

## MODEL TERMS AND CONDITIONS FORWARDER-ROAD HAULIER

### Article 1: Subject

These terms and conditions apply, in so far nothing else has been agreed between the forwarder and the road haulier, to:

- all orders for the transport of goods by road which are entrusted to the road haulier by the forwarder in its own name or in the name of its customer, but at least always payable by its customer;
- all services provided by the road haulier to the forwarder, more specifically the national and international transport of goods by road, including all related services.

### Article 2: Services

**2.1.** All main and ancillary services provided by the road haulier in the context of a transport order fall, subject to explicit protest, within the scope of these terms and conditions. In the event of a contradiction between the provisions of a transport order and these terms and conditions, the terms and conditions of the transport order shall prevail.

**2.2.** The road haulier guarantees that the services shall be performed in accordance with these terms and conditions and the transport order.

### Article 3: Transport order

**3.1.** A transport order is the written order given by the forwarder to the road haulier whereby the road haulier accepts to take receipt of the contracted goods, transport them by road and deliver them to the final destination.

**3.2.** If the forwarder gives a transport order by telephone or orally, the forwarder shall confirm the transport order in writing to the road haulier. To give the transport order, the parties shall specify the data as contained in the transport order template (Annex 1) drawn up by FORWARD Belgium, in cooperation with the transport federations.

**3.3.** The road haulier accepts this order explicitly or implicitly. In the absence of timely comments, i.e. submitted within a period of 24 hours after the transport order was given in writing by the forwarder to the road haulier, the order shall be deemed to have been irrevocably accepted by the road haulier. However, the aforementioned 24-hour period for submitting comments applies only on working days and not on weekends, public holidays or during the road haulier's holiday periods notified to the forwarder in advance or which are known to the forwarder.

**3.4.** The road haulier always and exclusively acts within the limits of the transport order and follows the forwarder's instructions meticulously and without delay.

**3.5.** In accordance with the applicable legal provisions, the forwarder shall communicate all necessary information required for the performance of the transport order to the road haulier on time. This does not relieve the road haulier of providing any information deemed relevant for the proper performance of the transport order.

The information to be provided consists of, but is not limited to: the time of receipt, the loading and unloading, or the delivery of the goods; a correct description of the goods, the mass of the load, the nature of the load unit, the centre of gravity of each load unit if it is not central, the outer dimensions of each load unit, the loading and

stacking restrictions to be applied during transport as well as all additional information required for correctly securing the load if not already affixed to the goods.

**3.6.** To the extent that the forwarder is ordered to issue the waybill, all copies shall be made available to the road haulier's agent. After signing, the road haulier shall return the consignor's copy to the forwarder before departure.

#### **Article 4: Obligations, performance of the services by the road haulier and performance level**

**4.1.** The road haulier is obliged to perform the services in accordance with these provisions.

**4.2.** Vehicle:

**4.2.1.** The road haulier makes available a vehicle that is transport worthy and suitable for the contracted transport. The transport worthiness and suitability shall be in accordance with the standards applicable at the time of the performance of the transport.

**4.2.2.** The used vehicle shall be serviced and repaired in accordance with the required service intervals as prescribed by the manufacturer of the vehicle and in accordance with its requirements.

**4.2.3.** Every cargo space of the vehicle must be clean, dry, dust-free, odour-free and water-free.

**4.2.4.** The list below is not exhaustive but merely exemplary. This means, among others, that the vehicle and its cargo space must always, and without exception, comply with the applicable standards. In case of the transport of hazardous cargo (e.g. ADR goods), the vehicle must comply and be equipped with all the facilities required for this. Persons, who are not members of the crew, are under no circumstances allowed to be in the vehicle. Any further equipment in the vehicle must meet safety requirements;

**4.3.** The on time performance of the services and/or transport order:

**4.3.1.** The road haulier guarantees that the goods can be loaded on time and within the agreed timing at the loading area, that the goods will be transported on time without loss or damage, will be delivered to the consignee at the place of destination, as provided in the transport order.

**4.3.2.** "On time performance" implies that receipt is taken of the goods at the loading area at the agreed time, or delivered at the place of destination. The time of receipt and/or delivery are specified on the transport order.

**4.3.3.** In the absence of a clearly specified time, the road haulier must request instructions from the forwarder in writing. The road haulier shall at least respect the arrival times at the loading/unloading area to make loading and unloading possible within a reasonable time.

**4.3.4.** The road haulier shall immediately notify the forwarder of any problems, of every slowdown or delay in taking receipt, the transport and delivery of the goods. The road haulier shall also inform the forwarder of any loss or damage to the goods and any unforeseen risks, including those resulting from circumstances which the road haulier could not avoid in order to allow the forwarder to give useful instructions.

**4.3.5.** In the event of an accident, fire or theft, the local police authorities must be notified immediately.

**4.3.6.** If, at the request of the consignor/forwarder, use has to be made of a loading/unloading area with pre-announcement, it is up to the consignor/forwarder to provide the road haulier with all necessary references for pre-announcement, booking a time slot and for handling at the loading/unloading area at least 24 hours in advance. The road haulier cannot be held liable for the unavailability of time slots insofar as this is not attributable to the road haulier.

**4.4.** Loading, unloading, stowage of the goods:

**4.4.1.** The parties agree in the transport order who will be responsible for loading/unloading the goods. It is best to use the transport order (Annex 1) to this end.

**4.4.2.** The party appointed for loading/unloading is the responsible party.

4.4.3. If nothing has been agreed, loading and unloading shall be done by the road haulier under the supervision of the consignor and consignee respectively.

4.4.4. The road haulier is responsible for the safe and adequate stowage. When the road haulier takes delivery of a filled container, its responsibility in terms of stowage shall be limited to the proper tightening of the twist locks of the container chassis to ensure proper securing of the container.

4.4.5. The road haulier is responsible for checking the loading/unloading of the goods. If the road haulier is unable to perform the load/unload check, the road haulier shall make a written reservation in this regard (e.g. 'Said to Contain').

4.4.6. The road haulier shall at all times check that the weight in loaded condition does not exceed the gross laden weight taking into account the applicable legal and regulatory provisions. If the road haulier determines overloading by means of a weighing system on the vehicle, the road haulier may refuse the transport of the goods / container. Unless the road haulier provides evidence that the forwarder gave incorrect instructions or committed acts that were the direct cause of the breach of the applicable regulations or laws, the forwarder's liability shall be excluded.

#### 4.5. Parking the vehicle:

4.5.1. The road haulier shall never park or leave the truck and/or trailer in an unsafe, or unlocked condition. In any case, the road haulier is obliged to use guarded parking spaces, with due observance of the rest periods in accordance with the work and driving time regulations.

#### 4.6. Obligation to check and inspect:

4.6.1. In accordance with art. 8 CMR, the road haulier is obliged to check the external condition and the external state of the packaging of the goods when they are made available or when taking receipt of them and to check that the goods correspond with the entries and descriptions on the waybill. In case of additional instructions, the transport order template (Annex 1) can be used.

4.6.2. The road haulier immediately notifies and informs the forwarder of any non-conformity, of the external condition of the goods, of the packaging and the risk associated with loading the goods, but this list is not exhaustive. In such event, the road haulier shall await further instructions from the forwarder before loading and commencing transport.

4.6.3. The goal of this obligation to check and inspect is, without being exhaustive:

- Checking the exterior condition of the empty container before taking receipt, with special attention for:
  - manifest visible defects from the ground in standing position. If possible the road haulier performs a visual check of the condition of the inner walls and the roof, which must be in very good condition;
  - if a container is used for the transport of foodstuffs ("*Foodstuff Quality*" container) the road haulier checks whether the container in question is suitable for this;
  - ...
- With great care the road haulier checks that the references, identifying marks and/or numbers of the goods correspond with the references, identifying marks and/or numbers specified on the transport order and the waybill.
- The road haulier shall at all times verify the seal of the container, establish that it is intact and that the seal number corresponds with all documents, in particular the waybill and customs documents.

4.6.4. The consignee or its authorised discharger shall be made aware of their obligation to make the container available to the road haulier after unloading, at least broom clean and free of all labels and stowage material.

#### 4.7. Employees and agents:

4.7.1. The road haulier shall only employ skilled employees or subcontractors with the necessary knowledge and capabilities to perform the transport order.

4.7.2. The road haulier confirms and ensures that it has sufficient personnel and equipment and an adequate operational organisation to perform the transport orders in accordance with the applicable labour

laws and regulations. The road haulier shall immediately remedy and notify the forwarder of any problem or malfunction that may affect the performance of the transport order.

#### **Article 5: National and international regulations**

**5.1.** The road haulier guarantees that it is in possession of the necessary permits (e.g. permission to perform commercial road transport, community permit, permit for third countries, ECMT permit, Swiss permit, etc.) in accordance with the applicable laws and regulations.

**5.2.** The road haulier guarantees for itself and, if applicable and in accordance with art. 6 of the present term and conditions, for each subcontractor used in the performance of the transport order, that the transport orders are performed in accordance with the legal and regulatory provisions relating to employment, in particular with due observance of the social security provisions and the applicable laws relating to minimum wages, posting as well as the applicable rules on driving and rest periods (the so-called Mobility Package).

**5.3.** If the road haulier runs the risk of failing to comply with any legal obligation incumbent upon it, in particular the driving and rest periods, the road haulier shall immediately inform the forwarder of this in writing.

#### **Article 6: Customs regulations**

**6.1.** The forwarder and road haulier expressly undertake to apply and comply with all legal or regulatory, national and European customs transit and regulatory provisions. The road haulier shall be obliged to submit all relevant customs documents accompanying the goods to the competent customs officers and to hand them over to the consignee on delivery of the goods.

**6.2.** If the customs authorities select the transported goods for scanning and/or physical verification, the road haulier undertakes, at the consignor or consignee's request respectively, to submit to this.

**6.3.** If, as a result of negligence or fault on the part of the road haulier, the transported goods are not presented to the customs services for verification, the penalties in question, subject to any other or multiple damages, shall be passed on in full to the road haulier.

#### **Article 7: Subcontracting and subcontracted road hauliers**

**7.1.** In any case the road haulier undertakes to expressly notify the subcontracted road hauliers of the present terms and conditions. The road haulier also explicitly undertakes that the subcontracted road hauliers will guarantee an equivalent level of services.

#### **Article 8: AEO Security Declaration**

**8.1.** For AEO companies the transport order shall be performed and followed up in accordance with the enclosed "AEO Security Declaration" (Annex 2).

**8.2.** This document is filled out once and signed by both forwarder and road haulier. If the road haulier, in accordance with the provisions of article 6, works with subcontracted road hauliers, the road haulier shall be expressly required to have the subcontracted road haulier in question sign the "AEO Security Declaration".

## Article 9: fee and payment

**9.1.** The forwarder is responsible for paying the freight charge and any additional costs payable by its customer to the extent that according to the transport order the freight and any additional costs are payable by its customer. The list of possible additional costs shall be submitted by the road haulier at the time of the quote/price enquiry.

**9.2.** If, according to the transport contract, the freight charge is payable only after delivery of the goods, payment shall be made only after presentation of a delivery note.

**9.3.** Unless otherwise agreed, the road haulier shall not be entitled to payment or compensation for waiting times in the event of delayed loading and/or unloading, except when the waiting time exceeding the agreed loading or unloading time, is more than two hours per loading or unloading event. This time limit shall be reduced to one hour in case of groupage and only to the extent that the road haulier has reached the place of loading/unloading at the agreed time and to the extent that they have been reported to the forwarder at the same time.

Unless otherwise agreed, in case of cancellation of the transport order by the forwarder, the following compensation shall be due to the road haulier:

- on the working day before the day on which the goods were to be loaded; 50% of the freight charge
- on the day itself; 100% of the freight charge
- or on any calendar day between both days, 75% of the freight charge

if the road haulier is already en route to the loading area or in case the goods are already loaded, 100% of the freight charge and any additional charges

unless a substitute trip is provided with equal conditions in terms of price; distance, etc.

## Article 10: Liability

**10.1.** The road haulier acknowledges that the forwarder provides logistics services on behalf of and for the account of its customer in the context of which the road haulier was contracted.

Any breach or violation of these terms and conditions by the road haulier shall create a right of action for both the forwarder and its customer to preserve and safeguard their mutual interests.

**10.2.** In this context, the road haulier shall also be bound to indemnify and safeguard the forwarder and its customer against all claims brought against the forwarder either by its customer, the consignor, the consignee or third parties or against its customer by third parties. Such a claim shall be admissible only if the cause or reason thereof is attributable to any violation, failure or defective performance by the road haulier of any provision of these terms and conditions. The road haulier shall not be bound to indemnify in the event of co-responsibility on the part of the forwarder, customer, consignor or consignee.

**10.3.** To the extent that the CMR Convention and/or similar conventions, provisions and/or legislation are applicable by mandatory law, the road haulier shall indemnify and safeguard the forwarder and its customer in accordance with the CMR Convention and/or similar or other conventions, provisions and/or legislation applicable by mandatory law.

**10.4.** Under no circumstances shall the parties be liable for any loss or damage suffered as a result of direct or indirect economic loss, goodwill, market share or profit, regardless of how it arose.

## Article 11: Non-disclosure and data protection

**11.1.** The road haulier is obliged to treat all data and information that is not available in the public domain confidentially and only to use it for the intended purpose.

**11.2.** The confidentiality clause is not applicable to data and information that had to be made public for legal obligations to third parties, in particular the authorities. The other party must be immediately informed accordingly.

**11.3.** The forwarder and road haulier undertake to process data in accordance with the rules as prescribed in the GDPR (General Data Protection Regulation) which are available at the following link: <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

## **Article 12 : Jurisdiction and applicable law**

**12.1.** All legal relationships to which these terms and conditions apply, shall be governed solely by Belgian law.

Jurisdiction is exclusively reserved to the courts of the forwarder's registered office as place of conclusion and performance of the contract, provided that this registered office is located in Belgium, in addition to which - in the event of legal proceedings to which the CMR Convention applies - the courts specified in art. 31, paragraph 1 littera a and b of the CMR Convention also have (international) jurisdiction.

If the forwarder's registered office is not located in Belgium, but the road haulier's registered office is, the courts of the road haulier's registered office have jurisdiction.

## **Annexes**

The following annex is an integral part of the terms and conditions:

- ANNEX 1 – Transport order
- ANNEX 2 – AEO Security Declaration