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FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES

PART I. GENERAL PROVISIONS

1. Applicability

1.1.
These Rules apply when they are incorporated, however this is made, in writing, orally or otherwise, into a contract by referring to the FIATA Model Rules for Freight Forwarding Services.

1.2.
Whenever such reference is made, the parties agree that these Rules shall supersede any additional terms of the contract which are in conflict with these Rules, except insofar as they increase the responsibility or obligations of the Freight Forwarder.

2. Definitions

2.1.
Freight Forwarding Services means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the Goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents relating to the Goods.

2.2.
Freight Forwarder means the person concluding a contract of Freight Forwarding Services with a Customer.

2.3.
Carrier means any person actually performing the carriage of the Goods with his own means of transport (performing Carrier) and any person subject to carrier liability as a result of an express or implied undertaking to assume such liability (contracting Carrier).

2.4.
Customer means any person having rights or obligations under the contract of Freight Forwarding Services concluded with a Freight Forwarder or as a result of his activity in connection with such services.

2.5.
Goods means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the Freight Forwarder.

2.6.
SDR means a Special Drawing Right as defined by the International Monetary Fund.

2.7.
Mandatory Law means any statutory law the provisions of which cannot be departed from by contractual stipulations to the detriment of the Customer.

2.8.
In writing includes written information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, telegram, telex, telefax or electronic mail, if the information is accessible so as to be usable for subsequent reference.

2.9.
Valuables means bullion, coins, money, negotiable instruments, precious stones, jewellery, antiques, pictures, works of art and similar properties whose value clearly exceeds the regular value of ordinary commercial goods or merchandise.

2.10.
Dangerous Goods means Goods which are officially classified as hazardous as well as Goods which are or may become of a dangerous, inflammable, radioactive noxious or damaging nature.

3. Insurance

No insurance will be effected by the Freight Forwarder, except upon express instructions given in writing by the Customer. All insurances effected are subject to the usual exceptions and conditions of the Policies of the Insurance Company or Underwriters taking the risk. Unless otherwise agreed in writing the Freight Forwarder shall not be under any obligation to effect a separate insurance on each consignment, but may declare it on any open or general Policy held by the Freight Forwarder.

4. Hindrances

If at any time the Freight Forwarder's performance is or is likely to be affected by any hindrance or risk of any kind (including the conditions of the Goods) not arising from any fault or neglect of the Freight Forwarder and which cannot be avoided by the exercise of reasonable endeavour, the Freight Forwarder may abandon the carriage of the Goods under the respective contract and, where reasonably possible, make the Goods or any part of them available to the Customer at a place which the Freight Forwarder may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Freight Forwarder in respect of such Goods shall cease. In any event, the Freight Forwarder shall be entitled to the agreed remuneration under the contract and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.

5. Method and route of transportation

The Freight Forwarder shall carry out his services according to the Customer's instructions as agreed. If the instructions are inaccurate or incomplete or not according to contract, the Freight Forwarder may at the risk and expense of the Customer act as he deems fit.

Unless otherwise agreed, the Freight Forwarder may without notice to the Customer arrange to carry the Goods on or under deck. Unless otherwise agreed, the Freight Forwarder may, upon reasonable efforts to inform the Customer, choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.

PART II. THE FREIGHT FORWARDER'S LIABILITY

6. The Freight Forwarder's liability (except as principal)

6.1. Basis of liability

6.1.1. The Freight Forwarder's duty of care
The Freight Forwarder is liable if he fails to exercise due diligence and take reasonable measures in the performance of the Freight Forwarding Services, in which case he, subject to Art.8, shall compensate the Customer for loss of or damage to the Goods as well as for direct financial loss resulting from breach of his duty of care.

6.1.2. No liability for third parties
The Freight Forwarder is not liable for acts and omissions by third parties, such as, but not limited to, Carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties.

7. The Freight Forwarder's liability as principal

7.1. The Freight Forwarder's liability as Carrier

The Freight Forwarder is subject to liability as principal not only when he actually performs the carriage himself by his own means of transport (performing Carrier), but also if, by issuing his own transport document or otherwise, he has made an express or implied undertaking to assume Carrier liability (contracting Carrier).

However, the Freight Forwarder shall not be deemed liable as Carrier if the Customer has received a transport document issued by a person other than the Freight Forwarder and does not within a reasonable time maintain that the Freight Forwarder is nevertheless liable as Carrier.

7.2. The Freight Forwarder's liability as principal for other services

With respect to services other than carriage of Goods such as, but not limited to, storage, handling, packing or distribution of the Goods, as well as ancillary services in connection therewith, the Freight Forwarder shall be liable as principal:

1. when such services have been performed by himself using his own facilities or employees, or
2. if he has made an express or implied undertaking to assume liability as principal.

7.3. The basis of the Freight Forwarder's liability as principal

The Freight Forwarder as principal shall, subject to Art. 8, be responsible for the acts and omissions of third parties he has engaged for the performance of the contract of carriage or other services in the same manner as if such acts and omissions were his own and his rights and duties shall be subject to the provisions of the law applicable to the mode of transport or service concerned, as well as the additional conditions expressly agreed or, failing express agreement, by the usual conditions for such mode of transport or services.

8. Exclusions, assessment, and monetary limits of liability

8.1. Exclusions
The Freight Forwarder shall in no event be liable for:

1. Valuables or Dangerous Goods unless declared as such to the Freight Forwarder at the time of the conclusion of the contract,
2. loss following from delay unless expressly agreed in writing,
3. indirect or consequential loss such as, but not limited to, loss of profit and loss of market,
4. loss of or damage to the goods due to inherent defect of the goods,
5. acts or omissions of Customer, its agents or any third party that the Customer employs,
6. improper packing or marking of the goods, unless the Freight Forwarder is liable as principal for such services under Art. 7.2.

8.2. Assessment of compensation
The value of the Goods shall be determined according to the current commodity exchange price or, if there is not 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 the Goods of the same kind and quality.

8.3. Monetary limits

8.3.1. Loss of or damage to the Goods
The provisions of Art. 7.3. notwithstanding, the Freight Forwarder shall not 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 a larger amount is recovered from a person for whom the Freight Forwarder is responsible. If the Goods have not been delivered within ninety consecutive days after the date when the Goods ought to have been delivered, the claimant may, in the absence of evidence to the contrary, treat the Goods as lost.

8.3.2. Limitation of liability for delay
If the Freight Forwarder is liable in respect of loss following from delay, such liability shall be limited to an amount not exceeding the remuneration relating to the service giving rise to the delay.

8.3.3. Other type of loss
The provisions of Art. 7.3. notwithstanding, the Freight Forwarder's liability for any type of loss not mentioned in 8.3.1. and 8.3.2. shall not exceed the total amount of ..... SDR[1] for each incident unless a larger amount is received from a person for whom the Freight Forwarders is responsible.

9. Notice

9.1.
Unless notice of loss of or damage to the Goods, specifying the general nature of such loss or damage, is given in writing to the Freight Forwarder by the person entitled to receive the Goods when they are handed over to him, such handing over is prima facie evidence of the delivery

[1] The maximum liability amount is intentionally left open and has to be completed according to the situation in the country where the Model Rules are applied.

of the Goods in good order and condition. Where such loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within 6 consecutive days after the day when the Goods were handed over to the person entitled to receive them.

9.2.
With respect to all other loss or damage, any claim by the Customer against the Freight Forwarder arising in respect of any service provided for the Customer or which the Freight Forwarder has undertaken to provide shall be made in writing and notified to the Freight Forwarder within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this time limit and that he has made the claim as soon as it was reasonably possible for him to do so.

10. Time bar

The Freight Forwarder shall, unless otherwise expressly agreed, be discharged of all liability under these Rules unless suit is brought within 9 months after the delivery of the Goods, or the date when the Goods should have been delivered, or the date when failure to deliver the Goods would give the consignee the right to treat the Goods as lost.

With respect to other loss than loss of or damage to the Goods the 9 months period should be counted from the time when the failure of the Freight Forwarder giving right to the claim occurred.

11. Applicability to actions in tort

These Rules apply to all claims against the Freight Forwarder whether the claim be founded in contract or in tort.

12. Liability of servants and other persons

These Rules apply whenever any claim is made against a servant, agent or other person the Freight Forwarder engaged for the performance of the service (including any independent contractor) whether such claims are founded in contract or in tort, and the aggregate liability of the Freight Forwarder and such servants, agents or other persons shall not exceed the limit applicable to the service concerned as expressly agreed between the Freight Forwarder and the Customer or following from these Rules.

PART III. THE CUSTOMER'S OBLIGATIONS AND LIABILITY

13. Unforeseen circumstances

In the event that the Freight Forwarder, in case of unforeseen circumstances, acts in the best interest of the Customer extra costs and charges have to be borne by the Customer.

14. No set-off

All monies due shall be paid without any reduction or deferment on account of any claim, counter-claim or set-off.

15. General lien

The Freight Forwarder shall, to the extent permitted by the applicable law, have a general lien on the Goods and any documents relating thereto for any amount due at any time to the Freight Forwarder from the Customer including storage fees and the cost of recovering same, and may enforce such lien in any reasonable manner which he may think fit.

16. Information

The Customer 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.

17. Duty of indemnification

17.1. General duty of indemnification
Except to the extent that the Freight Forwarder is liable according to the provisions of Part II, the Customer shall indemnify the Freight Forwarder for all liability incurred in the performance of the Freight Forwarding Services.

17.2. Duty of indemnification in respect of General Average
The Customer shall indemnify the Freight Forwarder in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder in this connection.

18. The Customer's liability

The Customer shall be liable to the Freight Forwarder for all loss or damage, costs, expenses and official charges resulting from the Customer's inaccurate or incomplete information or instructions or the handing over by the Customer or any person acting on his behalf to the Freight Forwarder, or to any other person to whom the Freight Forwarder may become liable, of Goods having caused death or personal injury, damage to property, environmental damage or any other type of loss.

PART IV. DISPUTES AND MANDATORY LAW

19. Jurisdiction and applicable law
Unless otherwise agreed, actions against the Freight Forwarder may be instituted only in the place where the Freight Forwarder has his principal place of business and shall be decided according to the law of the country of that place.

20. Mandatory Law

These Rules 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 Freight Forwarding Services.

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Explanatory Note to the Revision of and Guidelines for the Usage of FIATA Model Rules for Freight Forwarding Services

Part I. Introduction

A. Origin of FIATA Model Rules 1996

1. The law and practice of freight forwarding is quite different in different countries, and as it is not subject to any international regime, one has to cope with considerable difficulties to decide on the legal status of the Freight Forwarder (agent or principle) and the nature and extent of his liability. UNIDROIT (International Institute for the Unification of Private Law) prepared a draft convention in 1967 on the contract of agency for forwarding agents relating to international carriage of goods. This convention however was never submitted to a diplomatic conference.

2. Trying to mitigate the differences in the laws of freight forwarding industry, FIATA established a working group within Advisory Body Legal Matters (ABLM) led by Professor Jan Ramberg to perform a survey on the existing general conditions used by the freight forwarders in the member countries of FIATA and to elaborate Model Rules for Freight Forwarding Services. The final draft of FIATA Model Rules for Freight Forwarding Services was approved within the framework of FIATA World Congress 1996.

3. FIATA Model Rules for Freight Forwarding Services (hereinafter “FIATA Model Rules” or “the Rules”) formulated in 1996 stipulate some general principles on the rights, obligations and liabilities of forwarders and customers, especially the basis of liability, exclusions and monetary limits of liability for forwarders. The Rules are critical in establishing and developing the professional standards in the freight forwarding services, for instance, the forwarder shall exercise due diligence and take reasonable measures in the performance of freight forwarding services when he acts as agent and shall be responsible for the acts and omissions of the third parties he employs when the he acts as principle.

B. Usage of FIATA Model Rules 1996

4. FIATA Model Rules 1996 were usually used by freight forwarding associations and enterprises as a benchmark to draft their own standard trading conditions or service agreements. Some fundamental principles in the FIATA Model Rules, such as the distinction between “forwarder as agent” and “forwarder as principal”, were also adopted in national legislations for freight forwarding services by some countries.

5. Detailed provisions in FIATA Model Rules, however, are usually adjusted according to country-specific regulations, as they vary from country to country. For instance, the national association in Argentina reported that FIATA Model Rules were not applicable as there was a “minimum public order” mandatorily applicable to all contracts related for freight forwarding services.

C. Standard Trading Conditions and FIATA Model Rules

6. Standard Trading Conditions (hereinafter "STCs") are commonly adopted by national associations in FIATA, spelling out the general contractual obligations of the freight forwarder in his relationship with the customer as well as his rights, obligations, liabilities and defences. These STCs are formulated in accordance with the business practices, laws and regulations of the specific country and may take some guidance from the general principles of FIATA Model Rules. Member companies of these associations or other freight forwarders may incorporate such STCs into their own trading terms and conditions.

D. Revision of FIATA Model Rules 1996

7. Since the formulation of FIATA Model Rules in 1996, the business landscape and legal framework of the international freight forwarding and logistic industry has undergone substantial changes. Broader application of information technology, such as big data, e-commerce and electronic transport document, has profoundly shifted the roles of freight forwarders. Most forwarders have transformed from traditional "middleman" to providers of comprehensive logistic solutions. In the meantime, forwarders acting as contract or actual carriers are required to be in compliance with stricter Customs regulations and assume more obligations like protection of private data.

8. A survey conducted by ABLM among FIATA member associations in 2018 elaborated that it was time to update the FIATA Model Rules 1996 to reflect these new developments. ABLM, under the leadership of Chairman Richard Gluck, established a Revision Committee composed of various experts in law and insurance from different countries and held several revision sessions. The revised version has been approved and released to members during the FIATA World Congress 2019 in Cape Town, South Africa.

Part II. Commentary on revised provisions

A. Article 2.8 - Definition of "in writing"

> **Version 1996**: *In writing includes telegram, telex, telefax or any recording by electronic means.*
>
> **Version 2019**: *In writing includes written information generated, sent, received or stored by electronic, magnetic, optical or similar means, including but not limited to, electronic data interchange, telegram, telex, telefax or electronic mail, if the information is accessible so as to be usable for subsequent reference.*

9. The definition of "in writing" in FIATA Model Rules is used for two purposes: 1) specify the way for the Rules to be incorporated into a contract; 2) specify the format of instructions, notices or claims given by customers to forwarders what will establish contractual obligations on the forwarders. However, it should be noted that FIATA Model Rules do not regulate the legal or contractual validity of negotiable or non-negotiable transport documents in electronic form.

10. The definition in FIATA Model Rules 1996 reflected the electronic means of exchange used at the end of 20th century. The use of telegram, telex and telefax are already very rare today and is probably unknown to a substantial amount of young professionals. Growing application of new means of communications makes it necessary to adopt a broader definition for "in writing".

11. The revised definition is in line with the language used in the UNCITRAL instruments on electronic commerce, such as Model Law on Electronic Commerce (1996) and Model Law on Electronic Transferable Records (2017), as well as the United Nations Convention on the Use of Electronic Communications in International Contracts (2005). It is meant to cover any electronic writing, such as that sent by email or instant messaging services.

B. Article 2.9 – Definition of "valuables"

> **Version 1996**: *Valuables means bullion, coins, money, negotiable instruments, precious stones, jewellery, antiques, pictures, works of art and similar properties.*
>
> **Version 2019** : *Valuables means bullion, coins, money, negotiable instruments, precious stones, jewellery, antiques, pictures, works of art and similar properties whose value clearly exceeds the regular value of ordinary commercial goods or merchandise.*

12. Some FIATA members recommended to redefine "valuables" as the examples used in the previous definition need to be updated based on current practice. For instance, some insurance policies for carriers' liability may treat computer chips, laptops or cell phones as valuables and exclude the coverage of such cargoes.

13. The Revision Committee deems it reasonable to add an explanatory note that "valuables" refer to the goods "whose value clearly exceeds the regular value of ordinary commercial goods or merchandise". However, users shoud note that applicable examples of this definition are primarily decided by local commercial practice and judicial decisions and therefore may vary from country to country.

C. Article 5, paragraph 2 – Method and route of transportation

> **Version 1996**: *Unless otherwise agreed, the Freight Forwarder may without notice to the Customer arrange to carry the Goods on or under deck and choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.*
>
> **Version 2019**: *Unless otherwise agreed, the Freight Forwarder may without notice to the Customer arrange to carry the Goods on or under deck. Unless otherwise agreed, the Freight Forwarder may, upon reasonable efforts to inform the Customer, choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.*

14. Forwarders nowadays can communicate and exchange information with customers in a substantially easier, faster and more cost-efficient manner compared to the time the FIATA Model Rules were formulated twenty years ago. The Revision Committee deems it feasible that the forwarder make reasonable efforts to inform the customer in the case the forwarder

needs to choose or substitute the means, route and procedure of goods transportation of the goods and the parties do not have any previous agreement on this issue.

D. Article 8.1 - Exclusions

Version 1996:

The Freight Forwarder shall in no event be liable for:
1. Valuables or Dangerous Goods unless declared as such to the Freight Forwarder at the time of the conclusion of the contract,
2. loss following from delay unless expressly agreed in writing,
3. indirect or consequential loss such as, but not limited to, loss of profit and loss of market.

Version 2019:

The Freight Forwarder shall in no event be liable for:
1. Valuables or Dangerous Goods unless declared as such to the Freight Forwarder at the time of the conclusion of the contract,
2. loss following from delay unless expressly agreed in writing,
3. indirect or consequential loss such as, but not limited to, loss of profit and loss of market,
4. loss of or damage to the goods due to inherent defect of the goods,
5. acts or omissions of Customer, its agents or any third party that the Customer employs.;
6. improper packing or marking of the goods, unless the Freight Forwarder is liable as principal for such services under Art. 7.2.

15. The three new provisions are commonly used by member associations and companies in their Standard Trading Conditions or service agreements and are self-explanatory. If the loss of or damage to the goods is caused by inherent defect of the goods, it is up to the customer to bear such risk and, in most cases, sellers and buyers shall settle such loss or damage under the sales agreement. If the loss of or damage to the goods or delay in delivery results from acts or omissions of the customer, its agents and any third party it employs, the customer shall bear such consequences. The same is true for improper marking and packing, unless the forwarder has undertaken to provide those services.

Part III. Commentary on other revisions suggested by members

A. Data protection

16. The past years witnessed new laws and regulations on protection of private data coming into force, among which the most influential is the General Data Protection Regulation of the European Union (GDPR). International logistic service providers and freight forwarders are very likely to fall within the scope of legislation like GDPR, because they may obtain certain personal data on customers in the process of providing freight forwarding services.

17. The Revision Committee reviewed the need to introduce provisions on the obligations of forwarders in protection of private data in FIATA Model Rules. Considering that the data protection regulations and requirements are generally applicable to all industries with no specific reference to the transport and logistic industry, the applicable rules may vary from country to country and the jurisdiction of regional legislations like GDPR has limitations, the Revision Committee deems it unnecessary at the current stage to add data protection provisions to the FIATA Model Rules as a general rule for global forwarders. It is recommended that national associations and companies consider the necessity of adding such rules in their Standard Trading Conditions or service agreements in accordance with the data protection regulations applicable to their business.

B. Electronic transport document

18. The rapid development of information technology is a key enabler to the transformation of international logistics and freight forwarding industry. Application of electronic transport documents offers a huge potential to improve the efficiency, reliability and cost-effectiveness of freight transport.

19. UNCITRAL (United Nations Commission on International Trade Law) formulated a Model Law on Electronic Transferable Records in 2017, which established some fundamental rules to enable the legal use of electronic transferable records both domestically and across borders. By the time this Explanatory Note was drafted, Bahrain has become the first country to enact the model law.

20. FIATA Model Rules 1996 has no provision on the formality of any transport document, negotiable or non-negotiable. Members of FIATA have enquired whether the revised FIATA Model Rules need to adopt rules in this regard. Considering that there is no widely applicable international conventions on electronic transport document up to now and the formality of transport documents especially negotiable ones has critical importance to the transfer of ownership of goods, this revision of FIATA Model Rules will not introduce any provision on this subject.

21. FIATA has eight standard forms for use of freight forwarders worldwide, such as negotiable FIATA Multimodal Transport Bill of Lading (FBL), non-negotiable FIATA Multimodal Transport Waybill (FWB) and Forwarders Certificate of Receipt (FCR). FIATA is currently working on digitalizing negotiable FIATA Multimodal Transport Bill of Lading (FBL) with the aim of enabling members around the globe to use this document in a secure, reliable and cost-efficient way. The contractual validity of the electronic FBL will be based on agreements among issuing forwarders and customers.

C. Verified Gross Mass (VGM)

22. As of 1st July 2016, within the framework of Safety of Life at Sea Convention (SOLAS), no container is allowed to be loaded on board the ship unless its Verified Gross Mass (VGM) has been declared by the shipper to the shipboard personnel and/or to port representatives. As the obligations of freight forwarder on VGM vary significantly based on different roles the forwarder plays in the sea freight, especially when the forwarder acts as carrier, FIATA Model Rules will not introduce a unified rule on this issue. However, forwarders are recommended to

have VGM provisions in their service agreements according to their roles. FIATA's *SOLAS Information Paper on VGM*[2] provides a good reference in this regard.

Part IV. Best practices in usage of FIATA Model Rules

23. FIATA Model Rules for Freight Forwarding Services set some general standards for the global freight forwarding services. The Rules can either be incorporated into the Standard Trading Conditions of member associations or contracts of international logistic service providers and freight forwarders, or be taken as a starting point when associations and forwarders need to formulate such conditions or contracts specific to their situation.

A. Incorporated into contracts

24. By referring to FIATA Model Rules, the Rules will be incorporated into the contracts of freight forwarders. Although Article 1 provides that this can be done in writing and orally, it is strongly recommended that the forwarder incorporates the Rules in writing. The best practice ABLM recommends is that the forwarder publishes the FIATA Model Rules on his website, clearly refers to the Rules in his contract with the customer or attach the Rules as an annex of the contract.

25. Forwarders shall fill in the amount of Special Drawing Rights (SDR) in Article 8.3.3 of the Rules, which set the monetary limits for losses other than loss or damage to the goods (Article 8.3.1) and delay in services (Article 8.3.2).

26. Once the FIATA Model Rules are incorporated in the contract, the provisions will apply as long as they are not contrary to the mandatory provisions of applicable international conventions or national laws. These provisions will also supersede if they are in conflict with any additional terms in the contract, except the terms that will increase the responsibility or liability of the forwarder.

B. Taken as a reference document

Key provisions in FIATA Model Rules

27. FIATA Model Rules distinguish between the freight forwarder acting as principal and forwarder acting as agent. Article 7.1 provides two scenarios the forwarder is subject to liability as carrier: when the forwarder performs the carriage himself (performing carrier) and when the forwarder issues his own transport document without performing the carriage himself (contracting carrier). When the forwarder acts as carrier, he assumes the carrier liabilities regulated in applicable international conventions and national laws, provided that he does not assume a higher liability under the contract; he is also responsible for the acts of omission of others he has engaged for the performance of the services (Article 7.3).

28. Except for the situations provided in Article 7.1, the forwarder shall be deemed agent of the customer. In this case, he shall exercise due diligence and take reasonable care in the

[2] FIATA SOLAS Information Paper: SOLAS Chapter VI Part A Regulation 2 amendment Verification of Container Weights, https://fiata.com/fileadmin/user_upload/documents/recent_views/MTI/Guideline_SOLAS.pdf

performance of the services (Article 6.1.1). The forwarder acting as agent is not liable for the acts or omissions of the third parties unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties (Article 6.1.2).

29. The monetary limit has been set at 2 SDR per kilo with respect to loss of or damage to the goods (Article 8.3.1), and for delay it will be the remuneration relating to the delay (Article 8.3.2), but for other type of loss the liability limit for each incident has been left open for a decision by the respective national freight forwarding associations and forwarders (Article 8.3.3). There are particular exceptions from liability for valuables as well as for delay and consequential loss other than “direct loss” (Article 8.1).

Legislations in different countries

30. The distinction between the forwarder as agent and forwarder as principal is particularly apparent in the common law jurisdictions. In countries where freight forwarding services are regulated by statutory law, the conditions follow that law or at least use the law as the starting point.

31. In some countries, the law is mandatory to such an extent that there is no option for the forwarder to regulate his liability differently in his general conditions. In other countries, limitations of liability are disallowed unless following from national law or international conventions. At the other end of scale, we find countries still accepting almost a total freedom of contract, which is used by some associations in their disclaimers of liability.

Adapting to local conditions

32. As seen from the above, the legal status, basis of liability and monetary limit of liability of the forwarder in FIATA Modal Rules may differ from the mandatory laws and regulations in some countries. The forwarder should draft his terms and conditions based on the mandatory regulations applicable to the services in combination with FIATA Model Rules, the Standard Trading Conditions formulated by its national association and his commercial needs.

33. When the forwarder acts as actual carrier, it is possible for him to make the contract subject to his own conditions for the services insofar as such conditions do not depart from any compulsory regulations. When forwarder acts as contracting carrier, it is highly recommended that the forwarder has back-to-back conditions in his contract with the customer and the service supplier, so he could seek indemnification from the supplier he has engaged for the service upon the same conditions applied to the customer.