

**PART I**  
**GENERAL PROVISIONS**  
**CONDITIONS OF APPLICATION**

1.1. These rules shall be binding upon any reference, whether verbal or in writing, to UTIKAD Rules for Freight Forwarding Services, provided that they are incorporated into the contract.

1.2. UTIKAD Rules shall take precedence in the event of any contradiction between UTIKAD Rules and the carriage contract. Notwithstanding the aforementioned, the Provisions of the contract of carriage shall take precedence over UTIKAD Rules to the extent that they increase both the liability and responsibility of the Freight Forwarder.

**DEFINITIONS**

2.1. The term Freight Forwarding Services shall mean

- carriage of cargo or any responsibility thereof,
- storage,
- other services related to the carriage and storage of cargo including but not limited to :
- consolidation of the cargo or separation of consolidated cargo,
- packaging,
- customs services or any responsibility thereof,
- handling, overhauling or labelling of cargo,
- insurance or any responsibility thereof,
- preparation of export and import documents on behalf of the Customer or assistance therewith -consultancy services for carriage and distribution,

2.2. The term Freight Forwarder shall mean a body or bodies corporate having concluded an agreement with a Customer with respect to freight forwarding services.

2.3. The term carrier shall mean a body or bodies corporate actually performing the carriage of the cargo with its own means of transportation (performing carrier) or assuming expressly or impliedly the responsibility for the transportation of the cargo (contractual carrier). The Freight Forwarder shall be considered as a contractual carrier, when it has issued a transport document in its own name or when it can be deduced from its public declaration or its statement -such as the communication of the carriage fees- that it assumes the responsibility of a carrier.

2.4. The term Customer, shall mean a body or bodies corporate assuming rights and liabilities under a freight forwarding service contract entered into with a Freight Forwarder or as a result of activities related to such services.

2.5. The term goods shall mean any goods including live animals and plants, and any container, pallet or similar transport device or packaging material not provided by the freight forwarder.

2.6. The term SDR shall mean the Special Drawing Right as defined by the International Monetary Fund. In the event that SDR must be used as a unit of account, the relevant Turkish Central Bank foreign currency buying exchange rate on the relevant date shall apply unless mandatory regulations stipulate otherwise.

2.7. The term mandatory shall mean any legislative regulation that cannot be modified at the will of any party.

2.8. The term in writing shall include any document that is conveyed via telegram and fax as well as electronic means such as e-mail.

2.9. The term valuable goods shall mean ingot or processed gold, coin or banknote, securities, precious stones, jewellery, antiques, paintings, art crafts and the like.

2.10. The term dangerous goods shall mean any cargo classified as a hazardous substance by national law or International Conventions.

2.11. The term delay shall mean any delay in performing the carriage within the agreed time allotted thereto or if no time limit is agreed upon, within a reasonable period (in this respect, the expected time of arrival at a destination as communicated by the Freight Forwarder shall be taken into account).

**INSURANCE**

Unless the customer provides a clear written instruction, the Freight Forwarder shall not take out cargo insurance. All insurance shall be taken out under the customary conditions and exceptions applied by the insurer granting the insurance cover. Unless otherwise is agreed upon in writing, the Freight Forwarder shall not be obliged to contract individual insurance for each of the transported cargo and may declare these under its floating policy in force.

#### HINDERANCES TO THE PERFORMANCE OF THE FREIGHT FORWARDER

If the performance of the Freight Forwarder's obligations becomes impossible or is hindered because of any obstruction or risk which is not attributable to the Freight Forwarder's fault or negligence and which cannot be prevented with reasonable care, then the Freight Forwarder:

4.1. may discontinue the transport of the cargo and if the later occurs, shall forthwith notify the Customer of the situation in writing and if possible, shall hold the whole cargo or any part thereof at the disposal of the Customer at a place the Freight Forwarder considers safe and suitable at its sole discretion. At such place, the cargo shall be deemed delivered to the Customer and the responsibility of the Freight Forwarder shall expire. In any event, the Freight Forwarder shall be entitled to claim freight pro rata to the distance travelled and the Customer shall be obliged to reimburse additional costs incurred with regard to any services rendered under the aforementioned conditions.

4.2. shall reserve the right to change the method of transport, the period and route and request payment of freight and relevant additional costs. If no written instruction is received within 48 hours after the notification to the Customer, then article 4.1 shall apply.

#### METHOD OF TRANSPORT AND ROUTE

The Freight Forwarder shall render its services in compliance with the instructions of the Customer. If those instructions are incorrect, incomplete or contrary to the contract's provisions, then the Freight Forwarder may act at its own discretion, all related costs and risks are for the account of the Customer. The Freight Forwarder is entitled to enforce the sale of the cargo in the eventuality of any depreciation or any risk of harm to humans or to the environment. In such cases, the Freight Forwarder shall have priority for the collection of freight, sales costs and other reasonable expenses incurred. The remainder shall be rendered to the Customer. In any case, the Freight Forwarder shall be obliged to notify the Customer in due time in writing in respect to any measures taken. In no case shall "cash on delivery" or any other similar statement on the invoice be construed as to oblige the Freight Forwarder to collect the invoiced amount or to take out insurance for the goods. Unless otherwise agreed, the Freight Forwarder may load the cargo on deck and may determine or change at its sole discretion the means of transport, the route and the method of handling, lashing, storing and carrying, without any prior notification to the Customer.

#### LOADING INSTRUCTIONS

Instructions, explications, and notifications pertaining to loading or any subsequent modification thereto shall be in writing. The burden of proof with regard to the accuracy and non-ambiguity of the instructions remains with the party alleging the contrary. The customer shall include in its instructions all the details necessary to perform the carriage such as the address, package number, amount, package type and content, and characteristics of the goods. In the case of hazardous substances, the Customer shall notify the Freight Forwarder of the risks associated with the cargo and necessary precautions to be taken. In the event that the risk code of the cargo is defined by international custom and practice and regulation, The Customer shall notify the Freight Forwarder of such Code. However the Freight Forwarder shall have no obligation to check the accuracy of such information provided by the Customer. In no event shall the Freight Forwarder undertake any obligation to investigate whether the signatures to the written instructions or the documents are signed by duly authorised representatives of the Customer.

#### PACKAGING, LOADING AND ASSISTANCE IN PACKAGING

The following services shall not be included into the scope of this contract:

7.1. Packaging of the goods

7.2. Weighing or inspection of the goods and precautions to be taken to preserve the quality of the goods and their packaging

7.3. Provision of pallets

7.4. Loading of the goods However, these services may be rendered upon special agreement and upon payment in advance.

## CUSTOMS

The Freight Forwarder shall complete the registration of the means of transportation necessary to initiate customs proceedings and other services related thereto to be rendered in respect to customs, against payment of the respective fees as set by UTIKAD. The Freight Forwarder may also undertake, within the scope of its legal capacity, to accomplish the required customs proceedings against an additional fee. Relevant authorisation shall be given by the Customer in accordance with the prevailing regulations in order to enable the Freight Forwarder to undertake the required service.

## STORAGE

Upon the request of the customer, the Freight Forwarder shall store the cargo within its or others' storage facilities, at its own discretion. If the Freight Forwarder chooses a third party's warehouse, the name and the address of that warehouse shall be notified to the Customer. The Customer shall have the right to observe and inspect the warehouse chosen by the Freight Forwarder. The Customer shall notify the Freight Forwarder in writing of its objection thereto, if any. If the Customer does not use its right to inspect the warehouse, then it shall lose its right to make any claim in respect to that warehouse. In the event the Customer takes samples or carries out any other action in relation to the stored goods, the Freight Forwarder may request the co-operation of the Customer so as to mutually determine the amount, weight and similar characteristics of the goods. If the Customer refuses such request, then no claim shall be made against the Freight Forwarder except for any additional damage that may occur during the said determination. The Customer shall be responsible for any damage to the warehouse or to the stored goods that may occur during any visit by the Customer, its servants or agents. In the event that the Freight Forwarder encounters difficulties in collecting the sums due to it by the Customer and the value of the stored goods is not sufficient to cover such payments, the Freight Forwarder may request from the Customer to provide a guarantee and if the Customer fails to provide such guarantee within a reasonable period of time, then the Freight Forwarder may terminate the storage service agreement and use its right of retention or lien over the goods.

## FREIGHT FORWARDER'S OFFER

The cargo covered by the Freight Forwarder's offer or the contract entered into, is the cargo which amount is and specifications are explicitly defined or, if no explicit definition is made, the cargo which amount is and specifications are usual for that type of cargo. In case of any change in the usual conditions of carriage, routes, actual exchange rates and tariffs prevailing at the time of the proposal or contract, the terms of the contract shall be modified and adapted accordingly. The proposal shall be considered void upon the term of the validity period stated by the Freight Forwarder in its offer expiring, except when the Customer has provided its consent within the same period.

## FREIGHT FORWARDER'S INVOICES, PAYMENT AND EFFECTIVE EXCHANGE RATES

As a rule, the Freight Forwarder's invoices shall be payable upon submission, unless due dates are stipulated in the contract. The currency of the invoices and the name of the bank determining the effective exchange rates and the currency of payment shall be stated in the contract. If no such statement is made, the currency of the invoices shall be Euro and the exchange rate shall be the average of the exchange rates declared by the first four top ranking Turkish banks. If the invoiced amount is not paid within the specified period of time stated in the contract, default interest shall be imposed at the rate of 50% over the average of the current Commercial Euro interest rates of the first four top ranking Turkish banks. The sums due to the Freight Forwarder, irrespective of the means of payment, shall be paid in full and free of any deductions.

## PART II

### FREIGHT FORWARDER'S RESPONSIBILITIES

#### FREIGHT FORWARDER'S INVOICES, PAYMENT AND EFFECTIVE EXCHANGE RATES

**12.1. Freight Forwarder's Responsibility for Due Care** In providing Freight Forwarding Services, the Freight Forwarder will observe due care and take all reasonable measures. Otherwise, it shall be liable, subject to Article 14 below, to the Customer for loss of or damage to cargo and for financial loss arising directly from the failure to observe due care.

**12.2. No Responsibility for Third Parties' Actions** The Freight Forwarder will not be held responsible for the performance and negligence of third parties such as carriers, warehouse personnel, stevedores (persons in charge for loading and unloading), port authorities and other freight forwarders, except for any failure to observe due care in their selection.

**12.3.** In addition to the above provisions, the Freight Forwarder's responsibilities shall be as defined by CMR, CIM, Warsaw Convention and

similar International Conventions, of which the Republic of Turkey is a party.

#### FREIGHT FORWARDER'S CONTRACTUAL RESPONSIBILITIES

**13.1. The Freight Forwarder's Responsibility as Carrier** The Freight Forwarder shall be responsible as a party to the contract not only when it performs the carriage with its own means of transportation (performing Carrier) but also when it assumes carriers liabilities by issuing transport documents on its own behalf or by otherwise undertaking carriers liabilities (contracting carrier). However, if the Customer has not declared within a reasonable period of time that it will continue to hold the Freight Forwarder responsible as carrier after receiving the transport documents issued by a third party, then the Freight Forwarder shall not be held responsible as carrier.

**13.2. The Freight Forwarder's responsibilities as Contracting Party for Other Services** The Freight Forwarder shall be responsible as a Party to the contract, for services other than carriage such as storage, handling, packaging or distribution and additional services related with these only if:

**13.2.1** such services are rendered by it in using its own resources and employees; and

**13.2.2** it has assumed any clear or implied commitment to be held responsible as a party to the contract

**13.3. Scope of The Freight Forwarder's Responsibilities as Contracting Party** The Freight Forwarder, being a party to the contract, shall be responsible, subject to the Article 14 below, for the acts or omissions of persons employed for the carriage or another service, as if these acts or omissions were its own acts or omissions. The Freight Forwarder's rights and liabilities are subject to legal provisions applicable to the carriage or the service provided and to clearly agreed additional conditions or if there is no clear agreement then to usual conditions prevailing for the carriage or the services provided.

#### EXCEPTIONS, DETERMINATION OF RESPONSIBILITY AND THE AMOUNT OF INDEMNITY

**14.1. Exceptions** In no case will the Freight Forwarder be held liable for:

**14.1.1.** Precious or hazardous goods other those declared to the Freight Forwarder at the conclusion of the contract;

**14.1.2.** Unless the contrary is agreed explicitly in writing, any loss caused by delay

**14.1.3.** Any consequential loss such as loss of profit or loss of market The Freight Forwarder shall not be liable for any loss or damage, if such loss or damage is the result of:

**14.1.4.** the Customer's fault or negligence,

**14.1.5.** the loading, unloading, handling or stowage made by the Customer or a person acting on its behalf,

**14.1.6.** breakage, leakage, sudden flare, spoilage, rusting, fermentation, evaporation or cold, heat or humidity,

**14.1.7.** the perishable nature of the goods

**14.1.8.** imperfection or inadequacy of the packaging,

**14.1.9.** incorrect or missing addresses or labels of the goods,

**14.1.10.** incorrect or incomplete information with respect to the goods, and

**14.1.11.** any occurrence that the Freight Forwarder could not reasonably prevent and the consequences of which it could not avoid.

**14.2. Determination of the amount of indemnity** In case the Freight Forwarder is liable for any loss of or damage to the cargo, indemnity shall be calculated on the basis of the value of the cargo at the place where the Freight Forwarder took delivery for carriage, plus the freight and expenses related to carriage. The value of the goods shall be determined on the basis of their current exchange price. In the absence of a current exchange price, the market price and if there is no market price, the price of similar goods shall be taken into consideration. In case of damage to the goods, the percentage of the damage shall be determined and indemnity shall be calculated by taking into account the multiplication of the value of the goods with such percentage. If the Freight Forwarder pays as indemnity the full

value of the goods, it shall have the option to claim title over the goods.

### **14.3. Limitations of Liability**

**14.3.1. Loss of or Damage to Cargo** In the event of loss of or damage to the goods, the related provisions of International Conventions such as CMR, CIM; and Warsaw Conventions shall apply. In other cases the Freight Forwarder's liability is limited to no more than 1.00 SDR per kilogram of gross weight damaged. However, in such cases as referred to above, the liability shall not exceed the amount of the freight. If the goods are not delivered within 90 consecutive days following the day on which they should have been delivered, the claimant may consider the goods as lost if there is no proof to the contrary.

**14.3.2. Limitation of responsibility in case of delay** If the Freight Forwarder is liable for delay, such liability cannot exceed the amount of the fees related to the service during the performance of which a delay has occurred.

**14.3.3. Other kind of losses** For any type of loss not mentioned under 14.3.1 and 14.3.2, the liability of the Freight Forwarder cannot exceed 1000 SDR per event, except where a higher amount is collected from a person for whose acts or omissions the Freight Forwarder can be held liable. However, the total indemnity cannot be higher than the amount of the freight.

### **NOTIFICATION OF LOSS OR DAMAGE**

**15.1.** The person entitled to take delivery of the goods shall notify the Freight Forwarder in writing and will provide a general statement of any loss of or damage to the goods at the time of delivery. If this duty is not complied with, the goods shall be presumed as received in good condition. In cases where loss or damage cannot be seen from the outside, the presumption of delivery in good condition shall take effect in the absence of any written notification within 7 days following delivery.

**15.2.** For all other types of loss and damage, any claim related to a service undertaken or actually provided shall be made in writing within 14 days following the date at which the event giving rise to the loss or damage is effectively learned or ought to have been learned by the Customer. Otherwise such claim shall be deemed as waived and shall become void. However, if the Customer proves that it was impossible to comply with the time limitation and it has made its claim at the first opportunity, then such claim shall be valid.

### **TIME BAR**

Unless the contrary is explicitly agreed, the Freight Forwarder shall be exonerated of all liabilities if no lawsuit is initiated within 1 year following the delivery date or the date when the delivery should have taken place or the date on which the Customer is entitled to consider the goods as lost. In cases other than the loss of or damage to the goods, the one-year time bar period shall be calculated commencing from the act or omission that gave rise to the claim. Unconditional acceptance of the goods shall also bar the right to claim indemnity from the Freight Forwarder.

### **CLAIMS BASED ON EXTRA-CONTRACTUAL RESPONSIBILITIES**

These rules shall apply to all claims against the Freight Forwarder, whether based upon contractual or non-contractual responsibilities.

### **RESPONSIBILITIES OF EMPLOYEES AND OTHERS**

These rules shall also apply to claims filed against the servants or agents of the Freight Forwarder (including independent contractors) irrespective of whether they are based on contractual or non-contractual responsibilities. Total liability of the Freight Forwarder, its servants or agents cannot exceed the limit of liability set out in these Rules or in any special agreement between the Freight Forwarder and the Customer.

## **PART III CUSTOMER'S RESPONSIBILITIES AND OBLIGATIONS FEES, ADVANCES; CONTINGENCIES**

The fees requested from the Customer as consideration for the Freight Forwarding Services are calculated on the basis of information provided by the Customer and the assumption that those services will be rendered under normal circumstances. The Freight Forwarder has the right to suppose that the content and volume/weight ratio of the goods delivered for carriage are customary. If the services undertaken by the Freight Forwarder related with the goods cannot be rendered because of the arbitrary behaviour of the Customer, then the Freight

Forwarder shall be entitled to claim all the agreed fees for those services.

#### SET OFF PROHIBITION

All of the amounts that are to be paid to the Freight Forwarder, shall be paid without any deduction or delay and may not be subject to set off in respect to other receivables or counter claims.

#### LIEN

The Freight Forwarder shall have a lien, to the extent of the applicable law, on all of the goods or on documents related thereto, in order to guarantee all amounts payable by the Customer including the expenses incurred with respect to additional services carried out in order to collect such amounts payable. In case the goods are lost or damaged, indemnity to be paid by the insurer, carrier or any other person, shall be substituted for the goods and the Freight Forwarder shall use its lien on such indemnity.

#### ACCURACY OF INFORMATION

Upon the delivery of the goods for carriage or for other services, the Customer shall be responsible for the accuracy of the information given by itself or on its behalf to the Freight Forwarder with regard to the general content, brands, amount, weight, volume and the hazardous particularities of the goods.

#### LIABILITY TO PAY INDEMNITY

##### 23.1. General Liability to Pay Indemnity

Except where the Freight Forwarder is liable under the provisions of Part II, the Customer is obliged to free the Freight Forwarder of all obligations that may arise during the performance of Freight Forwarding Services.

##### 23.2. Liability with respect to General Average

The Customer is obliged to pay to the Freight Forwarder its debts arising from General Average and to provide security if requested by the Freight Forwarder with respect to General Average.

#### CUSTOMER'S OTHER RESPONSIBILITIES

The Customer shall be liable against the Freight Forwarder for any damage and expense and official charges caused as a result of incomplete or incorrect information or incorrect instructions given to the Freight Forwarder or to other persons for whose acts the Freight Forwarder is liable, and for the delivery of goods causing death, injury, environmental damage, property damage or any other kind of damage or loss whatsoever.

#### **PART IV DISPUTES AND JURISDICTION DETERMINATION OF LOSS OR DAMAGE**

In the determination of any loss or damage under the scope of these Rules, a surveyor's report ; whose competence is internationally accepted, shall be taken into consideration.

#### JURISDICTION

Any dispute which may arise with respect to this agreement shall be resolved in Istanbul by way of arbitration. The party wishing to commence arbitration proceedings shall appoint its arbitrator and inform the other party thereof through the notary public. In such notification, the dispute for which arbitration proceedings have commenced shall be also be stated. The other party shall appoint its arbitrator within 1 week following such notification and shall notify the other party of the same through the notary public. Arbitrators appointed by the parties shall appoint a third arbitrator within 10 days following the last notification. If they fail to mutually agree on a third arbitrator, then the Chamber of Commerce of Istanbul shall appoint the same. The arbitrator appointed by the Freight Forwarder shall be in enlisted from UTIKAD's list of arbitrators. The third arbitrator appointed by the parties or, in their failure to appoint, appointed by the CCI President must have experience in the field of transportation and be registered in the list of arbitrators of the Turkish Union of

Chambers. If the party receiving the notification of arbitration fails to appoint and communicate the appointment of an arbitrator within one week, then its arbitrator shall be appointed by the CCI President in compliance with the principles for the appointment of the third arbitrator. Notification shall be deemed to be on time, if the notary public procedure is accomplished within a week. Arbitration costs shall be borne equally by the parties at the commencement of arbitration. The arbitration award shall state the definitive portions incumbent to each party in proportion with the admission or rejection of the claim. Otherwise, the provisions of HUMK (Turkish Civil Proceedings Act) with respect to arbitration shall apply.

#### MANDATORY PROVISIONS

These Rules shall be valid to the extent that they do not violate the provisions of applicable mandatory national law or International Conventions.