je njena izpolnitev postala nemogoča.

V vsakem primeru velja, da je špediter pravilno in v celoti opravil storitev, če je tovor odpravil naprej v stanju, v kakršnem ga je sprejel, pri čemer se spremembe na njem, ki običajno nastanejo ob prevozu takega tovora in manipulacijah z njim ali izvajanju drugih špedicijskih storitev v zvezi z njim, ne upoštevajo.

8. člen **(Vsebinska opredelitev sklenjene pogodbe)**

V dvomu ali sta stranki sklenili špedicijsko ali logistično pogodbo, se šteje, da sta sklenili špedicijsko pogodbo, v kolikor iz same pogodbe, ki sta jo podpisali ali iz njune medsebojne korespondence, na podlagi katere je bila sklenjena, ni razvidno, da sta se izrecno in nedvoumno dogovorili za sklenitev logistične pogodbe.

V dvomu ali sta stranki sklenili špedicijsko ali prevozno pogodbo, se šteje, da sta sklenili špedicijsko pogodbo, razen če je predmet pogodbe izključno izvajanje prevoza in je špediter v korespondenci, na podlagi katere je prišlo do njene sklenitve, izrecno in nedvoumno izjavil, da se zavezuje tak prevoz opraviti sam oziroma je bila taka zaveza vključena v besedilo pogodbe, sklenjene s podpisom listine. V kolikor naročitelj špediterju poda naročilo za izvedbo prevoza, v katerem ni zapisana klavzula, da mora špediter ta prevoz opraviti sam, se šteje, da je bila z njegovim sprejemom s strani špediterja sklenjena špedicijska pogodba za organizacijo izvedbe tega prevoza, pri čemer pa špediter ohrani pravico, da po lastni izbiri tak prevoz opravi tudi sam.

Določbe teh pogojev, ki se nanašajo na stranki špedicijske pogodbe in njun položaj, pravice ter obveznosti, se smiselno uporabljajo tudi za stranki logistične pogodbe in njun položaj, pravice ter obveznosti, v kolikor se stranki ob sklenitvi logistične pogodbe nista pisno dogovorili drugače.

9. člen **(Tipični špedicijski posli)**

Špedicijski posli so zlasti, a ne izključno:

- dajanje strokovnih nasvetov in sodelovanje pri pogajanjih za sklenitev pogodb o mednarodni prodaji blaga z vidika prevoza in drugih manipulacij z njim, zagotavljanja zavarovanja, opravljanja carinskih in drugih formalnosti itd.,

- ugotavljanje najugodnejših prevoznih poti in klavzul, ki naj se v zvezi z določanjem obveznosti strank glede organizacije prevoza blaga in s tem povezanih dejanj uporabijo v pogodbi o mednarodni prodaji blaga,
- preskrbovanje znižanj in drugih ugodnosti pri prevoznikih ter drugih sodelujočih v izvajanju špedicijskega podjema,
- organizacija zbirne špedicije in ekspresnega prometa,
- organizacija vseh vrst prevozov z vsemi prevoznimi sredstvi in po vseh prevoznih poteh, vključno z multimodalnim prevozom in organizacija fizične distribucije tovora po sistemu »od vrat do vrat«,
- sklepanje prevoznih pogodb v vseh vejah prevoza,
- sklepanje pogodb o nakladanju, razkladanju, prekladanju, sortiranju, pakiranju, oziroma opravljanju teh in podobnih storitev,
- sklepanje pogodb o uskladiščenju tovora,
- sklepanje pogodb o zavarovanju tovora,
- zastopanje v carinskih postopkih in opravljanje carinskih formalnosti (carinsko zastopanje),
- jemanje vzorcev in ugotavljanje količine tovora brez izdajanja certifikatov,
- sodelovanje pri plačilu dobavljenega tovora (COD),
- izdajanje špedicijskih potrdil kot instrumentov pri plačilih v prometu z blagom ter izdajanje drugih FIATA listin,
- izdajanje ali preskrbovanje prevoznih in drugih listin,
- kontrola obračunske pravilnosti prevoznih listin in obračunov prevoznih in drugih stroškov,
- ukrepanje za povrnitev škode v primerih izgube, poškodbe ali zamude pri izročitvi tovora,
- preskrbovanje tranzitnih dovoljenj in drugih listin,
- organiziranje dodajanja ledu ter hranjenja in napajanja živih živali,
- opravljanje storitev na mednarodnih sejmih, samostojnih in specialnih razstavah ter podobnih prireditvah,
- drugi posli, ki so običajni v mednarodni špediciji.

10. člen **(Pogoji oseb, s katerimi špediter sklepa pogodbe)**

Špediter je upravičen pri izvajanju svojih poslov sprejeti običajne pogodbe, pogoje, uzance ter tarife ponudnikov železniških, cestnih, zračnih, pomorskih prevozov, prevozov po celinskih vodah, drugih prevozov, luških, skladiščnih in drugih storitev, običajne pogodbe, pogoje, uzance ter tarife ponudnikov poštnih in kurirskih storitev ter običajne pogodbe, pogoje, uzance ter tarife vseh drugih oseb, ki jih pritegne k izvajanju poslov.

11. člen **(Uporaba tipiziranih listin- obrazcev)**

Špediter lahko pri poslih, ki jih sklepa z izvajalci posameznih prevozov ali z izvajalci drugih storitev oziroma manipulacij s tovorom, uporabi tipizirane listine (obrazce), ki so običajne v posameznih vejah prevoza oziroma za posamezne storitve oziroma manipulacije.

V kolikor so v listinah iz prvega odstavka tega člena klavzule, ki omejujejo ali izključujejo prevoznikovo odgovornost, špediter za te klavzule ne odgovarja.

Kadar želi naročitelj izključiti določene klavzule v običajnih prevoznih listinah, mora o tem izrecno in pravočasno v pisni obliki obvestiti špediterja.

12. člen **(Špediterjeva komunikacija z naročiteljem in uporaba sodobne tehnologije)**

Špediter lahko komunikacijo z naročiteljem ali z osebo, ki jo določi naročitelj, opravi v ustni ali pisni obliki z vsemi komunikacijskimi sredstvi, ki so mu na voljo. V kolikor naročitelj špediterju ni sporočil sprememb naslova ali drugih podatkov o njem ali drugi osebi, s katero mora špediter po njegovem nalogu komunicirati, velja, da je špediter naročitelju ali taki osebi sporočilo posredoval na pravilen način, če ga je posredoval ob uporabi naslova in drugih podatkov, ki so mu bili do tedaj znani.

Naročitelj mora špediterju nemudoma sporočiti vse spremembe v podatkih, ki so kakorkoli pomembni za pravilno izvedbo špedicijskega posla, sicer nosi vse posledice take opustitve.

Špediter ima pri svojem delu pravico uporabljati sodobno tehnologijo, vključno z napravami, ki omogočajo izvajanje špedicijskega posla brez izpolnjevanja in izdajanja prevoznih ter drugih dokumentov v fizični obliki.

13. člen **(Naročiteljeva pravica razpolaganja s tovorom)**

Naročitelj s podajo naročila oziroma s sklenitvijo špedicijske pogodbe jamči, da je lastnik tovora, v zvezi s katerim je naročilo dano oziroma pogodba sklenjena, oziroma da

ima na podlagi izrecnega in veljavnega pooblastila lastnika pravico razpolagati s tem tovorom in v zvezi z njim skleniti tudi špedicijsko pogodbo, katere sestavni del so ti pogoji. Špediter teh dejstev ni dolžan preverjati sam.

V kolikor naročitelj poda naročilo oziroma sklene špedicijsko pogodbo v zvezi s tovorom, s katerim nima pravice razpolagati v smislu prejšnjega odstavka tega člena, vse posledice takega ravnanja nosi sam.

14. člen **(Prenos naročiteljevih pravic** **iz špedicijske pogodbe)**

Naročitelj mora obvestiti špediterja, če prenese svoje pravice iz špedicijske pogodbe na tretjo osebo, sicer prenos ne velja. Špediter odgovarja tretji osebi v mejah obveznosti, ki jih ima do svojega naročitelja, če ni drugače dogovorjeno v pisni obliki.

Ne glede na določbo prvega odstavka tega člena naročitelj svojih pravic iz špedicijske pogodbe, ki vsebuje dogovor o špediciji s fiksnim plačilom, ne more prenesti na tretjo osebo brez izrecne pisne privolitve špediterja.

15. člen **(Špedicija s fiksnim plačilom)**

Stranki špedicijske pogodbe se lahko dogovorita za to, da bo špediter storitev opravil proti plačilu skupne vsote (špedicija s fiksnim plačilom; forfait). V takem primeru plačilo, ki skladno z dogovorom med strankama pripada špediterju, poleg plačila za njegovo delo vsebuje še voznino, stroške carinskega zastopanja, skladiščnino in druge podobne izdatke, ki so nujno potrebni za izvršitev naročila.

V kolikor se stranki nista pisno na jasen, izrecen in nedvoumen način dogovorili, da bo storitev opravljena proti plačilu skupne vsote, se šteje, da do takega dogovora med njima ni prišlo. Obstoj takega dogovora se nikoli ne domneva.

V kolikor je bila špedicijska pogodba sklenjena za izvedbo organizacije prevoza in je dogovorjeno plačilo nedvomno obsegalo tudi plačilo voznine, se tak dogovor ne šteje kot dogovor, da bo celotna storitev opravljena proti plačilu skupne vsote (forfait). V takem primeru je špediter upravičen do povračila vseh ostalih stroškov, ki jih je utrpel pri opravljanju storitve (operativnih, režijskih in drugih), razen do povračila voznine. Ta določba se smiselno uporablja tudi v primeru, ko je špedicijska pogodba sklenjena za organizacijo skladiščenja ali drugega špedicijskega posla in je dogovorjeno plačilo nedvomno obsegalo tudi plačilo skladiščnine ali stroškov drugega špedicijskega posla.

Stroške in nagrado za delo, ki niso zajeti s forfaitno postavko, je naročitelj dolžan špediterju povrniti posebej. Taki stroški predstavljajo zlasti, a ne izključno, stroške carin, davkov, trošarin in drugih javnih dajatev ter taks, zavarovalnih premij in stroškov bančnih garancij, prispevkov generalne havarije ter stroške za izvedbo inšpekcijskih in drugih pregledov in vseh opravil, ki niso običajna, opravil, ki terjajo neobičajno veliko

truda ali časa oziroma opravil, ki sicer niso nujna, so pa za stranko koristna. Dodatna nagrada, ki ni zajeta s forfajtno postavko, pa predstavlja zlasti, a ne izključno, nagrado za izvedbo vseh opravil, ki niso običajna, opravil, ki terjajo neobičajno veliko truda ali časa ter opravil, ki sicer niso nujna, so pa za stranko koristna.

III. PONUDBA

16. člen (Obseg ponudbe)

Špediterjeva ponudba obsega le posle, ki so v njej izrecno navedeni. V kolikor posli v ponudbi niso navedeni, se šteje, da se ponudba nanaša na tiste posle, ki so nujno potrebni za izpolnitev špedicijskega podjema. Ponudba se nanaša na tovor v takih količinah in s tako maso, dimenzijami, naravo in lastnostmi, ki jih je špediter lahko predvidel oziroma pričakoval ob podaji ponudbe ter na take okoliščine, ki omogočajo neovirano in takojšnje izvajanje manipulacij s tovorom, ne pa tudi na take okoliščine, ki niso običajne in na taka opravila, ki terjajo neobičajno veliko truda ali časa.

Ta določba se smiselno uporablja tudi za posle, ki jih špediter opravi na podlagi pogodbe, sklenjene s podpisom listine.

17. člen (Učinek ponudbe)

Špediterja ponudba ne veže, razen če je v ponudbi izrecno zapisal, da je zavezujoča. V tem primeru ponudba veže špediterja samo do izteka roka, določenega za njen sprejem. V kolikor ta rok ni določen, se šteje, da znaša tri delovne dni od dne, ko je bil naročitelj s ponudbo neposredno seznanjen oziroma mu je bila izročena, če pa mu je bila poslana, pa od dne, ko jo je prejel.

Ne glede na določbo prejšnjega odstavka tega člena ponudba špediterja ne veže, če se po njeni podaji in pred njenim sprejemom s strani naročitelja okoliščine, na podlagi katerih je bila pripravljena, tako spremenijo, da je špediter ne bi podal, če bi zanj vedel v času njene priprave.

Ne glede na določbo prvega odstavka tega člena lahko špediter tudi po sprejemu ponudbe s strani naročitelja oziroma po sklenitvi špedicijske pogodbe na drug način spreminja tiste pogodbene pogoje in sestavine, ki so vezane na pogoje tretjih oseb, na katere nima vpliva (npr. v kolikor pride do poslabšanja pogojev, pod katerimi osebe, ki so potrebne za izvršitev špedicijskih poslov, kot so npr. prevozniki, skladiščniki ali zavarovalnice, opravljajo svoje storitve, oziroma v kolikor pride do oblastnih ukrepov, ipd.). To velja tudi za zvišanje cen storitev tretjih oseb ter negativne spremembe valutnih tečajev, carinskih in davčnih stopenj in drugih podobnih izdatkov.

18. člen **(Sklenitev pogodbe s sprejemom ponudbe)**

Pogodba na podlagi dane ponudbe špediterja je sklenjena v trenutku, ko špediter prejme izjavo naročitelja, da ponudbo sprejema. Ponudba velja za sprejeta le, če je bila sprejeta v celoti. Za sprejem ponudbe se smiselno uporablja določba 21. člena teh pogojev.

V kolikor je naročitelj v izjavi o sprejemu ponudbe zapisal, da določenih klavzul v ponudbi ne sprejema oziroma v kolikor je katerokoli od teh klavzul spremenil, se vedno šteje, da je ponudbo zavrnil in podal novo naročilo ter da do sklenitve pogodbe med njim in špediterjem še ni prišlo.

IV. NAROČILO (DISPOZICIJA)

19. člen **(Sklenitev pogodbe s sprejemom naročila)**

V primeru, ko naročitelj špediterju posreduje naročilo za izvedbo špedicijskih poslov, je špedicijska pogodba sklenjena v trenutku, ko naročitelj prejme izjavo špediterja, da naročilo sprejema, razen v primeru, če je špediter naročitelju v izjavi sporočil, da določenih klavzul v naročilu ne sprejema oziroma, če je te klavzule spremenil. V tem primeru se šteje, da je špediter s tem podal ponudbo naročitelju ter da do sklenitve pogodbe med njim in naročiteljem še ni prišlo.

Molka špediterja v nobenem primeru ni mogoče šteti za sprejem naročila.

Špediter je dolžan opraviti le posle, ki so izrecno navedeni v naročilu, ki se ga je špediter zavezal izpolniti ter tiste posle, ki so nujno potrebni za izpolnitev naročila. Ostalih špedicijskih poslov ni dolžan opraviti, v kolikor pa jih opravi, je upravičen do plačila zanje in do povračila stroškov, ki jih je pri tem utrpel (operativnih, režijskih in drugih).

20. člen **(Vsebina naročila)**

Naročilo mora vsebovati vse bistvene sestavine špedicijske pogodbe, določene v teh pogojih ter vsakokrat veljavnih predpisih, tako da njegov sprejem s strani špediterja omogoča sklenitev špedicijske pogodbe, zlasti pa mora vsebovati: podatke o naročitelju in njegovem zastopniku, podatke o prejemniku tovora, vse potrebne podatke o tovoru in njegovih lastnostih (zlasti pa opozorila iz 25. člena teh pogojev ter natančen opis in trgovski naziv tovora v slovenskem jeziku, podatke o količini, kvaliteti, vsebini, dimenzijah, masi, označbah tovora, njegovi vrednosti v času izročitve ipd.), natančno specifikacijo naročenih špedicijskih poslov, navodila glede izvedbe teh poslov in ravnanja s tovorom, vključno z navodili, ki se nanašajo na posebnosti v izvedbi carinskih in drugih formalnosti v zvezi z njim, opozorilo na morebitne pravice tretjih oseb na tovoru

ali na to, da ta tovor krši ali posega v pravice tretjih oseb, pogoje za njegovo zakonito posedovanje in manipulacije z njim, kot tudi druge podatke, ki so potrebni za pravilno in pravočasno izvršitev danega naročila.

Špediter podatkov iz prejšnjega odstavka tega člena ni dolžan preverjati, ima pa jih pravico preveriti, naročitelj pa mu je izvedbo preverjanja dolžan omogočiti na lastne stroške.

21. člen **(Oblika naročila)**

Naročilo se praviloma daje v pisni obliki. Naročilo, ki je dano ustno, po telefonu ali z drugimi telekomunikacijskimi sredstvi, mora biti praviloma potrjeno, če je le mogoče isti dan, najpozneje pa naslednji delovni dan. Šteje se, da je bilo naročilo podano pisno, če je bilo poslano po pošti ali če je bilo posredovano preko telefaksa, elektronske pošte ali drugega računalniškega sistema za elektronsko izmenjavo podatkov v pisni obliki, primerni za trajno uporabo in je bilo mogoče nedvoumno prepoznati naročitelja kot vir dostave podatkov. Morebitne napake, zmote in zlorabe pri posredovanju naročila preko telefaksa, drugega telekomunikacijskega sredstva, elektronske pošte ali drugega sistema za elektronsko izmenjavo podatkov v pisni obliki in vse iz tega izvirajoče škode ter stroški bremenijo izključno naročitelja. Dokazno breme o tem, da je špediter prejel naročilo, je na naročitelju.

Če je naročilo dano ustno, po telefonu ali z drugimi telekomunikacijskimi sredstvi, ni pa bilo naknadno pisno potrjeno v smislu prejšnjega odstavka tega člena, špediter ne odgovarja za škodljive posledice. To velja tudi v primeru, ko je bilo ustno dano naročilo kasneje pisno potrjeno, a se je pisno naročilo razlikovalo od ustnega.

22. člen **(Preverjanje pristnosti podpisov** **in upravičenja za podpisovanje)**

Špediter ni dolžan preverjati pristnosti podpisov in žigov na naročilu in drugih naročiteljevih dokumentih ter na dokumentih oseb, ki delujejo po navdilih naročitelja ali so iz kakršnega koli drugega razloga udeležene pri izvedbi špedicijskega posla, niti njihovega upravičenja za podpisovanje ali dostavo teh dokumentov.

23. člen **(Domneva ravnanja v imenu** **ali po pooblastilu naročitelja)**

Za osebe, za katere je na podlagi določenih dejstev mogoče sklepati, da delujejo v imenu ali po pooblastilu naročitelja (npr. osebe, ki imajo v posesti naročiteljev tovor, osebe, ki uporabljajo naročiteljeva vozila, ali na drug način sporočajo, da so z njim v poslovni zvezi) oziroma za osebe, ki se nahajajo v prostorih naročitelja, velja, da so po-

oblašcene za izvedbo vseh dejanj, ki jih mora izvršiti špediter in pri katerih je potrebno določeno aktivno ravnanje naročitelja, v kolikor so ta dejanja opravile (npr. prevzem in predaja tovora, podpis listin, podajanje izjav ipd.). V kolikor take osebe tovrstnih pooblastil nimajo, vse škodljive posledice, izvirajoče iz tega, nosi izključno naročitelj.

24. člen **(Ravnanje po naročiteljevih navodilih)**

Špediter se je dolžan ravnati po naročiteljevih navodilih. V kolikor teh navodil nima ali jih ne more dobiti oziroma v kolikor so pomanjkljiva ali v kolikor špediter ne more ravnati skladno z njimi ali če je naročilo oziroma navodilo nečitljivo ali slabo čitljivo, očitno nepopolno, nejasno ali protislovno, ali tako postane kasneje in ga zaradi tega ni mogoče izvesti, mora špediter naročitelja pozvati k podaji dodatnih navodil in/ ali pojasnil. V kolikor to ni mogoče ali v kolikor za to ni časa, mora špediter ravnati tako, kot to zahtevajo naročiteljevi interesi, naročitelj pa mu je dolžan povrniti vse stroške, nastale s tem ter mu plačati dodatno plačilo za povečan obseg dela. Za podajo naročiteljevih navodil in/ ali pojasnil se smiselno uporablja določba 21. člena teh pogojev.

25. člen **(Obvezna opozorila v naročilu)**

Naročitelj je špediterja dolžan izrecno opozoriti na vse posebnosti tovora, ki so kakorkoli pomembne za izvajanje naročila, zlasti pa ga je dolžan na to opozoriti, če je oziroma so predmet naročila:

- blago, katerega vrednost znaša ali presega vrednost 2 SDR na kilogram bruto mase, oziroma blago, ki je pakirano tako, da vrednost posameznega tovorka znaša ali presega vrednost 666,67 SDR,
- blago, ki je nevarno za življenje ali zdravje ljudi ali živali ali predstavlja grožnjo oziroma vir negativnih vplivov za druge stvari ali okolje ali lahko povzroči kakršnokoli škodo,
- blago, ki se skladno z veljavnimi predpisi šteje za nevarno ali lahko tako postane; naročitelj mora špediterju posredovati njegove oznake po predpisani klasifikaciji, vso potrebno dokumentacijo ter zahteve in navodila za manipulacije z njim (za nevarne se štejejo zlasti, a ne izključno: eksplozivne, vnetljive in samovnetljive, lahko gorljive, radioaktivne, kužne, jedke oziroma korozivne snovi, peroksidi, strupi),
- blago, s katerim je manipulacije mogoče opravljati le tako, da ne pride v stik z drugim blagom,
- blago, ki zahteva posebne pogoje hrambe in ravnanja z njim ter blago, ki terja poseben režim ohranjanja temperature, vlažnosti ipd.,
- nakit, ure, umetnine, starine, dragi kamni ali druge dragocenosti oziroma drage stvari, znamke, kovanci, unikatni predmeti, zlato, srebro ali druge dragocene ko-

vine, denar, plačilne ali kreditne kartice, druga plačilna sredstva, hranilne knjižice, čeki, menice, drugi vrednostni papirji, dokumenti,

- hrana, prehrabneni izdelki, alkohol in alkoholne pijače, tobak in tobačni izdelki,
- zabavna elektronika, nosilci podatkov,
- pornografski material,
- posmrtni ostanki,
- živali (žive ali mrtve) in deli živali ter izdelki iz živali, rastline, semena, biološke snovi,
- odpadki, odpadna olja in druge odpadne surovine,
- gabljive snovi, blago z intenzivnim vonjem,
- zdravila, kemikalije,
- orožje, strelivo,
- blago, ki je zaradi svojih lastnosti podvrženo nastajanju škode oziroma kvaru, razkroju, lomu, rjavenju, gnitju, sušenju, puščanju, plesni, črvivosti, delovanju mrčesa ali drugim škodljivcem,
- blago, ki je podvrženo razsipu, kalu, sušenju ali naravni izgubi,
- blago velikega volumna (preko 3 m³ na tovorek) ali mase (preko 1000 kg na tovorek),
- blago, ki zahteva uporabo posebne tehnike in naprav pri izvajanju manipulacij z njim (npr. blago, ki se lahko prevaža le po predpisih o izvajanju izrednih prevozov, blago z nesorazmerno razporeditvijo teže ipd.),
- občutljivo blago, blago s povečanjem tveganjem tatvine,
- blago, ki bi lahko kršilo ali posegalo v pravice intelektualne lastnine tretjih oseb,
- blago, katerega lastnosti bi lahko kakorkoli negativno vplivale na pravilno izvajanje špedicijske storitve ter drugo blago, katerega promet je omejen oziroma dovoljen le ob izpolnjevanju posebnih pogojev, predpisanih v vsakokrat veljavnih predpisih.

Opozorila iz prvega odstavka tega člena ter vsa navodila, kakorkoli pomembna za izvedbo posla, morajo biti podana v samem naročilu in sicer tako očitno, da je izključena vsaka možnost, da bi jih špediter spregledal, poleg opozorila pa mora naročitelj špediterja opozoriti na potrebne varnostne in druge predpisane ukrepe v zvezi s tovorom, ki mu je bil zaupan. Zgolj dostava dokumentov, iz katerih so razvidni podatki iz prvega odstavka tega člena, za izpolnitev obveznosti podaje opozorila ne zadošča. V dvomu, ali je tako opozorilo potrebno podati, se šteje, da ga je potrebno podati.

26. člen (Posledice opustitve podaje opozoril)

Vse stroške in škodo ter vse ostale posledice, nastale zaradi zamolčanja ali neustreznega posredovanja podatkov iz 20. in 25. člena teh pogojev ali nepopolne ali nepravilne navedbe teh podatkov, je dolžan nositi naročitelj.

V primeru, če špediter ni bil seznanjen s podatki iz 25. člena teh pogojev ali z dejstvom, da je tovor obremenjen s pravicami tretjih oseb ali da pravice tretjih oseb krši, prav tako pa tudi v primeru, če za izvajanje špedicijskih storitev s tovorom niso izpolnjeni vsi predpisani pogoji, pa naročitelj teh pomanjkljivosti ne odpravi v roku 3 dni od dne, ko ga je špediter k temu pozval, oziroma v drugem pisno dogovorjenem roku, lahko špediter odstopi od pogodbe z navadno izjavo, poslano naročitelju:

- in tovor na naročiteljev riziko in stroške vrne naročitelju,
- če tovora ne more vrniti naročitelju ali če bi bilo tako ravnanje povezano z nesorazmernimi stroški, lahko tovor na naročiteljev riziko in stroške zanj uskladišči,
- v kolikor ravnanje iz prejšnje alineje ni mogoče ali v kolikor bi bilo tako ravnanje povezano z nesorazmernimi stroški ali v kolikor to terja narava tovora ali druge lastnosti, povezane z njim, lahko tovor na naročiteljev riziko in stroške proda na javni dražbi ali po morebitni borzni ali tržni ceni ter s kupnino najprej poravna stroške prodaje, nato vse svoje terjatve do naročitelja iz naslova špedicijske pogodbe, preostanek pa izroči naročitelju,
- v primeru, če tovor ogroža varnost ljudi ali premoženja ali okolja ali če to dopuščajo oziroma zahtevajo veljavni predpisi, lahko tovor na naročiteljev riziko in stroške uniči ali z njim ravna na drug predpisan način,

lahko pa po lastni izbiri špedicijsko storitev opravi.

V kolikor okoliščine primera ne dopuščajo odlašanja, ima špediter pravico skladno z določbo prejšnjega odstavka tega člena ravnati, ne da bi naročitelja predhodno pozval k odpravi pomanjkljivosti.

V kolikor špediter storitve ne opravi, je upravičen do plačila za opravljeno delo ter do povračila vseh stroškov, ki so mu nastali, ali mu še bodo nastali (operativnih, režijskih in drugih, vključno s stroški, nastalimi zaradi posebnih manipulacij z blagom) in do povračila škode, ki mu je nastala, v kolikor pa storitev opravi, pa je upravičen do dodatnega plačila iz naslova večje zahtevnosti storitve ter do povračila vseh stroškov, ki jih je imel pri njenem izvajanju (operativnih, režijskih in drugih).

Šteje se, da je špediter izpolnil vse svoje obveznosti iz špedicijske pogodbe, če je skladno z določbo tega člena organiziral vrnitev tovora naročitelju oziroma ga uskladiščil, prodal ali uničil.

Naročitelj nima pravice od špediterja terjati odškodnine za škodo, ki jo je sam ali kdo drug utrpel zaradi špediterjevega ravnanja v skladu z določbo tega člena.

27. člen

(Posledice pomanjkljivosti naročila)

Naročitelj trpi vse posledice, ki nastanejo zaradi napačnega, nepopolnega, nejasnega, nečitljivega ali slabo čitljivega, protislovnega ali prepozno danega naročila.

28. člen

(Prepovedan tovor)

V kolikor naročitelj špediterju zaradi izvedbe špedicijskih storitev izroči mamila, tiho-tapsko blago ali druge snovi ali stvari, katerih posest oziroma promet je prepovedan, se šteje špedicijska pogodba v celoti za nično, naročitelj pa je dolžan nositi vse posledice takega dejanja ter špediterju plačati za že opravljeno delo, mu povrniti vso škodo (neposredno in posredno) ter mu povrniti vse stroške, ki mu nastanejo zaradi izvajanja špedicijskih storitev v zvezi s tem tovorom (operativnih, režijskih in drugih). Špediter je s tem tovorom dolžan ravnati skladno z veljavnimi predpisi, vse stroške in posledice tega ravnanja pa je dolžan nositi naročitelj.

29. člen

(Tovor, ki predstavlja grožnjo ali se kvari)

Če tovor ogroža varnost drugega blaga, premoženja, okolja ali ljudi ali sicer predstavlja potencialni vir nastanka kakršnekoli škode, pa niso izpolnjeni pogoji za uporabo določbe 26. člena teh pogojev, je špediter v primeru, če mu naročitelj v roku 3 dni od dne, ko ga je špediter k temu pozval, oziroma v drugem pisno dogovorjenem roku ne posreduje ustreznih navodil, na stroške in riziko naročitelja upravičen s tem tovorom ravnati tako, da se ta nevarnost zmanjša oziroma odstrani. Špediter ima pravico ta tovor tudi:

- vrniti naročitelju, če je to mogoče in smotrno, oziroma ga
- uskladiščiti v skladišču, ki je ustrezno glede na njegovo stanje, če pa to ni možno ali če bi bilo tako ravnanje nesmotrno, pa ga
- prodati na javni dražbi ali po morebitni borzni ali tržni ceni oziroma na drug primeren način ter s kupnino najprej poravnati stroške prodaje, nato vse svoje terjatve do naročitelja iz naslova špedicijske pogodbe, preostanek pa mora izročiti naročitelju; v kolikor tovara ni mogoče vrniti naročitelju ali ga uskladiščiti v drugem primernem skladišču ali ga prodati, ima špediter ta tovor pravico
- na stroške in riziko naročitelja na ustrezen način uničiti.

V kolikor okoliščine primera ne dopuščajo odlašanja, ima špediter pravico skladno z določbo prvega odstavka tega člena ravnati, ne da bi naročitelja predhodno pozval k podaji navodil.

Določbi prvega in drugega odstavka tega člena se uporabljata tudi v primeru, ko špediter na tovoru opazi znake kvarjenja ali druge spremembe, zaradi katerih bi se njegova vrednost lahko zmanjšala.

Naročitelj nima pravice od špediterja terjati odškodnine za škodo, ki jo je sam ali kdo drug utrpel zaradi špediterjevega ravnanja v skladu z določbo tega člena.

Šteje se, da je špediter izpolnil vse svoje obveznosti iz špedicijske pogodbe, če je skladno z določbo tega člena organiziral vrnitev tovora naročitelju oziroma ga uskladiščil, prodal ali uničil.

30. člen **(Izročitev listin in zagotovitev dostopa do tovora)**

Naročitelj mora pravočasno izročiti špediterju vse potrebne listine in mu zagotoviti vse potrebne podatke, potrebne za izvršitev naročila ter mu zagotoviti neoviran dostop do tovora. Naročitelj mora špediterju listine in podatke izročiti v fizični obliki. V kolikor jih izroči s pomočjo elektronske pošte, drugih sistemov za elektronsko komunikacijo ali drugih telekomunikacijskih sistemov, vse posledice takega ravnanja nosi sam.

Šteje se, da naročitelj ni pravočasno izročil špediterju potrebnih listin tudi v tistih primerih, kadar njegovi poslovni partnerji ali druge z njegove strani določene osebe niso pravočasno izročile špediterju takšnih listin.

Vse posledice zaradi nepravilnosti, neveljavnosti, nepristnosti ali drugih pomanjkljivosti listin ali njihove neizročitve ali nepravočasne oziroma nepravilne izročitve špediterju trpi naročitelj. Špediter ni dolžan preverjati pristnosti ali pravilnosti listin in za listine ne prevzema nikakršne odgovornosti. Špediter prav tako ne odgovarja za nepravilnosti ali pomanjkljivosti listin, ki jih je sam izpolnil na podlagi netočnih ali nepopolnih podatkov, ki mu jih je posredoval naročitelj ali oseba, ki jo je ta za to pooblastil.

Špediter ni dolžan izročiti ali prevzeti tovora z dajanjem garancije.

31. člen **(Plačilo stroškov in špediterjeve nagrade)**

Ko naročitelj s špediterjem sklene pogodbo, se šteje, da mu je dano tudi pooblastilo za plačilo voznin, davkov, carinskih dajatev, trošarin, škod, odkupnin in drugih stroškov, pri čemer za izvedbo teh plačil veljajo pravila, določena v XII. poglavju, zlasti pa določba 70. člena teh pogojev. Riziko in vse posledice izvedbe plačil nosi izključno naročitelj.

32. člen **(Navedba vrednosti odkupnine in sklicevanje na INCOTERMS ali podobne klavzule)**

Navedbe vrednosti odkupnine ni mogoče razlagati kot navedbe, na podlagi katere bi lahko naročitelj skladno z določbami veljavnih predpisov uveljavljal odškodninsko odgovornost špediterja, ki presega njegovo odgovornost po teh pogojih in veljavnih predpisih, če naročitelj ob navedbi vrednosti odkupnine ni jasno in izrecno zapisal, da ima ta navedba tudi ta namen in če za to niso izpolnjeni pogoji iz 83. člena teh pogojev.

V kolikor se špedicijska pogodba ali katerikoli dokument, ki ga je naročitelj ali oseba, ki jo je ta za to pooblastil, izročil špediterju, sklicuje na klavzule INCOTERMS ali druge podobne klavzule, s katerimi je naročitelj uredil poslovni odnos s svojim poslovnim partnerjem iz prodajne pogodbe ali druge pogodbe o dobavi blaga (zlasti način delitve stroškov, povezanih z izvedbo dostave blaga), take klavzule ne posegajo v obveznost naročitelja, da špediterju sam v celoti plača za njegovo storitev ter mu povrne vse stroške, pa čeprav skladno z dogovorjeno klavzulo INCOTERMS ali drugo podobno klavzulo v razmerju do svojega poslovnega partnerja iz prodajne pogodbe ali druge pogodbe o dobavi blaga ni dolžan nositi vseh oziroma dela stroškov, povezanih z odpravo tovora. Špediter je plačilo za svoje storitve ter povračilo stroškov dolžan terjati od prejemnika tovora le, če se je k temu zavezal skladno z določbo 33. člena teh pogojev.

33. člen **(Plačilo stroškov in špediterjevega plačila** **s strani prejemnika tovora ter pobiranje odkupnine)**

V kolikor se naročitelj in špediter pisno dogovorita, da bo špediter povračilo stroškov in plačilo za delo terjati od prejemnika tovora, je naročitelj slednjega dolžan k temu predhodno zavezati. V takem primeru špediter izterjavo opravlja na stroške in riziko naročitelja tako, da obdrži pravico zahtevati plačilo od naročitelja, če z njegovo izterjavo iz kakršnegakoli razloga ne bi uspel od prejemnika tovora. Naročitelj je v primeru, če mu špediter sporoči, da od naročiteljevega poslovnega partnerja ni uspel izterjati plačila in/ali stroškov, špediterju nemudoma dolžan te zneske plačati sam. Špediter ni dolžan podajati nikakršnih pojasnil o razlogih za neuspešnost izterjave od naročiteljevega poslovnega partnerja.

Dogovor med naročiteljem in špediterjem iz prejšnjega odstavka tega člena mora biti podan tako, da je nedvoumno jasno, da je špediter nanj pristal. Zgolj navedba na računu ali kateremkoli drugem dokumentu, ki ga je naročitelj ali oseba, ki jo je ta za to pooblastil, izročil špediterju, da je prejemnik tovora dolžan plačati špediterju za njegovo delo in mu povrniti njegove stroške, ne pomeni, da se je špediter zavezal izterjati plačilo za svoje delo in povračilo stroškov, ki jih je imel, od prejemnika. Špediter je k ravnanju iz prvega odstavka tega člena zavezan le, če špedicijska pogodba vsebuje klavzulo, da je špediter dolžan plačilo za svoje delo in povračilo svojih stroškov terjati od prejemnika tovora. Če taka klavzula ni zapisana izrecno in s popolnim opisom špediterjeve obveznosti, temveč le z uporabo kratic ali drugih simbolov, velja, da je špedicijska pogodba ne vsebuje.

Določba prejšnjega odstavka tega člena se smiselno uporablja tudi za pobiranje odkupnine ob predaji tovora prejemniku (COD).

V kolikor špediter pristane na to, da bo za naročitelja od prejemnika tovora pobral odkupnino (COD), je upravičen sprejeti gotovino ali ček ali odkupnino pobrati z uporabo sodobnih plačilnih metod. Dobljeni znesek je dolžan nakazati na katerikoli naročiteljev račun ali ga izročiti naročitelju na drug način in sicer v 8 dneh od dne, ko ga je prejel. Stroški nakazila ali izročitve dobljenega zneska gredo v breme naročitelja, prav tako pa

tudi negativne tečajne razlike od trenutka prejema tega zneska s strani špediterja do trenutka njegovega nakazila naročitelju, če je naročitelj zahteval nakazilo ali izročitev dobljenega zneska v valuti, ki ni enaka valuti, v kateri je bilo nakazilo izvedeno.

Špediter ne odgovarja za morebitne zlorabe pri izvedbi plačila, vključno z morebitnim plačilom z nekritim čekom ali drugim plačilom brez kritja ali s ponarejenim denarjem. Špediter odgovarja le za dostavo izterjanega zneska naročitelju, pri čemer odškodninski zahtevki zoper njega, ki presegajo omejitve, določene v teh pogojih, niso mogoči.

Špediter, ki izvršuje naročilo glede plačila naročiteljeve terjatve do prejemnika tovora, ne preizkuša utemeljenosti naloga in ne prevzema poročstva.

V primeru, če prejemnik tovora odkloni plačilo kupnine, se uporablja določba 42. člena teh pogojev.

Za storitve pobiranja plačil iz tega člena je naročitelj dolžan špediterju plačati posebno nadomestilo in mu povrniti vse stroške, ki jih je imel v zvezi s tem.

34. člen **(Sprememba naročila)**

Če naročitelj spremeni naročilo, se je špediter dolžan ravnati po spremenjenem naročilu le, v kolikor je to še mogoče. Špediter ne odgovarja za posledice, nastale s spremembo naročila. Naročitelj je dolžan špediterju povrniti vse stroške in škodo, nastalo zaradi spremembe naročila. Špediterju v primeru spremembe naročila pripada dodatek k prvotno dogovorjenemu plačilu, ki ustreza obsegu dodatnega dela, ki ga je špediter imel zaradi spremembe naročila.

35. člen **(Preklic naročila ali odstop od pogodbe)**

Če naročitelj prekliče dano naročilo ali odstopi od pogodbe, je dolžan špediterju plačati za že opravljene storitve, ter mu povrniti vse povzročene stroške, vključno s stroški, nastalimi zaradi preklica naročila ter škodo.

36. člen **(Smiselna uporaba določb tega poglavja)**

Določbe tega poglavja, razen pravil o obliki naročila iz 21. člena, se v primeru, če v posameznem členu ni izrecno določeno drugače, smiselno uporabljajo ne glede na način, uporabljen za sklenitev špedicijske pogodbe.

V. PREVZEM IN IZROČITEV TOVORA

37. člen

(Način prevzema in izročitve tovora)

Naročitelj je dolžan tovor špediterju izročiti skladno z določbami teh pogojev in sicer na dogovorjenem kraju, v dogovorjenem času, v dogovorjenem obsegu in na dogovorjeni način, sicer se šteje, da do izročitve ni prišlo.

Šteje se, da je bila s tem, ko je bil tovor izročen oziroma skladno z določbami veljavnih predpisov in teh pogojev dan na razpolago naročitelju, prevozniku ali drugi osebi, ki jo je naročitelj za to pooblastil, opravljena izročitev tovora. Špediter je dolžan izročiti tovor prevozniku ali drugi osebi, ki jo je naročitelj za to pooblastil, le, če ta oseba na nedvoumen način dokaže, da ima tako pooblastilo naročitelja.

Če ni drugače pisno dogovorjeno, špediter pri prevzemu tovora ni dolžan zagotavljati izvedbe njegovega nakladanja, pri predaji tovora pa ne njegovega razkladanja. V kolikor špediter ali oseba, ki deluje po naročilu, danem s strani špediterja, v takem primeru sodeluje pri izvajanju nakladanja ali razkladanja tovora, velja, da deluje na račun in riziko naročitelja.

Špediter ni dolžan predati tovora, v kolikor mu prejemnik njegovega prejema ni pripravljen pisno potrditi. Špediter prav tako ni dolžan prevzeti tovora, v kolikor mu ni dana možnost, da bi ga pregledal in osebi, od katere ga prevzema, podal pripombe v zvezi z njegovim stanjem, zamudo ali drugimi pomanjkljivostmi, znanimi pri prevzemu.

38. člen

(Prispetje poškodovanega tovora in postopek)

Če prispe v namembni kraj tovor, ki je vidno poškodovan ali z vidnim kosovnim primanjkljajem glede na navedbe iz dokumentov, na podlagi katerih je špediter tovor upravičen prevzeti, je špediter, če tamkaj zastopa naročitelja kot prejemnika, dolžan brez odlašanja obvestiti naročitelja, da je tovor poškodovan ali da je dostavljen s primanjkljajem, kakor tudi o vseh dogodkih, ki so za naročitelja pomembni ter ukreniti vse, kar je potrebno za obvarovanje njegovih pravic proti odgovorni osebi.

Če špediter na nekem prekladalnem kraju zastopa hkrati pošiljatelja in prejemnika, je dolžan s skrbnostjo dobrega gospodarja varovati interese obeh in ju obveščati o svojem delu.

39. člen

(Sklenitev prevozne pogodbe s strani naročitelja)

Če je naročitelj sklenil pogodbo za prevoz tovora po morju, je dolžan zagotoviti vse potrebne dogovore o pogojih izkrcaja in vkrcanja, ki so običajni v zadevnih pristaniščih ter ostale dogovore, ki so običajni za prevoz tovora po morju.

Naročitelj nosi stroške, nastale zaradi tega, ker pristaniška organizacija ali ladjar nista izpolnila pogojev za izkrcanje in vkrcanje in drugih pogojev, ki so v pristanišču običajni.

Določbi prvega in drugega odstavka tega člena se smiselno uporabljata tudi za primere, ko je naročitelj sklenil pogodbe za prevoz tovora z drugimi prevoznimi sredstvi.

Naročitelj nosi tudi stroške, ki so nastali zaradi zastojev v pristanišču, ranžirni in zbirni postaji ter na drugih prometnih točkah, pomanjkanja skladiščnega prostora, pomanjkanja prevoznih sredstev, čakanja ladje v pristanišču in drugih prevoznih sredstev v pristaniščih in na železniških postajah ali na drugih mestih, nadurnega dela, čakanja ob praznikih in nedeljah ter prekinitve dela zaradi slabih vremenskih razmer ali drugih okoliščin.

40. člen **(Špediterjeva odgovornost za obvestila prevoznikov)**

Špediter ne odgovarja za obvestila ladjarja in njegovega agenta o gibanju in prihodu ladje, kot tudi ne za obvestila drugih prevoznikov.

41. člen **(Posledice zamude pri prevoznih in drugih manipulacijah)**

Če ni izrecno drugače določeno v teh pogojih ali dogovorjeno v pisni obliki, vse posledice ovir in zamud pri prevozih tovora, njegovem prekladanju in drugih manipulacijah z njim ali storitvah v zvezi z njim nosi izključno naročitelj, s pravico regresa do povzročitelja zamude. To velja tudi za vse stroške, nastale zaradi izvajanja manipulacij s tovorom v času, ko so te storitve dražje (nočni čas, nedelje, prazniki in drugi dela prosti dnevi ipd.).

Špediter ne glede na druge določbe teh pogojev v nobenem primeru ne odgovarja za ovire in zamude, nastale zaradi okoliščin, za katere špediter ne odgovarja in okoliščin, ki se jim špediter ni mogel izogniti oziroma jih odvrniti ali zaradi višje sile, prav tako pa tudi ni dolžan trpeti posledic takih ovir ali zamud.

42. člen **(Ovire pri izročitvi tovora prejemniku)**

Če prejemnik odkloni prevzem tovora ali če izročitev tovora iz drugih razlogov ni mogoča, je špediter dolžan o tem obvestiti naročitelja in hkrati ukreniti vse, kar je potrebno za skladiščenje tovora, dokler ne prejme naknadnega naročila. V primeru, če špediter takega nakladnega naročila ne prejme v postavljenem roku, če ta ni postavljen, pa v roku 3 dni od dne, ko ga je zahteval, se smiselno uporablja določba 26. člena teh pogojev.

43. člen **(Ovire za odpravo tovora)**

Špediter po prejemu naročila ni dolžan preverjati, ali obstajajo zakonske ali druge ovire za odpravo tovora ter če obstajajo uvozne, izvozne, tranzitne ali druge podobne omejitve.

Morebitni stroški in škoda, ki s tem v zvezi nastanejo, grede v breme naročitelja.

VI. INSTRADACIJA

44. člen **(Pomanjkanje naročiteljevih navodil)**

Če naročilo oziroma pogodba ne vsebuje navodil o prevozni poti, o prevoznemu sredstvu, o izvajalcih in načinu izvajanja prevoza ter drugih manipulacij s tovorom ali storitev v zvezi z njim, špediter ni dolžan ravnati skladno z določbo 24. člena teh pogojev, temveč je pooblaščen, da izbere, oziroma kombinira elemente tako, kot to v danem primeru nalagajo naročiteljevi interesi. Ta določba ne omejuje špediterjeve pravice do odprave tovora z zbirno špedicijo.

45. člen **(Špediterjeva pravica določiti namembno postajo)**

Kadar se tovor odpravlja po železnici in naročitelj navede samo sedež in naslov oziroma prebivališče prejemnika brez označbe namembne postaje, ima špediter, če nima možnosti, da bi pravočasno dobil od naročitelja potrebna pojasnila, pravico tovor napotiti na tisto postajo, ki je za naročitelja najugodnejša. V tem primeru špediter ne odgovarja za izbiro postaje.

Določba tega člena se smiselno uporablja tudi za prevoze z ostalimi prevoznimi sredstvi.

46. člen **(Zbirna špedicija)**

Vse pošiljke lahko špediter odpravi z zbirno špedicijo, razen če mu je naročitelj to izrecno pisno prepovedal. Špediter ima pravico do razlike pri voznini, doseženi z zbirno špedicijo.

47. člen **(Potrdilo o prevzemu in odpravi tovora)**

Špediter je dolžan o prevzemu in odpravi tovora izdati naročitelju na njegovo zahtevo in stroške običajno špeditersko potrdilo. V kolikor ni drugače dogovorjeno, s takim potrdilom potrjuje le tip blaga (osnovni opis) in število tovorkov. V kolikor tako potrdilo vsebuje tudi druge attribute tovora, špediter za njihovo točnost ne odgovarja, razen če je za točnost teh podatkov prevzel izrecno jamstvo in za to tudi prejel dodatno plačilo.

48. člen **(Naročiteljeva dolžnost zavezati svojega partnerja k spoštovanju špediterjevih navodil)**

Naročitelj je v prodajni pogodbi ali drugi pogodbi o dobavi blaga dolžan zavezati svojega partnerja, da v zvezi s prevozom blaga in drugimi manipulacijami z njim ter v zvezi z opravljanjem drugih z njim povezanih storitev upošteva navodila, ki mu jih bo dal špediter. Špediter ne odgovarja za škodo, če se naročiteljev partner ne ravna po njegovih navodilih.

VII. ROKI

49. člen **(Špediterjeva odgovornost za zamudo)**

Špediter odgovarja za zamudo le, če se je za to izrecno in nedvoumno zavezal z izjavo v pisni obliki in za prevzem tega jamstva dobil tudi dodatno plačilo.

Dejstva, da naročilo vsebuje navedbo roka ali dejstva, da je špediter naročitelju sporočil podatke o predvidenem časovnem okviru izvedbe storitve, v nobenem primeru ni mogoče razlagati kot dokaz o tem, da se je špediter zavezal ta rok ali časovni okvir spoštovati.

VIII. PAKIRANJE IN PRIPRAVA TOVORA NA PREVOZ IN DRUGE MANIPULACIJE Z NJIM

50. člen **(Naročiteljeva dolžnost pakiranja in priprave tovora na prevoz in druge manipulacije z njim)**

Naročitelj oziroma njegov partner sta kot poznavalca tovora slednjega dolžna zapakirati z uporabo kakovostnih in zanesljivih sredstev za embaliranje ob upoštevanju njego-

vih lastnosti, veljavnih predpisov, lastnosti embalaže, zahtev prevozne poti, potrebnih manipulacij in storitev v zvezi s tovorom ter zahtev prevoznega sredstva in prevoznega načina ter ga tudi sicer temeljito pripraviti za zakonito in nemoteno izvajanje prevoza, prekladanja ter drugih manipulacij, vključno z manipulacijami, potrebnimi za prekladanje tovora med izvajanjem prevoza, njegovo skladiščenje in njegovo razkladanje na namembnem kraju. Tovor mora biti pripravljen tako, da je zaščiten pred vsemi običajnimi prevoznimi in manipulacijskimi riziki in da brez vidnih poškodb embalaže ni mogoče doseči njegove notranjosti.

51. člen **(Prevozna in trgovska embalaža)**

Embalaža, v katero je pakiran tovor, velja za prevožno embalažo, katere izključni namen je varovanje tovora pred prevoznimi in manipulacijskimi riziki in je ni mogoče šteti za trgovsko oziroma komercialno embalažo, ki ne sme biti podvržena poškodbam ob manipulaciji s tovorom in ki služi pakiranju blaga za potrebe njegove izročitve končnemu uporabniku ali za druge komercialne namene. V kolikor je tovor pakiran v komercialno embalažo, ki se pri izvajanju prevoznih in drugih manipulacij z njim ne sme poškodovati, ga mora naročitelj pred izročitvijo špediterju dodatno zapakirati skladno z določbo 50. člena teh pogojev, da se preprečijo poškodbe, do katerih pri teh manipulacijah lahko pride.

Špediter ne odgovarja za poškodbe embalaže, do katerih pride zaradi izvajanja prevoza in drugih manipulacij s tovorom.

52. člen **(Označevanje tovorkov)**

Naročitelj oziroma njegov partner sta dolžna na pregleden, trajen in zanesljiv način označiti vsak tovorek tako, da je tovorke mogoče enostavno razločevati med seboj in jih identificirati na prevoznih, zavarovalnih in drugih listinah, ki se uporabljajo pri manipulaciji s tovorom. V kolikor več tovorkov predstavlja eno pošiljko, mora biti na vsakem tovoru to jasno označeno. Prav tako sta naročitelj oziroma njegov poslovni partner dolžna na vsak tovorek na pregleden in trajen način namestiti podatke o prejemniku in druge oznake, potrebne za zagotovitev primerne, varne in zakonite manipulacije z njim ter za pravilno izvedbo špedicijskega posla (zlasti oznake, iz katerih je razvidno, da gre za nevaren tovor, tovor z veliko maso, tovor, ki zahteva poseben način manipulacije, če pa je to potrebno za zakonito in pravilno izvedbo špedicijske storitve, pa tudi oznake, iz katerih je razvidno, da gre za tovor, opredeljen v 25. členu teh pogojev). Vse stare oznake, ki se na tovoru nahajajo od prejšnjih manipulacij z njim in niso več aktualne, morajo biti odstranjene ali obdelane tako, da niso več čitljive.

53. člen **(Opozorilo na pomanjkljivosti pri pakiranju)**

Če špediter ugotovi, da tovor ni pakiran ali sicer pripravljen za prevoz in izvajanje drugih manipulacij tako, kot bi moral biti, je dolžan opozoriti naročitelja na te pomanjkljivosti, slednji pa je to opozorilo dolžan upoštevati ter izvesti ponovno pakiranje. Špediter ni dolžan ugotavljati takih nepravilnosti, če ni imel možnosti izvesti pregleda pakiranja tovora.

Ta določba se uporablja tudi v primeru, ko špediter naročitelja pozove k izvedbi sprememb v načinu pakiranja ali pripravi tovora zaradi zagotovitve lažje, varnejše ali bolj ekonomične izvedbe špedicijske storitve v zvezi z njim. Če naročitelj ali po njegovem pooblastilu špediter v takem primeru več tovorkov združi v enega, se šteje, da je predmet špedicijske pogodbe en tovorek.

Če bi zaradi čakanja na to, da naročitelj pomanjkljivosti iz prvega odstavka tega člena odpravi, naročitelj lahko utrpel škodo, jih je špediter dolžan odpraviti sam na naročiteljev račun, vendar ne odgovarja za morebitne posledice takega ravnanja. Špediter ima pri odpravljanju teh pomanjkljivosti med drugim tudi pravico razdreti s strani naročitelja pripravljene tovorke in iz njih narediti več manjših tovorkov, pri čemer pa se za določanje višine njegove odškodninske odgovornosti do naročitelja ne glede na to šteje, da do povečanja števila tovorkov ni prišlo.

Špediter je dolžan pakirati tovor samo, če je to obveznost izrecno sprejel v pisni obliki ter v primeru iz tretjega odstavka tega člena.

Špediter ne odgovarja za posledice, ki bi lahko nastale, če naročitelj oziroma njegov partner ne bi ravnala skladno z določbami teh pogojev, ki se nanašajo na obveznost pakiranja.

IX. UGOTAVLJANJE KOLIČINE IN KAKOVOSTI TOVORA TER JEMANJE VZORCEV

54. člen **(Količinski prevzem in predaja tovora)**

Špediter prevzema in predaja tovorke le po njihovem številu upošteva navedbe na dokumentih, na podlagi katerih jih je upravičen prevzeti ali predati in ne odgovarja za količino, kakovost, naravo, vrednost in vsebino blaga znotraj posameznega tovorka, niti za njihovo maso, volumen ali druge attribute, pa čeprav so ti navedeni na dokumentih.

Špediter prevzema in predaja razsut tovor in drugo nekosovno blago le skladno z navodili naročitelja in ne odgovarja za njegovo maso, količino, vsebino, naravo ali druge attribute.

Tehtanje, merjenje in podrobnejše štetje ali pregledovanje tovora in tovorkov se opravlja le po naročilu ter v primeru očitne poškodbe in primanjkljaja tovora in sicer z zaračunavanjem stroškov ter dodatnega plačila.

Špediter lahko tehta tovor tudi pri osebi, ki se ukvarja s tem poslom.

55. člen **(Kvalitativni prevzem tovora)**

Špediter ne nastopa v vlogi poznavalca tovora in ni dolžan dajati ugovorov v zvezi z njegovim stanjem, naravo ali kvaliteto ali v zvezi s tem, da tovor ne ustreza specifikaciji ali vzorcem, razen če so pomanjkljivosti tovora take, da jih ne bi mogla spregledati nobena povprečno skrbna oseba.

56. člen **(Jemanje vzorcev)**

Špediter jemlje in odpravlja vzorce le po naročiteljevem naročilu ali na zahtevo pristojnih državnih organov in drugih nosilcev javnih pooblastil. Naročitelj je špediterju dolžan povrniti vse stroške, povezane s temi opravili ter mu plačati dodatno plačilo za njihovo izvedbo.

Špediter odgovarja le za jemanje vzorcev iz partije tovora, ki mu je bila označena.

X. CARINJENJE

57. člen **(Domneva obstoja naloga za izvedbo carinskih formalnosti)**

Šteje se, da je z izdajo naročila za odpravo ali prevzem tovora, dan tudi nalog za izvedbo carinskih formalnosti, če ni izrecno in pisno drugače dogovorjeno. Špediter je dolžan izvajati poročanje v sistemu Intrastat le na podlagi izrecnega pisnega naročila.

Če kraj izvajanja carinskih formalnosti ni določen v naročilu oziroma v predpisih, ga lahko določi špediter.

58. člen **(Način zastopanja)**

Če ni drugače pisno dogovorjeno, v postopku izvajanja carinskih formalnosti špediter nastopa v imenu in na račun naročitelja (neposredno zastopanje), če pa za to niso izpolnjeni vsi predpisani pogoji, pa v svojem imenu in na račun naročitelja (posredno zastopanje). Špediter vlaga carinske listine in opravlja druga dejanja v carinskem postopku na podlagi naročiteljevih podatkov oziroma podatkov njegovega poslovnega partnerja. Špediter ne odgovarja, če se podatki ne bi ujemali z dejanskim stanjem. Naročitelj je

dolžan povrniti špediterju in njegovi odgovorni osebi s tem nastalo škodo, vključno z vsemi naknadno odmerjenimi dajatvami in kaznimi ter stroški postopkov in sicer na špediterjev prvi poziv ter brez kakršnihkoli omejitev, pridržkov, pogojev ali ugovorov.

V kolikor je zoper špediterja zaradi napak v postopku carinjenja iz prejšnjega odstavka tega člena ali zaradi drugih napak, za katere špediter ne odgovarja, začel upravni, kazenski, prekrškovni ali drug postopek, se šteje, da se ta postopek vodi na račun naročitelja ter na njegove stroške. Naročitelj je dolžan špediterju v takem primeru dati na razpolago vsa sredstva, dokaze in listine, potrebne v takem postopku, ga na njegov prvi poziv razbremeniti vseh njegovih posledic ter mu tudi sicer nuditi vso potrebno pomoč.

59. člen **(Naročiteljeva organizacija prevoza** **in/ali drugih storitev v primeru odložnih carinskih postopkov** **in carinskih postopkov z ekonomskim učinkom)**

V kolikor špediter za naročitelja opravlja posle carinskega zastopanja, ne pa tudi organizacije prevoza tovora in/ali drugih storitev, je naročitelj v primeru, ko so v zvezi s tem tovorom v teku odložni carinski postopki in carinski postopki z ekonomskim učinkom, dolžan zagotoviti, da prevoznik in druge osebe, ki imajo tovor v posesti, z njim in z vso carinsko ter drugo dokumentacijo, potrebno za pravilen zaključek teh postopkov, ravnajo skladno z veljavnimi carinskimi predpisi ter navodili špediterja in da prevoz ter druge storitve izvedejo tako, da se ti postopki pravočasno in na predpisan način zaključijo.

V primeru neizpolnitve obveznosti iz prvega odstavka tega člena je naročitelj dolžan špediterju in njegovi odgovorni osebi povrniti vso s tem nastalo škodo, vključno z vsemi naknadno odmerjenimi dajatvami in kaznimi ter stroški postopkov in sicer na špediterjev prvi poziv ter brez kakršnihkoli omejitev, pridržkov, pogojev ali ugovorov.

60. člen **(Plačilo za opravljanje poslov carinskega zastopanja)**

Plačilo, ki špediterju pripada za organizacijo prevoza ali drugih storitev, še ne vključuje plačila za opravljanje poslov carinskega zastopanja. To plačilo špediterju vselej pripada poleg plačila za organizacijo prevoza ali drugih storitev.

XI. ZAVAROVANJE TOVORA

61. člen **(Zavarovanje tovora na podlagi izrecnega naročila)**

Špediter je dolžan zagotoviti zavarovanje tovora le na podlagi izrecnega naročila za vsako posamezno odpravo. Navedba vrednosti tovora v naročilu se ne šteje kot naročilo

za njegovo zavarovanje. Prav tako z zavarovanjem ene pošiljke ne nastane obveznost špediterja, da zavaruje poznejše pošiljke svojega naročitelja.

V primeru, če je špediter prevzel obveznost zagotovitve zavarovanja, se ta obveznost vselej nanaša le na sklenitev kargo zavarovanja (zavarovanja tovora), ne pa tudi na sklenitev drugih zavarovanj.

62. člen

(Sklenitev pogodbe o zavarovanju)

Naročilo za zavarovanje tovora mora biti podano preden špediter začne opravljati špedicijsko storitev in mora vsebovati jasno navedbo želenega zavarovalnega kritja ter rizikov, ki naj jih zavarovanje zajema. Kadar v naročilu za zavarovanje ti riziki niso navedeni, je špediter dolžan zavarovati tovor le za običajne prevozne rizike. Špediter ima pravico izbrati način sklenitve zavarovanja in zavarovalnico po lastni presoji ter pristati na splošne pogoje, ki jih zavarovalnica postavlja za sklenitev zavarovanja, vključno s pogoji, ki se nanašajo na običajno odbitno franšizo, razen če mu naročitelj da drugačna pisna navodila. Špediter ni dolžan skleniti zavarovanja, ki ne izpolnjuje pogoja iz 65. člena teh pogojev.

Špediter je upravičen do posebnega plačila za zagotovitev zavarovanja tovora in do povračila stroškov v zvezi s tem. Ta določba se smiselno uporablja tudi za vse posle, ki jih špediter opravi v zvezi s takim zavarovanjem (npr. vlaganje zahtevkov na izplačilo zavarovalnine ipd.).

63. člen

(Posledice zaradi odsotnosti zavarovanja ali pomanjkljivosti v zvezi z njim)

Če naročitelj ni dal naročila za zavarovanje tovora, ali pa je naročil le delno zavarovanje, ali pa je podal napačne podatke, potrebne za zavarovanje oziroma je kako drugače onemogočil sklenitev zavarovanja ali povzročil nastanek njegovih pomanjkljivosti, sam trpi vse škodljive posledice, ki zaradi tega nastanejo. To velja tudi, če v primeru nastanka zavarovalnega primera ne uveljavi svojih pravic iz zavarovanja.

64. člen

(Vloga špediterja v primeru nastopa zavarovalnega primera)

Če je špediter na podlagi naročiteljevega naročila sklenil pogodbo o zavarovanju tovora in pride do nastopa zavarovalnega primera, je naročitelj v primeru, če zahtevek na izplačilo zavarovalnine nasproti zavarovalnici postavi špediter, upravičen le do tistega zneska, ki ga špediter iz naslova zavarovanja tovora prejme od zavarovalnice. Špediter s sklenitvijo pogodbe o zavarovanju ne prevzame nikakršne odgovornosti za izplačilo zavarovalnin za škode, ki so krite s tem zavarovanjem.

Špediter v nobenem primeru ni dolžan v imenu naročitelja postavljati zahtevka iz prvega odstavka tega člena.

V kolikor je špediter zavarovanje sklenil tako, da je nasproti zavarovalnici sam nastopal kot zavarovatelj, se v primeru nastopa zavarovalnega primera šteje, da je vse obveznosti do naročitelja v zvezi s to pogodbo izpolnil v trenutku, ko mu je omogočil uveljavljanje pravic iz te pogodbe nasproti zavarovalnici.

65. člen

(Vsebina zavarovalne pogodbe, ki jo sklene naročitelj sam)

Če pogodbo za zavarovanje tovora sklene naročitelj sam, je dolžan zagotoviti, da ta pogodba vsebuje klavzulo o izključitvi regresne pravice zavarovalnice do špediterja, sicer nosi vse stroške in škodo, ki zaradi tega nastane špediterju.

XII. PLAČILO ZA STORITVE IN POVRAČILO STROŠKOV

66. člen

(Obveznost plačila za opravljene storitve in povračila stroškov)

Naročitelj je špediterju dolžan plačati za vsako opravljeno storitev ter mu povrniti vse stroške v povezavi s špedicijsko pogodbo in njeno izvedbo (vključno s tistimi, ki se pokažejo po tem, ko je bila celotna storitev že opravljena in je naročitelj špediterju že poravnal vse do tedaj znane stroške v zvezi z njo; taki stroški so npr. naknadno obračunane carinske in druge dajatve, premalo zaračunana voznina, skladiščnina, plačilo za podaljšani postanek ipd.).

Obveznost iz prvega odstavka tega člena ima naročitelj tudi, če špediter iz razlogov za katere odgovarja naročitelj ali osebe, ki delajo po njegovem naročilu, storitve ni opravil ali je ni opravil v celoti.

Naročitelj je špediterju stroške dolžan povrniti po tem, ko nastanejo in sicer na njegov prvi poziv, pri čemer ta določba ne posega v špediterjevo pravico iz 70. člena teh pogojev.

Med stroške iz prvega odstavka tega člena spadajo zlasti, a ne izključno, carinske dajatve, davki in trošarine, druge javne dajatve (tudi takse, carinske dajatve, davki, trošarine in druge javne dajatve, ki so obračunane naknadno), zavarovalne premije, stroški bančne garancije, prispevki generalne havarije ter stroški za izvedbo inšpekcijskih in drugih pregledov, plačila tretjim osebam, ki so sodelovale pri izvajanju storitev, drugi izdatki, ki jih tretje osebe zoper špediterja uveljavljajo iz naslova posedovanja tovora na račun tretjega in drugi stroški, ki jih špediter skladno s pogodbo ni dolžan nositi.

67. člen **(Način določanja višine plačila)**

Višina plačila se določa s tarifo ali pogodbo. V kolikor ta tarifa ni dogovorjena, pogodba pa ne opredeljuje zneska plačila, velja špediterjeva tarifa, ki je veljala v času, ko je bila posamezna špedicijska storitev opravljena.

Če se lahko plačilo po tarifi določi bodisi na podlagi mase, volumna, dolžine, površine, števila kosov ali drugih karakteristik tovora in ni drugačnega pisnega dogovora ali klavzule v tarifi, se plačilo določi na podlagi kriterija, ki ga špediter uporablja v podobnih primerih.

Če se plačilo določi v sorazmerju z vrednostjo tovora, opredeljenega na računu ali drugi dokumentaciji, ki je špediterju izročena, mora biti vrednost na takem računu poštena in ne sme biti zmanjšana za morebitne popuste ali druge ugodnosti. V kolikor vrednost na računu odstopa od poštene tržne vrednosti, lahko špediter pri določanju višine plačila upošteva pošteno tržno vrednost. Poštena tržna vrednost se določa po borzni ceni, če take cene ni, pa po dnevnih tržnih cenah, če pa ni ne borzne in ne dnevne tržne cene, pa na podlagi običajne tržne vrednosti, pri čemer se kot relevanten trenutek in kraj za določanje vrednosti upoštevata trenutek in kraj izročitve tovora špediterju.

Če se plačilo določi na podlagi drugih podatkov in ne vrednosti tovora in špediter ugotovi, da mu je naročitelj ali oseba, ki jo je ta za to pooblastil, sporočil napačne podatke, je špediter upravičen na naročiteljeve stroške pridobiti prave podatke ter nato višino plačila določiti z njihovo uporabo, naročitelju pa zaračunati tudi vso škodo, ki jo je zaradi posredovanja napačnih podatkov utrpel.

Špediter je ne glede na druge določbe teh pogojev upravičen preverjati tržno vrednost tovora ter druge podatke o njem tudi v drugih primerih, ko te podatke potrebuje za pravilno izvedbo špedicijskega posla in ne le v primeru, ko jih potrebuje za določitev višine plačila.

68. člen **(Valuta plačil)**

Naročitelj je vsa plačila špediterju dolžan opraviti v uradni valuti Republike Slovenije.

Ne glede na določbo prvega odstavka tega člena je špediter upravičen za svoje storitve, opravljene tujemu naročitelju, zahtevati plačilo in povračilo svojih stroškov v valuti države v kateri je sedež naročitelja ali po dogovoru v kakšni drugi valuti. V kolikor je plačilo in povračilo stroškov dogovorjeno v tuji valuti, gredo vse tečajne razlike med tujo valuto in valuto, ki je v uporabi v Republiki Sloveniji, od trenutka, ko je prišlo do dogovora o plačilu oziroma od trenutka, ko so špediterju nastali stroški, pa do izvedbe plačila oziroma povračila stroškov, v breme naročitelja.

69. člen **(Rok za plačilo računa in ugovori na račun)**

Špediterjev račun je potrebno plačati v roku osmih dni po njegovi izdaji, če ni drugače dogovorjeno v pisni obliki.

Ugovore na račun je potrebno vložiti v enakem roku, sicer se šteje, da takih ugovorov ni. V primeru zamude s plačilom špediterju pripadajo zamudne obresti v višini predpisane obrestne mere zamudnih obresti, če pa ta obrestna mera ni predpisana, pa v višini 15% letno.

Kadar se ugovor nanaša le na del računa, je nesporni del računa potrebno plačati v roku osmih dni od dne njegove izdaje.

70. člen **(Predujem)**

Špediter ima pravico od naročitelja kadarkoli zahtevati predujem za plačilo vseh pričakovanih stroškov ali pa zagotovitev brezpogojne bančne garancije prvovrstne banke s sedežem v Republiki Sloveniji, unovčljive brez ugovora na prvi poziv špediterja za znesek pričakovanih stroškov. V primeru špediterjevega dvoma v plačilno sposobnost naročitelja se ta določba uporablja tudi za izvedbo plačila za opravljeno špedicijsko storitev. Ta določba ne posega v pravico špediterja, da namesto predujma ali bančne garancije pristane na drug ustrezen način zavarovanja njegovih terjatev (npr. poroštvo, zastava, menica ipd.).

V primeru, če naročitelj odkloni plačilo predujma ali zagotovitev bančne garancije oziroma zagotovitev druge oblike zavarovanja, če je špediter nanjo pristal v pisni obliki ter v primeru, če naročitelj odkloni izvedbo plačila, zapadlega v času veljavnosti pogodbe, ima špediter v primeru, če naročitelj ne ravna skladno z določbo prvega odstavka tega člena niti v roku 8 dni od dne, ko ga je k temu pozval, oziroma v krajšem roku, če tak rok terjajo okoliščine primera, brez kakršnihkoli posledic zanj pravico nemudoma odstopiti od pogodbe z navadno izjavo, poslano naročitelju, pri čemer pa ohrani pravico do plačila za opravljeno delo ter pravico do povračila vseh stroškov. Če špediter ne izkoristi pravice do odstopa od pogodbe, ni dolžan izpolnjevati špedicijske pogodbe, dokler ne prejme predujma ali bančne garancije ali druge oblike zavarovanja, na katero je pripravljen pristati, če pa špedicijsko pogodbo izpolni, pa vse posledice takega ravnanja bremenijo izključno naročitelja.

71. člen **(Špediterjevo zalaganje lastnih sredstev za naročitelja)**

Kadar špediter pri izvršitvi naročila založi lastna sredstva, je upravičen do posebnega plačila za to opravilo ter do provizije za založena sredstva, katere višina se določa s tarifo, oziroma po sporazumu z naročiteljem. Če take tarife ali sporazuma ni, je špediter upravičen do provizije v višini 12% letno, računano od vrednosti založenih sredstev od

trenutka, ko so bila založena, do trenutka, ko nastopi naročiteljeva dolžnost za njihovo povračilo špediterju, če pa je špediter za zagotovitev založitve moral najeti kredit, pa je upravičen do povračila vseh stroškov, ki jih je imel s takim kreditom, pri čemer tako povračilo v nobenem primeru ne more biti nižje od 12% letno, računano od vrednosti založenih sredstev.

XIII. ODGOVORNOST ŠPEDITERJA

72. člen

(Dolžnostno ravnanje)

Špediter je ob vsaki priložnosti dolžan ravnati tako, kot to nalagajo naročiteljevi interesi in kot dober gospodarstvenik.

73. člen

(Odgovornost špediterja za druge in omejitev odgovornosti drugih)

Špediter odgovarja le za izbiro prevoznika ter za izbiro drugih, s katerimi je v izpolnjevanju naročila sklenil pogodbo (uskладиščenje, prekladanje, sortiranje, pakiranje, zavarovanje tovora, ipd.), ne pa tudi za njihovo delo, razen v primerih iz določbe tretjega odstavka 5. člena teh pogojev.

Določbe teh pogojev o odgovornosti špediterja se smiselno uporabljajo tudi za odgovornost oseb, ki so delovale za špediterja ali jih je špediter pritegnil k izvrševanju špedicijske pogodbe ter za zahteve naročitelja in tretjih do teh oseb. Kumulativna odgovornost špediterja in teh oseb ne more preseči zneska, do katerega je omejena odškodninska odgovornost špediterja.

74. člen

(Špediter kot izvajalec prevoza ali drugih storitev)

Špediter ima vselej pravico sam opraviti prevoz tovora in/ali vse druge posle, potrebne pri izvajanju špedicijske storitve. V takem primeru ima pravice in obveznosti, ki izhajajo iz predpisov oziroma so običajne za opravljanje tovrstnih poslov.

Če je špediter po naročilu izrecno ali molče pooblaščen zaupati izpolnitev naročila drugemu špediterju ali če je to v naročiteljevem interesu, je odgovoren samo za izbiro drugega špediterja. Šteje se, da ima špediter tako pooblastilo zlasti, vendar ne izključno, v primeru organizacije zbirne špedicije ter v primeru, ko je del posla potrebno izvesti na območjih ali področjih, ki jih špediter s svojo poslovno mrežo ne pokriva neposredno, jih pa pokriva drug špediter ali na področjih, ki jih zaradi ugodnejšega položaja na trgu bolj učinkovito pokriva drug špediter.

75. člen

(Primeri, v katerih je špediterjeva odgovornost izključena)

Špediter ne odgovarja za škodo in ni dolžan trpeti nikakršnih posledic, nastalih zaradi:

- hib ali narave tovora (vključno z običajnim razsipom, kalom in kvarom, sušenjem, puščanjem, razkrojem, lomom, rjavenjem, izgubo teže ali prostornine, črvihostjo, gnitjem, plesnivostjo, delovanjem mrčesa ali drugih škodljivcev ipd.),
- nepravilnega ali pomanjkljivega pakiranja oziroma priprave tovora,
- upoštevanja navodil in podatkov v zvezi s tovorom, ki jih je dobil od naročitelja ali osebe, ki jo je ta za to pooblastil,
- neizročitve ali nepravočasne izročitve tovora s strani naročitelja,
- izročitve tovora v nasprotju z dogovorom,
- drugih dejanj ali opustitev naročitelja, njegovih izpolnitvenih pomočnikov in oseb, ki jih on najame ali oseb, ki imajo pravico razpolagati s tovorom,
- naročiteljevega nespoštovanja določb veljavnih predpisov, teh pogojev, pogodbe ter navodil špediterja in drugih oseb, ki jih je špediter pooblastil za dajanje navodil,
- manipulacij s tovorom, nakladanja, zlaganja ali razkladanja tovora in drugih dejanj, povezanih s tovorom, ki jih opravi naročitelj ali njegovi izpolnitveni pomočniki,
- višje sile, vremenskih razmer in pojavov, naravnih in drugih nesreč, požara, stavk, zaustavitve ali izključitve delovne sile, zaustavitve, zaplembe ali zasega tovora, ostalih oblastnih ukrepov, odredb ali priporočil državnih organov ali drugih nosilcev javnih pooblastil, administrativnih ali pravnih ovir, nemirov, uporov, revolucij, spopadov, vojne, nasilnih dejanj, ropov ali tatvin,
- ravnanja skladno z veljavnimi predpisi, špedicijsko pogodbo in/ ali temi pogoji,
- drugih dejstev, vzrokov ali dogodkov, ki so kot ekskulpacijski razlogi opredeljeni v veljavnih predpisih ter dejstev, vzrokov ali dogodkov, za katere špediter ne odgovarja ali dogodkov, ki se jim špediter ni mogel izogniti in njihovih posledic ni mogel preprečiti.

Če obstaja možnost, da je škoda nastala zaradi katerekoli od okoliščin, naštetih v prvem odstavku tega člena, se šteje, da je nastala zaradi nje.

Špediter ne odgovarja za škodo, nastalo zaradi svetovanja ali dejanj, ki jih je za naročitelja opravil brezplačno.

Špediter ne odgovarja za nepravilno obračunane vozne ter carinske in druge javne davščine.

76. člen **(Nemožnost izpolnitve špedicijske pogodbe)**

V kolikor špediter zaradi kateregakoli dogodka ali okoliščine iz prvega odstavka 75. člena ali lastnosti tovora ali drugih dogodkov, na katere nima vpliva, ne more izpolniti svojih obveznosti iz špedicijske pogodbe, pa so ovire take, da jih je mogoče odpraviti, lahko naročitelja pozove, da mu v roku 3 dni po prejemu poziva poda navodila za njihovo odpravo, pri čemer ima v primeru, če takih navodil ne prejme, ali v primeru, če na prejem takih navodil ne more čakati, ovire pravico na riziko in stroške naročitelja odpraviti sam.

V primeru, če so ovire take, da jih ni mogoče odpraviti, je špediter prost svojih obveznosti iz špedicijske pogodbe, mora pa naročitelju na njegov riziko in stroške dati tovor na razpolago oziroma ga uskladiščiti, če pa to ne bi bilo mogoče ali smotno, pa ga ima pravico prodati po borzni ali tržni ceni ter s kupnino najprej poravnati stroške prodaje, nato vse svoje terjatve do naročitelja iz naslova špedicijske pogodbe, preostanek pa izročiti naročitelju. V takem primeru se obveznosti strank špedicijske pogodbe presojujejo po pravilih o nemožnosti izpolnitve.

V kolikor so ovire zgolj začasne narave, špediterjeve obveznosti v času njihovega trajanja mirujejo. Šteje se, da so ovire začasne narave, če njihovo trajanje ne presega 15 dni.

77. člen **(Naročiteljeva dolžnost obvarovati špediterja pred zahtevki tretjih oseb in posledicami izvrševanja špedicijske pogodbe)**

Naročitelj je špediterja in vse njegove zastopnike, pooblaščenca in druge osebe, ki delujejo po njegovem naročilu ali v njegovem imenu, v primeru, ko špediter nastopa v imenu in na račun naročitelja oziroma v svojem imenu in na račun naročitelja, dolžan obvarovati pred vsemi zahtevki tretjih oseb (vključno z državo in drugimi nosilci javnih pooblastil) in na njihov prvi poziv vstopiti namesto njih v vse postopke, ki jih tretje osebe sprožijo zoper njih ter jih obvarovati pred vsemi negativnimi posledicami, ki jih utrpijo v povezavi z izpolnjevanjem špedicijske pogodbe in jih skladno z določbami veljavnih predpisov, teh pogojev in pogodbe niso dolžni trpeti.

Določba prejšnjega odstavka tega člena se uporablja tudi v primeru, ko špediter nastopa v svojem imenu in na svoj račun in v drugih primerih, če je postavitelj teh zahtevkov ali začetek teh postopkov povzročila naročiteljeva kršitev veljavnih predpisov, katerekoli določbe špedicijske pogodbe ali teh pogojev ali dejstvo, da je špediter ravnal skladno z navodili naročitelja ali osebe, ki jo je ta za to pooblastil oziroma če je postavitelj teh zahtevkov ali začetek teh postopkov povzročil dogodek, za katerega odgovarja naročitelj. Določba prejšnjega odstavka tega člena se vselej uporablja tudi v primerih, ko špediter skladno z določbami veljavnih predpisov, pogodbe in teh pogojev ni dolžan izpolniti teh zahtevkov tretjih oseb, zlasti pa v primerih obveznosti plačila carinskih in davčnih obveznosti, trošarin, drugih javnih dajatev, obveznosti do bank in zavarovalnic, prispevkov generalne havarije, obresti, kazni, odškodnin ipd.

Naročitelj je špediterju dolžan na njegov prvi poziv povrniti škodo, ki jo slednji utrpi zaradi naročiteljevega ravnanja v nasprotju z veljavnimi predpisi, pogodbo ali temi pogoji ali zaradi tovrstnega ravnanja osebe, ki deluje po naročiteljevem navodilu.

78. člen **(Vodenje postopkov za naročitelja)**

Špediter je dolžan vlagati reklamacije, pritožbe, odškodninske zahtevke in voditi razne formalne postopke v korist naročitelja le, če to naročitelj izrecno zahteva. V tem primeru je naročitelj dolžan izročiti špediterju vse potrebne prevozne, carinske in druge listine ter mu posredovati vse potrebne informacije, potrebne za vložitev reklamacije.

Špediter postopke iz prejšnjega odstavka tega člena vodi na račun, stroške in riziko naročitelja ter je upravičen do posebnega plačila iz tega naslova.

79. člen **(Omejitev špediterjeve odgovornosti)**

V kolikor je temelj špediterjeve odgovornosti nedvomno dokazan, špediter v mejah, določenih v teh pogojih, odgovarja le za navadno premoženjsko škodo (zmanjšanje premoženja), ne pa tudi za nematerialno škodo, izgubljeni dobiček ali dohodek oziroma prihodek in morebitne druge škode, ki jih je utrpel naročitelj ali njegov poslovni partner, kot so zlasti, a ne izključno stroški za izvedbo nadomestnih storitev, izgubljeni dohodek zaradi nemožnosti uporabe, zamudne obresti, pogodbene in druge kazni, druge odmene, ki jih je moral plačati, škoda zaradi obratovalnega zastoja, izguba tržišča, posla, poslovne priložnosti ali poslovnega partnerja, škoda zaradi okrnitve ugleda ali dobrega imena ter druge posredne in posledične škode.

80. člen **(Obseg špediterjeve odgovornosti** **v primeru poškodbe, uničenja ali izgube tovora)**

V kolikor je špediter odgovoren za poškodbo, uničenje ali izgubo tovora, je njegova odgovornost omejena na višino, ki jo določa posamezna konvencija ali nacionalna zakonodaja ali drug predpis, ki ureja vrsto prevoza oziroma manipulacije ali storitve, pri kateri je do poškodbe, uničenja ali izgube tovora prišlo. V primeru, ko je škodo povzročila oseba, za katero špediter odgovarja, špediterjeva odgovornost v nobenem primeru ne more preseči obsega odgovornosti, ki je določen za to osebo, če je ta obseg manjši od obsega špediterjeve odgovornosti, določenega v teh pogojih.

Če ni drugače dogovorjeno oziroma če drugače ne izhaja iz veljavnih predpisov, se v primeru, ko špediter ne poda izjave, da je tovor izgubljen, šteje, da je prišlo do izgube tovora, če slednji ni bil dostavljen prejemniku v roku 30 dni od dne, ko bi moral biti dostavljen, če pa dostavni rok ni bil dogovorjen, pa v roku 90 dni od dne, ko ga je špediter prevzel.

V kolikor se v primeru poškodbe, uničenja ali izgube tovora določil katerekoli konvencije ali nacionalne zakonodaje ali drugega predpisa iz prvega odstavka tega člena ne da uporabiti, ali v kolikor tak predpis ne obstaja, ali v kolikor obstaja, pa ne vsebuje določb o omejitvi višine odgovornosti, oziroma v kolikor se mesta nastanka škode in s tem določitve konvencije ali nacionalne zakonodaje ali drugega predpisa iz prvega odstavka tega člena ne da z gotovostjo določiti, je odgovornost špediterja omejena na znesek 5 SDR na kilogram bruto mase poškodovanega, uničenega ali izgubljenega tovora, v primeru multimodalnega prevoza, če v predpisih, ki ga urejajo, ni določeno drugače, pa na znesek 2 SDR na kilogram bruto mase poškodovanega, uničenega ali izgubljenega tovora.

Če ni določeno drugače, odškodnina iz tega naslova ne more preseči zneska 25.000 SDR na posamezen škodni dogodek oziroma več škodnih dogodkov, ki imajo isti vzrok škode.

V kolikor pride do popolne oziroma delne poškodbe, uničenja ali izgube tovora, naročitelj nima pravice do odškodnine iz naslova zamude, temveč izključno pravico do odškodnine, določene v tem členu, če so za to izpolnjene vse predpostavke, določene v veljavnih predpisih in teh pogojih.

81. člen **(Obseg špediterjeve odgovornosti v primeru zamude)**

V kolikor je špediter prevzel zavezo za spoštovanje roka, je njegova odgovornost za zamudo omejena na višino, ki jo določa posamezna konvencija ali nacionalna zakonodaja ali drug predpis, ki ureja vrsto prevoza oziroma manipulacije ali storitve, pri kateri je do zamude prišlo.

V kolikor se določil katerekoli konvencije ali nacionalne zakonodaje ali drugega predpisa iz prvega odstavka tega člena ne da uporabiti, ali v kolikor tak predpis ne obstaja, ali v kolikor obstaja, pa ne vsebuje določb o omejitvi višine odgovornosti, ali v primeru multimodalnega prevoza, če v predpisih, ki ga urejajo, ni določeno drugače, oziroma v kolikor se mesta, kjer je nastal razlog za zamudo in s tem določitve konvencije ali nacionalne zakonodaje ali drugega relevantnega predpisa ne da z gotovostjo določiti, je odgovornost špediterja omejena na dvakratnik zneska plačila, ki ga je prejel za opravljeno delo v zvezi z organizacijo špedicijskega posla, pri katerem je prišlo do zamude, pri čemer se v primeru zamude pri izvedbi špedicijskega posla v zvezi z delom tovora kot relevantni znesek plačila šteje del plačila, ki ustreza razmerju med količino pravočasno dostavljenega in z zamudo dostavljenega tovora. V kolikor ni določeno drugače, odškodnina za zamudo ne more preseči zneska 25.000 SDR na posamezen škodni dogodek oziroma več škodnih dogodkov, ki imajo isti vzrok škode.

V primeru, ko je škodo povzročila oseba, za katero špediter odgovarja, špediterjeva odgovornost v nobenem primeru ne more preseči obsega odgovornosti, ki je določen za to osebo, če je ta obseg manjši od obsega špediterjeve odgovornosti, določenega v teh pogojih.

82. člen

(Obseg špediterjeve odgovornosti v ostalih primerih)

V kolikor je špediter skladno z veljavnimi predpisi in temi pogoji odgovoren za škodo, ki se ne kaže v poškodbi, uničenju ali izgubi tovora ali v zamudi, je njegova odgovornost omejena na dvakratnik zneska plačila, ki ga je prejel za opravljeno delo v zvezi z organizacijo špedicijskega posla, pri čemer pa ne more preseči zneska 25.000 SDR na posamezen škodni dogodek oziroma več škodnih dogodkov, ki imajo isti vzrok škode.

Kumulativna odgovornost špediterja za poškodbo, uničenje, izgubo tovora ter za zamudo in ostale škode ne glede na druge določbe teh pogojev ne more preseči vrednosti poškodovanega, uničenega oziroma izgubljenega tovora.

Omejitev iz prejšnjega odstavka tega člena velja tudi za skladiščenje.

83. člen

(Razširitev špediterjeve odgovornosti)

Špediter lahko sprejme odgovornost, ki presega omejitve, določene v veljavnih predpisih in teh pogojih. Sprejem take odgovornosti je veljaven in za špediterja zavezujoč le pod pogojem, da je bil dan v obliki pisne klavzule, v kateri je bila špediterjeva odgovornost jasno in opisno opredeljena in pod pogojem, da je špediter jasno izjavil, da tako odgovornost sprejema ter za njen prevzem prejel dodatno plačilo. Če taka klavzula ni bila zapisana izrecno in s popolnim opisom špediterjeve obveznosti ter na način, iz katerega je nesporno razvidno, da je špediter pristal na razširitev svoje odgovornosti, temveč je bila zapisana le z uporabo kratic ali drugih simbolov, velja, da je špedicijska pogodba ne vsebuje. Navedbe zneskov v špedicijski pogodbi ni mogoče šteti kot navedbe višine špediterjeve odgovornosti, če ni ob njih izrecno in nedvoumno zapisana špediterjeva izjava, da ti zneski predstavljajo zgornjo mejo njegove odgovornosti.

84. člen

(Delna poškodba, uničenje ali izguba tovora)

V primeru delne poškodbe, uničenja ali izgube tovora je odgovornost špediterja omejena le na poškodovani, uničeni ali izgubljeni del tovora.

V primeru iz prvega odstavka tega člena se kot škoda šteje le škoda, ki jo predstavlja poškodovani del tovora, ne pa tudi zmanjšanje vrednosti preostalega dela tovora, do katerega pride zaradi poškodovanja njegovega dela.

85. člen

(Vrednost poškodovanega, uničenega ali izgubljenega tovora)

Vrednost poškodovanega, uničenega ali izgubljenega tovora se ugotavlja skladno z določbami uporabljene konvencije ali nacionalne zakonodaje ali drugega predpisa iz

prvega odstavka 80. člena teh pogojev. V kolikor vrednosti poškodovanega ali uničenega tovora ni mogoče ugotoviti na ta način, se šteje, da je njegova vrednost enaka vrednosti, navedeni v računu ali drugih listinah, ki so bile špediterju izročene zaradi izvedbe špedicijskega posla. Če takega računa ali drugih listin ni, se vrednost tovora določi po borzni ceni, če take cene ni, pa po dnevnih tržnih cenah, če pa ni ne borzne in ne dnevne tržne cene, pa na podlagi običajne tržne vrednosti tovora iste vrste in kakovosti, pri čemer se kot relevanten trenutek in kraj za določanje vrednosti vzameta trenutek in kraj izročitve tovora špediterju.

Špediterjeva odgovornost ne glede na druge določbe teh pogojev v nobenem primeru ne more preseči zneska, ki bi ga naročitelj v primeru pravilne izvedbe špedicijske storitve dobil od prejemnika tovora, vsekakor pa ne more preseči vrednosti poškodovanega, uničenega ali izgubljenega tovora.

Vse stroške, povezane z ugotavljanjem škode in njene višine je dolžan nositi naročitelj.

86. člen **(Prepustitev poškodovanega** **ali uničenega tovora špediterju)**

V kolikor je špediter dolžan plačati odškodnino za poškodovan ali uničen tovor v višini, enaki vrednosti tovora, lahko pred izplačilom odškodnine zahteva, da mu naročitelj izroči oziroma prepusti poškodovan tovor.

87. člen **(Roki, v katerih mora naročitelj pregledati tovor** **in podati ugovore)**

Če naročitelj ali oseba, ki jo je naročitelj za to pooblastil, od špediterja ali osebe, ki jo je ta za to pooblastil, prevzame tovor, ne da bi ga v navzočnosti te osebe ali špediterja natančno pregledal in najkasneje ob prevzemu podal pridrške in ugovore ter specifično izgubo in škodo, ki jo je mogoče ugotoviti ob prevzemu, pisne pridrške, ugovore in specifikacijo glede izgube ali škode, ki je ni mogoče ugotoviti ob prevzemu, pa v 7 dneh od dne, ko je bil tovor prevzet, se šteje, da je bil tovor prevzet brez napak, da je škoda na njem nastala po tem, ko ga je špediter predal ter da je špediter pravilno in v celoti izpolnil vse svoje obveznosti.

Če naročitelj v roku 21 dni od izteka roka iz drugega odstavka 80. člena teh pogojev špediterju ne poda pridrzkov in ugovorov ter specifikacije izgube in škode zaradi izgube tovora, se šteje, da je bil tovor prejemniku predan brez napak ter da do izgube tovora ni prišlo. V primeru delne izgube se uporabi določba prvega odstavka tega člena.

Določba drugega odstavka tega člena se uporablja tudi v primeru, če naročitelj v primeru, ko je špediter prevzel odgovornost za spoštovanje roka, špediterju v roku 21 dni od dne, ko se je ta rok iztekel, ne poda pridrzkov in ugovorov ter specifikacije izgube in škode, nastale zaradi špediterjevega nespoštovanja roka.

Ostale napake špediterja, ki se ne nanašajo na poškodovanje, uničenje ali izgubo tovara oziroma na zamudo, mora naročitelj grajati v roku 7 dni od dne, ko je špediter opravil naročeno storitev oziroma bi jo moral opraviti, sicer se šteje, da je špediter storitev opravil brez napak.

88. člen **(Roki, v katerih mora naročitelj podati ugovore** **v zvezi z napakami tretjih oseb,** **za katere odgovarja špediter)**

Ne glede na druge določbe teh pogojev je naročitelj dolžan pridrške in ugovore v zvezi z napakami, ki so jih zagrešile osebe, za katere odgovarja špediter, podati in svoje zahteve do špediterja iz tega naslova postaviti v takih rokih, da špediterju po njihovem prejemu skladno z veljavnimi predpisi ostane dovolj časa za uveljavljanje svojih regresnih zahtevkov do teh oseb pred pristojnim sodiščem ali drugim organom, pri čemer ta čas ne more biti krajši od 7 dni. V kolikor naročitelj te obveznosti ne izpolni in špediter zaradi tega ne uspe ali ne more uspeti s svojim regresnim zahtevkom do odgovorne osebe, naročitelj ni upravičen do odškodnine od špediterja, če pa jo je že prejel, pa jo je špediterju dolžan povrniti skupaj s pripadajočimi zakonskimi zamudnimi obrestmi od trenutka njenega prejema do njenega vračila.

89. člen **(Oblika in vsebina ugovora)**

Naročitelj mora pridrške, ugovore ter specifikacije iz 87. in 88. člena teh pogojev vselej podati pisno, v njih pa mora navesti dejstva, s katerimi jih utemeljuje ter jih opremiti z dokazi, na katere se opirajo. Dokazno breme, da je izpolnil to obveznost v rokih, določenih v 87. in 88. členu teh pogojev, je na naročitelju.

XIV. ZASTAVNA IN PRIDRŽNA PRAVICA

90. člen **(Špediterjeva zastavna in pridržna pravica)**

Za zavarovanje plačila svojih terjatev, nastalih v zvezi s špedicijsko pogodbo, ima špediter pod pogoji, določenimi v veljavnih predpisih, zastavno pravico in pridržno pravico na tovoru, ki mu je bil izročen, vse dokler ga ima v posesti ali dokler ima v rokah listino, ki mu omogoča razpolaganje z njim. Ta pravica se razteza tudi na denar, ki ga špediter prejme ob izročitvi tovara prejemniku (COD) oziroma druge zneske ali stvari, ki jih špediter prejme v zameno za tovor (npr. zneske, ki jih prejme ob prodaji tovara, ki jo izvede sam).

Špediterjeva zastavna in pridržna pravica iz prejšnjega odstavka tega člena se raztezata tako na terjatve do naročitelja iz naslova špedicijske pogodbe, na podlagi katere ima v posesti tovor, kot tudi na terjatve do naročitelja iz naslova vseh ostalih špedicijskih pogodb, ki jih je v preteklosti sklenil z njim in jih že izvršil. Šteje se, da je v trenutku sklenitve špedicijske pogodbe sklenjena tudi zastavna pogodba ter da zastavna pravica nastane v trenutku, ko je špediterju izročen tovor oziroma listina, na podlagi katere ga je špediter upravičen prevzeti.

Špediter ima v primeru neplačila terjatve s strani naročitelja ob njeni zapadlosti pravico tovor, na katerem ima zastavno ali pridržno pravico iz prvega odstavka tega člena, prodati izvensodno in sicer skladno s predpisi, ki urejajo obligacijska in stvarnopravna razmerja.

XV. SKLADIŠČENJE

91. člen

(Kdaj špediter organizira oziroma izvaja skladiščenje)

Špediter je dolžan organizirati skladiščenje tovara oziroma ga izvesti sam le na podlagi izrecnega naročiteljevega naročila, lahko pa ga organizira ali izvede tudi brez takega naročila in sicer v vseh primerih, določenih v teh pogojih in veljavnih predpisih, v primerih, ko je to potrebno ob izvajanju premeščanja tovara in drugih manipulacij ali storitev v zvezi z njim, v primeru zbirne špedicije, v primeru, ko je to potrebno zaradi opravljanja carinskih formalnosti ter v vseh drugih primerih, ko je skladiščenje kakorkoli potrebno ali smotno zagotoviti zaradi izvedbe špedicijske storitve.

92. člen

(Določitev podrobnosti v zvezi s skladiščenjem)

Špediter je upravičen izbrati tip in lokacijo skladišča, skladiščnika ter določiti vse ostale podrobnosti v zvezi s skladiščenjem, v kolikor mu naročitelj ne poda drugačnih pisnih navodil. To špediterjevo upravičenje se nanaša tudi na premeščanje tovara v času skladiščenja iz prvotnega skladišča v drugo skladišče, pri čemer je naročitelj špediterju dolžan povrniti stroške, povezane s takim premeščanjem, če je bilo slednje izvedeno na naročiteljevo zahtevo ali z namenom zaščite naročiteljevih interesov ali iz razlogov za katere špediter ne odgovarja ali na podlagi veljavnih predpisov ali oblastnih ukrepov.

Skladiščenje se upošteva lastnosti tovara lahko izvaja tudi na prostem, razen če naročitelj to izrecno prepove v pisni obliki ali če tak način skladiščenja za tovrsten tovar ni običajen.

93. člen **(Čas trajanja skladiščenja)**

V kolikor čas trajanja skladiščenja med špediterjem in naročiteljem ni dogovorjen, se šteje, da znaša 3 mesece ter da se v primeru, če nobena stranka najpozneje 14 dni pred iztekom tega 3 mesečnega obdobja pisno ne sporoči drugi stranki, da tega ne želi, vselej molče podaljša za novo obdobje 3 mesecev.

94. člen **(Špediterjeva odgovornost za skladiščenje** **v posebnih primerih)**

V kolikor špediter organizira skladiščenje tovora oziroma ga izvaja sam iz razlogov, določenih v 26., 29., 42., 76. in 95. členu teh pogojev ali iz drugih razlogov, za katere odgovarja naročitelj ali druga oseba, ki deluje po naročiteljevem naročilu, tako skladiščenje poteka izključno na stroške in riziko naročitelja.

95. člen **(Tovor, ki predstavlja grožnjo ali se kvari)**

V primeru, če špediter na tovoru opazi znake kvarjenja ali druge spremembe oziroma lastnosti, zaradi katerih bi se njegova vrednost lahko zmanjšala ali bi lahko nastala škoda na drugem blagu, skladiščnih prostorih, okolju, drugem premoženju ali zaradi katerih bi lahko bilo ogroženo življenje ali zdravje ljudi ali zaradi katerih bi lahko nastala kakršnakoli druga škoda, se smiselno uporablja določba 29. člena teh pogojev.

96. člen **(Ohranjanje tovora v prvotnem stanju)**

Špediter je tovor v skladišču dolžan ohranjati v stanju, v kakršnem je bil v trenutku uskladiščenja, vendar le v obsegu, ki je v sorazmerju s plačilom, do katerega je upravičen iz naslova skladiščenja.

Če v trenutku izskladiščenja tovor ni v takem stanju, pa so spremembe na njem take, ki običajno nastanejo ob njegovem prevzemu v skladišče, v času izvajanja skladiščenja, izdaji iz skladišča in pri izvajanju drugih manipulacij z njim v skladišču (kot so npr.: kalamiteta, razsip, naravni kvar, lom in druge spremembe na njem), se šteje, da je špediterjeva obveznost iz prvega odstavka tega člena izpolnjena.

Špediter nastanka sprememb na tovoru iz drugega odstavka tega člena ni dolžan sporočiti naročitelju.

97. člen **(Naročiteljeva pravica pregledovanja načina skladiščenja** **in jemanja vzorcev)**

Naročitelj ima v rednem delovnem času skladišča pravico pregledovati način skladiščenja ter nanj podajati pripombe, če pogoji, po katerih posluje skladiščnik, ne določajo drugače. V kolikor to pravico izkoristi, pa pripomb na način skladiščenja ne poda takoj, ko je to mogoče, čeprav bi jih lahko, načina skladiščenja ne more več grajati ob prevzemu tovora.

Naročitelj nima pravice sam izvajati nikakršnih manipulacij s tovorom v skladišču, razen v kolikor mu skladiščnik to dovoli. Ta določba se ne nanaša na pravico naročitelja do jemanja vzorcev uskladiščenega tovora.

Špediter ima vselej pravico biti prisoten ob izvajanju pregleda ali manipulacij iz prvega in drugega odstavka tega člena ter pravico zahtevati, da se o vsaki aktivnosti v zvezi s tovorom v skladišču, ki jo opravi naročitelj, naredi zapisnik. Za vso škodo, nastalo zaradi take aktivnosti in za vso škodo, ki jo naročitelj in osebe, ki delujejo na podlagi njegovega naročila, povzročijo na skladišču in blagu ter osebam, ki se nahajajo v njem, je odgovoren naročitelj.

98. člen **(Poročilo o stanju in količini tovora v skladišču)**

Špediter je na naročiteljevo pisno zahtevo in stroške dolžan naročitelju podati poročilo o stanju in količini njegovega tovora v skladišču. V kolikor zahteva naročitelj vzorce tovora, mora špediterju podati natančna navodila o postopku in mestu jemanja vzorcev, sicer jih lahko špediter jemlje po svojem preudarku in brez vsakršne odgovornosti za njihovo ustreznost.

99. člen **(Izravnava inventurnih presežkov in primanjkljajev)**

Špediter je upravičen opraviti izravnavo inventarnih presežkov in primanjkljajev istovrsnega blaga istega naročitelja.

100. člen **(Zahteva za izskladiščenje pred dogovorjenim rokom)**

V kolikor naročitelj zahteva izskladiščenje tovora pred dogovorjenim rokom, ima špediter pravico do plačila za skladiščenje, kot bi ga imel v primeru, če do predčasnega izskladiščenja ne bi prišlo, upošteva prihranek pri stroških, ki ga je špediter imel zaradi takega izskladiščenja ter prihodke z uskladiščenjem morebitnega drugega tovora, ki ga je špediter uskladiščil namesto predčasno izskladiščenega tovora.

101. člen
(Obseg špediterjeve odgovornosti
v primeru uničenja, izgube ali poškodbe tovora
v času skladiščenja)

V kolikor je skladno z določbami veljavnih predpisov in teh pogojev podana odškodninska odgovornost špediterja za uničenje, izgubo ali poškodbo tovora v času skladiščenja, je ta njegova odgovornost omejena na višino, ki jo določa posamezna konvencija ali nacionalna zakonodaja ali drug predpis, ki ga je potrebno uporabiti za primer skladiščenja.

V kolikor se določil katerekoli konvencije ali nacionalne zakonodaje ali drugega predpisa iz prvega odstavka tega člena ne da uporabiti oziroma v kolikor tak predpis ne obstaja, oziroma v kolikor obstaja, pa ne vsebuje določb o omejitvi višine odgovornosti, je odgovornost špediterja za poškodbo, uničenje ali izgubo tovora omejena na znesek 5 SDR na kilogram bruto mase tovora, pri čemer ta odgovornost ne more preseči zneska 5.000 SDR na škodni dogodek oziroma več škodnih dogodkov, ki imajo isti vzrok škode, oziroma dejanske vrednosti tovora, v kolikor je ta nižja od zneska 5.000 SDR.

Odgovornost špediterja velja od trenutka, ko je bil tovor uskladiščen in je bilo o tem naročitelju oziroma osebi, ki jo ta za to pooblasti, izstavljeno potrdilo o uskladiščenju ali skladiščnica, do trenutka, ko je tovor izročen upravičenemu prejemniku

102. člen
(Obseg špediterjeve odgovornosti v ostalih primerih)

V kolikor je špediter skladno z veljavnimi predpisi in temi pogoji odgovoren za škodo, ki nastane v zvezi s skladiščenjem in se ne kaže v poškodbi, uničenju ali izgubi tovora, je njegova odgovornost omejena na znesek 5.000 SDR na posamezen škodni dogodek oziroma več škodnih dogodkov, ki imajo isti vzrok škode.

103. člen
(Uporaba določb drugih poglavij teh pogojev)

Določbe drugih poglavij teh pogojev se, če ni v njih izrecno določeno drugače, uporabljajo tudi za to poglavje in sicer ne glede na to, ali špediter organizira ali izvaja skladiščenje in ne glede na to, ali tako ravna v okviru izvajanja špedicijske pogodbe, na podlagi katere poleg poslov v zvezi s skladiščenjem opravlja tudi druge storitve, ali na podlagi pogodbe, na podlagi katere opravlja le posle v zvezi s skladiščenjem.

Ljubljana, junij. 2009

Predsednik sekcije špediterjev:
Janko Pirkovič

XVI. PREHODNE IN KONČNE DOLOČBE

104. člen (Uporaba prava)

V kolikor ni drugače dogovorjeno v pisni obliki, se za reševanje sporov iz špedicijske pogodbe oziroma v zvezi z njo uporablja slovensko pravo.

105. člen (Pristojnost sodišč)

V kolikor ni drugače dogovorjeno v pisni obliki, je za reševanje vseh sporov, izvirajočih iz špedicijske pogodbe, izključno krajevno pristojno sodišče Republike Slovenije, ki je stvarno pristojno za območje, kjer ima špediter svoj sedež.

106. člen (Avtentično besedilo)

V kolikor so ti pogoji prevedeni v tuj jezik, se kot avtentično besedilo vselej šteje le besedilo v slovenskem jeziku.

107. člen (Začetek uporabe)

Ti pogoji se začnejo uporabljati naslednji dan po objavi v Uradnem listu Republike Slovenije. V kolikor ni drugače dogovorjeno v pisni obliki, se šteje, da so sestavni del špedicijske pogodbe, sklenjene tega dne ali pozneje, ti pogoji in ne Splošni pogoji poslovanja mednarodnih špediterjev Slovenije, objavljeni v Vestniku Gospodarske zbornice Slovenije št. 48 z dne 03. 12. 1992.

General Terms and Conditions of International Freight Forwarders of Slovenia

I. PRELIMINARY PROVISIONS

Article 1 (Explanation of Terms)

The meaning of the individual terms used in these Terms and Conditions shall be as follows:

- **freight forwarding and logistics services:** any kind of services that the Freight Forwarder carries out for the Customer within the extent determined by the contract and by these Terms and Conditions that are related to organising and implementing the transport (implemented as single, combined or multimodal transport), collection, storage, packing or distribution of freight, freight handling and ancillary and advisory services in connection therewith; furthermore, freight forwarding and logistics services include services of handling freight insurance, providing documents, paying costs, collecting or handling payments, other financial services that are required for the implementation of the freight forwarding or logistics service, services relating to customs, inspection, tax and other administrative procedures, logistics services employing modern information and communication technology in freight transport, freight handling and storage as well as the complete organisation of supply throughout the entire logistics chain;
- **the Freight Forwarder:** the company or sole proprietor that carries out freight forwarding services for the Customer in the extent determined by the contract and these Terms and Conditions and all the legal successors of such a company or sole proprietor;
- **the Customer:** the person that places an order with the Freight Forwarder, either itself, through authorised representatives or proxies or that negotiates with the Freight Forwarder about concluding a freight forwarding contract or concludes a freight forwarding contract with the Freight Forwarder in any manner as described in Article 6 hereof;
- **the Carrier:** the person that undertakes to carry out the transport or that carries out such transport regardless of the type of the means of transport and regardless whether such person carries out the transport itself or entrusts it to another contractor;
- **third party:** any person that is not a party to the freight forwarding contract;
- **freight:** any item, material or goods, including containers, pallets and other packaging or devices on or in which freight is installed that the Customer clearly and unambiguously specifies and hands over to the Freight Forwarder for reasons of implementing

freight forwarding or logistics services and for which it is allowed to carry out all services and handling that are required for the implementation of the freight forwarding or logistics service in accordance with the currently valid rules and regulations and these Terms and Conditions;

- **package:** if the regulation that needs to be enforced in an individual case does not include the definition of a package, it shall be deemed that a package is an individual piece of freight that is individualised and prepared in a manner that enables the handling of the package as an independent unit of freight; if the package is placed in containers, on pallets or on or in similar devices, the container, pallet or another similar device shall be deemed a package unless explicitly stated in the transport documents accompanying the freight or, if such documents have not yet been prepared, on documents that have been used as the basis for the Customer handing over the freight to the Freight Forwarder that individual packages within such a device are deemed packages; individual packages within such a device shall only be deemed packages if they have been specifically determined as such in transport documents and the Freight Forwarder has had the opportunity to inspect and count such packages upon taking over the freight;
- **FIATA:** the International Federation of Freight Forwarders Associations;
- **SDR:** Special Drawing Rights as defined by the International Monetary Fund.

Article 2 **(The Validity and Interpretation** **of the Terms and Conditions)**

These General Terms and Conditions apply to all freight forwarding and logistics services and represent an integral part of a concluded freight forwarding or logistics contract or any other contract whose subject includes the performance of freight forwarding or logistics services.

It shall be deemed that the contracting parties have reached an agreement concerning the use of these General Terms and Conditions if such an agreement has been explicitly included in the contract. It shall further be deemed that the contracting parties have reached an agreement concerning the use of these General terms and Conditions if the clause that the Freight Forwarder operates pursuant to these Terms and Conditions has been included in the offer submitted by the Freight Forwarder or in the order form issued by the Freight Forwarder and used by the Customer or in the Freight Forwarder's acceptance of the Customer's order or in any kind of correspondence between the contracting parties that led to the conclusion of the freight forwarding contract.

If these Terms and Conditions state that the Freight Forwarder is entitled to an action or omission, this shall not mean that it is bound to take such action or omission.

The provisions of these Terms and Conditions that relate to the limitation of the Freight Forwarder's liability in cases where there are several parties suffering damage cannot be interpreted as meaning that each of the parties have the right to the compensation

determined in these Terms and Conditions but that all parties have the right to such a compensation divided between them proportionally to the amount of damages suffered.

Article 3 (Conflict of Rules and Regulations)

If there are any conflicts between the provisions of these Terms and Conditions and the customs, usages or provisions or the currently valid rules and regulations, the provisions of these Terms and Conditions shall apply unless the rules and regulations are mandatory.

In no case shall these Terms and Conditions be interpreted as increasing the Freight Forwarder's liability on the basis of valid rules and regulations.

Article 4 (Article and Chapter Titles)

The titles of the individual articles and chapters serve merely for a better overview of these Terms and Conditions and cannot be used to interpret the individual provisions of these Terms and Conditions.

II. GENERAL PROVISIONS RELATING TO THE FREIGHT FORWARDING CONTRACT

Article 5 (The Content and Method of Implementation of the Freight Forwarding Contract)

By concluding the freight forwarding contract, the Freight Forwarder agrees to conclude a transport contract and/or other contracts required for implementing the transport for and on behalf of the Customer or for himself and on behalf of the Customer, as well as to perform other arranged services and activities, and the Customer agrees to fulfil all the obligations determined in the valid rules and regulations, the contract and these Terms and Conditions in order to enable the proper implementation of the contract and to remunerate the Freight Forwarder and reimburse its expenses in accordance with the provisions of Chapter XII hereof and the valid rules and regulations.

If the method of representation is not determined in the Contract explicitly and in writing, it shall be deemed that the Freight Forwarder may also act for and on behalf of the Customer.

The Freight Forwarder shall not be obliged to conclude contracts for itself and on its own behalf, except in the cases determined in Article 15 herein (fixed price freight forward-

ing) or in cases when the Freight Forwarder acts as a multimodal transport operator and explicitly assumes all the related obligations by issuing a FIATA multimodal transport bill of lading.

The fact that the payment of obligations to persons involved in implementing the transport and other freight handling or freight-related services has been made by the Freight Forwarder cannot be interpreted as proof that the contract with such persons was concluded for and on behalf of the Freight Forwarder if the conditions for the contract being concluded in the manner determined in the previous paragraph have not been met.

Notwithstanding the provisions of paragraph three of this Article, the Freight Forwarder shall never act for itself and on its own behalf when implementing services of representation in customs, tax, inspection, legal and other proceedings, including proceedings involving insurance companies, banks, etc.

Article 6 **(The Manner of Conclusion and Termination** **of Validity of the Freight Forwarding Contract)**

The freight forwarding contract may be concluded by signing a document stating its content, by the Customer accepting the Freight Forwarder's offer or by the Freight Forwarder accepting the Customer's order.

Notwithstanding any other provisions of these Terms and Conditions, the Freight Forwarder or Customer may express their acceptance of the other party's offer with a conclusive act following the receipt of such an offer and from which it is evident that they accept such an offer.

It shall be deemed that the Freight Forwarder is acting in accordance with the provisions of paragraph two of this Article especially if it begins implementing the ordered service, unless it acts in this manner in order to prevent damage to the Customer or to prevent the Customer from missing an obvious advantage.

It shall be deemed that the Customer is acting in accordance with the provisions of paragraph two of this Article especially if it hands over the freight or freight-related documents or the required information and instructions to the Freight Forwarder after receiving its offer, if it enables the Freight Forwarder in any other way to begin implementing freight forwarding services, if it allows the implementation of such services to be initiated or if it makes an advance payment to the Freight Forwarder for costs and/or payment for its services, if it does not prevent the Freight Forwarder from implementing the services but knows or should know that the Freight Forwarder has already begun implementing the service or that it will start implementing the service, etc.

The freight forwarding contract shall be terminated in the cases determined in the contract and according to the valid rules and regulations and these Terms and Conditions. If the contract is concluded for an indefinite period of time, it also ceases to be valid in cases when either of the contracting parties withdraws from the contract (cancels it) in

writing. In the event of such a withdrawal from the contract, the withdrawing party shall not be obliged to state its reasons for withdrawal. Unless determined otherwise in the freight forwarding contract, a 3-month period of notice shall apply for such a withdrawal and the period of notice shall commence on the day that the party who is the recipient of such a notification of withdrawal receives the notification.

The provisions of the previous paragraph of this Article shall not prejudice other provisions of these Terms and Conditions that enable the Freight Forwarder to withdraw from the freight forwarding contract with immediate effect (without a notice period). In the event of such a withdrawal, it shall be deemed that the contract ceases to be valid when the Customer receives the Freight Forwarder's statement of withdrawal from the contract.

Article 7 (Emergence and Termination of the Freight Forwarder's Obligation)

The Freight Forwarder's obligation begins at the moment of concluding the contract or at any other moment determined by the valid rules and regulations, these Terms and Conditions or the contract but not before the Customer hands over the freight for which the contract has been concluded along with all the relevant documents and information to the Freight Forwarder in the arranged place, at the arranged time, to the arranged extent and in the arranged manner and until the Customer meets all the other requirements determined by these Terms and Conditions and the currently valid rules and regulations and the Freight Forwarder's obligation ceases to exist at the moment of expiration of the validity of the freight forwarding contract or at any other moment determined by the valid rules and regulations, these Terms and Conditions and the contract. The Freight Forwarder's obligation in any case ceases at the moment the freight is destroyed or when its fulfilment has become impossible.

In any case, it shall be deemed that the Freight Forwarder performed the service in full and correctly if it delivered the freight in the same condition that it received it, though changes normally occurring during the transportation of such freight and its handling or the implementation of other related freight forwarding services shall not be considered.

Article 8 (The Content of the Concluded Contract)

In case of doubt whether the contracting parties have concluded a freight forwarding or logistics contract, it shall be deemed that they have concluded a freight forwarding contract unless it is evident from the signed contract or the correspondence that served as basis for concluding the contract that they have explicitly and unambiguously agreed to conclude a logistics contract.

In case of doubt about whether the contracting parties have concluded a freight forwarding or a transport contract, it shall be deemed that they have concluded a freight

forwarding contract unless the subject of the contract is exclusively the implementation of transport and the Freight Forwarder explicitly and unambiguously expressed in the correspondence that was the basis for the conclusion of the contract that it undertakes to conduct such transport itself or such an undertaking was included in the text of the contract concluded by signing the document. If the Customer places an order with the Freight Forwarder for the implementation of transport and if there is no clause stating that the Freight Forwarder shall conduct the transport itself, it shall be deemed that the Freight Forwarder's acceptance of such an order means that a freight forwarding contract has been concluded to organise the implementation of such transport whereby the Freight Forwarder retains the right to conduct such transport itself if it so chooses.

The provisions of these Terms and Conditions relating to the contracting parties of the freight forwarding contract and their position, rights and obligations shall apply *mutatis mutandis* for the contracting parties to the logistics contract and their position, rights and obligations unless the contracting parties agreed otherwise in writing at the time of concluding the logistics contract.

Article 9 **(Typical Freight Forwarding Services)**

Freight forwarding services shall include in particular, but not exclusively:

- expert advice and participation in negotiations concerning the conclusion of international sales contracts relating to transport and other freight handling, insurance, customs clearance and other formalities, etc.,
- establishing the most favourable transport routes and clauses relating to the obligations of the contracting parties in the organisation of transport and related activities to be applied in international sales contracts,
- providing reductions and other benefits from carriers and other participants in the implementation of the freight forwarding service,
- organising groupage and express freight,
- organising all types of transport with all means of transport across all transport routes, including multimodal transport and the physical door-to-door distribution of freight,
- concluding transport contracts in all transport branches,
- concluding contracts on loading, unloading, transshipment, sorting, packing or the performance of these and other similar services,
- concluding contracts on freight storage,
- concluding contracts on freight insurance,
- representation in customs clearance and the performance of custom-house formalities,

- the sampling and assessment of freight quantity, excluding the issuance of certificates,
- collecting payments for freight delivered (COD),
- issuing the Forwarder's Certificate of Receipt as a foreign trade payment instrument, as well as the issuance of other FIATA documents,
- the issuing or acquisition of transport and other documents,
- checking the accounting accuracy of transport documents and computing transport and other costs,
- taking measures for compensation in case of the loss, damage or delayed delivery of goods,
- acquiring transit authorisations and other documents,
- organising the re-icing, feeding and watering of live animals,
- performing services at international fairs, independent and special exhibitions and similar events,
- other services customary in international freight forwarding.

Article 10
(Conditions Regarding the Persons
with Whom the Freight Forwarder Concludes Contracts)

In implementing its services, the Freight Forwarder shall be entitled to accept regular contracts, conditions, usages and tariffs from providers of railroad, road, air and maritime transport, internal waterways transport, other types of transport, providers of port, storage and other services, regular contracts, conditions, usages and tariffs from providers of postal and courier services and regular contracts, conditions, usages and tariffs from all other persons that the Freight Forwarder involves in the implementation of its services.

Article 11
(Use of Standardised Documents – Forms)

In dealings concluded with transport operators or providers of other services or in freight handling, the Freight Forwarder shall be allowed to use standardised documents (forms) that are typically used in individual transport branches or used for individual services or freight handling.

If the documents described in paragraph one of this Article contain clauses that limit or exclude the Carrier's responsibility, the Freight Forwarder shall not be held responsible for these clauses.

When the Customer wants to exclude individual clauses from the customary shipping documents, it shall explicitly and in due time inform the Freight Forwarder thereof in writing.

Article 12
(The Freight Forwarder's Communication
with the Customer and the Use of Modern Technology)

The Freight Forwarder may communicate with the Customer or the person assigned for communication by the Customer in a verbal or written form using all means of communication that are at its disposal. If the Customer fails to notify the Freight Forwarder of any changes of address or other information pertaining to the Customer or another person that was assigned as the Freight Forwarder's point of communication by the Customer, it shall be deemed that the Freight Forwarder communicated its message to the Customer or such a person in the correct manner if it communicated that message using the address or other information that were available to the Freight Forwarder at the time.

The Customer shall immediately notify the Freight Forwarder of any changes of information that are in any way relevant to the correct implementation of freight forwarding. Failure to do so shall result in the Customer bearing all the consequences of such an omission.

The Freight Forwarder shall be entitled to use modern technology in implementing its services, including devices that enable the implementation of freight forwarding without filling in and issuing transport and other documents in a physical form.

Article 13
(The Customer's Right of Disposition of the Freight)

By placing an order or concluding a freight forwarding contract, the Customer guarantees that it is the rightful owner of the freight for which the order was placed or the contract concluded or that it has an explicit and valid authorisation from the owner giving it the right to dispose of the freight in question and to conclude a freight forwarding contract with these Terms and Conditions being an integral part thereof. The Freight Forwarder shall not be obliged to verify these facts.

If the Customer places an order or concludes a freight forwarding contract for freight for which it does not have the right of disposal mentioned in the previous paragraph of this Article, the Customer shall bear all the consequences of such an act.

Article 14 **(Transfer of the Customer's Rights** **from the Freight Forwarding Contract)**

The Customer shall inform the Freight Forwarder of its eventual transfer of rights under the freight forwarding contract to a third party. If the contrary holds true, such a transfer shall be considered null and void. Unless otherwise agreed in writing, the Freight Forwarder shall be responsible to the third party within the limits of its obligations towards its Customer.

Notwithstanding the provisions of paragraph one of this Article, the Customer may not transfer its rights under a freight forwarding contract that includes an agreement on fixed price freight forwarding to a third party without the explicit written consent of the Freight Forwarder.

Article 15 **(Fixed Price Freight Forwarding)**

The contracting parties to the freight forwarding contract may agree that the Freight Forwarder shall perform its services in return for the payment of a fixed charge (fixed price freight forwarding, flat rate). In such a case, the payment that pertains to the Freight Forwarder pursuant to the concluded agreement includes payment for the Freight Forwarder's work, freight charges, the costs of customs formalities, storage and other similar expenses that are required for implementing the order.

If the contracting parties have not clearly, explicitly and unambiguously agreed that the service shall be performed for a specified flat rate, it shall be deemed that such an agreement has not been reached. The existence of such an agreement shall not be presumed.

If the freight forwarding contract has been concluded for the organisation of transport and if the agreed payment explicitly included the payment of freight charges, such an agreement shall not be deemed an agreement that the entire service shall be performed for the specified flat rate. In such a case, the Freight Forwarder shall be entitled to the reimbursement of all the other costs incurred in the implementation of the service (operating costs, overhead costs, etc.), excluding reimbursement of freight charges. This provision shall apply *mutatis mutandis* when the freight forwarding contract has been concluded for organising storage or other freight forwarding services and when the agreed payment explicitly included payment for storage or the costs of other freight forwarding services.

Expenses and reimbursements not included in the flat rates shall be paid by the Customer to the Freight Forwarder separately. These costs shall include in particular, but not exclusively charges relating to customs clearance, taxes, excise duties and other public levies and charges, insurance premiums and costs of bank guarantees, general average costs, the costs of implementing inspections and other examinations and all other actions that are not ordinary actions, actions that require an extraordinary

amount of time or effort and actions that are not essential but are beneficial to the Customer. Additional remuneration not included in the flat rate includes in particular, but not exclusively remuneration for implementing all actions that require an extraordinary amount of time or effort and actions that are not essential but are beneficial to the Customer.

III. OFFER

Article 16 (The Extent of the Offer)

The Freight Forwarder's offer shall only cover those services that are explicitly listed therein. If the services are not listed in the offer, it shall be deemed that the offer relates only to those services that are indispensable for the implementation of freight forwarding. The offer shall relate to freight in the quantities and with a weight, dimensions, nature and characteristics that could have been anticipated or expected by the Freight Forwarder in making its offer and to circumstances that enable the unhindered and immediate handling of freight, excluding circumstances that are other than ordinary circumstances and that require an extraordinary amount of time or effort.

This provision shall apply mutatis mutandis for all services that the Freight Forwarder conducts on the basis of a contract concluded by signing the document.

Article 17 (The Effect of the Offer)

The Freight Forwarder shall not be bound by the offer unless it explicitly states in the offer that the offer is binding. In such a case, the offer shall be binding to the Freight Forwarder only until the date specified for its acceptance. If such a date is not determined, it shall be deemed that the binding period is three workdays from the day that the Customer was directly briefed about the offer or when the offer was presented to the Customer and if it was sent, three workdays from the day the Customer received the offer.

Notwithstanding the provisions of the previous paragraph of this Article, the offer shall not be binding to the Freight Forwarder if, after the offer has been submitted and before its acceptance by the Customer, the circumstances of preparing the offer change to such an extent that the Freight Forwarder would not have made such an offer had it been aware of such circumstances at the time of making the offer.

Notwithstanding the provisions of paragraph one of this Article, the Freight Forwarder shall be entitled to change any contractual provisions and elements relating to the conditions of third parties that are beyond its influence (e.g. if there is a deterioration in the conditions under which persons that are required for the implementation of freight

forwarding, i.e. carriers, warehouse keepers or insurance companies, operate, if regulatory measures occur, etc.) even after the Customer has accepted the offer or after the freight forwarding contract has been concluded. This shall also apply to price increases of services provided by third parties and negative exchange rate differences, customs and tax rates and other similar expenses.

Article 18 (Concluding the Contract by Accepting the Offer)

It shall be deemed that the contract on the basis of the Freight Forwarder's offer is concluded at the moment that the Freight Forwarder receives the Customer's statement that it accepts the offer. The offer shall be deemed accepted only if it is accepted in full. For the acceptance of the offer, the provisions of Article 21 hereof shall apply *mutatis mutandis*.

If the Customer's statement on the acceptance of the offer states that it does not accept individual clauses in the offer or if the Customer changed any of the clauses, it shall be deemed that it rejected the offer and placed a new order and that no contract has been concluded between the Customer and the Freight Forwarder.

IV. ORDER

Article 19 (Concluding the Contract by Accepting the Order)

If the Customer submits an order to the Freight Forwarder for implementing freight forwarding, the freight forwarding contract shall be deemed concluded at the moment that the Customer receives the Freight Forwarder's statement that it accepts the order, unless the Customer stated in its order that it does not accept individual clauses in the offer or that it changed any of the clauses. In such a case, it shall be deemed that the Freight Forwarder submitted an offer to the Customer and that no contract has yet been concluded between the Customer and the Freight Forwarder.

The silence of the Freight Forwarder does not constitute the acceptance of the order.

The Freight Forwarder shall only be obliged to perform such services that have been explicitly specified in the order that the Freight Forwarder has undertaken to execute and services that are essential for the execution of the order. The Freight Forwarder shall not be obliged to conduct any other services. However, if it does perform such services, the Freight Forwarder shall be entitled to payment for such services and the reimbursement of any incurred costs (operating costs, overhead costs, etc.).

Article 20

(The Content of the Order)

The order shall include all the essential components of a freight forwarding contract determined by these Terms and Conditions and the currently valid rules and regulations so that its acceptance by the Freight Forwarder enables the conclusion of a freight forwarding contract – particularly information on the Customer and its legal representative, information on the consignee, all the necessary information on the freight and its properties (especially the warnings specified in Article 25 herein and a detailed description and commercial name of the freight in Slovene, information on quantity, quality, content, dimensions, weight, freight labels, its value at the time of handover, etc.), a detailed specification of the freight forwarding services ordered, instructions regarding the implementation of these services and freight handling, including instructions relating to special procedures in the implementation of customs and other freight related formalities, warnings regarding the right of third parties to the freight or of the freight infringing or breaching the rights of third parties, conditions for its legal possession and handling as well as any other information required for the correct and timely execution of the order.

The Freight Forwarder shall not be obliged to verify the information determined in the previous paragraph but shall have the right to do so and the Customer shall be obliged to enable the Freight Forwarder to verify such information at its own cost.

Article 21

(The Form of the Order)

In principle, the order shall be given in writing. An order given verbally, by phone or by any other means of communication shall in principle be confirmed, possibly on the same and at the latest on the subsequent working day. It shall be deemed that the order was made in writing if it was sent by mail or by fax, email or another computer system for electronic data exchange in a written form that is appropriate for permanent use and where the Customer can be unambiguously recognised as the source of data delivery. Any eventual errors, mistakes and abuses occurring in the transmission of the order by fax, another means of telecommunication, email or another computer system for electronic data exchange in written form and all the ensuing damages and costs shall be borne exclusively by the Customer. The burden of proof that the Freight Forwarder has received the order shall lie with the Customer.

If an order is given verbally, by phone or by any other type of means of communication and is not subsequently confirmed in writing as indicated in the preceding paragraph, the Freight Forwarder shall not be held responsible for any harmful consequences. This shall also apply in cases when an order given verbally was later confirmed in writing but the order in writing differed from the order given verbally.

Article 22
(Verifying Signature Authenticity
and Authorisations for Signing)

The Freight Forwarder shall not be obliged to verify the authenticity of signatures and stamps on the order and any of the Customer's other documents and on the documents of persons acting on the Customer's instructions or that are involved in the implementation of freight forwarding for any reason, nor their authorisations for signing or delivering such documents.

Article 23
(Assumption of Acting on Behalf of
or by Authority of the Customer)

It shall be deemed that persons for whom it can be assumed that they are acting on behalf of or by authority of the Customer (e.g. persons who are in possession of the Customer's freight, persons who are using the Customer's vehicles or who communicate in any other way that they are in a business relationship with the Customer) or persons who are in the Customer's business premises are authorised to implement all actions that have to be performed by the Freight Forwarder and for which actions by the Customer are required if such persons performed such actions (e.g. the takeover and delivery of freight, signing documents, making statements, etc.). If such persons do not have such authorisations, any harmful consequences arising therefrom shall be borne exclusively by the Customer.

Article 24
(Acting According to the Customer's Instructions)

The Freight Forwarder shall be obliged to strictly observe the Customer's instructions. If such instructions have not been given or cannot be obtained or are incomplete or if the Freight Forwarder cannot act in compliance with such instructions or if the order or instructions are illegible, obviously incomplete, unclear or contradictory or become such at a later time and therefore cannot be implemented, the Freight Forwarder shall call upon the Customer to provide additional instructions and/or explanations. If this is not possible or if there is not enough time to do so, the Freight Forwarder shall act in the best interest of the Customer and the Customer shall be obliged to reimburse the Freight Forwarder for any eventual costs so incurred and pay an additional sum for the increased scope of the work. For providing instructions and/or explanations, the provisions of Article 21 hereof shall apply mutatis mutandis.

Article 25 **(Mandatory Warnings in the Order)**

The Customer shall be obliged to explicitly warn the Freight Forwarder about any special characteristics of the freight that are relevant in any way to the implementation of the order, especially if the subject of the order is:

- goods whose value equals or exceeds SDR 2 per kilogram of gross weight or goods packed in such a manner that the value of an individual package equals or exceeds SDR 666.67,
- goods that endanger human or animal life or health or pose a threat or are a source of negative impacts on other items or the environment or that may cause any kind of damage,
- goods considered hazardous goods according to valid rules and regulations or that may become hazardous; the Customer shall submit labels following the statutory classification to the Freight Forwarder as well as all the required documents and handling instructions for such freight (hazardous goods include in particular, but not exclusively explosive, flammable, spontaneously flammable, easily combustible, radioactive, infectious and corrosive substances, peroxides and poisons),
- goods that should be handled in a manner preventing them to come into contact with other goods,
- goods requiring special storage and handling conditions and goods requiring a special regime of maintaining temperature, humidity, etc.
- jewellery, watches, artwork, antiques, precious stones or other valuables or items of worth, stamps, coins, unique items, gold, silver or other precious metals, money, charge or credit cards, other means of payment, passbooks, cheques, bills of exchange, other securities or documents,
- food, food products, alcohol and alcoholic beverages, tobacco and tobacco products,
- consumer electronics, data carriers,
- pornographic material,
- human remains,
- animals (live or dead) and animal parts and products derived from animals, plants, seeds or biological substances,
- waste, waste oils and other waste material,
- repugnant substances or goods with an intensive odour,
- medicines or chemicals,

- weapons or ammunition,
- goods whose characteristics make it susceptible to damage or perishing, decomposing, breaking, corrosion, rotting, drying, leaking, mould, worm damage, insects or other vermin,
- goods susceptible to spillage, ullage, drying or natural loss,
- goods in large volumes (over 3 m³ per package) or weight (over 1,000 kg per package),
- goods requiring the use of special handling techniques and devices (e.g. goods that have to be transported observing the rules for exceptional transport operations, goods with disproportionate distribution of weight, etc.),
- sensitive goods or goods exposed to increased risk of theft,
- goods that may infringe or breach the intellectual property rights of third parties,
- goods whose characteristics may have a negative impact on the proper implementation of freight forwarding and other goods whose transport is limited or allowed only if complying with special conditions determined by the currently valid rules and regulations.

The warnings specified in paragraph one of this Article and all instructions that are in any way relevant to the implementation of the service shall be provided in an obvious manner in the order excluding any kind of possibility of the Freight Forwarder overlooking them. In addition to the warning, the Freight Forwarder must to be warned about all the required safety and other legally prescribed measures to be taken with regard to the freight. Merely submitting documents with evident information determined in paragraph one of this Article shall not be deemed sufficient for meeting the obligation of communicating the warning. If there is any doubt whether such a warning should be submitted, it shall be deemed that it has to be submitted.

Article 26 **(Consequences of Omitting the Warning)**

All costs, damages and other consequences arising from the concealment or improper communication of information under Articles 20 and 25 hereof or incomplete or false statement of such information shall be borne by the Customer.

If the Freight Forwarder is not notified about the information listed in Article 25 herein or the fact that there are third parties having rights to the freight or that the freight infringes the rights of third parties and if all prescribed conditions are not met for implementing freight forwarding and the Customer fails to remedy such faults within 3 days from the day it was asked to do so by the Freight Forwarder or within another deadline determined in writing, the Freight Forwarder shall be entitled to withdraw from the contract by an ordinary statement sent to the Customer:

- and return the freight to the Customer at the Customer's risk and cost,
- if it cannot return the freight to the Customer or if such an action causes disproportionate costs, the Freight Forwarder shall be allowed to store such freight at the Customer's risk and cost,
- if the action from the previous indent is not possible or if such action causes disproportionate costs or if such an action is prevented by the nature of the freight or other freight characteristics, the Freight Forwarder shall be entitled to sell the Customer's freight at the latter's risk and cost at a public auction or at exchange or market price and use the purchase money to settle the costs of sale followed by its receivables due from the Customer under the freight forwarding contract and release the remaining amount to the Customer,
- if the freight endangers the safety of persons, property or the environment or if this is allowed or required by valid rules and regulations, the Freight Forwarder shall be entitled to destroy the freight at the Customer's risk and cost or to handle it in any other prescribed manner or choose to implement the freight forwarding service.

If circumstances do not allow any delay in action, the Freight Forwarder shall be entitled to act in accordance with the provisions of the previous paragraph without first instructing the Customer to remedy the faults.

If the Freight Forwarder does not perform the service, it shall be entitled to payment for the services rendered and the reimbursement of all incurred expenses or expenses that it will yet incur (operating, overhead and other costs, including costs due to special freight handling) and to the reimbursement of incurred damages. If the Freight Forwarder does perform the service, it shall be entitled to additional payment due to the more complex nature of the service and to the reimbursement of all costs related to the implementation of the service (operating costs, overhead costs, etc.).

It shall be deemed that the Freight Forwarder has fulfilled its obligations under the freight forwarding contract if it organised the return of the freight to the Customer or if it has stored, sold or destroyed it in accordance with the provisions of this Article.

The Customer shall not be entitled to claim compensation from the Freight Forwarder for damages incurred by the Customer or any other person due to the Freight Forwarder's actions taken in accordance with the provisions of this Article.

Article 27 **(Consequences of Faulty Orders)**

The Customer shall bear all the consequences of an incorrect, incomplete, vague, illegible or poorly legible, contradictory or delayed order.

Article 28 (Prohibited Freight)

If the Customer delivers drugs, smuggled goods or other material and items whose possession or transport are prohibited to the Freight Forwarder for reasons of implementing freight forwarding services, the freight forwarding contract shall be deemed null and void and the Customer shall bear all the consequences of such an act and shall pay the Freight Forwarder for the services rendered, shall reimburse all damages (direct or indirect) and all costs relating to the implementation of freight forwarding services for such freight (operating costs, overhead costs, etc.). The Freight Forwarder shall be obliged to handle such freight in accordance with the valid rules and regulations and all costs and consequences of such actions shall be borne by the Customer.

Article 29 (Freight that Poses a Threat or Perishable Freight)

If the freight endangers other goods, property, the environment or people or represents a potential source of any damages and conditions for applying provisions of Article 26 hereof have not been met, the Freight Forwarder shall be entitled to act and handle the freight so as to reduce or eliminate such dangers at the Customer's risk and cost if the Customer fails to communicate appropriate instructions within 3 days of being called upon by the Freight Forwarder to do so or within another deadline determined in writing. Furthermore, the Freight Forwarder shall be entitled to:

- return the freight to the Customer if this is possible and sensible or
- store it in a warehouse that is appropriate for the state of the freight or, if this is not possible or if such an act were inexpedient, to
- sell it at a public auction or at exchange or market price or in any other appropriate way and use the purchase money to settle the costs of sale followed by its receivables due from the Customer under the freight forwarding contract and release the remaining amount to the Customer; if the freight cannot be returned to the Customer or stored in another appropriate warehouse or sold, the Freight Forwarder shall be entitled
- to destroy the freight in an appropriate manner and at the Customer's risk and cost.

If circumstances do not allow a delay in action, the Freight Forwarder shall be entitled to act in accordance with the provisions of paragraph one of this Article without first calling on the Customer to provide further instructions.

The provisions of paragraphs one and two of this Article shall also apply in cases when the Freight Forwarder notices signs of perishing or other changes to the freight that may reduce its value.

The Customer shall not be entitled to claim compensation from the Freight Forwarder for damages incurred by the Customer or from any other person due to the Freight Forwarder's actions taken in accordance with the provisions of this Article.

It shall be deemed that the Freight Forwarder has fulfilled its obligations under the freight forwarding contract if it organised the return of freight to the Customer or if it has stored, sold or destroyed it in accordance with the provisions of this Article.

Article 30 **(Submitting Documents** **and Ensuring Access to the Freight)**

The Customer shall submit all the required documents to the Freight Forwarder on time and shall provide it with all the information required for implementing the order and shall ensure unhindered access to the freight. The Customer shall submit the documents and information to the Freight Forwarder in a physical form. If these are submitted by email, other systems of electronic communication or other telecommunication systems, the Customer shall bear all consequences of such an action.

Furthermore, it shall be deemed that the Customer has not submitted the necessary documents to the Freight Forwarder in time in cases when its business partners or other persons appointed by the Customer failed to submit such documents to the Freight Forwarder in due time.

All consequences of incorrect, invalid or non-genuine documents or of other shortcomings in the documents or the failure to submit them, to submit them on time or incorrect submission to the Freight Forwarder shall be borne by the Customer. The Freight Forwarder shall not be obliged to verify the authenticity or correctness of documents and shall assume no responsibility for the documents. Furthermore, the Freight Forwarder shall not be responsible for any irregularities or deficiency of the documents that it completed itself on the basis of faulty or incomplete information that was submitted by the Customer or a person authorised to do so by the Customer.

The Freight Forwarder shall not be liable to deliver or to take over freight against issuance of a guarantee.

Article 31 **(The Payment of Costs and Remuneration)**

When the Customer concludes the contract with the Freight Forwarder, it shall be deemed that the latter is given authorisation to pay freight charges, taxes, customs duties, excise duties, damages, cash-on-delivery fees and other costs, whereby the terms and conditions specified in Chapter XII and especially provisions of Article 70 hereof shall apply to such payments. The risks and all consequences of such payments shall be borne exclusively by the Customer.

Article 32 **(Stating the Value of Cash-on-Delivery Fees** **and Referring to INCOTERMS or Similar Clauses)**

The stated value of the cash-on-delivery fee cannot be interpreted as a statement on whose basis the Customer may, in accordance with the provisions of the valid rules and regulations, enforce the Freight Forwarder's liability for damages that surpasses the latter's liability under these Terms and Conditions and under the valid rules and regulations if the Customer, upon stating the value of the cash-on-delivery fee, did not clearly and explicitly put down in writing that such a statement has such a purpose and if the conditions under Article 83 hereof are not met for such an action.

If the freight forwarding contract or any other document submitted to the Freight Forwarder by the Customer or by a person authorised by the Customer to do so refers to INCOTERMS clauses or other similar clauses with which the Customer regulates its business relationship with its business partner from the sales contract or another contract on the supply of goods (especially the manner of distributing the costs related to the delivery of goods), such clauses shall not prejudice the Customer's obligation to pay for the Freight Forwarder's service in full and to reimburse the Freight Forwarder's costs even though it is not obliged to bear all the costs or part of the costs related to the dispatch of freight under the agreed INCOTERMS clause or another similar clause included in the sales contract or similar contract on the supply of goods concluded between the Customer and its business partner. The Freight Forwarder shall be only obliged to claim payment for its services and the reimbursement of costs from the consignee if it undertook to do so in accordance with the provisions of Article 33 hereof.

Article 33 **(Payment of Costs** **and the Freight Forwarder's Payment by the Consignee** **and Collecting the Cash-on-Delivery Fee)**

If the Customer and the Freight Forwarder agree in writing that the Freight Forwarder shall claim the reimbursement of costs and payment for services from the consignee, the Customer shall be obliged to previously bind the consignee to such payments. In such cases, the Freight Forwarder shall collect the money at the Customer's risk and cost, whereby the Customer shall remain liable to the Freight Forwarder if the Freight Forwarder fails to collect the money from the consignee for any reason. If the Freight Forwarder notifies the Customer that it failed to collect payment for services and/or the reimbursement of costs from the Customer's business partner, the Customer shall be liable to immediately pay the amounts itself. The Freight Forwarder shall not be obliged to provide any explanation of the reasons why it was unable to collect payment from the Customer's business partner.

The agreement between the Customer and the Freight Forwarder from the previous paragraph of this Article shall be made in such a way that it is undoubtedly clear that

the Freight Forwarder agreed. Merely a statement on the invoice or any other document that the Customer or a person authorised by the Customer has submitted to the Freight Forwarder stating that the consignee shall be bound to pay the Freight Forwarder for its services and to reimburse its expenses shall not be deemed to mean the Freight Forwarder undertaking to claim payment for its services and the reimbursement of incurred expenses from the consignee. The Freight Forwarder shall only be bound to take the actions specified in paragraph one of this Article if the freight forwarding contract contains a clause stating that the Freight Forwarder shall be obliged to claim payment for its services and the reimbursement of its expenses from the consignee. If such a clause is not explicitly stated in writing containing a detailed description of the Freight Forwarder's obligation, but merely uses abbreviations or other symbols, it shall be deemed that the freight forwarding contract does not contain such a clause.

The provisions of the previous paragraph of this Article shall apply *mutatis mutandis* for collecting cash-on-delivery fees.

If the Freight Forwarder agrees to collect the cash-on-delivery fees from the consignee for the Customer, it shall be entitled to accept cash or cheque or to collect such fees using modern methods of payment. The Freight Forwarder shall be obliged to remit such amounts to any of the Customer's accounts or to deliver it to the Customer in any other way within 8 days following the receipt of such fees. The costs of the transaction or delivery of the obtained amount shall be borne by the Customer as well as any negative exchange rate differences from the moment the Freight Forwarder obtained such an amount to the moment that it remitted it to the Customer if the Customer asked the amount to be remitted or delivered in a currency that is not the currency in which the remittance was made.

The Freight Forwarder shall not be liable for any eventual misuse of remittance, including eventual payment by a cheque without cover or other payment without cover or with counterfeit money. The Freight Forwarder shall only be liable for the delivery of the collected amount to the Customer, whereby any claims for damages against the Freight Forwarder that exceed the limitations determined herein shall not be possible.

The Freight Forwarder executing the order by collecting the Customer's claims from the consignee shall not verify the justification of the order nor shall it assume any warranty.

If the consignee refuses to pay the cash-on-delivery fee, the provisions of Article 42 hereof shall apply.

The Customer shall pay a special fee to the Freight Forwarder for the collection of fees under this Article and shall indemnify it for any related expenses.

Article 34 **(Changes of the Order)**

If the Customer changes its order, the Freight Forwarder shall only be obliged to follow these changes if this is still possible. The Freight Forwarder shall not be liable for

the consequences arising from the changed order. The Customer shall be obliged to reimburse the Freight Forwarder's expenses and damages arising from the changed order. In the event of such changes, the Freight Forwarder shall be entitled to a bonus on top of the originally arranged payment that corresponds to the extent of the Freight Forwarder's additional work due to the changes to the order.

Article 35
(Cancelling the Order or Withdrawing
from the Contract)

If the Customer cancels the order or withdraws from the contract, it shall indemnify the Freight Forwarder for the services rendered, as well as for incurred expenses, including expenses caused by the cancellation of the order and damages.

Article 36
(The Mutatis mutandis Application of Provisions of this Chapter)

The provisions of this chapter, excluding the provisions on the form of the order under Article 21, shall apply mutatis mutandis regardless of the manner in which the freight forwarding contract was concluded unless explicitly determined otherwise by a specific article.

V. ACCEPTANCE AND HAND OVER OF FREIGHT

Article 37
(The Manner of Accepting and Handing
Over the Freight)

The Customer shall hand over the freight to the Freight Forwarder in accordance with the provisions hereof in the agreed place, at the agreed time and in the agreed extent and manner or it shall be deemed that the freight was not handed over.

It shall be deemed that the freight has been handed over if it is handed over in accordance with the provisions of the valid rules and regulations and these Terms and Conditions and if it is made available to the Customer, Carrier or another person authorised by the Customer. The Freight Forwarder shall only be obliged to hand over the freight to the Carrier or another person authorised by the Customer if such a person is able to prove the existence of such an authorisation beyond any doubt.

Unless arranged otherwise, the Freight Forwarder shall not be obliged to arrange for the freight to be loaded upon acceptance nor unloaded upon its delivery. If the Freight Forwarder or a person operating under the instructions of the Freight Forwarder participates in the loading and unloading of freight, it shall be deemed that it is operating on the Customer's account and risk.

The Freight Forwarder shall not be obliged to hand over the freight if the consignee is not willing to confirm the acceptance in writing. Furthermore, the Freight Forwarder shall not be obliged to accept the freight if it was not given an opportunity to check the freight and provide the person handing it over with its remarks concerning the freight's condition, delay or any other faults evident at the time of accepting the freight.

Article 38 **(The Arrival of Damaged Freight** **and the Related Procedure)**

If the freight arrives at the destination visibly damaged or showing evident shortage with regard to the quantities listed in the documents that serve as a basis for the Freight Forwarder's acceptance of the freight, the Freight Forwarder, if representing the Customer as consignee, shall without delay inform the Customer about the damage or shortage and of all events important to the Customer. Furthermore, it shall take all the necessary measures to safeguard the Customer's rights towards the person responsible.

If at a certain point in the transshipment, the Freight Forwarder acts on behalf of both the consignor and the consignee, it shall use due diligence and protect the interest of both and keep them informed about its work.

Article 39 **(The Customer's Conclusion of the Transport Contract)**

If the Customer concludes a maritime transport contract, it shall be obliged to provide all the agreements on the terms and conditions of loading and unloading, such as is customary in the respective ports and other agreements customary for maritime transport.

The costs due to the failure of the port authority or the ship-owner to fulfil the loading or unloading requirements and other requirements customary in the respective port, shall be borne by the Customer.

The provisions of paragraphs one and two of this Article shall apply *mutatis mutandis* for cases when the Customer concludes a transport contract for transporting freight by other means of transport.

The Customer shall further bear the costs resulting from congestion at the port, the marshalling yard, the groupage station and other traffic points, from lack of storage space, a shortage of the means of transport, the ship waiting in the port, other means of transport waiting in ports, at railway stations or at other points, from overtime work, waiting on holidays and Sundays or from work interruption due to bad weather.

Article 40
(The Freight Forwarder's Responsibility
for the Carrier's Notes)

The Freight Forwarder shall not be responsible for information supplied by the ship-owner and its agent about the movement of the ship and its arrival, nor for information supplied by other carriers.

Article 41
(Consequences of Delays in Transport
and other Handling)

Unless explicitly determined otherwise in these Terms and Conditions or arranged in writing, all the consequences of obstacles and delays in the transport of freight, its transshipment and other handling or of freight-related services shall be borne exclusively by the Customer retaining the right of recourse against the party causing such a delay. This shall also apply to all the costs incurred due to freight handling at times when these services are more expensive (night time, Sundays, holidays and other non-working days).

Notwithstanding other provisions hereof, in no case shall the Freight Forwarder be responsible for obstacles and delays arising due to circumstances beyond the Freight Forwarder's obligation and which cannot be avoided or averted or due to force majeure and shall not be obliged to bear the consequences of such obstacles or delays.

Article 42
(Obstacles in the Delivery of Freight to the Consignee)

Should the consignee refuse to take over the freight or if the freight cannot be delivered for other reasons, the Freight Forwarder shall inform the Customer thereof and shall also take all the necessary measures for storing the freight pending further orders. If the Freight Forwarder does not receive further orders within the determined time (within 3 days if such a time has not been determined) after asking for further orders, the provisions of Article 26 hereof shall apply mutatis mutandis.

Article 43
(Obstacles in the Dispatch of Freight)

Having received the order, the Freight Forwarder shall not be obliged to investigate either the existence of any legal or other obstacles to the dispatch of the freight or the existence of any import, export and transit restrictions and the like.

Any eventual expenses and damages incurred in connection with this shall be borne by the Customer.

VI. ROUTING

Article 44 (Lack of Customer Instructions)

If the order or the contract does not contain instructions on the transport route, means of transport, the operator and the transport mode or instructions on other freight handling and related services, the Freight Forwarder shall not be obliged to act in accordance with the provisions of Article 24 hereof but shall be authorised to choose or to combine the elements that are the most favourable to the Customer. This provision does not limit the Freight Forwarder's right to dispatch the freight by groupage transport.

Article 45 (The Freight Forwarder's Right to Determine the Destination Station)

When the freight is dispatched by rail and the Customer has only indicated the consignee's headquarters and address or residence without the destination station, the Freight Forwarder, if unable to obtain the necessary clarifications from the Customer in due time, shall send the freight to the station whose location is the most favourable for the Customer. In this case, the Freight Forwarder shall not be held responsible for the selection of the station.

The provisions of this Article shall apply mutatis mutandis for transport by other means of transport.

Article 46 (Groupage Services)

The Freight Forwarder may forward all consignments by groupage transport unless explicitly prohibited by the Customer in writing. The Freight Forwarder shall be entitled to the difference in freight charges achieved by groupage transport.

Article 47 (Receipt of Notifications of the Acceptance and Dispatch of Freight)

At the Customer's demand and at its cost, the Freight Forwarder shall issue a customary forwarding certificate of the receipt and dispatch of freight. Unless arranged otherwise, such a receipt shall only confirm the type of goods (basic description) and the number of packages. If such a receipt describes other freight characteristics, the Freight Forwarder shall not be responsible for their accuracy unless it assumed an explicit guarantee thereof and received additional payment therefore.

Article 48
**(The Customer's Obligation to Bind Its Partner
to Respect the Freight Forwarder's Instructions)**

The Customer shall use its sales contract or another contract on the supply of goods to bind its partner to follow the Freight Forwarder's instructions on the transport of goods and other handling and related services. The Freight Forwarder shall not be responsible for any incurred damages should the Customer's partner fail to follow its instructions.

VII. DEADLINES

Article 49
(The Freight Forwarder's Responsibility for Delays)

The Freight Forwarder shall only be responsible for delays if it committed to this explicitly and unambiguously in writing and it if receives additional payment for assuming such a guarantee.

The fact that the order includes a deadline or the fact that the Freight Forwarder informs the Customer of the foreseen time required to implement the service shall in no instance be interpreted as proof that the Freight Forwarder has committed to this deadline and that it will comply with it.

VIII. PACKING AND PREPARING THE FREIGHT FOR TRANSPORT AND OTHER HANDLING

Article 50
**(The Customer's Responsibility
for Packing and Preparing the Freight
for Transport and Other Handling)**

As the connoisseurs of the freight, the Customer or its partner shall be obliged to pack the freight using quality and reliable packaging material, depending on its characteristics, the valid rules and regulations, the characteristics of the packaging, the requirements of the transport route, required handling and other freight related services and the requirements of the means of transport and transport mode and thoroughly prepare the freight for legal and unhindered transport, transshipment and other handling, including the handling required for transshipment during the implementation of transport, its storage and unloading at the point of destination. The freight shall be prepared in such a manner that it is protected from all regular transport and handling risks and that the

inside of the packaging cannot be reached without visible damage to the packaging itself.

Article 51 (Transport and Commercial Packaging)

The packaging of the freight shall be regarded as transport packaging with the exclusive purpose of protecting the freight from transport and handling risks and cannot be regarded as commercial packaging that may not be subject to damage occurring in freight handling and that serves for the packaging of goods to be delivered to the final user or for any other commercial purposes. If the freight is packed in commercial packaging that may not be damaged during transport and freight handling, the Customer must additionally package such goods in accordance with the provisions of Article 50 hereof prior to handing over the freight to the Freight Forwarder, thus preventing damage that may occur during freight handling.

The Freight Forwarder shall not be responsible for damages to packaging that may occur during the implementation of transport and other handling of freight.

Article 52 (Labelling on Packages)

The Customer or its partner shall be obliged to label each package in a transparent, permanent and reliable manner, making the packages distinguishable and identifiable on the transport, insurance and other documents that are used in freight handling. If one consignment is made up of several packages, each package shall be clearly marked. Furthermore, the Customer or its business partner shall be obliged to label each package in a transparent and permanent manner with information on the consignee and other information that is required to ensure proper, safe and legal handling and the correct implementation of freight forwarding (especially labels indicating that the packages constitute hazardous freight, heavy freight, freight requiring special handling procedures and, if required for the lawful and correct implementation of freight forwarding, labels indicating that the packages constitute freight as described in Article 25 hereof). All older labels on the freight from previous handling that are no longer topical shall be removed or processed so they are not legible anymore.

Article 53 (Warnings Regarding Deficient Packaging)

Should the Freight Forwarder notice that the freight is not properly packed or otherwise duly ready for transport or handling, the Freight Forwarder shall draw the Customer's attention to these deficiencies and the Customer shall be obliged to take this warning into consideration and repack the freight. The Freight Forwarder shall not be obliged to determine such irregularities if it did not have the opportunity to inspect the freight's packaging.

This provision shall also apply in cases when the Freight Forwarder calls upon the Customer to change the manner of packaging or preparation of the freight in order to ensure the easier, safer or more economic implementation of freight forwarding. Should the Customer or the Freight Forwarder under the Customer's authorisation combine several packages into one package, it shall be deemed that one package is the subject of the freight forwarding contract.

If waiting for the Customer to eliminate the deficiencies under paragraph one of this Article may be harmful for the Customer, the Freight Forwarder shall eliminate them itself at the Customer's expense but shall not be liable for any eventual consequences arising from such an action. In eliminating such deficiencies, the Freight Forwarder shall further have the right to take apart the packages prepared by the Customer and turn them into several smaller packages, whereby in determining its liability for damages it shall be deemed that there was no increase in the number of packages.

The Freight Forwarder shall only be obliged to pack the freight if it explicitly accepted such an obligation in writing and in cases under paragraph three of this Article.

The Freight Forwarder shall not be responsible for any consequences that might arise due to the Customer or its partner not observing the provisions hereof relating to the responsibility for packaging.

IX. DETERMINING THE QUANTITY AND QUALITY OF FREIGHT AND SAMPLING

Article 54 (The Take Over and Hand Over of Freight in Terms of Quantity)

The Freight Forwarder shall only take and hand over packages corresponding to the number of pieces stated on the documents pursuant to which it is justified to take or hand them over without any responsibility for the quantity, quality, nature, value and contents within an individual package nor for their weight, volume or other characteristics regardless of whether these are stated in the documents.

The Freight Forwarder shall only take and hand over bulk freight and other non-packaged goods in accordance with the Customer's instructions and without any responsibility for its weight, quantity, contents, nature or other characteristics.

Weighing, measuring and detailed counting or inspection of freight and packages shall only be made on special demand or in the case of evident damage and loss of freight and against payment of expenses and a supplementary fee.

The Freight Forwarder may also have the freight weighed by a respective specialised organisation.

Article 55
(Taking Over Freight in Terms of Quality)

The Freight Forwarder does not act as a connoisseur of the freight and shall not be obliged to object to its condition, nature or quality or the fact that the freight does not correspond to the specification or samples unless the deficiencies of the freight are such that they cannot be overlooked by any average attentive person.

Article 56
(Sampling)

The Freight Forwarder shall only conduct the sampling and dispatch thereof on the Customer's orders or at the demand of competent state bodies and other public authorities. The Customer shall be obliged to reimburse the Freight Forwarder for all costs relating to such actions and additionally remunerate the Freight Forwarder for their implementation.

The Freight Forwarder shall only be responsible for sampling the indicated lot of freight.

X. CUSTOMS CLEARANCE

Article 57
(Assumption of the Existence of the Order for Customs Clearance)

Unless expressly agreed otherwise in writing, the order for the ispatch or takeover of freight shall be deemed to include the order for implementing customs clearance. The Freight Forwarder shall only be obliged to report using the Intrastat system on the basis of an explicit written order.

If the place of customs clearance is not indicated in the order or in the valid rules and regulations, such a place may be specified by the Freight Forwarder.

Article 58
(Manner of Representation)

Unless expressly agreed otherwise in writing, the Freight Forwarder shall act in the customs clearing procedure for and on behalf of the Customer (direct representation) and if all the conditions to do so are not met for itself and on behalf of the Customer (indirect representation). The Freight Forwarder shall submit the customs documents and conduct other actions in the customs clearance procedure on the basis of information supplied by the Customer or its business partner. The Freight Forwarder shall not be responsible if such information does not conform to the actual situation. The Customer shall be obliged to reimburse the Freight Forwarder or its responsible person for any damages thus incurred, including all subsequently levied duties, penalties and

costs of procedures, upon the Freight Forwarder's first call and without any limitations, reservations, conditions or objections.

If administrative, criminal, penal or other proceedings are started against the Freight Forwarder due to faults in the customs clearance procedure described in the previous paragraph of this Article or due to other faults beyond the Freight Forwarder's responsibility, it shall be deemed that such procedures are conducted on behalf of the Customer and at its cost. In such a case, the Customer shall be obliged to provide the Freight Forwarder with all the needed means, proofs and documents and shall be obliged to exonerate it from all consequences upon the Freight Forwarder's first call and provide all the required help.

Article 59 (The Customer's Organisation of Transport and/or Other Services in the Event of Suspensive Arrangements and Customs Procedures with Economic Impact)

If the Freight Forwarder conducts customs clearance procedures for the Customer and does not organise the transport of freight and/or other services, in cases of suspensive arrangements and customs procedures with economic impact, the Customer shall ensure that the Carrier and all the parties in possession of the freight treat the freight and all the related customs and other documents that are required for the correct conclusion of these procedures in accordance with the valid customs rules and regulations and the Freight Forwarder's instructions and to implement transport and other services so as to enable the timely and legal conclusion of these proceedings.

Failure to comply with the obligation under paragraph one of this Article shall result in the Customer being obliged to reimburse the Freight Forwarder and its responsible person for any damages thus incurred, including all subsequently levied duties, penalties and costs of procedures, upon the Freight Forwarder's first call and without any limitations, reservations, conditions or objections.

Article 60 (Payment for Conducting Customs Clearance Procedures)

The payment pertaining to the Freight Forwarder for organising transport or other services shall not include payment for conducting customs clearance procedures. This payment shall pertain to the Freight Forwarder in addition to payment for organising transport or other services.

XI. FREIGHT INSURANCE

Article 61

(Freight Insurance on the Basis of an Explicit Order)

The Freight Forwarder shall only be obliged to provide freight insurance on the basis of an explicit order for each dispatch. The indication of the freight value in the order alone shall not be deemed an insurance order. Likewise, the insurance of a single consignment does not imply any obligation on the part of the Freight Forwarder to insure all subsequent consignments of this Customer.

If the Freight Forwarder assumes the responsibility of providing insurance, this responsibility shall always relate only to cargo or freight insurance and not to the conclusion of any other types of insurance.

Article 62

(Conclusion of the Contract on Freight Insurance)

The order for freight insurance shall be placed before the Freight Forwarder begins implementing the freight forwarding services and shall include a clear specification of the desired insurance coverage and the risks covered by the insurance. If the order does not include such risks, the Freight Forwarder shall only be obliged to insure the freight against customary transport risks. The Freight Forwarder shall be entitled to choose the manner of concluding the insurance and the insurance company at its own discretion and to accept the insurance company's general terms and conditions for concluding the insurance, including the terms and conditions relating to the deductible franchise, unless instructed otherwise by the Customer in writing. The Freight Forwarder shall not be obliged to take out insurance that does not meet the requirements specified under Article 65 hereof.

The Freight Forwarder shall be entitled to separate payment for providing cargo insurance and to the reimbursement of related costs. This provision shall apply *mutatis mutandis* for all services that the Freight Forwarder conducts in relation to such insurance (e.g. filing insurance claims, etc.).

Article 63

(The Consequences of the Lack of Insurance or Deficiencies Thereof)

If the Customer does not submit an order for freight insurance or orders only partial insurance, provides the wrong information required for the insurance, prevents the conclusion of insurance in any way or causes the occurrence of deficiencies in the insurance, it shall bear all the harmful consequences arising therefrom. This shall also apply if it does not enforce its rights under the insurance in the event of contingency.

Article 64 **(The Freight Forwarder's Role in the Event of Contingency)**

If the Freight Forwarder concludes a freight insurance contract on the basis of the Customer's order and a contingency arises and the Freight Forwarder submits the insurance claim, the Customer shall only be entitled to the amount that that Freight Forwarder receives from the insurance company under the insurance contract. By concluding the insurance contract, the Freight Forwarder does not assume any responsibility for the payment of damage compensation under such insurance.

In no case shall the Freight Forwarder be obliged to submit the claim under paragraph one of this Article on behalf of the Customer.

If the Freight Forwarder concludes the insurance in a manner making it the insurer, it shall be deemed that in the event of a contingency, its obligations towards the Customer in relation to that contract are met in the moment when it enabled it to enforce the rights under that contract against the insurance company.

Article 65 **(The Contents of the Insurance Contract Concluded by the Customer)**

If the Customer concludes a cargo insurance contract with the insurance company itself, it shall be obliged to ensure that the contract includes a clause on the insurance company's waiver of recourse against the Freight Forwarder. Failure to do so shall result in the Customer bearing all costs and damages thus incurred by the Freight Forwarder.

XII. THE FEE AND REIMBURSEMENT OF EXPENSES

Article 66 **(The Obligation of Paying the Fee and Reimbursing Expenses)**

The Customer shall pay the Freight Forwarder for each service rendered and shall reimburse all expenses relating to the freight forwarding contract and its implementation (including those that arise after the service has been concluded and the Customer has reimbursed the Freight Forwarder for all the currently known expenses relating to the service; such expenses include the subsequent payment of customs and other duties, undercharged freight or storage fee, payment for longer stops, etc.).

The Customer's obligation under paragraph one of this Article also exists if the Freight Forwarder is unable to perform the service or not able to perform it in full for reasons that are the responsibility of the Customer or persons acting on behalf of the Customer.

The Customer shall reimburse the Freight Forwarder's expenses after their occurrence and upon the latter's first call, whereby this provision shall not prejudice the Freight Forwarder's right under Article 70 hereof.

The expenses under paragraph one of this Article include particularly, but not exclusively customs duties, taxes and excise duties, other public levies (including charges, customs duties, taxes, excise duties and other public levies charged subsequently), insurance premiums, the costs of bank guarantees, general average costs and the costs of implementing inspection and other examinations, payments made to third parties that participated in the implementation of services, other costs that are enforced against the Freight Forwarder by third parties due to the possession of freight on account of the third party and other costs and expenses that the Freight Forwarder is not bound to bear under the concluded contract.

Article 67 **(The Method of Determining the Amount of Payment)**

The fee shall be fixed by the tariff or by the contract. If such a tariff is not arranged and if the contract does not determine the amount of payment, the Freight Forwarder's fee shall apply as valid at the time when the individual freight forwarding service was implemented.

If payment under the tariff can be determined on the basis of weight, volume, length, surface area, number of packages or other freight characteristics and no other written agreement or clause in the tariff exist, payment shall be determined on the basis of the criteria used by the Freight Forwarder in similar cases.

If payment is determined proportionately to the value of the freight that is determined on the invoice or on another document submitted to the Freight Forwarder, the value on such an invoice shall be the fair value and may not be reduced by any eventual discounts or other bonuses. If the value on the invoice varies from the fair market price, the Freight Forwarder shall be allowed to consider the fair market price when determining the payment amount. The fair market price is determined according to the exchange price or, if no such price exists, according to the daily market prices. If neither the exchange nor the market price exist, the value shall be determined on the basis of the normal market prices, whereby the moment and location of the freight's handover to the Freight Forwarder shall be considered as the relevant moment and location for determining the value.

If payment is determined on the basis of other information and not the value of the freight and if the Freight Forwarder establishes that the Customer or the person authorised to do so by the Customer has communicated faulty information, the Freight Forwarder shall be entitled to obtain the correct information at the Customer's cost and then determine the amount of payment by using such information and charge the Customer all the damages arising from the latter communicating faulty information.

Notwithstanding the provisions hereof, the Freight Forwarder shall also be entitled to check the market price of the freight and other information in cases when it requires such information for the correct implementation of freight forwarding and not only when such information is required for determining the amount of the fee.

Article 68 (Currency)

The Customer shall conduct all payments to the Freight Forwarder in the official currency of the Republic of Slovenia.

Notwithstanding the provisions of paragraph one of this Article, the Freight Forwarder shall be entitled to a fee for its services and to the reimbursement of its expenses in the currency of the country of its Customer's headquarters or, if agreed, in any other currency for services rendered to a foreign Customer. If the payment of the fee and the reimbursement of expenses are agreed to be made in a foreign currency, all exchange rate differences between the foreign currency and the currency used in the Republic of Slovenia arising from the moment that the agreement on payment has been concluded or the moment that the Freight Forwarder has incurred the expenses to the moment of making the payment or reimbursing the expenses shall be borne by the Customer.

Article 69 (Payment Deadlines and Objections to the Invoice)

Unless otherwise agreed in writing, the Freight Forwarder's invoice shall fall due within eight days of the date of issuing the invoice.

Objections to the invoice shall be submitted within the same deadline or it shall be deemed that there are no objections. In the event of late payment, the Freight Forwarder shall be entitled to charge the legal interest for late payment or, if such an interest rate is not determined, at an interest rate of 15% annually.

Whenever the claim refers to only a part of the invoice, the undisputed part must be paid within eight days of the date of issuing the invoice.

Article 70 (Advance Payment)

The Freight Forwarder shall be entitled to request advance payment or the payment of anticipated expenses at any time, or the provision of an unconditional bank guarantee issued by a prime bank with headquarters in the Republic of Slovenia, payable upon first call and without objections issued for the amount of the anticipated expenses. If the Freight Forwarder doubts the Customer's solvency, this provision shall also apply to the payment for the freight forwarding service. This provision shall not prejudice the Freight Forwarder's right to accept another appropriate manner of insuring its claims other than advance payment or bank guarantee (e.g. surety, mortgage, bill of exchange, etc.).

If the Customer refuses to make such an advance payment or to provide a bank guarantee (or another form of insurance if the Freight Forwarder agreed to such a form of insurance in writing) and if the Customer refuses to make the payment falling due at the time of the validity of the contract, should the Customer fail to act in accordance with the

provisions of paragraph one of this Article within 8 days of being called upon to do so or in a shorter time if so required by circumstances, the Freight Forwarder shall have the right to immediately withdraw from the contract by an ordinary statement sent to the Customer and without facing any consequences from such an action, whereby it retains the right to receive payment for services rendered and the reimbursement of expenses. If the Freight Forwarder does not enforce its right to withdraw from the contract, it shall not be bound to implement the freight forwarding contract until it receives the advance payment or a bank guarantee or another form of insurance that it accepted. If it chooses to implement the freight forwarding contract, all the consequences of such an act shall be borne exclusively by the Customer.

Article 71

(The Freight Forwarder Advancing its Own Funds for the Customer)

If the Freight Forwarder executing an order advances its own funds, it shall be entitled to a special commission for the advanced sums. The amount of this commission shall be specified by the tariff or by agreement with the Customer. If such a tariff or agreement do not exist, the Freight Forwarder shall be entitled to a commission of 12% annually calculated on the basis of the value of the funds advanced from the moment that the Customer's obligation to reimburse the Freight Forwarder arises. If the Freight Forwarder takes on a loan to ensure such an advancement of funds, it shall be entitled to the reimbursement of all costs relating to such a loan, whereby the reimbursement cannot be less than 12% annually calculated on the basis of the advanced funds.

XIII. THE FREIGHT FORWARDER'S LIABILITY

Article 72

(Duty of Care)

The Freight Forwarder shall always act in compliance with the Customer's interests and with due diligence.

Article 73

(The Freight Forwarder's Liability for Others and the Limitation of Liability of Others)

The Freight Forwarder shall only be responsible for the choice of carrier and other parties with whom it concludes a contract relating to the execution of the order (storage, transshipment, sorting, packaging, freight insurance, etc.) but it shall not be responsible for their performance except in cases determined by paragraph three of Article 5 hereof.

The provisions hereof applying to the Freight Forwarder's liability shall apply mutatis mutandis to the liability of the parties operating for the Freight Forwarder or that the

Freight Forwarder attracted to the implementation of the freight forwarding contract and to the Customer's claims and the claims of third parties towards such parties. The cumulative liability of the Freight Forwarder and such parties cannot exceed the amount limiting the Freight Forwarder's liability.

Article 74 (The Freight Forwarder as a Transport Operator or Provider of Other Services)

The Freight Forwarder shall have the right to transport the freight itself and/or implement all other services required for the implementation of freight forwarding. In such cases, it shall hold the rights and obligations under the valid rules and regulations or that are customary for the performance of such services.

If the order includes an explicit or implicit authorisation to the Freight Forwarder to entrust the execution of the order to another Freight Forwarder or if this is in the Customer's interest, the Freight Forwarder shall only be responsible for choosing another Freight Forwarder. It shall be deemed that the Freight Forwarder has such an authorisation particularly, but not exclusively in cases of organising groupage transport and in cases when part of the service has to be implemented in areas or territories that are not directly covered by the Freight Forwarder's business network but are covered by another Freight Forwarder or in areas or territories that another Freight Forwarder covers more efficiently due to its more favourable position on the market.

Article 75 (Cases Excluding the Freight Forwarder's Liability)

The Freight Forwarder shall not be liable for damages nor bear any consequences arising due to:

- defects or the nature of the freight (including ordinary spilling, ullage, perishing, drying, leaking, decomposing, breaking, rusting, loss of weight or volume, worm damage, rotting, mould, insects or other vermin, etc.),
- faulty or deficient packaging or freight preparation,
- following instructions and information on the freight obtained by the Customer or a person authorised by the Customer,
- non-delivery or untimely delivery of the freight by the Customer,
- delivery of freight contrary to agreement,
- other actions or omissions thereof by the Customer or its authorised representatives or persons hired by the Customer or persons who have the right to handle the freight,

- the Customer failing to respect the provisions of the currently valid rules and regulations, these Terms and Conditions, the contract and the instructions provided by the Freight Forwarder and other persons that the Freight Forwarder authorised to provide such instructions,
- freight handling, loading, stacking or unloading freight and other freight related actions conducted by the Customer or its authorised representatives,
- force majeure, weather conditions and phenomena, natural and other disasters, fires, strikes, labour disputes, shutdown, the seizure or impounding of freight, other regulatory measures, decrees or recommendations issued by state bodies or other public authorities, administrative or legal requirements, riots, rebellions, revolutions, hostilities, war, acts of violence, robbery or theft,
- acting in accordance with the valid rules and regulations, the freight forwarding contract and/or these Terms and Conditions,
- other facts, causes or events that are defined as exculpatory in the valid rules and regulations and facts, causes or events that are not the Freight Forwarder's responsibility or events that the Freight Forwarder was unable to avoid and whose consequences it was unable to prevent.

Where there is a possibility of damages occurring due to any of the circumstances under paragraph one of this Article, it shall be deemed that they occurred due to them.

The Freight Forwarder shall not be liable for damages occurring due to consultancy or acts that it performed for the Customer free of charge.

The Freight Forwarder shall not be responsible for freight charges, customs duties and other public levies that have been incorrectly charged.

Article 76 (Inability to Fulfil the Freight Forwarding Contract)

If the Freight Forwarder is unable to fulfil its obligations under the freight forwarding contract due to any of the reasons or events under paragraph one of Article 75 or the nature of the freight or other events beyond its control and if these obstacles are such that they may be eliminated, it may call upon the Customer to provide instructions for such elimination within 3 days after receiving such a call. If it cannot wait to receive such instructions, the Freight Forwarder shall have the right to eliminate such obstacles itself at the Customer's risk and cost.

If the obstacles cannot be eliminated, the Freight Forwarder shall be relieved of its obligations under the freight forwarding contract but shall put the freight at the Customer's disposal or store it at the latter's risk and cost. If this is not possible or sensible, it shall have the right to sell the freight at the exchange or market price and use the purchase money to settle the costs of sale followed by its receivables due from the Customer under the freight forwarding contract and to release the remaining amount to the Customer.

tom. In such a case, the obligations of the contracting parties to the freight forwarding contract shall be assessed as impossible to perform.

If the obstacles are temporary in nature, the Freight Forwarder's obligations shall be at a standstill during their duration. It shall be deemed that obstacles are temporary in nature if their duration does not exceed 15 days.

Article 77 **(The Customer's Obligation to Protect the Freight Forwarder from Claims from Third Parties and Consequences arising from Implementing the Freight Forwarding Contract)**

Whenever the Freight Forwarder acts for and on behalf of the Customer or for itself and on behalf of the Customer, the Customer shall be obliged to protect the Freight Forwarder and all its representatives, agents and other parties operating under its order or on its behalf from all claims from third parties (including the state and other public authorities) and take their place in all proceedings lodged against them by third parties upon their first call and to protect them against all the negative consequences that they suffer in relation to implementing the freight forwarding contract that they are not obliged to suffer under the provisions of the valid rules and regulations, these Terms and Conditions and the freight forwarding contract.

The provisions of the previous article shall further apply when the Freight Forwarder acts for itself and on its own behalf and in other cases when the occurrence of such claims or the start of such procedures has been caused by the Customer breaching valid rules and regulations, any provisions of the freight forwarding contract or hereof or the fact that the Freight Forwarder has acted in accordance with the Customer's instructions or the instructions of a person authorised by the Customer to provide such instructions or if the occurrence of such claims or the start of such proceedings has been caused by an event that is the responsibility of the Customer. The provisions of the previous paragraph of this Article shall apply any time the Freight Forwarder is not obliged to fulfil such claims from third parties in accordance with the provisions of the valid rules and regulations, the contract and hereof and especially in cases relating to the payment of customs and tax liabilities, excise duties, other public levies, obligations to banks and insurance companies, general average costs, interest, fines, compensations, etc.

The Customer shall be obliged to reimburse the Freight Forwarders, upon the latter's first call, for any damages suffered due to the Customer acting in contradiction to the valid rules and regulations, the contract or hereof or such actions being taken by a party operating under the Customer's orders.

Article 78 **(Managing Procedures for the Customer)**

The Freight Forwarder shall only submit claims, complaints and compensation claims and manage various formal procedures to the benefit of the Customer if explicitly

requested by the Customer. In such a case, the Customer shall submit all transport, customs and other documents required for raising the claim to the Freight Forwarder as well as all the relevant information.

The Freight Forwarder shall manage the procedures under the previous paragraph of this Article at the Customer's risk and cost and shall be entitled to receive separate payment for these services.

Article 79 (Limitation of the Freight Forwarder's Liability)

If the basis of the Freight Forwarder's liability is proven beyond doubt, the Freight Forwarder shall only be responsible within the limits determined herein for ordinary damages to property (loss of property) and not for non-material damages, loss of profit or income or revenue and any eventual other damages suffered by the Customer or its business partner, such as in particular, but not exclusively the costs of implementing alternative services, loss of income due to the inability of use, interest for late payment, contractual and other penalties, other compensations paid by the Customer, damages due to a standstill of operation, loss of market, business, business opportunities or business partners, damages due to impairment of reputation or goodwill and other indirect and consequential damages.

Article 80 (The Extent of the Freight Forwarder's Liability in the Event of Damages, Destruction or Loss of Freight)

If the Freight Forwarder is responsible for the damage, destruction or loss of freight, its liability shall be limited by the amount determined by an individual convention, by national legislation or another rule or regulation that governs that type of transport, handling or services in which the damage, destruction or loss of freight occurred. If the damage was caused by a party under the responsibility of the Freight Forwarder, the Freight Forwarder's liability shall not exceed the liability determined for such a person if such an extent is smaller than the extent of the Freight Forwarder's own liability under these Terms and Conditions.

Unless agreed otherwise or unless proceeding from the valid rules and regulations, in cases when the Freight Forwarder does not issue a statement that the freight is lost, it shall be deemed that the freight is lost if it is not delivered to the consignee within 30 days of the day of anticipated delivery or, if such a date has not been determined, within 90 days of the acceptance of the freight by the Freight Forwarder.

If the provisions of any convention, national legislation or another rule or regulation as determined under paragraph one of this Article cannot be applied in the event of damages, destruction or loss of freight, if such provisions do not exist, if they do exist but do not include provisions on limitation of liability or if the place of occurrence of the damage cannot be determined and therefore the convention or national legislation or

another rule or regulation as determined under paragraph one of this Article cannot be determined with certainty, the Freight Forwarder's liability shall be limited to SDR 5 per kilo of gross weight of the damaged, destroyed or lost freight or, in the case of multimodal transport, unless determined otherwise in the rules and regulations governing multimodal transport, to SDR 2 per kilo of gross weight of damaged, destroyed or lost freight.

Unless determined otherwise, the compensation hereunder cannot exceed SDR 25,000 per individual incident or several incidents with the same reason for the damage.

If the freight is completely or partially damaged, destroyed or lost, the Customer shall not be entitled to claim damages for delay but exclusively to compensation determined in this Article provided that all the assumptions determined by the valid rules and regulations and these Terms and Conditions have been met.

Article 81 **(The Extent of the Freight Forwarder's Liability** **in the Event of Delay)**

If the Freight Forwarder accepts the obligation to observe the deadline, its liability shall be limited by the amount determined by an individual convention, by national legislation or by another rule or regulation that governs that type of transport, handling or service in which the delay occurred.

If the provisions of any convention, national legislation or another rule or regulation as determined under paragraph one of this Article cannot be applied, if such provisions do not exist, if they do exist but do not include provisions on limitation of liability, in the case of multimodal transport if not determined otherwise in the rules and regulations governing multimodal transport, or if the place of occurrence of the delay cannot be determined and therefore the convention or national legislation or other rule or regulation cannot be determined with certainty, the Freight Forwarder's liability shall be limited to twice the payment received for the services rendered in relation to organising freight forwarding in which the delay occurred, whereby in the event of a delay regarding the implementation of freight forwarding for part of freight, the relevant amount to be paid shall be an amount corresponding to the ratio between the quantity of the freight delivered on time and the freight delivered with a delay. Unless determined otherwise, the compensation for delay cannot exceed SDR 25,000 per individual incident or several incidents with the same reason for the damage.

If the damage was caused by a party under the responsibility of the Freight Forwarder, the Freight Forwarder's liability shall not exceed the liability determined for such a person if such an extent is smaller than the extent of the Freight Forwarder's own liability under these Terms and Conditions.

Article 82 **(The Extent of the Freight Forwarder's Liability** **in Other Cases)**

If the Freight Forwarder is responsible for damages that are not classified as damages, destruction or loss of freight or delay of delivery under the valid rules and regulations and these Terms and Conditions, its liability shall be limited to twice the payment received for the services rendered in relation to organising freight forwarding, whereby the compensation cannot exceed SDR 25,000 per individual incident or several incidents with the same reason for the damage.

The Freight Forwarder's cumulative liability for damages, destruction or loss of freight and for delay in delivery and other damages cannot exceed the value of the damaged, destroyed or lost freight regardless of any other provisions of these Terms and Conditions.

The limitation under the previous paragraph of this Article shall also apply to storage.

Article 83 **(Expansion of the Freight Forwarder's Liability)**

The Freight Forwarder may assume an obligation that exceeds the limitations determined by the valid rules and regulations and these Terms and Conditions. The assumption of such obligation is only valid and binding to the Freight Forwarder under the condition that it is given in the form of a written clause in which the Freight Forwarder's liability is clearly and descriptively provided and under the condition that the Freight Forwarder has explicitly stated that it assumes such an obligation and received additional payment for such assumption. If such a clause is not explicitly stated in writing containing a detailed description of the Freight Forwarder's obligation and not in a manner that makes it unambiguously clear that the Freight Forwarder accepts the expansion of its obligations but merely uses abbreviations or other symbols, it shall be deemed that the freight forwarding contract does not contain such a clause. Specifications of amounts in the freight forwarding contract cannot be deemed specifications of the freight forwarder's liability unless accompanied by an explicit and unambiguous statement from the Freight Forwarder that these amounts represent the maximum limitation of liability.

Article 84 **(Partial Damage, Destruction or Loss of Freight)**

In the event of partial damage, destruction or loss of freight, the Freight Forwarder's liability is limited to the damaged, destroyed or lost part of the freight.

In cases under the first paragraph of this Article, damages shall be regarded as such only in extent of the damaged part of the freight and not any reduced value of the remaining part of the freight that occurs due to the partial damage.

Article 85 **(The Value of Damaged, Destroyed or Lost Freight)**

The value of damaged, destroyed or lost freight shall be determined in accordance with the provisions of the convention used or the national legislation or another rule or regulation under paragraph one of Article 80 hereof. If the value of the damaged, destroyed or lost freight cannot be determined in such a manner, it shall be deemed that its value equals the value stated in the invoice or other documents that were submitted to the Freight Forwarder for reasons of implementing freight forwarding. If such an invoice or other documents do not exist, the value of the freight shall be determined according to the exchange price or, if no such price exists, according to the daily market prices. If neither the exchange nor a market price exist, the value shall be determined on the basis of the normal market value of the same kind and quality of freight, whereby the moment and place of the freight's handover to the Freight Forwarder shall be considered as the relevant moment and place of determining the value.

Notwithstanding the other provisions hereof, the Freight Forwarder's liability cannot exceed the amount that the Customer would have received from the consignee in the event of the correct implementation of the freight forwarding service and cannot exceed the value of the damaged, destroyed or lost freight.

Any costs related to determining the damage and its amount shall be borne by the Customer.

Article 86 **(Releasing Damaged or Destroyed Freight to the Freight Forwarder)**

If the Freight Forwarder is obliged to pay compensation for damaged or destroyed freight in the amount equalling the freight's value, it shall be entitled to request that the Customer hand over or release such freight to the Freight Forwarder prior to paying the compensation.

Article 87 **(Deadlines for the Customer to Inspect the Freight and Submit its Objections)**

If the Customer or a person authorised to do so by the Customer takes over the freight from the Freight Forwarder or a person authorised by the Freight Forwarder without inspecting it in detail in the presence of such a person or the Freight Forwarder and submits its reservations and objections upon takeover and specifies loss or damages that can be established upon takeover and written reservations, objections and specifications regarding loss or damages that cannot be established upon takeover within 7 days after the freight has been taken over, it shall be deemed that the freight was taken over without any faults and that damages to it occurred after the Freight Forwarder handed

over the freight and that the Freight Forwarder implemented its obligations correctly and in full.

If the Customer fails to submit its reservations, objections and specifications of loss and damages due to loss of freight within 21 days after the deadline specified in paragraph two of Article 80 hereof has expired, it shall be deemed that the freight was delivered to the consignee without any faults and that the freight was not lost. In the event of partial loss, the provisions of paragraph one of this Article shall apply.

The provisions of paragraph two of this Article shall also apply in cases when the Customer, should the Freight Forwarder assume the obligation of meeting the deadline, fails to submit its reservations, objections and specifications of loss and damages arising due to the Freight Forwarder's failure to meet the deadline within 21 days after this deadline has expired.

The Customer shall point out any other faults relating to damage, destruction or loss of freight or delay within 7 days following the Freight Forwarder's implementation of the ordered service or after the service should have been implemented or it shall be deemed that the service has been implemented without faults.

Article 88
(Deadlines for the Customer's Submission
of Objections Relating to Faults of Third Parties
under the Freight Forwarder's Responsibility)

Notwithstanding other provisions hereof, the Customer shall be obliged to submit its reservations and objections relating to the faults of third parties under the responsibility of the Freight Forwarder and submit its claims towards the Freight Forwarder hereunder in deadlines that allow the Freight Forwarder enough time to take recourse action against such parties with the competent court or another body in accordance with the valid rules and regulations, whereby this deadline cannot be less than 7 days. If the Customer fails to fulfil this obligation and the Freight Forwarder is consequently not able or cannot be able to enforce its recourse claim against the third party, the Customer shall not be entitled to compensation from the Freight Forwarder and if it has already received such compensation it shall be obliged to refund the Freight Forwarder together with the corresponding legal interest for late payment from the moment of receiving compensation to the moment of refunding it.

Article 89
(The Form and Content of Objections)

The Customer shall submit its reservations, objections and specifications under Articles 87 and 88 hereof in writing and shall provide all the facts for their argumentation and proof on which they are based. The burden of proof that it has met this obligation within deadlines determined in Articles 87 and 88 hereof shall be borne by the Customer.

XIV. LIEN ON FREIGHT AND ITS RETENTION

Article 90 (The Freight Forwarder's Lien on Freight and its Retention)

In order to secure the payment of its claims under the freight forwarding contract, the Freight Forwarder shall be entitled to lien and retention of freight submitted for dispatch under conditions determined by the valid rules and regulations as long as it is in its custody or as long as it possesses a certificate entitling it to dispose of such goods. This right shall extend to money that the Freight Forwarder receives upon delivering the freight to the consignee (COD) or other amounts or items that the Freight Forwarder receives in exchange for the freight (e.g. amounts that it receives when selling the freight itself).

The Freight Forwarder's lien and retention of the freight under the previous paragraph of this Article shall expand to cover receivables from the Customer under the freight forwarding contract that is the basis for the Freight Forwarder's possession of the freight, as well as to receivables from the Customer under other freight forwarding contracts already concluded and implemented in the past. It shall be deemed that at the moment of concluding the freight forwarding contract, the lien contract is concluded and that a lien arises at the moment that the Freight Forwarder receives the freight or a document authorising the Freight Forwarder to take over the freight.

If the Customer fails to pay its obligation to the Freight Forwarder, the latter shall be entitled to sell the freight over which it has the lien or the right of retention under paragraph one of this Article out-of-court and in accordance with the valid rules and regulations governing contractual obligations and material law relations at the moment that the Customer's obligation falls due.

XV. STORAGE

Article 91 (The Freight Forwarder's Organisation or Implementation of Storage)

The Freight Forwarder shall only be obliged to organise the storage of freight or conduct storage itself on the basis of the Customer's explicit order but it may organise or implement it also without such an order in all the cases determined herein and in the valid rules and regulations, when this is required for moving freight and for other freight handling and related services, for groupage transport, when required due to implementing customs formalities and in all other cases when storage is required or sensible in order to implement the freight forwarding service.

Article 92 **(Details Regarding Storage)**

The Freight Forwarder shall be entitled to choose the type and location of the warehouse, the warehouse keeper and all other details relating to storage, provided that it does not receive different instructions from the Customer in writing. This entitlement shall also relate to moving freight during storage from the original warehouse to another warehouse, whereby the Customer shall reimburse the Freight Forwarder for any expenses related to such moves if the move was made at the Customer's request, with the intent of protecting the Customer's interest, for reasons beyond the Freight Forwarder's responsibility or on the basis of valid rules and regulations or regulatory measures.

Considering its characteristics, the freight may be stored outdoors unless this is explicitly forbidden in writing by the Customer or if such storage is not standard for the freight in question.

Article 93 **(Duration of Storage)**

If the Freight Forwarder and the Customer do not arrange the duration of storage, it shall be deemed that the storage shall last 3 months. If neither contracting party notifies the other party in writing at least 14 days prior to the expiry of this 3-month period that it no longer wishes to store the freight, this period shall be tacitly prolonged for another 3 months.

Article 94 **(The Freight Forwarder's Liability for Storage in Special Cases)**

If the Freight Forwarder organises the storage of freight or implements it itself for the reasons determined under Articles 26, 29, 42, 76 and 95 hereof or for other reasons under the responsibility of the Customer or another party operating under the Customer's orders, such storage shall be implemented exclusively at the Customer's risk and cost.

Article 95 **(Freight that Poses a Threat or Perishable Freight)**

If the Freight Forwarder notices signs of perishing or other changes or characteristics of the freight that may reduce its value or cause damages to other goods, warehouse facilities, the environment or other property, or that may endanger human life or health or cause any other damages, the provisions of Article 29 hereof shall apply *mutatis mutandis*.

Article 96 **(Maintaining the Freight in its Original Condition)**

The Freight Forwarder shall be obliged to maintain the stored freight in the same condition as at the moment of storing it but only to an extent that is proportional to the payment pertaining to the Freight Forwarder for storage.

If at the time of release from storage the freight is not in such a condition and the changes are such that usually occur during takeover for storage, duration of storage, release from storage or during other types of handling (e.g. ullage, spilling, natural perishing, breaking and other changes), it shall be deemed that the Freight Forwarder's obligation under paragraph one of this Article has been met.

The Freight Forwarder shall not be obliged to notify the Customer about the occurrence of changes to the freight under paragraph two of this Article.

Article 97 **(The Customer's Right to Inspect the Manner of Storage and Sampling)**

The Customer shall be entitled to inspect the manner of storage during the regular working hours of the warehouse and to submit any objections unless the terms and conditions under which the warehouse keeper operates determine otherwise. If it enforces this right and does not submit its objections to the manner of storage as soon as this is possible even if it has the opportunity to do so, it shall not have the right to complain about the manner of storage upon takeover.

The Customer shall not have the right to handle the stored freight in the warehouse unless allowed to do so by the warehouse keeper. This provision shall not apply to the Customer's right to sample stored freight.

The Freight Forwarder shall have the right to be present at inspections and handling under paragraphs one and two of this Article and the right to demand that minutes are drawn up on any activity regarding the stored freight implemented by the Customer. The Customer shall be responsible for any damages arising due to such activities and for all damages caused by the Customer and the parties operating under its orders in the warehouse, goods and to the persons in the warehouse.

Article 98 **(Report on the Condition and Quantity of Freight in the Warehouse)**

The Freight Forwarder shall be obliged to submit a report on the condition and quantity of the Customer's freight in storage upon the latter's written request and at its cost. If the Customer requests that samples are taken, it shall provide the Freight Forwarder with detailed instructions on the sampling procedure and the sampling points, other-

wise the Freight Forwarder shall be entitled to sample the freight at its own discretion and without any responsibility for its suitability.

Article 99
(Balance of Inventory Differences)

The Freight Forwarder shall be entitled to balance inventory differences (surplus and deficit) of the same type of goods from the same Customer.

Article 100
(Request for Early Release from Storage)

If the Customer requests the freight to be released from storage prior to the arranged date, the Freight Forwarder shall have the right to receive payment for storage as though the early release from storage did not take place, taking into account the Freight Forwarder's saved costs due to such a release and the income generated by storing other eventual freight that the Freight Forwarder stores instead of the freight released early.

Article 101
**(The Extent of the Freight Forwarder's Liability
in the Event of Destruction, Loss or Damages
to the Freight during Storage)**

If the Freight Forwarder's liability for destruction, loss or damages to the freight during storage is determined in accordance with the provisions of the valid rules and regulations and hereof, such a liability shall be limited to the amount determined by an individual convention, national legislation or other rule or regulation governing storage.

If the provisions of any convention, national legislation or other rule or regulation as determined under paragraph one of this Article cannot be applied, if such provisions do not exist or if they do exist but do not include provisions on limitation of liability, the Freight Forwarder's liability for damages, destruction or loss of freight shall be limited to SDR 5 per kilo of gross weight of freight, whereby this liability cannot exceed SDR 5,000 per individual incident or several incidents with the same reason for the damage or the actual value of the freight if the value is less than SDR 5,000.

The Freight Forwarder's liability shall apply from the moment the freight is stored and the Customer or a party authorised by the Customer receives a receipt for the goods or a warehouse receipt until the moment that the freight is handed over to the entitled consignee.

Article 102
(The Extent of the Freight Forwarder's Liability
in Other Cases)

If the Freight Forwarder is responsible for storage-related damages that are not classified as damages, destruction or loss of freight under the valid rules and regulations and these Terms and Conditions, its liability shall be limited to SDR 5,000 per individual incident or several incidents with the same reason for the damage.

Article 103
(The Use of Provisions of Other Chapters Hereof)

Unless explicitly stated otherwise, the provisions of other chapters hereof may apply to this Chapter regardless of whether the Freight Forwarder organises or implements storage and regardless of whether it acts so within the framework of the freight forwarding contract that is the basis not only for storage but also for other services or within the framework of another contract that is the basis for implementing operations relating to storage.

XVI. TRANSITIONAL AND FINAL PROVISIONS

Article 104
(Application of the Law)

Unless agreed otherwise in writing, Slovenian law shall apply to all disputes arising from the freight forwarding contract or in relation thereto.

Article 105
(Jurisdiction of Courts)

Unless agreed otherwise in writing, any disputes arising from the freight forwarding contract shall be settled by the local competent court of the Republic of Slovenia with subject matter jurisdiction in the area where the Freight Forwarder is domiciled.

Article 106
(Original Text)

If these Terms and Conditions are translated into a foreign language, the text in Slovenian shall be regarded as the original text.

Article 107
(Effective Date)

These Terms and Conditions shall become effective the day after they are published in the Official Gazette of the Republic of Slovenia. Unless agreed otherwise in writing, these Terms and Conditions shall be deemed an integral part of the freight forwarding contract concluded on that day or at any later date and not the General Terms and Conditions of International Freight Forwarders of Slovenia published in the Gospodarski Vestnik magazine of the Chamber of Commerce and Industry of Slovenia, Issue 48 as of 3 December 1992.

Chairman
of the Freight Forwarders Section
Janko Pirkovič

Quehenberger

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Viator & Vektor Logistika, s sedežem v Ljubljani, je eno vodilnih logističnih podjetij v Sloveniji in na območju jugovzhodne Evrope.

Celovita paleta logističnih storitev

Obseg dejavnosti zajema vso paleto logističnih storitev: organizacijo in izvedbo prevozov, zbirni promet, skladiščenje, pakiranje, pošiljanje, carinsko zastopanje (carinjenje in mejna odprava), distribucijo.

Dostavo blaga zagotavljamo z lastnimi kapacitetami in z razvejano mrežo pogodbenih partnerjev, in sicer po cesti, železnici, zraku in morju.

Dostava obsega vse vrste blaga, prevoze manjših pošiljk (hitra dostava od vrat do vrat), prevoze zabojnikov, tovorov izrednih dimenzij in drugih tovorov, ki zahtevajo posebne prevozne rešitve.

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