

TERMS AND CONDITIONS REGARDING THE INTERNAL TRANSPORT OF GOODS BY ROAD

..... LIABILITY REGARDING THE TRANSPORT SERVICE

The liability of the parties from the transport contract is regulated by the convention of parties and the law in force, respectively the *Romanian Civil Code* (common right) and the *Convention regarding the contract of international transport of goods on roads* (CMR) applicable and the national transport according to art. 77 from G.O. 27/2011 regarding *road transports* (special law).

The carrier is liable for total or partial loss or for damaging the goods between receiving and delivering the goods and also for delays in delivery.

According to the Romanian civil code (art. 1991), the carrier is not liable if the total or partial loss or, if applicable, the damage was produced because of:

a) some actions regarding the loading or unloading of the goods, if this operation was made by the sender or by the receiver;

b) lack or faultiness of package if, from the exterior aspect, it could not be observed when the goods were received for transport;

c) dispatch under an inappropriate, incorrect or incomplete name of some goods excluded from transport or allowed for transport only under certain conditions and non-abidance by the sender of the safety measures stipulated for the these;

d) some natural events unavoidable for transport in opened vehicles, if according to the provisions of the special law or contract the goods must be transported in such a way;

e) nature of the transported goods if this exposes them to loss or damage by wrecking, break, rusting, spontaneous interior damage or other such;

f) loss in weight, irrespective of the distance, if the transported goods are suffering such a loss through their nature, only by transportation;

g) any other circumstances stipulated by special law.

If the loss or damage or alteration happened due to one of the above reasons, it's presumed that the damage was made of that cause.

The carrier is also exonerated from liability, if he proves that the total or partial loss or alteration or damage was caused by:

a) another action than those from line (1) made on purpose or by mistake by the sender or receiver or by the instructions given by one of these;

b) force majeure or action of a third party for which the carrier is not obliged to be liable.

According to the Convention CMR (art. 17), the carrier is exonerated if the loss, damage or delay was caused by a mistake of the person who has the right to dispose of the goods or from the inherent particular risks of one or more of the following actions:

- lack or faultiness of package for the goods exposed by their nature to damage or impairment, when these goods are not packed or are packed incorrectly;
- handling, loading, stacking or unloading of goods by the sender or receiver or by other people who act on the behalf of the sender or receiver;
- nature of goods exposed because of inherent causes of their nature, either to total or partial loss, either to damage, especially through break, rust, internal and spontaneous damage, sear, leak or normal loss;
- insufficiency or imperfection of labels or numbers of parcels.

It is considered delay in issuance when the goods were not issued in the agreed term or if a term was not agreed, when the effective length of the transport exceeds the time which is reasonably given to a diligent carrier, considering the circumstances and, among others, in case of a partial loading, of the necessary time for assembling a full loading under normal conditions.

If according to the above provisions, the carrier is not liable for some factors which caused the damage, its liability is committed only if the factors for which he is liable, contributed to the damage.

The entitled one can consider the goods lost, without presenting other proofs, when these were not issued in 30 days term from the expiry of the agreed term or, if such a term was not agreed, in 60 days term from receipt of goods by the carrier.

The entitled one can request, by receiving the indemnity for the lost goods, in written, to be notified immediately, if the goods were found during the year that follows after the payment of indemnity.

The confirmation of receipt for such a request is communicated in written.

In case of lack either of request, either of instructions given in the 30 days term or if the goods were found after one year from the payment of the indemnity, the carrier can dispose of it, according to the law of the place where the goods are found.

If the goods are issued to the recipient without cashing the reimbursement value, that should have been perceived by the carrier, under the virtue of the dispositions of the transport contract, the carrier is obliged to indemnify the sender with the reimbursement value, without being prejudiced by right or in regress against the receiver.

If the sender delivers dangerous goods towards the carrier, he will notify the exact nature of the danger the goods have and eventually specifies the cautions that must be taken. If this notification was not notified in the consignment note, the task to make the proof by any means that the carrier knew exactly about the danger of transporting the above-mentioned goods, is at the sender or recipient.

The dangerous goods that were not known as such by the carrier under the above conditions, can be in any moment and place, unloaded, destroyed or made unharmed by the carrier, without any indemnity; the sender is additionally liable for all the expenses and damages resulting from the delivery at transport of these goods or for their transport.

If the recipient received the goods without determining their state, in contradiction with the carrier or if at latest when they were issued, regarding losses or apparent damages or in 7 days term from the issuance date, besides Sundays and legal holidays, when it is about losses or non-apparent damages, did not make reserves to the carrier, notifying the general nature of loss or damage, it is presumed, until it is contrary determined, that he received the goods in the state described in the consignment note. The reserves shown above must be made in written if it is about losses or non-apparent damages.

If the state of goods was determined contradictory by the recipient and carrier, the proof contrary to the result of this determination can be made only if it is about losses or non-apparent damages and if the receiver addresses his reserves in written to the carrier, in 7 days term, outside Sundays and legal holidays, from the date of this determination.

The quantity of indemnities in case of total or partial loss or for damage of goods is the one mentioned in art. 23 from CMR Convention, so:

When according to the disposition of the CMR convention an indemnity for total or partial loss of goods falls to the carrier, this indemnity is calculated based on the value of goods at the place and time of their receipt for transport.

Nonetheless, the quantity of indemnity cannot exceed the value of 2.5 USD per kilogram gross weight, limitation stipulated by art. 77 line 2 from *G.O. 27/2011 regarding road transports*.

Additionally, the transport tax, custom taxes and other expenses appeared from the transport of goods will be returned in full, in case of total loss and proportionally in case of partial loss; other damages for loss are not owed.

In case of delay, if the one in right makes the proof that from this delay a prejudice resulted, the carrier is kept to pay claims that cannot exceed the price of the transport.

A larger indemnity can be claimed only in case of declaring the value of goods.

The liability of the carrier for cashing the reimbursements with which the sender burdens the transport, is regulated by dispositions regarding mandate.

The sender will indemnify the carrier for any damages caused by the nature or vice of the goods delivered for transport.

The carrier is still liable towards third parties for damages caused such, with regress right against the sender.

The litigations regarding the execution of the transport contract will be settled by the material competent court from the carrier's headquarters.

The parcels with weight over 50 kg which make the object of the internal transport of goods service will be delivered between 2-7 working days.