

Polska Izba Spedycji i Logistyki

Polish International Freight Forwarders Association



Ogólne Polskie Warunki Spedycyjne 2022

**Polish General Freight Forwarding
Rules 2022**

Gdynia 2022

POLISH GENERAL FREIGHT FORWARDING RULES 2022

– Description –

On the 13th of December 2022, the Board of the Polish International Freight Forwarders Association adopted, by way of resolution No 115/09/2022, a new version of Polish General Freight Forwarding Rules 2022, prepared by a special working group consisting of lawyers, following consultations with experienced experts and members of the Association. The necessity to change the existing version of the rules after twelve years resulted from a number of factors. Much had changed over the preceding decade, in particular provisions of law. Other issues which had to be taken into consideration included the development of new technologies, ordering parties' expectations, as well as the international situation which could not have been foreseen, i. e. the COVID-19 pandemic and the war caused by the attack of the Russian Federation on Ukraine across the eastern border of Poland.

Before we discuss the novelties, it has to be explained, first and foremost, what the Polish General Freight Forwarding Rules 2022 (hereinafter referred to as the PGFFR 2022) are. The PGFFR 2022 serve as a contract template, which should be understood as a series of provisions concerning rights and obligations of the parties to a contractual relationship, applied by one of these parties. The template may regulate these rights and obligations in part or in their entirety (G. Karaszewski, Kodeks Cywilny. Komentarz aktualizowany, [The Civil Code. A Revised Commentary], edited by: J. Ciszewski, P. Nazaruk, LEX/el. 2022, Art. 384). Modern civil legal transactions require particular regulations for the procedure of concluding typified contracts, as well as their contents. A lot of entities participating in such transactions (the vast majority of which are entrepreneurs), address their offers to a wide range of recipients. Taking into consideration the fact that identical or very similar goods and services constitute the subject of such offers, it is necessary to use contracts with standardised contents. This phenomenon is a permanent and unchangeable factor of modern economic relations, which results in considerable benefits, as it facilitates transactions and gives them the desirable impetus.

The provisions of Art. 384 of the Civil Code establish the principle that a contract template is binding on a party on condition that it has been presented to this party prior to conclusion of a contract. Such a contract template is deemed to be effectively delivered if the contractor receives it early enough to be able to familiarise themselves with its contents prior to conclusion of the contract in question (exceptions to this principle are provided for in further paragraphs of Art. 384 of the Civil Code). The document has to be intelligible and may not include references to provisions which are not included in its contents (e. g., published in the press or displayed in the entrepreneur's registered office). If the above-mentioned requirements are not fulfilled, a contract concluded between a freight forwarder and their ordering party will not be binding. Business relations between the parties constitute an exception from the principle described above. In such a case, to make the contract template binding, it is sufficient if the freight forwarder ensures that the contents of the template are easily accessible to their contractor (Art. 384, § 2 of the Civil Code), for example on the entrepreneur's website or at places where they render their services. Nevertheless, it is always recommended to make such a template available to the other party. Both the case law and the doctrine of law recommend that the ease of access to a contract template should be assessed taking into consideration objective possibilities of the other party to this contract. For example, publication of a template in a professional journal or on the website of the Polish International Freight Forwarders Association will be effective if addressed to entrepreneurs from this particular sector of business, while it cannot be expected to have the same effect if addressed to entrepreneurs operating in different sectors. If one of the parties uses a digital version of the contract template, they should make it available to the other party prior to conclusion of the contract in the way allowing for retention and display thereof in the ordinary course of business. The PGFFR 2022 in their contents complement the above-mentioned principle by indicating that they may be applied in relationships between a freight forwarder and their ordering party only in the situation where at least one of the parties is a member of the Polish International Freight Forwarders Association. Then the PGFFR will be effectively incorporated into the contract concluded between the parties.

Here it should be indicated that the PGFFR 2022 do not constitute provisions of generally applicable substantive law, which means that they are not a provision of law. Their application does not result from a legal provision and, in order to be binding on the parties, they have to be properly incorporated into the legal relationship. Thus, if a freight forwarder does not ensure that they are applied in assessment of rights and obligations of parties to a freight forwarding agreement, the PGFFR 2022 will not be applicable to such an agreement.

In comparison with the previous version of the PGFFR, published in the year 2010, the current version includes more defined terms, such as Goods with Specific Features, Shipping Container, Cargo Handling Activities (including Loading and Unloading), Transshipment, Force Majeure, and Document Form. General Provisions of the PGFFR 2022 have been considerably modified, particularly with regard to regulations connected with concluding freight forwarding agreements between the parties, as well as with the freight forwarder's liability. Due to the distinctive features of intermodal transport, a whole chapter concerning this type of transport has been added, together with characteristic defined terms (Intermodal Transport, Terminal Operations, ITU, Intermodal Certificate, Intermodal Consignment Note, Network Principle). In many other cases, the introduced changes are of a clarifying and systematising nature.

The General Provisions chapter of the PGFFR 2022, which is the most extensive one in the document, contains new provisions and amended provisions of its former versions. The aim of the changes is to strengthen legal protection of freight forwarders, in particular with regard to a few issues: principles for concluding agreements; principles for remuneration and other settlements with freight forwarders, including those related to costs and expenses incurred by freight forwarders; liability, taking into account the issue of securing the interests of freight forwarders by way of introducing various means to limit their liability, as well as provisions regarding complaint procedure. The authors of the PGFFR 2022 aimed to draft, in the extended General Provisions chapter, universal provisions, common for all types of freight forwarding, regardless of the means of transport used to move a consignment.

Contracts in the transport industry are concluded in a specific way, very dynamic and often informal. Naturally, it happens sometimes that contractors conclude multi-page agreements, which exhaustively regulate the rules of their cooperation. However, contracts are often concluded by exchanging email correspondence and via other channels – as a result of offers submitted by freight forwarders to ordering parties. Also, in the situation where the parties are bound by a framework agreement, it may be performed by way of offers tendered by the freight forwarder. At the time of rapidly changing market, the frequency of submitted offers is usually dependent on the dynamics of changes in freight and land transport rates, as well as other operational or financial conditions.

In practice, contracts are most often concluded as a result of an offer submitted by a freight forwarder to their ordering party. Such offers are very often made in the course of cooperation between the parties which remain in permanent economic relations, mentioned in Art. 68² of the Civil Code: "If an entrepreneur receives, from a person with whom they remain in permanent economic relations, an offer to conclude a contract within their business activity, lack of immediate response thereto shall be understood as acceptance of the offer." The aforementioned provision should be read in conjunction with Art. 68 of the Civil Code, which states: "Acceptance of an offer made subject to amendment or supplementation of the contents thereof shall be regarded as a new offer."

Art. 68² of the Civil Code is a provision of the General Provisions Chapter of the Code, which is applied to all civil law contracts, unless the parties agree otherwise. Referring to this provision, it is possible to invoke the fact that lack of immediate response from the other party is regarded as unconditional acceptance of the offer which, in turn, means that the offer is accepted in its entirety, including pricing and operational conditions, and often also regulations concerning liability. It is, therefore, an advantageous provision when the offer is made by a freight forwarder which does not receive a response in the form of a counter-offer (constituting a new offer) from the ordering party. In case the ordering party, in response to the offer received from the freight forwarder, sends, without unnecessary delay, a response (a counter-offer), including, for example, provisions concerning other price conditions, operational conditions, or provisions concerning liability, the situation may be entirely different. Silence on the part of the freight forwarder will then be regarded as acceptance of the conditions stipulated by the ordering party, and the contract will be concluded on entirely different terms than those originally assumed by the freight forwarder. It often happens in the industry practices that clients try to somehow impose on freight forwarders their conditions on which the service should be performed. Such conditions frequently increase the freight forwarder's liability (sometimes also due to conditions made by carriers), and result in other disadvantageous factors (such as liquidated damages). Thus, in order to avoid the situation where freight forwarders unintentionally accept undesirable provisions concerning cooperation, the PGFFR 2022 introduce solutions aimed at protecting freight forwarders against negative consequences of their failure to reply to conditions submitted by ordering parties which, de facto, constitute a counter-offer.

The provisions of §4, p. 3 and § 2, p. 3 of the PGFFR 2022, are meant to clearly protect freight forwarders from automatic application of silent acceptance of counter offers submitted by ordering parties.

§ 2, p. 3 of the PGFFR 2022

"3. Any statements made by the Ordering Party, particularly commissions or other contractual terms presented

by the Ordering Party to the Freight Forwarder, in any form, in relation to the Freight Forwarder's offer, are applied to the relationship between the Freight Forwarder and the Ordering Party solely to the extent in which such statements correspond to the offer submitted by the Freight Forwarder, while they are applied in the remaining scope, exceeding the contents of the offer or those of the concluded agreement, only after prior acceptance of these statements by the Freight Forwarder, given in writing or in the Document Form under pain of nullity. Lack of an immediate answer from the Freight Forwarder, as well as the commencement of service performance shall not be regarded as acceptance of the Ordering Party's offer included in such statements."

§ 4, p. 3 of the PGFFR 2022

"3. Should the Freight Forwarder receive from the Ordering Party with whom they maintain permanent economic relations an offer (including the counter-offer mentioned in Art. 68 of the Civil Code) to conclude an agreement as part of their business activity, lack of immediate response from the Freight Forwarder shall not be tantamount to the approval thereof."

Over the years, there have been numerous disputes between freight forwarders and ordering parties concerning broad settlement issues. It applies particularly to situations where a freight forwarder provides an additional service which is not covered by the agreed remuneration. Such a service, although performed without prior approval of the ordering party, is aimed at appropriate execution of freight forwarding or is rendered in the interests of a consignment (e. g., in situations where the consignment could be damaged). It also applies to situations where a freight forwarder has incurred or is about to incur costs and expenses when executing a commission, such as various costs of downtime or detention of a consignment or a container. Having regard to the necessity to regulate such situations, which are, in a way, a permanent feature of freight forwarding services, § 14 of the PGFFR 2022 provides a clear and exhaustive description of principles concerning settlements between the parties to a freight forwarding agreement. Notwithstanding the freight forwarder's right to demand reimbursement of the costs already incurred, the PGFFR 2022 provide freight forwarders with a possibility to request an advance payment or to demand their release from debt by the ordering party by way of a direct deposit made for the benefit of the freight forwarder's subcontractor. Such rules may prove to be really beneficial in, for example, settling high costs of demurrage or detention, which often constitute a considerable burden for freight forwarders, as well as other costs or expenses arising in the process of executing a freight forwarding commission.

Taking into consideration legal risks on the part of freight forwarders concluding freight forwarding agreements, §§ 12, 13, and 14 of the PGFFR 2022 regulate the principles for effective limitation of their liability, making them more advantageous in comparison with the rules resulting from commonly binding provisions of law. First and foremost, the PGFFR 2022 put an end to diversification of liability which freight forwarders may incur with regard to various categories of their subcontractors.

It has to be indicated that Art. 799 of the Civil Code enables freight forwarders to use the rules of liability based on lack of fault in selection (*culpa in eligendo*) only in situations where, during the performance of a freight forwarding agreement, two categories of subcontractors, i. e. sub-forwarders and carriers are used. In practice, a freight forwarder, which usually provides comprehensive freight forwarding services, uses a much wider variety of subcontractors, including, inter alia, entrepreneurs rendering services connected with storage of goods, their conditioning and marking, as well as subcontractors performing transshipment services (which is usually a complex and specialist operation), or inspecting bodies, experts, etc. With the development of freight forwarding the number of various subcontractors providing diverse services has also grown. Freight forwarders are not liable for actions of such subcontractors pursuant to the *culpa in eligendo* rule stipulated in the Civil Code, but in the way they are liable for their own acts and omissions. Owing to the passive attitude of the legislator, who has not introduced necessary changes to the Civil Code, the PGFFR 2022 make it possible for freight forwarders to use liability principles based on *culpa in eligendo* with regard to all their subcontractors, without any differentiation.

The PGFFR 2022 also include an extended catalogue of conditions releasing freight forwarders from their liability even in situations where the negligence in choice could be attributed to them for some reason, or in case they are liable for their own actions. Taking into consideration numerous cases resulting from practices of the industry, the catalogue has been extended by limitations such as exclusion of liability for damage caused by breaking or risk of breaking a cold chain or for damage caused by exercising, by the freight forwarder, the sub-forwarder, or the carrier their right of lien or retention. The freight forwarders' liability for the occurrence of force majeure (extensively defined in the PGFFR 2022) or for delays resulting from untimely operations of a container terminal has also been clearly excluded. The aforementioned exclusions are expressed in the PGFFR 2022 on the basis of industry experiences in recent years, resulting from such circumstances as: lack of carriers' cooperation when providing readings

from devices measuring temperature during movement of consignments, lack of flow at terminals, pandemic as well as acts of war, which are translated into a number of unforeseen factors in the logistics industry and restrictions in using the infrastructure. At present, freight forwarders' liability for delay is also excluded. The PGFFR 2022 explicitly provide that freight forwarders may declare, to their ordering parties, that a given service will be performed by the established deadline, only in writing or in the document form, under pain of nullity. The exclusion of the above-mentioned regulation, i. e. silent acceptance of a counter-offer submitted by the ordering party, will make it possible to protect freight forwarders against the situation where a deadline for service rendition is imposed on them, and they are not able to guarantee that such a deadline will be met.

The above is expanded upon by the principle, clearly regulated in the PGFFR 2022, that the transit time (TT) specified by the freight forwarder, as well as any other information relating to the time within which the service ought to be provided (e. g. ETA. ETD), including all kinds of timetables, shipping service's timetables, sailing schedules or any other dates of departure or arrival, of calling at ports, as well as of arrival and departure of aircraft, published by the freight forwarder, carriers or by any other entities, are indicative in nature and are not guaranteed.

The PGFFR 2022 also introduce a solution which is desirable in the industry and used in practice, namely the exclusion of freight forwarders' liability for loading and unloading of the goods unless, due to the specific nature of services provided (e. g., with regards to LCL freights), they directly undertake to provide such services. The PGFFR 2022 also refer to the Shipperpacked and Merchant-packed containers clauses used in marine bills of lading by stipulating that freight forwarders are not liable for loss or damage to the goods resulting from unsuitable or defective condition of a shipping container, even if such a container was provided by the freight forwarder as part of the execution of the freight forwarding commission, in the situation where the unsuitable or faulty condition of the container was or would be visible upon the delivery thereof to the loading site or during the operation of loading the goods into the shipping container. The above provision of the PGFFR 2022 does not refer exclusively to containers, but to a broader term of shipping container defined therein. In effect, this regulation is included in the General Provisions of the PGFFR 2022 and is applicable to all types of freight forwarding where shipping containers (and not simply containers) are used.

The PGFFR 2022 also strengthen the position of freight forwarders with regard to complaints procedure, explicitly stating presumptions connected with failure to inform the freight forwarder about the occurrence of damage by a given deadline. Owing to the fact that the conduct of complaint procedure by freight forwarders is, in the majority of cases, connected with the necessary involvement and prompt reactions on the part of freight forwarders' subcontractors, the provisions included in the PGFFR 2010 have been removed, thus releasing freight forwarders from their obligation to establish a deadline by which they should provide explanations as to the manner and time of examining a given complaint. Due to the time-consuming nature of complaint procedures, the PGFFR introduce the rule that a fee should be charged with regard to complaint procedures handled by freight forwarders. However, they do not determine any specific amount due for such services. The amount payable is established by the freight forwarder and the ordering party in the agreement concluded between them.

The PGFFR 2022 also resolve, to the advantage of freight forwarders, the disputes which often arise in transactions, regarding the significance and nature of the INCOTERMS® rule provided to the ordering party by the freight forwarder or included in the latter's offer. The collected information shows that ordering parties often instrumentally use a particular INCOTERMS® rule, on the basis of which they conclude a commercial contract with a seller, thus trying to impose on freight forwarders obligations which are not justified by the agreements concluded between them and freight forwarders. In accordance with current solutions applied in PGFFR 2022, providing the ordering party with the INCOTERMS® rule, or its inclusion in the offer tendered by the freight forwarder is done for information purposes only. It does not mean that the freight forwarder incurs additional obligations which should be performed by the ordering party or by another entity by virtue of the commercial contract.

Several provisions of the PGFFR 2022 are applicable directly to sea freight forwarding, whose institutions are characteristic only for this type of freight, and with regard to which legal regulations are rather modest. Therefore, the PGFFR 2022 refer to the VGM regulations, introduced in recent years, as well as directly introduce rules of conduct concerning frequent situations where bills of lading go missing. The PGFFR 2022 provisions also establish the obligation to present a HBL, if issued, so that the goods may be released. This rule was not included in previous versions of the PGFFR. Also, a very important solution aimed at protecting freight forwarders against consequences of being qualified as entities with the "Merchant" status pursuant to the terms of bills of lading has been clarified. Provisions within this scope are to strengthen the protection of freight forwarders against any claims which may be made

against them in this regard. The PGFFR 2022 unequivocally determine that, in such cases, the ordering party should indemnify the freight forwarder against the above-mentioned liability and pay, at the freight forwarder's request, an amount sufficient to secure the freight forwarder's recourse claims. In the situation where the freight forwarder classified as a "Merchant" satisfies the claims of a shipowner, the ordering party is obliged to reimburse to the freight forwarder all the costs and expenses incurred by the latter in connection with satisfying the aforementioned claims. Additionally, the ordering party's obligation to perform, in good faith, all the actions necessary for proper execution, by the freight forwarder, of their obligations towards sea carriers, defined in the bill of lading or in any other documents of a similar nature has been clearly and unambiguously stated.

The chapter concerning intermodal transport, introduced in the PGFFR 2022, constitutes an answer to the needs of both intermodal operators and other entities within the transport industry, which use the services of such operators. The increasing share of this branch of transport in the total volume of cargo transport, both in Poland and at the international level, made it necessary to define basic principles for activities of intermodal transport operators, including the scope of their liability. Thus, the chapter of the PGFFR 2022 concerning the above, and starting with § 24 has been entitled "Intermodal Transport Operators". For the purposes of the PGFFR 2022, the term "Intermodal Transport Operator" has been abbreviated to "ITO".

Due to the different nature or specificity of intermodal transport, § 25 of the PGFFR 2022 clarifies the terms significant for this branch of transport, such as the definition of intermodal transport, which, until now, have not always been understood in a uniform manner.

The definition of "Intermodal Transport" adopted in § 25 p. 1 of the PGFFR 2022 has been borrowed, to a considerable extent, from the document titled The Terminology on Combined Transport, drafted by the European Conference of Ministers of Transport and the European Commission in the year 2001. Nevertheless, the Polish International Freight Forwarders Association (PIFFA) decided to supplement that definition by a reference to transport of empty intermodal transport units. In accordance with its definition in the PGFFR 2022, "intermodal transport stands for moving goods in the same shipping container classified as an intermodal transport unit (ITU), with the use of at least two different branches of transport, for example, railway and road transport, as well as moving empty ITUs in connection therewith. The additional element concerning movement of empty ITUs results from the close link, characteristic for intermodal transport, between nearly every movement of empty ITUs and the transport of goods realised within this branch. It has to be added that the definition included in the PGFFR 2022 does not cover intermodal transport based on technologies using vehicles which are not classified as ITUs. Due to significant differences in regulations, and to the small share of intermodal transport in Polish market, it did not seem purposeful to include regulations concerning this type of transport in the PGFFR 2022.

The definition introduced in § 25, p. 2, refers to terminal operations, which were hitherto not regulated by provisions of law, or defined in the PGFFR 2010. Since the PGFFR 2022 regulate the issue of intermodal transport, it seemed necessary to define terminal operations as an element indispensable for moving ITUs as part of such transport services. "Terminal Operations" are therefore defined as the "necessary transshipment of ITUs, their storage between different means of transport or between means of transport of the same kind, as well as other ITU services provided during intermodal transport". The definition of terminal operations is a rather broad one, as it covers not only transshipment (defined in § 1, p. 10 of the PGFFR 2022) between two different types of transport, but also between means of transport of the same kind. Let us, once again, emphasise that the PGFFR 2022 differentiate between the terms of transshipment, loading and unloading of ITUs. Of the three, only the first one is included in the definition of terminal operations, and is connected with the services provided by ITOs and their liability. The other two constitute operations defined separately in § 1, p. 9 of the PGFFR 2022, for which ITOs are not liable, as a rule, pursuant to the provisions of § 32, p. 4 of the PGFFR 2022. This distinction was necessary due to the specific nature of activities performed by ITOs, to which the ordering party delivers sealed and secured ITUs, suitable for safe intermodal transport, as has been clearly stated in § 32 of the PGFFR 2022.

The PGFFR 2022 include, for the first time, definitions of documents used in practice by intermodal freight forwarders. The contents of § 25, pp. 4 and 5 respectively define the "Intermodal Certificate" and the "Intermodal Consignment Note". The first one is "a document confirming reception for shipment with the use of Intermodal Transport, by an ITO as the Freight Forwarder, of goods described by the Ordering Party in documents submitted to the ITO. The ITO shall issue the Intermodal Certificate based solely on documents provided by the Ordering Party, and shall not verify the compliance of actual condition of the consignment with contents of the above-mentioned documents." This definition reflects the fact that an ITO, acting as the freight forwarder does not

issue the ordering party with a consignment note. At the ordering party's request, they are only entitled to issue a document confirming the receipt of the goods for shipment. The above-mentioned certificate confirms the receipt of goods placed in a sealed ITU solely on the basis of the statement made by the ordering party. An ITO is not required and, in fact, does not have a real possibility to verify the actual type of goods, their condition or manner of loading. In this regard, the "intermodal certificate" is issued exclusively on the basis of the ordering party's representations and the shipment documentation submitted by them. It is important to note that the "intermodal certificate" defined in the PGFFR 2022 is not identical to the FIATA document – the Forwarders Certificate of Receipt – which is the freight forwarder's confirmation of receipt of goods, and is not of a formal nature. It must be borne in mind that the FIATA FCR document may not be changed with regard to its contents, quantity, and the entity for which it was issued (FIATA FCR documents are issued to recipients of consignments only in one copy, and are of a non-transferable nature). An intermodal certificate is solely a statement of knowledge on the part of the ITO, which confirms the real activity, i. e. the receipt of an ITU for shipment by intermodal transport, and is issued at the request of the ordering party (in accordance with § 26, p. 2 of the PGFFR 2022).

The Intermodal Consignment Note constitutes another document which may be used in the business activity of ITOs. The definition of this document is closely connected with the provisions of § 33 of the PGFFR 2022, which establish conditions on which an ITO is regarded as a Contracting Carrier, and the agreement concluded by them – as a carriage agreement. It is important since, as a rule, an ITO acts as a freight forwarder in the relationship with their ordering party (§ 26, p. 1 of the PGFFR 2022 indicates that an ITO, who acts on the basis of the PGFFR 2022, provides freight forwarding services by default and is not a carrier.) Giving an ITO the status of a contracting carrier, mentioned in § 33, p. 1 of the PGFFR 2022, requires action on their part, consisting in making a statement in the document form or in writing, that they undertake the obligation to perform carriage services and assume liability for the outcome of such services in the form of a successful delivery of an ITU to the recipient. Pursuant to the provisions of § 33, p. 1 thereof, apart from the above-mentioned statement, the ITO is also required to submit a completed Intermodal Consignment Note, whose template should be provided by the ITO themselves. The Intermodal Consignment Note is defined in § 25, p. 5 of the PGFFR 2022 as "a document confirming the reception, by an ITO as the Contracting Carrier, of a consignment for Intermodal Transport. The document includes, in particular, a description of individual sections of transport route, points where means of transport are changed, as well as types of transport used in a given section." This definition determines the necessary factors connected with the specificity of intermodal transport whilst, at the same time, it does not introduce changes to the elements of a consignment note indicated in relevant provisions of the Transport Law Act or international conventions. The PGFFR 2022 definition emphasises only the elements directly connected with the specific character of intermodal transport.

The final definition included in § 25 concerns the principle of liability of an ITO acting as a contracting carrier. The so-called network principle described in p. 6 indicates that the ITO's liability for damage is defined by these mandatory provisions which are applied to the stage of Intermodal Transport where the damage occurred". Therefore, as the contracting carrier, the ITO is liable on conditions arising from binding provisions of law, applicable to a given branch of transport. This means that in a situation where damage has occurred, for example during the domestic road or railway transport, the ITO's liability will be subject to the provisions of Transport Law, while in the case of international transport, additionally to those of the CMR Convention or COTIF Convention.

Further chapters of the PGFFR 2022 include provisions clarifying the principles of concluding agreements by ITOs on the basis of tariff, i. e. a specific kind of offer constituting a comparison of price rates and service conditions, addressed to a wide group of recipients, and not customised to a concrete ordering party. Within the area of their operations, ITOs often make use of the tariff. Therefore, the conclusion of agreements by ITOs is frequently performed in a mixed way, partly by an offer addressed to an individual ordering party, and partly based on the tariff (e. g., for terminal services).

The regulation included in § 32 of the PGFFR 2022, which stipulates one of the basic obligations of the ordering party, namely appropriate closing and securing of an ITU, is worthy of attention. Securing ITUs with container seals resistant to accidental damage which may occur during the transshipment operations (usually bottle seals of the HSS type) is a standard requirement in intermodal transport. The above-mentioned obligation also applies to ITUs which are not moved to or from a seaport. The PGFFR 2022 introduce the obligation to provide ITOs with numbers of such seals. The real possibility, on the part of the ITO, to establish at which stage of transport the consignment was damaged and who is responsible for it largely depends on the performance, by the ITO's ordering party, of this obligation.

In practice, owing to the provisions of § 31, p. 4 of the PGFFR 2022, the obligation to provide numbers of seals applies only to the ITUs which are subject to risk of damage due to unauthorised access of third parties thereto. This obligation does not, as a rule, apply to open-top and flat-rack ITUs, which cannot be closed. In general, the obligation in question will not apply to empty containers, either, unless the necessity to secure the ITU results from an agreement concluded between an ITO and their ordering party. In case the ITO does not receive the numbers of seals, they are entitled to terminate the agreement, after requesting the ordering party to perform their obligation, but they are not obliged to do so. It often happens that termination of the agreement by the ITO is not in the best interest of the ordering party, either. The latter cares about prompt execution of transport and wants to avoid additional costs connected with layover of ITUs.

Practice shows that ITOs often act as organisers of ITU transport, not at the beginning of the route, but at its further stages. In fact, verification of seals is technically possible only at transshipment terminals, i. e. often only after completion of the first stage of such transport. Thus the provisions of § 31, pp. 3 and 4 of the PGFFR 2022 release ITOs from the obligation to establish the location where damage occurred during the first stage of transport, if they were not provided with numbers of seals, and simultaneously, at the earliest opportunity, took action to verify whether the seals were, in fact, attached and read their numbers, or secured the ITU with appropriate seals in the situation where they were unjustifiably missing.

As a rule, the above actions performed by ITOs, result in their being released from the obligation to determine at which stage of intermodal transport the damage occurred, which included undertaking action to secure the ordering parties' rights, as well as from the liability resulting from unauthorised access of third parties to ITUs, which took place prior to the attachment of the seal or before the ITO obtained the number of that seal.

– Summary –

The aim of the PGFFR 2022 authors was to order and regulate the rights and obligations of parties to freight forwarding agreements at the time of rapid changes in technology, in provisions of law, and in the environment, taking into consideration current market needs and specific features, e. g. those characteristic for intermodal transport. We also took steps to make the document as intelligible as possible for persons without legal qualifications. To this end, we extended the list of definitions (the terms defined in the PGFFR 2022 are afterwards written therein with first letters in upper case). We also tried to ensure that economic and legal equilibrium between parties to the agreement. Addressing the expectations of our members, as the working group which has drafted the PGFFR 2022, we express our hope that this document, regulating the issues concerning rights and obligations of parties to agreements concluded as part of business activities of the PIFFA members, and constituting a development of frequently laconic commissions, will facilitate, for entrepreneurs affiliated in the PIFFA, appropriate protection of their interests, at the same time helping them to form successful business relationships with their contractors.

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POLISH GENERAL FREIGHT FORWARDING RULES 2022

Developed by Polish International Freight Forwarders Association
with the registered office in Gdynia, Poland

GENERAL PROVISIONS

§ 1.

1) **PGFFR 2022** – Polish General Freight Forwarding Rules.

2) **Freight Forwarder** – an entrepreneur who, commissioned by an Ordering Party, for a fee, undertakes to send or receive a consignment, or to render any other services connected with organising the transport thereof;

3) **Ordering Party** – a legal person or an organisational unit which is not a legal person, granted legal capacity by law, or a natural person, including natural persons who do not conduct a business activity, who has concluded an agreement with the Freight Forwarder,

4) **Sub-Forwarder** – a subcontractor of the Freight Forwarder, entrusted by the Freight Forwarder with the performance of a part of the latter's obligations arising from the freight forwarding agreement;

5) **Substitute Forwarder** – a subcontractor of the Freight Forwarder, entrusted by the Freight Forwarder with the performance of all the latter's obligations arising from the freight forwarding agreement concluded between the Freight Forwarder and the Ordering Party;

6) **Contracting Carrier** – an entrepreneur who, in their own name, enters into a carriage agreement, i. e. expressly gives to the contractor an undertaking that the consignment shall be delivered to its place of destination with the use of a given means of transport, and assumes direct responsibility for achieving this result, yet does not perform the carriage service themselves;

7) **Goods with Specific Features** – goods whose transport, storage, and other kinds of handling covered by the freight forwarding agreement are connected with additional risk, due to the fact that the value of the goods is high or difficult to estimate; because they are particularly susceptible to damage or destruction, or because it is necessary, with regard to these goods, to fulfil additional administrative and documentation requirements, as well as any other requirements resulting from binding provisions of law.

The following goods are regarded as Goods with Specific Features:

- a) monetary values in the form banknotes and coins of national and foreign currencies, shares, bonds, cheques, promissory notes, payment cards, credit cards, excise bands and excise marks, lottery tickets, public transport tickets, and other documents which replace cash in transactions;
- b) precious metals and articles made of precious metals; gems, pearls and articles of gems and pearls,
- c) works of art, antiques, items of historical value, collectibles;
- d) medicinal products;
- e) corpses and human remains;
- f) goods covered by the statutory transport and trade monitoring system;
- g) dangerous materials;
- h) arms and ammunition;
- i) easily perishable goods and goods which require maintenance of constant temperature during their carriage and storage;
- j) live animals;
- k) resettlement belongings;
- l) documents, models, prototypes, designs;
- m) data recorded on all kinds of data carriers, with the exception of brand new magnetic and optical carriers with copyrighted films, music, and computer software recorded on them, which are designed for sale;
- n) fodder, animal by-products, and derivative products;
- o) drug precursors;
- p) waste;

r) oversize cargo;

s) goods other than those described above, which the Freight Forwarder defines in their offer or in the agreement as Goods with Specific Features.

8) **Shipping Container** – a durable transport device with appropriate resistance, which provides the possibility of multiple use, specially designed to facilitate cargo shipping by one or more means of transport without reloading the cargo;

9) **Cargo Handling Activities** – Loading and Unloading of the consignment:

a) **Loading** – all the operations performed prior to the commencement of shipping, aimed at placing a consignment within the construction of the vehicle itself or, if necessary, in a Shipping Container provided at the place of Loading, taking into account appropriate distribution of the consignment (including the cargo), its packaging, and protection (also on the means of transport);

b) **Unloading** – operations performed after the completion of shipment, aimed at emptying the Shipping Container of cargo, such as, in particular: unlashng, removal of protection devices (including seals), and cleaning of the Shipping Container, should it become soiled during Unloading, including the operations connected with moving the cargo after the removal of seals, necessary to extract it from the Shipping Container;

10) **Transshipment** – servicing a consignment during the execution of the commission, aimed at moving the consignment between means of transport or within one means of transport, or between means of transport and a transshipment terminal or another place where the consignment is stored or stacked, directly connected to or realised together with the freight forwarding agreement;

11) **Force Majeure** – an extraordinary occurrence which is beyond the control of either of the parties; which could be neither foreseen nor avoided, and which took place, or whose results were revealed either after the conclusion of the agreement or following the commencement of order execution. Pursuant to the Polish General Freight Forwarding Rules 2022, force majeure is to be understood as, in particular, the occurrence of (one or more, together or separately) floods, hurricanes or other natural disasters, as well as weather anomalies, terrorist attacks, epidemics, actions or omissions by state authorities (including any acts of law passed by state authorities, which will affect the possibility of the agreement's performance by the Freight Forwarder), repair works or closures of infrastructure on the route of the consignment's transport, congestion and acts of war activities, to the extent in which the above-mentioned occurrences affect the performance of the agreement, including the commission;

12) **Document Form** – a form of legal action which may be observed by making a statement of will in the form of a written document, in the way which allows for identification of the person who made that statement. This includes data carriers and means of electronic communication, particularly e-mail messages, text messages or other messages exchanged via instant messaging.

§ 2

1. The Polish General Freight Forwarding Rules 2022, hereinafter referred to as the PGFFR 2022, are applied to relationships between the Freight Forwarder and the Ordering Party only in the situation where at least one of the parties is a member of the Polish International Freight Forwarders Association.

2. The PGFFR 2022 are applied in their entirety, although subject to the precedence of other conditions specified in the agreement concluded by the Freight Forwarder and the Ordering Party (which includes agreements concluded as a result of the offer submitted by the Freight Forwarder).

3. Any statements made by the Ordering Party, particularly commissions or other contractual terms presented by the Ordering Party to the Freight Forwarder, in any form, in relation to the Freight Forwarder's offer, are applied to the relationship between the Freight Forwarder and the Ordering Party solely to the extent in which such statements correspond to the offer submitted by the Freight Forwarder, while they are applied in the remaining scope, exceeding the contents of the offer or those of the concluded agreement, only after prior acceptance of these statements by the Freight Forwarder, given in writing or in the Document Form under pain of nullity. Lack of an immediate answer from the Freight Forwarder, as well as the commencement of service performance shall not be regarded as acceptance of the Ordering Party's offer included in such statements.

§ 3

The PGFFR 2022 are applied to performance of freight forwarding agreements or commissions concerning Goods with Specific Features defined in § 1, pp. 6) a)–e), l) and m) hereof. The Freight Forwarder's liability for damage resulting therefrom shall be excluded, except for damage which has been caused intentionally.

§ 4

1. An offer made by the Freight Forwarder covers only the activities specified therein, and the tariffs for services mentioned in the offer are binding only during the validity period of the offer, unless the offer provides otherwise.
2. In the agreement concluded by the Freight Forwarder and the Ordering Party, including agreements concluded as a result of the offer submitted by the Freight Forwarder, only remuneration and costs and expenses connected with uninterrupted performance of the agreement are specified.
3. Should the Freight Forwarder receive from the Ordering Party with whom they maintain permanent economic relations an offer (including the counter-offer mentioned in Art. 68 of the Civil Code) to conclude an agreement as part of their business activity, lack of immediate response from the Freight Forwarder shall not be tantamount to the approval thereof.
4. The Freight Forwarder shall not be liable for failure to perform or improper performance of services which were commissioned orally from the Freight Forwarder, unless such a commission is confirmed without delay by the Freight Forwarder or the Ordering Party in the Document Form or in writing, where the Freight Forwarder shall indicate, in particular, the type of the confirmed service, as well as the amount of remuneration due to the Freight Forwarder. Provisions of § 9, p. 2 of the PGFFR shall apply accordingly to performed services which were commissioned orally and not confirmed in the form described above.
5. The Freight Forwarder shall not be liable for the consequences of additional instructions given directly by the Ordering Party to any third parties participating in the realisation of service.

§ 5

1. The Freight Forwarder's offer shall not be binding and shall not result in conclusion of an agreement, if it is understood from the commission that the subject of freight forwarding is an item belonging to the category of Goods with Specific Features, which was not expressly indicated to the Freight Forwarder in the request for offer.
2. The commission shall include all the necessary information about a consignment and its characteristics, particularly marks and numbers of individual items (packages), their number, weight, sizes, cubage, as well as the number and type of transporting units. It shall also indicate whether the goods constituting the consignment belong to any of the categories of Goods with Specific Features, and define the scope of commissioned services as well as any other relevant data and documents necessary for proper execution of the commission.
3. In case the commission does not include one of the elements defined in p. 2 above, or if it contains other omissions or errors, the Ordering Party shall be obliged, at the Freight Forwarder's request, to supplement any missing information and address the omissions or remove the mistakes without delay.
4. Until all the shortcomings in the commission, mentioned above in p. 3, are addressed, the Freight Forwarder shall be entitled to, at their discretion, suspend execution of the Commission in part or in its entirety, and shall inform the Ordering Party thereof. Should the Ordering Party, after an additional deadline has been set by the Freight Forwarder, delay in addressing the shortcomings in the commission, the Freight Forwarder shall be entitled to terminate the commission for a valid reason.
5. In case the Freight Forwarder exercises their rights mentioned above in pp. 2 and 4, the Ordering Party shall not be entitled to file any compensation claims against the Freight Forwarder, even if the Freight Forwarder does not inform the Ordering Party about the decision to exercise their rights.
6. Should the goods be subject to regulations for monitoring carriage of goods or to any other provisions regulating specific principles connected with transport of a given type of goods, and should the Freight Forwarder grant their express consent to rendering services with regard to such goods, execution of the commission shall be additionally dependent on submission, by the Ordering Party to the Freight Forwarder, of all the necessary data, information, documents, and other means indispensable for performance of the service in compliance with the aforementioned

regulations. In case the Ordering Party fails to do so, the Freight Forwarder's liability shall be wholly excluded with regard to the performance of a given service, and the Ordering Party shall be obliged to cover, in full, any possible damage which has occurred on the part of the Freight Forwarder.

7. The Freight Forwarder shall be entitled, in particular, to establish the time and type of shipment, the kind of carriage, tariffs and principles of conduct, unless the parties unanimously decide otherwise, in writing or in the Document Form, under pain of nullity.

§ 6

The Freight Forwarder shall not be obliged to perform the Loading or the Unloading. The risk and sole liability for these operations shall be borne by the Ordering Party, unless the parties decide otherwise.

§ 7

At the Ordering Party's express request, made in writing or in the Document Form, under pain of nullity, the Freight Forwarder may conclude, on behalf of the Ordering Party, and at the Ordering Party's exclusive expense, an insurance agreement for the property in transport (cargo), provided that the Ordering Party submits to the Freight Forwarder before all the necessary information concerning the value and type of the goods.

§ 8

1. The Freight Forwarder shall be entitled to remuneration for handling complaint procedure on behalf of the Ordering Party or of any person indicated by the Ordering Party.
2. The Freight Forwarder shall be entitled to retain the amount of remuneration mentioned above in p. 1, in the situation where the complaint is deemed justified, and the amount claimed is credited to the Freight Forwarder's bank account.
3. The complaint proceedings, mentioned above in p. 1, are not inclusive of handling, by the Freight Forwarder on behalf of the Ordering Party, of any court proceedings, administrative proceedings, court-administrative proceedings, arbitration or mediation.

§ 9

1. The Freight Forwarder shall be entitled to remuneration from the Ordering Party, pursuant to the concluded agreement.
2. For additional services, not stipulated in the agreement, and rendered by the Freight Forwarder without the Ordering Party's approval, but for the purpose of appropriate realisation of the freight forwarding operation or in the best interest of the consignment or of the Ordering Party, the Freight Forwarder shall be entitled, from the Ordering Party, to remuneration in the amount corresponding to the market value of the services in question, if the Freight Forwarder renders the services themselves. In case such services are rendered by a subcontractor, the Freight Forwarder shall be entitled to reimbursement of the incurred costs and expenses, and to remuneration in the amount of 10% of the net value of the above-mentioned costs and expenses plus the VAT due, unless a higher amount of due remuneration has been agreed upon.
3. The remuneration mentioned above in p. 2, as well as all the costs and expenses, including those connected with parking, demurrage, detention, storage, as well as any other costs incurred by the Freight Forwarder in connection with execution of the freight forwarding commission, shall be paid by the Ordering Party at the Freight Forwarder's first request, no later than within seven days.
4. Notwithstanding the provisions of p. 3 above, the Ordering Party shall be obliged, at the Freight Forwarder's first request, to make, without delay, an advance payment towards the remuneration, costs or expenses mentioned above in pp. 2 and 3, or to release the Freight Forwarder entirely from their liability by paying the amounts due directly into the bank account of an authorised carrier or any other entity.
5. The Ordering Party shall not be released from their obligation to make payments for the Freight Forwarder's benefit in the situation where the Ordering Party indicates a third person as the invoice payer.
6. The rates indicated in the Freight Forwarder's offer are binding, subject to the availability of equipment and space on a vessel, on any other means of transport, or at the storage site, and on condition that the Loading onto a vessel or any other means of transport is performed by the day specified by the carrier as the date of loading. Lack of space on a vessel or any other means of transport, lack of equipment, or lack of storage space shall constitute, for the Freight Forwarder, the grounds for terminating the agreement for a valid reason, without liability for possible damage incurred by the Ordering Party.

§ 10

Seizure, forfeiture, confiscation, lien or detention of a consignment, as well as its sale by administrative bodies or other similar bodies, or by the Freight Forwarder's subcontractor, in particular by the carrier, shall not affect the Freight Forwarder's claims against the Ordering Party, particularly the claims for payment of due remuneration and for reimbursement of costs or expenses.

§ 11

1. When placing an order with the Freight Forwarder, the Ordering Party declares that their financial position enables them to satisfy all liabilities towards the Freight Forwarder, that they are not, at present, the subject of bankruptcy or restructuring proceedings, and that there are no reasons for such proceedings to be instigated. Should a motion for instigation of such proceedings be filed with a court, the Ordering Party shall be obliged to inform the Freight Forwarder thereof no later than on the day following the one on which the motion was filed.

2. The Freight Forwarder shall be entitled to retain the consignment covered by the freight forwarding agreement until the day when full payment is made for the performed services, past and present, and until the expenses incurred by the Freight Forwarder, as well as any other amounts due in connection with commissions hitherto executed for the Ordering Party, together with interest thereon, are reimbursed. If such a payment is not made by the deadline specified in an invoice, in any other accounting document or in a request for payment, the Freight Forwarder shall be entitled to sell the consignment on conditions established at their discretion, by way of tender or single-source sale, and to cover (set off) from the price obtained, firstly the amount due to the Freight Forwarder for the services rendered by them, the interest and other costs connected with satisfying their claims. The Freight Forwarder shall then be obliged to transfer the remainder of the sale proceeds into the bank account from which the last invoice issued by the Freight Forwarder with regard to the Ordering Party's commission was paid. On placing a commission with the Freight Forwarder, the Ordering Party grants to the Freight Forwarder irrevocable power of attorney to perform all the activities necessary to exercise the rights mentioned herein, including, in particular:

- 1) retention and disposal of goods covered by the commission to satisfy the Freight Forwarder's claims against the Ordering Party;
- 2) sale of the consignment on conditions established at the Freight Forwarder's discretion, by way of tender or single-source sale, and to cover (set off) from the price obtained, firstly the amount due to the Freight Forwarder for the services rendered by them, the interest and other costs connected with satisfying their claims.

On placing a commission with the Freight Forwarder, the Ordering Party represents that they shall conduct any disputes with the owner of the goods on their own, and undertakes the obligation to indemnify the Freight Forwarder against any claims made by third parties, including claims for payment or return of goods, by way of settling the amounts due.

3. The Ordering Party shall assume the entire liability for any damage to third parties' assets, which may result from the Freight Forwarder's use of their rights mentioned hereinabove in p. 2, or of the right of statutory lien. In case such third parties issue any claims against the Freight Forwarder, the Ordering Party undertakes the obligation to fully indemnify the Freight Forwarder against these claims. Should the Freight Forwarder satisfy the aforementioned claims, the Ordering Party undertakes to fully reimburse the costs incurred by the Freight Forwarder in this respect, at the Freight Forwarder's first request.

§ 12

The Freight Forwarder shall be liable for the used by them in the execution of the commission in accordance with the "fault in selecting" (culpa in eligendo) principle.

§ 13

1. The Freight Forwarder shall not be liable, in particular, for the following:

- 1) valuable consignments and dangerous goods, if they are not declared in the commission and accepted by the Freight Forwarder in the concluded agreement;
- 2) damage caused by delay;
- 3) damage other than actual loss (damnum emergens);
- 4) natural defects;

- 5) damage caused by breaking or risk of breaking a cold chain;
- 6) damage caused by access or risk of access of third parties to the consignment;
- 7) damage caused by lack of due diligence on the part of the Ordering Party or any third party acting on behalf of the Ordering Party as the entity handing the consignment for transport or collecting the consignment, provided they were obliged to do so in the situation where the container was not sealed in the presence of a carrier, or where entries were not made in the bill of lading, etc.;
- 8) damage caused by exercising, by the Freight Forwarder, the Sub-Forwarder, or the carrier their right of lien or retention;
- 9) failure to perform or improper performance of the agreement in its entirety or in part for reasons beyond the Freight Forwarder's control, such as, in particular (when at least one of them occurs): force majeure, lack of space on the means of transport, lack of equipment, service or storage space, increase or change in freight rates and the Ordering Party's refusal to accept the new rates;
- 10) delay caused by untimely operation of the container terminal.

2. The Freight Forwarder may not, in any case, be charged with failure to exercise due diligence in executing the commission, if:

- a) loss of or damage to a consignment is caused solely by fault of an authorised person, their instructions which do not result from the fault of the Freight Forwarder or the Freight Forwarder's carrier-subcontractor, defects of the goods, or from circumstances which could not be avoided by the Freight Forwarder, and whose effects they could not prevent;
- b) loss of or damage to a consignment due to one or more of the following reasons (each of them individually):
 - lack of or defective packaging, if the activities connected with packing were not, under the concluded agreement, included in the Freight Forwarder's obligations, or if the goods, due to their natural properties, perish or are damaged (including partial damage), in particular by breakage, rust, self-deterioration, desiccation, leakage, natural defects, and activity of insects or rodents;
 - loading of the goods by the shipper into open-top Shipping Containers;

Unless agreed otherwise by the parties in writing or in the Document Form, under pain of nullity.

§ 14

1. Compensation paid by the Freight Forwarder, due to the person entitled to it under the freight forwarding agreement, is limited to the ordinary value of a given consignment, indicated in an invoice or another document, subject to the remaining provisions of the PGFFR 2022.
2. Nevertheless, under no circumstances may the compensation paid by the Freight Forwarder exceed the value of 2 SDR per 1 kg of gross weight of a consignment which is missing, damaged, lost, destroyed, utilized, rejected, or abandoned, regardless of the cause thereof.
3. The total amount of the compensation due from the Freight Forwarder shall not exceed the equivalent of the amount of 50,000 SDR per each incident, unless compensation in a higher amount is obtained from the person for whom the Freight Forwarder is liable.

§ 15

1. The Freight Forwarder shall be informed about any damage to a consignment or the probability of its occurrence without delay, no later than within seven days from the date when the consignment in question was handed over to the recipient or another authorised entity. In case such damage is not reported by the stipulated deadline, it shall be assumed that the damage to the consignment did not occur during the execution of the freight forwarding commission, or as a result of improper performance of their obligations by the Freight Forwarder.
2. Subject to the remaining provisions of the PGFFR 2022, the Ordering Party shall be entitled to file a complaint with the Freight Forwarder. The complaint shall be submitted to the Freight Forwarder in writing or in the Document Form, under pain of nullity, and shall include the necessary documents mentioned hereinafter in p. 3.
3. The complaint shall be accompanied by documents stating the condition and value of the consignment, and confirming the circumstances in which the damage occurred. Any complaint without the aforementioned documents may be deemed by the Freight Forwarder to have not been submitted; should this be the case, the Freight Forwarder shall be entitled to leave the complaint unprocessed, while the Ordering Party shall not be entitled to any claims against the Freight Forwarder in relation thereto.
4. The Freight Forwarder's failure to respond to the complaint shall not constitute recognition of the Ordering Party's claims included in this complaint.

FREIGHT FORWARDING

§ 16

1. The provisions of this chapter are applicable to agreements on sea freight, air freight, railway freight or road freight, concluded by the Freight Forwarder, including the situation where the freight forwarding agreement is performed with the use of more than one means of transport, unless the provisions of the PGFFR 2022 state otherwise.
2. The Incoterms[®] Rule, in accordance with which a commercial agreement has been concluded, is provided to the Freight Forwarder by the Ordering Party for information purposes only. Its invocation in the Freight Forwarder's offer shall not mean that the Freight Forwarder is obliged to perform the duties of the Ordering Party or of any other entity which is a party to this commercial agreement.

§ 17

1. The transit time (TT) specified by the Freight Forwarder, as well as any other information relating to the time within which the service ought to be provided (e. g. ETA, ETD), including all kinds of timetables, shipping service's timetables, sailing schedules or any other dates of departure or arrival, of calling at ports, as well as of arrival and departure of aircraft, published by the Freight Forwarder, carriers or by any other entities, are indicative in nature and are not guaranteed.
2. The Freight Forwarder shall not be liable for any delay in the execution of the commission or in the performance of individual operations within this commission by the stipulated deadline, unless the parties decide otherwise in writing or in the Document Form under pain of nullity.

§ 18

1. The Freight Forwarder shall not be not obliged to use services provided by controlling companies in order to verify the condition of a container, a consignment or of seals, unless the performance of such a service clearly results from the offer made by the Freight Forwarder, or unless the Freight Forwarder directly undertakes to perform such an activity, in writing or in the Document Form, under pain of nullity.
2. Subject to other provisions of the PGFFR 2022, the Freight Forwarder shall not be liable for loss or damage to the goods resulting from unsuitable or defective condition of a Shipping Container, even if such a Container was provided by the Freight Forwarder as part of the execution of the freight forwarding commission, in the situation where the unsuitable or faulty condition of the Container was or would be visible upon the delivery thereof to the loading site or during the operation of loading the goods into the Shipping Container.
3. The Ordering Party shall be solely liable for compliance of the weight of goods provided to the Freight Forwarder with the actual weight of the goods.

§ 19

In case the parties agree that, as part of the freight forwarding services provided, the Freight Forwarder is obliged to store the goods, the Ordering Party shall be obliged to submit to the Freight Forwarder, prior to the storage of goods, in writing or in the Document Form, a list of guidelines concerning the conditions in which the goods are to be stored, in the situation where the goods or the consignment require storage in special conditions.

Detailed provisions concerning sea freight forwarding

§ 20

The Ordering Party shall be obliged to define and provide the Freight Forwarder, in time sufficient for this information to be taken into consideration in the plan for vessel loading, with verified gross mass (VGM) of a container. This information shall be provided in accordance with binding provisions of law, and the Freight Forwarder shall be issued with an appropriate certificate indicating the weighing method applied, as well as details of the weighing procedure, unless the activity of estimating the VGM clearly arises from the offer submitted by the Freight Forwarder, who undertakes therein to provide this service for the benefit of the Ordering Party. Failure to determine or incorrect determination of the VGM, or failure to provide a certificate, shall entitle the Freight Forwarder to terminate the freight forwarding agreement with effect on the day of submitting the statement concerning the container

or containers with regard to which the Ordering Party failed to perform the activities mentioned above. Such termination shall not result in liability for damages on the part of the Freight Forwarder, concerning failure to perform the agreement or inappropriate performance thereof.

§ 21

1. Postage of bills of lading and other documents connected therewith takes place at the risk of the Ordering Party. The Freight Forwarder shall not be liable for damage caused by loss of a bill of Lading or of a set of bills of lading, sent to the Ordering Party or to a person indicated by the Ordering Party, even in the situation where the Freight Forwarder concludes an agreement with the postal operator, courier company or any other similar entity.
2. The goods shall be released only after the original of the bill of lading, a TELEX release or a similar document is presented, provided it is used and approved by sea carriers. In the situation where HBLs (House Bills of Lading) are issued – the goods shall be released after original of these documents, a TELEX release or a similar document is presented, provided it is used and approved by sea carriers.
3. In case there is no original of a bill of lading (if it was issued in such form), particularly if it has been lost, the goods shall be released after the Ordering Party or, depending on the situation, another indicated entity, has signed a letter of guarantee in the wording suggested by the Freight Forwarder, or on presentation of other securities indicated by the Freight Forwarder or the sea carrier, including, in particular, the delivery of a bank guarantee or payment of a cash security deposit.

§ 22

In situations where the Freight Forwarder is an entity defined as the “Merchant” in the light of terms and conditions of the bill of lading or other similar documents used by sea carriers, including, in particular, the sender, the shipper or the recipient, and claims are made against the Freight Forwarder (e. g. in connection with general average or for any other reasons), the Ordering Party shall be obliged to fully indemnify the Freight Forwarder against liability in this respect and, additionally, at the Freight Forwarder’s request, to pay an appropriate amount of money in order to secure the Freight Forwarder’s recourse claims. In case the claims mentioned in the preceding sentence are satisfied by the Freight Forwarder, the Ordering Party shall be obliged to reimburse the Freight Forwarder for any costs and expenses incurred in relation to satisfying the above-mentioned claims.

§ 23

The Ordering Party shall be obliged to perform, in good faith, all the factual and legal actions required for proper execution, by a Freight Forwarder, of their obligations outlined in terms and conditions of a bill of lading, or in other documents of a similar nature, used by sea carriers.

INTERMODAL TRANSPORT OPERATORS

§ 24

1. This chapter of the PGFFR 2022 stipulates principles for rendering services by Intermodal Transport Operators (ITO), which are binding in relationships between ITOs and their Ordering Parties, with regard to all services connected with organising intermodal transport, rendered by ITOs.
2. General provisions and provisions concerning freight forwarding included in the PGFFR 2022 are applied to issued not regulated differently in this chapter.

§ 25

The terms used in this part of the PGFFR 2022 shall have the following meanings:

1. Intermodal Transport – moving goods in the same Shipping Container classified as an intermodal transport unit (ITU), with the use of at least two different branches of transport, for example, railway and road transport, as well as moving empty ITUs in connection therewith;
2. Terminal Operations – necessary Transshipment of ITUs, their storage between different means of transport or between means of transport of the same kind, as well as other ITU services provided during intermodal transport.

3. ITU – Intermodal Transport Unit (French Unité de Transport Intermodal, also in English ILU – Intermodal Loading Unit) – a Shipping Container or a vehicle designed for carriage of goods by at least two different branches of transport, and for Terminal Operations, for example ISO containers, swap bodies, semi-trailers adapted to Transshipment with the use of a crane.

4. Intermodal Certificate – a document confirming reception for shipment with the use of Intermodal Transport, by an ITO as the Freight Forwarder, of goods described by the Ordering Party in documents submitted to the ITO. The ITO shall issue the Intermodal Certificate based solely on documents provided by the Ordering Party, and shall not verify the compliance of actual condition of the consignment with contents of the above-mentioned documents.

5. Intermodal Consignment Note – a document confirming the reception, by an ITO as the Contracting Carrier, of a consignment for Intermodal Transport. The document includes, in particular, a description of individual sections of transport route, points where means of transport are changed, as well as types of transport used in a given section.

6. Network Principle – a principle of an ITO’s liability as the Contracting Carrier, in accordance with which the ITO’s liability for damage is defined by these mandatory provisions which are applied to the stage of Intermodal Transport where the damage occurred.

§ 26

1. The ITO, concluding an agreement with the Ordering Party, undertakes to send or collect an empty or loaded ITU using Intermodal Transport, and to organise Terminal Operations or other services connected with the movement thereof (Intermodal Freight Forwarder).

2. The ITO may issue an Intermodal Certificate at the Ordering Party’s request, in order to confirm reception of goods for intermodal shipment.

§ 27

Under the agreement, the ITO undertakes action in order to establish at which stage of Intermodal Transport the damage occurred, and performs the necessary activities to secure the Ordering Party’s rights in accordance with binding regulations.

§ 28

The ITO may, as part of the agreement, carry a consignment over the entire route of Intermodal Transport or over a part thereof; in such a situation, the ITO shall have both the rights and liabilities of a carrier.

§ 29

1. If the agreement is concluded based on an offer made by the ITO, provisions of § 4, p. 3 of the PGFFR shall be applied accordingly.

2. In case the agreement is concluded with the Ordering Party using the ITO’s tariff, and the agreement does not state otherwise, the ITO shall not accept commissions concerning Goods with Specific Features, defined in § 1 pp. 6) a)–m), r), hereof, and furthermore:

- 1) postal and courier consignments;
- 2) consignments not transported in ITUs.

§ 30

Remuneration payable to the ITO is established based on the agreement concluded by them with the Ordering Party (including agreements concluded as a result of the offer tendered). Within the remaining, undefined scope, remuneration may be established based on the ITO’s tariff, in force on the day when the agreement was concluded, provided that the tariff was submitted or made available to the Ordering Party on conclusion thereof, in a form allowing for its being retained and referred to in the ordinary course of business. In case of discrepancies between the contents of the agreement and the tariff, the provisions of the former (including the offer) shall prevail.

§ 31

1. The Ordering Party shall be liable towards the ITO for proper closing and securing ITUs handed over to the ITO for Intermodal Transport. Each ITU should be secured with container seals adjusted to the conditions characteristic

for such transport. The Ordering Party shall be obliged to ensure that numbers of seals or of other securities are provided to the ITO prior to their acceptance of ITUs for Intermodal Transport.

2. In case the numbers of seals or of other securities used in a consignment are missing, the ITO shall call upon the Ordering Party, in the Document Form, to perform the above-mentioned obligation, and the Ordering Party shall be obliged provide the number of a seal or of another kind of security before the consignment is accepted for Intermodal Transport.

3. In case the Ordering Party, despite being requested to do so, fails to provide the ITO with the above-mentioned numbers of seals or of other securities used in the consignment, the ITO shall be entitled to terminate the commission within this scope. However, if the ITO decide to not to exercise this right and commences execution of the commission, they shall be obliged to take action aimed at obtaining information on numbers of seals or of other securities; and in case they:

a) fail to obtain the information on numbers of seals – read the number of the seal if it is attached to the ITU;

b) find that the seals are missing – secure the ITU with an appropriate seal at the Ordering Party's expense, without delay, before the consignment is handed over by the ITO for the subsequent stage or transport, and inform the Ordering Party about the actions taken, also providing them with the number of the seal attached.

4. The ITO which performs the obligation indicated in p. 3 hereinabove, shall be released from the obligation stipulated in § 27, and from liability resulting from unauthorized access of third parties to the ITU in question, which occurred prior to the attachment of the seal or before the ITO obtained the number of that seal.

§ 32

1. Unless the agreement states otherwise, the ITO and their subcontractors are neither obliged nor entitled to inspect the consignment in any other way than checking the visible external condition of the ITU.

2. The ITO shall be obliged to verify whether the received numbers of seals and markings of the ITU are correct, and to inspect the condition of visible seals or other securities required for a given ITU.

Should there be any discrepancies with regard to the provided numbers of one or more seals, the ITO shall be required to inform the Ordering Party about such discrepancies without delay, but no later than prior to handing over of the consignment for the subsequent stage of transport.

3. The ITO may refuse to accept a consignment whose condition is unsuitable for safe Intermodal Transport and for performance of Terminal Operations, which includes the situation where loose elements of equipment are improperly mounted and secured. The ITO shall not be liable either for mounting open-top and flat rack ITUs, or for covering them with tarpaulin or an appropriate sheet.

4. Unless the agreement provides otherwise, the ITO shall not be liable for the Loading or Unloading of goods into/from the ITU. The ITO, their subcontractor or each of them individually, do not take part in Loading Activities as a rule, and are not liable for correct Loading of goods into ITUs, for securing the goods, for the condition, quantity, quality or packaging thereof, or for the accuracy and completeness of data in documents regarding, inter alia, the type, weight, volume, type or number of items, or condition of the goods.

§ 33

1. The ITO may, in the agreement concluded with the Ordering Party, undertake to transport a marked ITU, empty or loaded, assuming the liability for its delivery with the use of Intermodal Transport (Contracting Carrier). The above-mentioned obligation on the part of the ITO shall arise directly from the contents of the offer submitted by the ITO, or from another statement made by them in writing or in the Document Form, and shall be confirmed by the ITO by filing a completed Intermodal Consignment Note. If the ITO acts as a Contracting Carrier, they are obliged to provide the Ordering Party with a template of Intermodal Consignment Note to be completed; such a template shall include, in particular, the description of planned sections of the transport route and of the means of transport used.

2. The Intermodal Consignment Note shall be compliant with the transport commission. In case of omissions or discrepancies between the Intermodal Consignment Note and the transport agreement, the parties shall be bound by terms and conditions of the agreement, while the provision of § 2, p. 2 of the PGFFR 2022 shall also be applied.

3. Within the agreement concluded in accordance with p. 1 above, the ITO may use the services of subcontractors such as railway carriers and road carriers. However, in such cases, the ITO shall be liable for the acts and omissions of these subcontractors in the same way the ITO is liable for their own acts and omissions.

4. The ITO shall be entitled to perform the intermodal transport agreement in the manner they deem appropriate, which includes using only road transport. In such a case, it shall be assumed that the parties concluded an agreement on transport of goods by road.

5. Should there be no provisions in the agreement, at least in the Document Form, which explicitly indicate

the ITO's obligations defined in p. 1 hereinabove, it shall be assumed that the Ordering Party has given their consent and represents that the ITO is obliged to act within the scope stipulated in § 26, p. 1 hereof.

§ 34

1. The ITO mentioned in § 26, p. 1 hereof may not be charged with failure to exercise due diligence in their execution of the consignment in the situation where the loss of or damage to the consignment occurred due to, in particular, the fact that the goods were loaded by the sender into open top or flat rack ITUs.
2. The ITO mentioned in § 33, p. 1 of these PGFFR 2022, shall be liable for damage on the Network Principle.

FINAL PROVISIONS

§ 35

1. If both Parties have their respective registered seats (places of residence) in Poland, any disputes between the Ordering Party and the Freight Forwarder shall be resolved by a common court of law with jurisdiction over the registered seat of the Freight Forwarder.
2. If the Ordering Party's registered seat or place of residence is abroad, any disputes between the Ordering Party and the Freight Forwarder shall be resolved by a Polish common court of law with jurisdiction over the registered seat of the Freight Forwarder (national jurisdiction).
3. Any disputes arising from the agreement concluded between the Ordering Party and the Freight Forwarder, to which the provisions of these PGFFR 2022 are applied, or any disputes arising in connection with this agreement, may be resolved, with the parties' mutual consent, by the Arbitration Court at the Polish International Freight Forwarders Association in Gdynia, in accordance with the Regulations of this Arbitration Court in force on the date when the claim is filed.

§ 36

1. Should any provision of these PGFFR 2022 be deemed unenforceable or invalid, in part or in its entirety, this shall not exclude the enforceability or validity of the remaining provisions hereof, or the enforceability or validity of the remaining scope of any provision which was deemed unenforceable or ineffective in its part.
2. In the situation described in p. 1 above, any stipulation deemed invalid or unenforceable shall be substituted by another provision, permitted in the light of law, which is most similar to the intent of the invalid or unenforceable provision of the PGFFR 2022.

§ 37

1. Agreements concluded between the Ordering Party and the Freight Forwarder with the use of the PGFFR 2022 shall be governed by Polish law, unless the parties agree otherwise.
2. In case of any discrepancies between the Polish and English version of these PGFFR 2022, the Polish version shall prevail.

§ 38

When the Ordering Party and the Freight Forwarder conclude an agreement with the application of some or of all the provisions of the PGFFR 2022, the parties declare that, prior to the conclusion of such an agreement, they familiarised themselves with the provisions of the PGFFR 2022 in so far as they are applicable to the agreement concluded by the parties. The parties also represent that they agree to the provisions of the PGFFR 2022 being applied, in the scope mentioned hereinabove, to the agreement concluded between them.