

## Terms & Conditions of Business

### Applicability

#### Article 1.

1. These general conditions shall apply to any form of service which the forwarder shall carry out.
2. With respect to the operations and activities, such as those of shipbrokers, stevedores, carriers, insurance agents, warehousing and superintending firms etc. which are carried out by the forwarder, the conditions customary in the particular trade, or conditions stipulated to be applicable, will also be applicable.
3. The forwarder may at any time declare applicable the conditions stipulated by third parties with whom he has made contracts for the purpose of carrying out the orders given to him.
4. The forwarder may have his orders and/or the work connected therewith carried out by third parties or the servants of third parties. In so far as such third parties or their servants bear statutory liability towards the forwarder's principal, it is stipulated on their behalf that in doing the work for which the forwarder employs them they shall be regarded as solely in the employ of the forwarders. All the provisions (inter alia) regarding non-liability and limitation of liability and also regarding indemnification of the forwarder, as described herein shall apply to such persons.
5. Instructions for delivery C.O.D., against banker's draft etc., shall be deemed to be forwarding work.

### Contracts

#### Article 2.

1. All quotations made by the forwarder shall be without any obligation on his part.
2. All prices quoted and agreed shall be based on the rates, wages, social insurances and/or other provisions, freight and exchange rates applying at the time of quotation or contract.
3. Upon any change in any or more of these factors the quoted or agreed prices shall likewise be altered in accordance therewith and retroactively to the time such change occurred. The forwarder must be able to prove the change.

#### Article 3.

1. If the forwarder charges all-in or fixed rates, as the case may be, these rates shall be deemed to include all costs that in the normal procedure of handling the order shall be for the account of the forwarder.
2. Unless the contrary be stipulated, all-in or fixed rates shall not include at any rate: taxes and levies, consular and attestation fees, cost of preparing banker's guarantees and insurance premiums.
3. For work of a special nature, unusual job or work requiring a special amount of time or effort, an additional reasonable amount may at all times be charged.

#### Article 4.

1. In the event of loading and/or unloading time being inadequate-regardless of the cause thereof-all costs resulting there from, such as demurrage, etc., shall be borne by the principal, even when the forwarder has accepted the bill of lading and/or charter party from which the additional costs arise without protestation.
2. Expenses of an exceptional nature and higher wages arising whenever carriers by virtue of any provision, shipping documents load or unload goods in the evening, at night, on Saturdays or on Sundays or public holidays, shall not be included in the agreed prices, unless specifically stipulated. Any such costs shall therefore be refunded by the principal to the forwarder.

#### Article 5.

1. Insurance of any kind shall be arranged only upon specific instructions in writing at the principal's expense and risk. The risks to be covered shall be clearly stated. A mere statement of the value is not enough.
2. If the forwarder has arranged an insurance in his own name he shall be bound - if so requested - only to transfer his claims against the insurer to his principal.
3. The forwarder shall not be responsible as regards the choice of the insurer and his ability to pay.
4. When the forwarder uses derricks and any other such equipment for carrying out his orders he shall be entitled to arrange an insurance at his principal's expense to cover the forwarder's risk arising through the use of such equipment.

#### Article 6.

1. The supplying to the forwarder of data required for customs formalities shall imply an order to perform these formalities, unless agreed otherwise in writing.

### Performance of the contract

#### Article 7.

1. If the principal has not given any specific instructions with his order, the mode and route of transport shall be at the forwarder's option and he may at all times accept the documents customarily used by the firms with which he contracts for the purpose of carrying out his orders.

#### Article 8.

1. The principal shall ensure that the goods will be tendered at the agreed place and time.
2. The principal shall ensure that the documents required for receipt and for despatch and also the instructions, are in the forwarder's possession in proper time.
3. The forwarder is not held but has the right to investigate if the specifications stated to him are correct and complete.
4. In the absence of documents, the forwarder shall not be obliged to receive against a guarantee. Should the forwarder furnish a guarantee, he shall be indemnified by his principal for all the consequences thereof.

#### Article 9.

1. All operations such as superintending, sampling, tarring, tallying, weighing, measuring etc., and receiving goods under judicial survey, shall take place only on the principal's specific instructions and upon reimbursement of the costs thereof.
2. Nevertheless the forwarder shall be entitled, but not obliged, on his own authority and at his principal's expense and risk to take all action which he considers necessary in the principal's interest.
3. The forwarder shall not act as an expert. He shall in no way be liable for any notification of the state, nature or quality of the goods; nor shall he be under any obligation to see that samples are identical with the lot.

#### Article 10.

The addition of the word "approximately" shall allow the principal the freedom to supply 2,5% more or less.

### Liability

#### Article 11.

1. All operations and activities shall be at the principal's expense and risk.
2. The forwarder - without prejudice to the stipulations in Article 16 - shall not be liable for any damage whatsoever, unless the principal shall prove that the damage has been caused by the forwarder's or the latter's employees' fault or negligence.
3. The forwarder's liability shall in all cases be limited to 7,500 SDR per occurrence or series of occurrences with one and the same cause of damage, on the understanding that in the event of damaging, loss of value or loss of the goods comprised in the order, the liability shall be limited to 2 SDR per kilogram damaged or lost gross weight, the maximum being 1,000 SDR per consignment.
4. The damages to be paid by the forwarder shall never exceed the invoice value of the goods, to be proved by the principal, in default whereof the market value - to be proved by the principal-at the time the damage has occurred shall apply. The forwarder shall not be liable for lost profit, consequential loss and immaterial injury.
5. If while the order is being carried out, damage occurs for which the forwarder is not liable, the forwarder shall make efforts to recover the principal's damage from the party that is liable for the damage. The forwarder shall be entitled to charge to the principal the costs incurred thereby. If requested, the forwarder shall waive in his principal's favour his claims against third parties engaged by him for the purpose of carrying out the order.
6. The principal shall be liable towards the forwarder for any damage as a consequence of the (nature of the) goods and the packaging thereof, the incorrectness, inaccuracy or incompleteness of instructions and data, failing to tender the goods or not doing so in time at the agreed place and time, as well as the failure to supply - or not doing so in time - documents and/or instructions or the fault or negligence in general of the principal and the latter's employees and third parties called in or engaged by him.
7. The principal shall indemnify the forwarder against third-party claims connected with the damage referred to in the foregoing section, the third parties including employees or both the forwarder and the principal.
8. The forwarder, who is not a carrier, even in the event all-in or fixed rates, as the case may be, have been agreed, shall be liable under the present conditions and not as a carrier.

#### Article 12.

1. To be regarded as force majeure are all circumstances which the forwarder could not reasonably prevent and the consequences of which the forwarder could not reasonably prevent.

#### Article 13.

1. In the event of force majeure, the contract shall remain in force; the forwarder's obligations shall, however, be suspended for so long as the force majeure lasts.
2. All additional costs caused by force majeure, such as carriage and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance, delivery from warehouses, bonded or otherwise etc., shall be borne by the principal.

#### Article 14

1. The mere statement by the principal of a time for delivery shall not be binding upon the Forwarder.
2. Arrival terms are not guaranteed by the forwarder, unless agreed otherwise in writing.

#### Article 15.

1. If the carriers refuse to sign for number of pieces or items etc., the forwarder shall not be liable for the consequences thereof.

### Imperative law

#### Article 16.

1. If the goods are not delivered without delay at the place of destination in the state in which they were tendered, the forwarder, in as far as he has carried out a transport agreement himself which he was to conclude with a third party, is bound to inform this forthwith to the principal who has notified him of the damage.

2. In a case the forwarder fails to make the statement as referred to in the first section, he will be, if as a result thereof he has not been called upon as a carrier in time, in addition to payment of the further damages which were sustained by the principal as a result thereof, owing a compensation equal to the damages he would have had to pay, if he would have been called upon as a carrier in time.

3. If the goods are not delivered without delay at the place of destination in the state in which they were tendered, the forwarder, in as far as he has not carried out a transport agreement himself which he was to conclude with a third party, is bound to inform the principal forthwith which transport agreements he has entered into to fulfil his obligation. He is also bound to put all documents at the disposal of the principal, in his possession or which he can reasonably supply, at any rate in as far as they may be used to claim damages sustained.

4. The principal will obtain against the party, with whom the forwarder has carried on business, as from the point of time at which he informs the forwarder unequivocally, that he wishes to exercise them, the rights and powers, to which he would have been entitled, when he himself as a shipper would have concluded the agreement. He can take legal action in this matter, when he submits a statement to be issued by the forwarder - or in case of his bankruptcy by his trustee in bankruptcy, that between him and the forwarder with respect to the goods an agreement for the organizing of the transport thereof was concluded.

5. If the forwarder fails to comply with an obligation as referred to in the third section, in addition to payment of the further damages which were sustained by the principal as a result thereof, he will be owing a compensation equal to the damages which the principal would have received from him, when he had carried out the agreement himself which was concluded by him, less the damages which the principal may have received from the carrier.

### Payment

#### Article 17.

1. The principal shall pay to the forwarder in cash the freights, duties, remuneration, etc., upon arrival or despatch of goods which are being received or forwarded respectively. The risk of exchange fluctuations shall be borne by the principal.
2. If, in contravention to section 1 of this article, the forwarder allows a credit-term, the forwarder shall be entitled to make an additional credit-limit charge.
3. If the principal does not pay the amount due immediately upon notification thereof or, as the case may be, after lapse of the credit term applied, the forwarder shall be entitled to charge interest as the rate of 4% per annum over the bank rate of "Barclays Bank of London"
4. The principal shall by reason of the forwarding contract and upon demand by the forwarder furnish security for any amount in which the principal is or maybe indebted to the forwarder.
5. The forwarder shall not be obliged out of his own resources to furnish security for the payment of freight, duties and/or other costs should the same be demanded. All the consequences of non-compliance or of failure to comply forthwith with a demand to furnish security shall be borne by the principal. If the forwarder has furnished security out of his own resources, he may demand payment of the amount for which security has been furnished from the principal forthwith.
6. The principal shall at all times be obliged to compensate the forwarder for any amounts to be levied or additionally demanded by any authority in connection with the order, as well as fines related thereto.
7. The principal shall at all times compensate the forwarder for any amounts that may be claimed or additionally claimed from the forwarder in connection with the order as a result of incorrectly charged freight rates and costs.
8. The principal shall not be entitled to apply any setoff in respect of sums charged by the forwarder to the principal under any contract existing between them.

#### Article 18.

1. Cash payments shall be deemed in the first place to have been made on account of non-preferential debts, regardless of whether any other instructions have been given at the time of payment.
2. If legal proceedings or other means are resorted to in the event of failure to pay by due date, the amount of the indebtedness shall be increased by 10% for clerical expenses, while the legal and other costs shall be borne by the principal up to the amount paid by or due from the forwarder.

#### Article 19.

1. The forwarder shall be entitled to retain goods, documents and moneys at the principal's and/or owner's expense and risk until the sums due to him have been paid or, if the goods are forwarded on, to collect the sum due on subsequent delivery or draw a bill therefore with the shipping documents annexed.
2. All goods, documents and moneys which the forwarder for whatsoever reason or purpose has or may have in his possession shall serve as security for all sums which are or may be due to him from the principal or owner.
3. The forwarder may also exercise the rights granted to him in section 1 and 2 for that which the principal was owing to him with respect to previous orders.
4. The forwarder is also empowered to exercise the rights granted to him in section 1 and 2 for that which fails on the matter by way of delivery C.O.D.
5. Failing payment of the amount due the security shall be sold as provided by statute or - if agreed upon by private sale.

### Final provisions

#### Article 20.

1. No legal or arbitration proceedings shall be taken against third parties by the forwarder unless he states his readiness to take the same at the principal's request and expense.

#### Article 21.

1. All claims shall be barred solely by the lapse of a period of nine months.
2. All claims against the forwarder shall be extinguished solely by the lapse of a period of eighteen months.
3. If after the term of prescription one of the parties is being called upon for that which he is owing to a third party, a new term of prescription sets in, which runs to three months.

#### Article 22.

1. The place for settlement and adjustment of damage shall be London.

#### Article 23.

### Law and Arbitration.

1. These Conditions as well as the Contract between Forwarder and the Principal shall be governed by and construed and interpreted in accordance with English law.
2. Any dispute between the parties unless settled by amicable agreement, shall be referred to arbitration in London in accordance with the terms of the London Maritime Arbitrators' Association (hereinafter referred to as "LMAA") current at the time when the arbitration proceedings are commenced, to the exclusion of the ordinary courts of law, and the decision of such arbitration shall be final. Without prejudice to the provisions of the foregoing paragraph the forwarder shall be at liberty to bring before the court claims of payable sums of money, the indebtedness of which has not been disputed in writing by the opposing party within four weeks after the invoice date.
3. Unless the parties agree upon a sole arbitrator, the reference shall be to a tribunal of three arbitrators one to be appointed by each of the parties and the third to be appointed by the two so chosen. The arbitrators shall be members of "LMAA".
4. For disputes / claims where the amount of claimed between the parties does not exceed US\$15,000.- excluding interest (or such amount as the parties may agree upon), the arbitration shall be conducted in accordance with the "LMAA small claims procedure".

#### Article 24.

1. These general conditions may be cited as the "Mortrans Terms & Conditions of Business".