

CONDITII GENERALE DE TRANSPORT CE STAU LA BAZA ACTIVITATII CASELOR DE EXPEDITII MEMBRE U.S.E.R. ROMANIA

Capitolul I - Generalitati si definitii

1. Prin casa de expeditii, in sensul prezentelor conditii generale, se intelege orice intreprinzator, care, din ordinul si pe seama unui comitent (client), face sa se transporte, adica sa se organizeze un transport de marfuri, fara sa fie el insusi transportatorul.

In organizarea transportului, pe langa transportul propriu-zis, se includ si activitati conexe acestuia, cum ar fi: depozitarea marfii, obligatiile vamale (declaratii s.a.), controlul marfurilor, executarea dispozitiilor privind incasarea sumelor cuvenite comitentului (client).

2. Clientul este orice persoana juridica si/sau fizica, detinator si/sau care drept de dispozitie asupra unei cantitati de marfa si solicita efectuarea transportului acesteia, inclusiv operatiuni conexe transportului. Clientul este cel care plateste sau garanteaza plata pretului transportului si al operatiunilor legate de acesta.

3. Organizarea transportului se face in baza si in conditiile contractului de expeditii, incheiat intre client si casa de expeditii.

4. Se considera drept contract incheiat si comanda clientului adresata casei de expeditii, urmata de acceptarea acesteia. Comanda si acceptarea pot fi transmise prin posta, telex, fax sau pe cale electronica.

Comanda trebuie sa contina elementele necesare care sa permita organizarea si efectuarea transportului, precum si a operatiunilor conexe de catre casa de expeditii.

5. Casa de expeditii nu este obligata sa verifice exactitatea documentelor puse la dispozitie de client (facturi comerciale, liste specifice etc.), care are responsabilitatea modului de intocmire si a corectitudinii acestora.

Clientul este obligat sa transmita in scris casei de expeditii instructiuni precise daca solicita conditii speciale de livrare a marfii. Instructiunile sunt supuse acceptului casei de expeditii. Totusi, acestea se considera acceptate daca, dupa primirea acestora de catre casa de expeditii, s-a trecut la executare.

6. In toate cazurile in care casa de expeditii este membra USER, prevederile contractului de expeditie sau comanda se considera completate cu prevederile prezentelor conditii generale, care fac parte integranta din contract sau comanda, chiar daca o mentiune expresa in acest sens lipseste.

Partile sunt libere sa convina expres in contractele incheiate si alte clauze, decat cele prevazute in prezentele conditii generale, pe care le pot inlocui, modifica sau exclude dupa caz.

Partile care nu sunt membre USER pot convenii prin mentiune expresa aplicarea prezentelor conditii generale in contractele incheiate cu clientii.

Capitolul II - Obligatiile casei de expeditii

1. Casa de expeditii va depune diligentele necesare pentru organizarea transportului si efectuarea operatiunilor conexe, potrivit instructiunilor clientului, astfel cum au fost convenite, precum si pentru protejarea pe tot parcursul executarii a intereselor acestuia.

2. Casa de expeditii trebuie sa fie organizata si sa dispuna de mijloacele necesare executarii misiunii sale. Daca nu s-a convenit altfel, casa de expeditii are dreptul sa-si aleaga in mod liber subexecutanti, precum si modurile de transport si mijloacele folosite.

Sarcina probei privind instructiunile speciale date casei de expeditii incumba clientului. Persoanele intermediare sau subexecutanti la care recurge casa de expeditii pentru executarea obligatiilor sale sunt considerate acceptate de client.

3. In cazurile in care casa de expeditii, in calitate de comisionar, incheie cu carausi contracte de transport, in nume propriu dar pe seama clientilor, pentru raspunderea fata de acestia, pentru daunele produse in executarea transportului, pentru care este angajata raspunderea carausului, casa de expeditii nu va putea fi tinuta responsabila, fata de client, la mai mult decit datoreaza carausul.

Contractelor de transport incheiate de casele de expeditii cu carausi, le sunt aplicabile prevederile Conventiei referitoare la contractul de transport international de marfuri pe sosele CMR, semnata la Geneva, Elvetia, la 19 mai 1956 la care Romania a aderat prin Decretul nr. 451/ noiembrie 1972, publicat in Buletinul Oficial, Partea I din 6 decembrie 1972 si ale Legii nr. 102/09 mai 2006 pentru aprobarea Ordonantei de urgenta a Guvernului nr. 109/2005, privind transporturile rutiere, publicata in Monitorul oficial nr. 398/09 mai 2006 (art 53/5 si urmatoarii).

Capitolul III - Obligatiile clientului

1. Marfa trebuie sa fie predata ambalata, marcata, etichetata, astfel incat sa reziste operatiunilor de transport si/sau celor conexe si sa poata fi livrata destinatarului potrivit contractului si conform uzantelor.

2. Casa de expeditii nu raspunde pentru daunele ce ar decurge din absenta, insuficienta sau defectuozitatea ambalajului, marcarii si/sau etichetarii marfii, precum si din lipsa unor informatii corespunzatoare cu privire la natura sau insusirile particulare ale marfii.

3. In cazul constatarii, la destinatie, de pierderi, avarii sau orice pagube produse marfii, inclusiv cele produse de

intarzierea transporturilor, destinatarul sau cei care receptioneaza marfa au obligatia sa procedeze la constatarea daunelor si la indeplinirea formalitatilor ce se impun, inclusiv la formularea de rezerve legale fata de transportator, precum si sa ia alte masuri care sa asigure conservarea dreptului la reclamatii si actiuni in vederea recuperarii daunelor.

4. Clientul suporta consecintele, indiferent de natura lor, rezultate din transmiterea de documente gresite, incomplete sau de neaplicat, ori de furnizarea lor cu intarziere.

5. In cazul in care casa de expeditii angajeaza in contul clientului operatiuni vamale, clientul este cel care garanteaza comisionarului vamal plata taxelor de vama si amenzile ce s-ar datora, determinate de furnizarea unor instructiuni sau documente eronate.

6. In caz de refuz al marfii de catre destinatar sau in caz de absenta a acestuia, indiferent de motiv, clientul este obligat sa suporte cheltuielile initiale, cat si cele suplimentare, efectuate sau angajate de casa de expeditii.

Capitolul IV - Responsabilitatea casei de expeditii

1. Casa de expeditii, oricare ar fi calitatea sa de intermediar (concesionar, mandatar) raspunde numai pentru daunele produse prin greselile proprii, ce pot fi imputate atat ei, cat si prepusilor sai.

2. Casa de expeditii nu raspunde pentru faptele tertilor, cum ar fi subexecutanti sai (transportator, intermediar etc.) cu exceptia cazurilor in care o greseala in alegerea acestora ar putea sa ii fie imputata.

In acest din urma caz, raspunderea casei de expeditii nu poate depasi limitele raspunderii tertilor.

3. Daca raspunderea casei de expeditii este angajata pentru avaria sau pierderea marfii, ca urmare a faptei proprii, cuantumul despagubirilor datorate se stabileste in raport cu valoarea normala a marfii din momentul luarii in primire.

4. Totusi, in cazurile in care responsabilitatea casei de expeditii este angajata in conditiile aliniatului precedent, aceasta este strict limitata, neputand depasi:

a) pentru pagubele provocate marfii, din pierderi sau avarii si pentru toate consecintele care ar putea decurge din acestea - 2,5 USD/kg, cu o limita maxima de - 1600 USD/colet, indiferent de greutate, natura si dimensiune si de - 50000 USD/expeditie. Pentru expeditiile in vrac, despagubirea nu poate depasi - 2,5 USD/kg marfa lipsa sau avariata, dar nu mai mult de - 50000 USD/expeditie;

b) pentru toate celelalte pagube, inclusiv cele decurgand din intarzierea livrarii, cand este cazul, responsabilitatea sa este limitata la pretul transportului marfii.

5. Casa de expeditii nu raspunde pentru pagubele indirecte, indiferent de cauza care le-a generat.

6. Daca un termen de executare a transportului nu a fost cerut expres de client si acceptat de casa de expeditii, aceasta nu garanteaza o data determinata de sosire la

destinatie si nu datoreaza nici o despagubire pentru intarzierea transportului.

Chiar si in cazul unui termen expres convenit, clientul va putea solicita despagubiri numai dupa o notificare adresata in acest scop casei de expeditii.

7. Daca valoarea marfii excede limitele responsabilitatii casei de expeditii, clientul este liber sa aleaga una din urmatoarele masuri:

- sa suporte, in caz de daune, riscul rezultat din diferenta dintre responsabilitatea casei de expeditii si valoarea marfii;
- sa faca, la incheierea contractului, o declaratie de valoare a marfii care, daca va fi acceptata de casa de expeditii, va ridica limita responsabilitatii acesteia pana la valoarea declarata; in asemenea situatii se vor datora diferentele de pret corespunzatoare;
- sa dea instructiuni casei de expeditii pentru incheierea in contul sau (al clientului) a unei asigurari care sa acopere total sau partial riscul, indicand riscul si valoarea asigurata. Aceste instructiuni trebuie date pentru fiecare expeditie in parte.

Capitolul V - Transporturi speciale

In cazul unor transporturi speciale (frigo, marfuri periculoase), casa de expeditii va pune la dispozitia clientului informatiile necesare executarii transportului, variantele de transport, pret, asigurari etc., pe baza carora clientul sa poata conveni, in cunostinta de cauza, contractul de expeditie.

Capitolul VI - Reclamatii

Reclamatile impotriva casei de expeditii pot fi formulate in termen de 6 (sase) luni.

Termenul de 6(sase) luni incepe din ziua livrarii marfii la destinatie sau, daca livrarea nu a avut loc, din ziua incheierii contractului de expeditie.

Capitolul VII - Conditii de plata

Plata transportului si a celorlalte servicii se face de catre client sau de destinatar, daca s-a convenit astfel, pe baza facturii emise de casa de expeditii.

Termenul de achitare a sumelor facturate este de 48 de ore de la primirea facturii.

Daca s-a convenit plata in mai multe rate, neplata unei rate datorate atrage in mod automat exigibilitatea intregii sume datorate.

Pentru intarzierea platii, clientul datoreaza penalitati de 0,40% din valoarea sumei, pentru fiecare zi de intarziere.

Capitolul VIII - Dreptul de gaj si dreptul de retentie al casei de expeditii

Casa de expeditii are, pentru toate creantele sale actuale sau anterioare rezultate din prestatii executate pentru client, un drept de gaj si retentie asupra marfurilor si asupra oricaror alte valori apartinand acestuia, care se gasesc in posesia sa.

Capitolul IX - Clauza arbitrala

In lipsa unor prevederi contrare convenite, litigiile dintre client si casa de expeditii sau dintre aceasta si partile indreptatite legal, ramase nesolutionate pe cale amiabila, sunt de competenta organelor judecatoresti din localitatea unde isi are sediul casa de expeditii. Raporturile juridice dintre casele de expeditii si clienti, generate din aplicarea acestor conditii generale, sunt reglementate de dreptul roman.

Aprobate in Adunarea generala a membrilor din 26 octombrie 1995 si modificari aprobate in Adunarea generala a membrilor din 1 iunie 2007.

ENGLISH

GENERAL CONDITIONS AND TERMS FOR THE OPERATIONS PERFORMED BY THE FREIGHT FORWARDERS MEMBERS OF U.S.E.R. ROMANIA

Chapter I - Generalities and definitions

1. Under the present general conditions, by forwarder it is understood any entrepreneur that, in the name of a committent (client) or at his order, provides to be transported, that is organizes a transport of goods, without being himself a conveyor.

The transport, beside the proper transport, includes other activities that are connected with this activity, as: deposit of the goods, custom obligations (declarations and so on), control of the goods, execution of the disposition concerning the amounts that the committent (client) must cash.

2. The client is any juridical or physical person, owner and/or having the right to dispose upon a quantity of goods and soliciting the transportation of these goods, including the operations connected with the transport. The client is the person that pays or guarantees the payment of the transport price and of the operations related to this transport.

3. The organization of the transport is based on the conditions of the shipping contract, concluded between the client and the shipping house.

4. The client's order to the shipping house, followed by its acceptance, is also considered as a contract concluded between the house and the client. The order and its acceptance can be provided by mail, telex, fax or electronically.

The command should contain the necessary elements that should allow the shipping house to organize and perform the transport, as well as the connected operations.

5. The shipping house is not obliged to check the documents of the client (commercial invoices, specification list etc.) for exactness; the client has the responsibility to elaborate these documents correctly and in a proper manner.

If the client is asking for special delivery conditions, he is obliged to inform the shipping house about these conditions, in a written form. The instructions are subject to the agreement of the shipping house. Thus the conditions are considered as accepted if the shipping house takes action after receiving the instructions.

6. In all the cases where the shipping house is a USER member, the shipping contract stipulations of the order are completed by the stipulations of these general conditions, that are integrate parts of the contract or order, even if a special mention about this fact is not expressed.

The Parties are free to expressly agree upon other clauses, in the concluded contracts, than those stipulated in the present general conditions, which they can replace, modify or exclude, if necessary.

The Parties which are not USER members can agree, by an express stipulation, upon the application of the present general conditions in the contracts concluded with their clients.

Chapter II - Obligations of the shipping house

1. The shipping house will deposit the necessary diligence for organizing the transport and providing the connected operations, according to the client's instructions, as they were agreed upon, as well as for protecting the client's interests during the execution time.

2. The shipping house must be organized and dispose of the necessary means for performing this action.

If it has not been agreed differently, the shipping house has the right to freely choose its sub-performers, as well as the type of transport and the used means.

The verification of the special instructions given to the shipping house devolves upon the client.

The client agrees with the intermediaries or the sub-performers collaborating with the shipping house for the execution of its obligations.

3. In the cases where the shipping house, in its quality of customs broker, concludes transport contracts with transport operators, in its own name but on behalf of the clients, for the responsibility towards them - for the damages

produced during performing the transport for which the responsibility of the haulier is engaged, the shipping house shall not be responsible towards the client for more than the haulier owes.

For the transport contracts concluded by the shipping houses with transport operators, are applicable the stipulations of the Convention on the contract for the international carriage of goods by road CMR, signed in Geneva, Switzerland, on 19 May 1956, to which Romania adhered by the Decree no.451/November 1972, published in the Official Journal Part I dated 6 December 1972, as well as the stipulations of the Law no.102/9 May 2006 for the approval of the Urgency Ordinance of the Government no.109/2005 concerning road transports, published in the Official Journal no.398/9 May 2006 (article 53/5 and the following ones).

Chapter III - Obligations of the client

1. The goods must be delivered packed, marked, labeled, in order to resist to the transport operations and/or to the operations that are connected with it and it must be delivered to the consignee according to the contract and in accordance with the usage.
2. the shipping house is not responsible for the damages that could result from the absence, insufficiency or imperfection of the packing and/or from the marking and/or labeling of the goods, as well as from the lack of some adequate information concerning the nature of particular features of the goods.
3. When at the goods' destination there are ascertained damages or any other injuries to the goods, including those that are resulting from the delay of transports, the consignee or those that receive the goods have the obligation to proceed to establish the damages and to achieve the imposed formalities, including the expression of legal reserves toward the person providing the transport, as well as to take measures that will preserve him the right to reclamation and actions for recovery of the damages.
4. The client undergoes the consequences, no matter their nature, that are resulting from providing wrong or incomplete documents or documents that cannot be applied, or from providing them with delays.
5. In case that the shipping house performs customs operations in the account of the client, the client is the one that guarantees to the custom errand the payment of the customs taxes and the fines eventually owed, that are determined by wrong instructions or documents provided by client.
6. In case that the consignee refuses the goods or in case of his absence, no matter the reason, the client is obliged to support the initially expenses and the additional ones, that are made or engaged by the shipping house.

Chapter IV - The responsibility of the shipping house

1. No matter its intermediary quality (concessionaire, authorized agent), the shipping house is responsible only for the damages that are resulted from its own errors, that can be charged to it and to its delegates.
2. The shipping house is not responsible for the actions of the third, such as its agents (person in charge with transport, intermediary etc.), except the cases when a mistake in choosing them that could be charged on it is made. In this case, the responsibility of the shipping house can not overpass the responsibility of the third.
3. If the responsibility of the shipping house is in charge with the damage or loss of the goods, as a result of its own act, the proportion of the owed compensation is established according to the goods' normal value in the moment of its reception.
4. However, in the cases when the responsibility of the shipping house is engaged under the conditions of the previous paragraph, this responsibility is strictly reduced and it cannot overpass:
 - a) for the damages of the goods, from loss or injuries and for all the consequences that might result from those reasons - 2.5 US/kg, but not more than - 1600 US/parcel, no matter the weight, type or size, and no more than - 50000 US/transport. For the bulk goods transports, the compensation cannot be more than - 2.5 US/kg of lost or damaged goods, but not more than - 50000 US/transport;
 - b) for other damages, including those resulting from delayed delivery, when it is the case, its responsibility is limited to the price of the transport of the goods.
5. The shipping house is not responsible for the indirect damages, no matter the cause that produced them.
6. If the client did not ask for a special delivery term, the client can ask for compensations only after a notification addressed for this purpose to the shipping house. If the value of the goods exceeds the responsibilities of the shipping house, the client can choose one of the following measures:
 - a) to support, in case of damages, the risk resulted from the difference between the responsibility of the shipping house and the value of the goods;
 - b) to make, at the end of the contract, a statement for the goods value that, if accepted by the shipping house, it will rise the limit of responsibility, up to the declared value of the goods; in such situations the price differences will be owed;
 - c) to instruct the shipping house for purchasing an insurance in the client's account; this insurance should cover totally or partially the risk, indicating the risks and the insured value. These instructions should be given for each transport.

Chapter V - Special transports

In the case of special transports (frigorific, dangerous goods), the shipping house will put at client's disposal all the

information that are necessary for performing the transport, the alternatives for transport, prices, insurance etc.; on these grounds the client can agree upon the shipping contract.

Chapter VI - Complaints

The complaints against the shipping house can be formulated within 6 (six) months. The term of 6 (six) months begins from the day of delivery of the goods at the destination, or, if the delivery was not made, from the day the shipping contract was concluded.

Chapter VII - Payment conditions

The payment of the transport and for the others services is made by the client or by the consignee, if agreed this way, based on the invoices issued by the shipping house. The payment term of the invoiced amount is 48 hours from the moment the invoice was received. If the payment of the owed amounts is made in several instalments, the performed payments are referring to the debts in order of their settling day. If there was established an installment payment, the failure of paying one installment oblige the client to immediate payment of the whole amount. For the delayed payment the client owes penalties of 0.40% from the amount, for each day of delay.

Chapter VIII - The right of pledge and the right of retention of the shipping house

For all its actual and previous debts, resulted from services made for the client, the shipping house has a right of pledge and retention concerning the goods and any other values connected with these ones, that are in its possession.

Chapter IX - Arbitrary clause

In absence of any contrary stipulations contractually agreed, the litigation between the client and the shipping house or between the shipping house and the parts that are legally entitled, that has not been solved in a friendly manner, are under the competence of the juridical organs in the town where the shipping house has its head-quarters. The juridical relationship between the shipping house and the clients, generated by the application of these general conditions, are regulated by the Romanian law.

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SOURCE: USER.RO