

GENERAL TERMS AND CONDITIONS

Definitions

- **Freight Forwarder** means the Multimodal Transport Operator who issues this FBL and is named on the face of it and assumes liability for the performance of the multimodal transport contract as a carrier.
- **Carrier** includes the air carrier issuing the Air Waybill (AWB) and all carriers that carry or undertake to carry the goods or perform any other services incidental to such carriage.
- **Merchant** means and includes the Shipper, the Consignor, the Consignee, the Holder of this FBL, the Receiver and the Owner of the Goods.
- **Consignor/Shipper** means the person who concludes the multimodal transport contract with the Freight Forwarder, i.e., the person whose name appears on the Air Waybill as the party contracting with the Carrier for the carriage.
- **Consignee** means the person entitled to receive the goods from the Freight Forwarder, i.e., the person whose name appears on the Air Waybill as the party to whom the Carrier is to deliver the goods.
- **Taken in charge** means that the goods have been handed over to and accepted for carriage by the Freight Forwarder at the place of receipt evidenced in this FBL.
- **Goods/Cargo** means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the Freight Forwarder, irrespective of whether such property is to be or is carried on or under deck. In air transport, "Cargo" means any property carried or to be carried in an aircraft, excluding mail and passenger baggage.
- **Air Waybill (AWB)** means a document made out by or on behalf of the Shipper, which evidences the contract between the Shipper and the Carrier for the carriage of goods. The AWB is non-negotiable.
- **Montreal Convention** means the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28 May 1999.
- **Warsaw Convention** means the following instruments, whichever may be applicable to the contract of carriage: the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929; that Convention as amended at The Hague on 28 September 1955; that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2 or 4 (1975).
- **Special Drawing Right (SDR)** means a unit of account as defined by the International Monetary Fund.
- **Chargeable Weight** in air transport means the weight used for calculating freight charges. It is generally the actual gross weight or the volumetric weight of the goods, whichever is greater.

1. Applicability

1.1 Notwithstanding the heading "FIATA Multimodal Transport Bill of Lading (FBL)," these conditions shall also apply if only one mode of transport is used.

1.2 For air transport, the rules on liability established by the Warsaw Convention or the Montreal Convention shall apply, unless such carriage is not "international carriage" as defined by the applicable conventions.

1.3 To the extent not inconsistent with the foregoing, carriage and other related services are subject to applicable laws and government regulations, as well as to the provisions contained in the Air Waybill, the Carrier's conditions of carriage and applicable tariffs.

2. Issuance of this FBL

2.1. By issuance of this FBL, the Freight Forwarder:

- a) undertakes to perform or, in his own name, to procure the performance of the entire transport, from the place at which the goods are taken in charge (the place of receipt evidenced in this FBL) to the place of delivery designated in this FBL; and
- b) assumes liability as set out in these conditions.

2.2. Subject to the conditions of this FBL, the Freight Forwarder shall be responsible for the acts and omissions of his servants or agents acting within the scope of their employment, or any other person whose services he makes use of for the performance of the contract evidenced by this FBL, as if such acts and omissions were his own.

3. Negotiability and Title to the Goods

3.1. This FBL is issued in a negotiable form unless it is marked "non-negotiable." It shall constitute title to the goods, and the holder, by endorsement of this FBL, shall be entitled to receive or transfer the goods herein mentioned. The Air Waybill (AWB) is non-negotiable.

3.2. The information in this FBL shall be prima facie evidence of the taking in charge by the Freight Forwarder of the goods as described by such information, unless a contrary indication, such as "shipper's weight, load and count," "shipper-packed container," or similar expressions, has been made in the printed text or superimposed on this FBL. However, proof to the contrary shall not be admissible when the FBL has been transferred to the consignee for valuable consideration who, in good faith, has relied and acted thereon.

4. Dangerous Goods and Indemnity

4.1. The Merchant shall comply with rules which are mandatory according to national law or by reason of International Convention, relating to the carriage of goods of a dangerous nature, and shall, in any case, inform the Freight Forwarder in writing of the exact nature of the danger before goods of a dangerous nature are taken in charge by the Freight Forwarder and indicate to him, if need be, the precautions to be taken.

4.2. If the Merchant fails to provide such information and the Freight Forwarder is unaware of the dangerous nature of the goods and the necessary precautions to be taken, and if, at any time, they are deemed to be a hazard to life or property, they may, at any place, be unloaded, destroyed, or rendered harmless, as circumstances may require, without compensation. The Merchant shall indemnify the Freight Forwarder against all loss, damage, liability, or expense arising out of their being taken in charge, their carriage, or any service incidental thereto.

4.3. The burden of proving that the Freight Forwarder knew the exact nature of the danger constituted by the carriage of the said goods shall rest on the Merchant.

4.4. If any goods shall become a danger to life or property, they may, in like manner, be unloaded or landed at any place or destroyed or rendered harmless. If such danger was not caused by the fault or neglect of the Freight Forwarder, he shall have no liability, and the Merchant shall indemnify him against all loss, damage, liability, and expense arising therefrom.

5. Description of Goods and Merchant's Packing and Inspection

5.1. The Consignor shall be deemed to have guaranteed to the Freight Forwarder the accuracy, at the time the goods were taken in charge by the Freight Forwarder, of all particulars relating to the general nature of the goods, their marks, number, weight, volume, and quantity and, if applicable, to the dangerous character of the goods, as furnished by him or on his behalf for insertion on the FBL. The Consignor shall indemnify the Freight Forwarder against all loss, damage, and expense resulting from any inaccuracy or inadequacy of such particulars. The Consignor shall remain liable even if the FBL has been transferred by him. The right of the Freight Forwarder to such an indemnity shall in no way limit his liability under this FBL to any person other than the Consignor.

5.2. The Freight Forwarder shall not be liable for any loss, damage, or expense caused by defective or insufficient packing of goods or by inadequate loading or packing within containers or other transport units when such loading or packing has been performed by the Merchant or on his behalf by a person other than the Freight Forwarder, or by the defect or unsuitability of the containers or other transport units supplied by the Merchant, or if supplied by the Freight Forwarder, if a defect or unsuitability of the container or other transport unit would have been apparent upon reasonable inspection by the Merchant. The Merchant shall indemnify the Freight Forwarder against all loss, damage, liability, and expense so caused.

5.3. The Shipper shall comply with all applicable laws and government regulations of any country to or from which the goods are carried, including those relating to the packing, carriage, or delivery of the goods, and shall furnish such information and attach such documents to the Air Waybill as may be necessary to comply with such laws and regulations. The Carrier is not liable to the Shipper and the Shipper shall indemnify the Carrier for any loss or expense incurred by the Shipper's failure to comply with this provision.

6. Acceptability of Goods for Carriage

6.1. The Freight Forwarder/Carrier undertakes to carry, subject to availability of suitable equipment and space, all shipments except those excluded by these conditions, provided that:

- a) the carriage, or the export, transit or import thereof, is not prohibited by applicable laws or regulations of any country from, to or through which the flight is operated;
- b) they are packed in a manner ready for carriage as required by the Freight Forwarder/Carrier;
- c) they are accompanied by the necessary dispatch documents; and
- d) they are not likely to endanger the aircraft or any other means of transport, persons or property, or cause annoyance to passengers.

6.2. The Freight Forwarder/Carrier reserves the right, without assuming liability, to refuse carriage of goods when it deems circumstances so require.

7. Freight Forwarder's Liability

7.1. The responsibility of the Freight Forwarder for the goods under these conditions covers the period from the time the Freight Forwarder has taken the goods into his charge to the time of their delivery.

7.2. The Freight Forwarder shall be liable for loss of or damage to the goods, as well as for delay in delivery, if the occurrence which caused the loss, damage, or delay in delivery took place while the goods were in his charge as defined in Clause 2.1.a, unless the Freight Forwarder proves that no fault or neglect of his own, his servants or agents, or any other person referred to in Clause 2.2, has caused or contributed to such loss, damage, or delay. However, the Freight Forwarder shall only be liable for loss following from delay in delivery if the Consignor has made a declaration of interest in timely delivery which has been accepted by the Freight Forwarder and stated in this FBL.

7.3. Arrival times are not guaranteed by the Freight Forwarder. However, delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which would be reasonable to require of a diligent Freight Forwarder, having regard to the circumstances of the case.

7.4. If the goods have not been delivered within ninety consecutive days following the date of delivery as determined in Clause 7.3, the claimant may, in the absence of evidence to the contrary, treat the goods as lost.

7.5. When the Freight Forwarder establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more causes or events specified in a-e of this clause, it shall be presumed that it was so caused, always provided, however, that the claimant shall be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of such causes or events:

- a) an act or omission of the Merchant, or a person other than the Freight Forwarder acting on behalf of the Merchant or from whom the Freight Forwarder took the goods in charge;
- b) insufficiency or defective condition of the packaging or marks or numbers;
- c) handling, loading, storage, or unloading of the goods by the Merchant or any person acting on behalf of the Merchant;
- d) inherent vice of the goods;
- e) strike, lockout, stoppage, or restraint of labour.

7.6. Defences for carriage by sea or inland waterways

Notwithstanding Clauses 7.2, 7.3, and 7.4, the Freight Forwarder shall not be liable for loss, damage, or delay in delivery with respect to goods carried by sea or inland waterways when such loss, damage, or delay during such carriage has been caused by:

- a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
 - b) fire, unless caused by the actual fault or privity of the carrier, however, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the Freight Forwarder can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.
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8. Paramount Clauses

8.1. These conditions shall only take effect to the extent that they are not contrary to the mandatory provisions of International Conventions or national law applicable to the contract evidenced by this FBL.

8.2. The Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated Brussels, 25th August 1924, or in those countries where they are already in force, the Hague-Visby Rules contained in the Protocol of Brussels, dated 23rd February 1968, as enacted in the Country of Shipping, shall apply to all carriage of goods by sea and also to the carriage of goods by inland waterways, and such provisions shall apply to all goods whether carried on deck or under deck.

8.3. The Carriage of Goods by Sea Act of the United States of America (COGSA) shall apply to the carriage of goods by sea, whether on deck or under deck, if compulsorily applicable to this FBL or would be applicable but for the goods being carried on deck, in accordance with a statement on this FBL.

8.4. For air transport, the provisions of the Warsaw Convention or the Montreal Convention shall apply, whichever is applicable to the contract of carriage.

9. Limitation of Freight Forwarder's/Carrier's Liability

9.1. Assessment of compensation for loss of or damage to the goods shall be by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when, in accordance with this FBL, they should have been delivered.

9.2. The value of the goods shall be fixed according to the current commodity exchange price, or, if there is no such price, according to the current market price, or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

9.3. Subject to the provisions of sub-clauses 9.4. to 9.9, the Freight Forwarder shall in no event be or become liable for any loss of or damage to the goods in an amount exceeding the equivalent of 2 SDR per kilogram of gross weight of the goods lost or damaged, unless the nature and value of the goods have been declared by the Consignor before they have been taken in charge by the Freight Forwarder and accepted by the Freight Forwarder, or an *ad valorem* freight has been charged, and such value is stated in this FBL by the Freight Forwarder.

9.4. For air transport to which the Montreal Convention does not apply, the Carrier's limit of liability for lost, damaged, or delayed cargo is 26 SDR per kilogram, unless a higher per kilogram limit is provided by any applicable convention, or in the Carrier's tariffs or conditions of carriage. (NOTE: Although some sources cite 19 SDR, the standard IATA value is 26 SDR for cases where the Montreal Convention is not applicable).

9.5. In the case of loss, damage, or delay of part of the cargo, the weight to be taken into consideration in determining the Carrier's limit of liability shall be only the weight of the package or packages concerned.

9.6. For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit the Shipper to increase the limit of liability by declaring a higher value for carriage and paying a supplementary charge if required.

10. Claims Procedure and Time Limits for Actions

10.1. Receipt by the person entitled to delivery of the goods without complaint shall be prima facie evidence that the goods have been delivered in good condition and in accordance with the contract of carriage.

10.2. In case of loss, damage, or delay of the goods, a written complaint must be made to the Carrier by the person entitled to delivery. Such complaint must be made:

- a) in the case of damage to the goods, immediately after discovery of the damage and, at the latest, within 14 days from the date of receipt of the goods;
- b) in the case of delay, within 21 days from the date on which the goods were placed at the disposal of the person entitled to delivery;
- c) in the case of non-delivery of the goods, within 120 days from the date of issue of the Air Waybill, or if the Air Waybill has not been issued, within 120 days from the date of receipt of the goods for carriage by the Carrier.

10.3. If no written complaint is made within the time limits specified above, no action shall lie against the Carrier.

10.4. The right to damages against the Carrier shall be extinguished if an action is not brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

11. Application to All Modes of Transport

11.1. Where permitted by applicable laws, tariffs and government regulations, the Freight Forwarder/Carrier may use alternative carriers, aircraft or modes of transport without notice, but with due regard to the interests of the Shipper.

11.2. Any exclusion or limitation of liability applicable to the Freight Forwarder/Carrier shall apply to the agents, employees and representatives of the Freight Forwarder/Carrier, and to any person whose aircraft or equipment is used by the Freight Forwarder/Carrier for carriage and the agents, employees and representatives of such person.