

## SCANDINAVIA

### Introductory conditions

The General Conditions of the Nordic Association of Freight Forwarders set forth the freight forwarder's and the customer's rights and obligations, including the freight forwarder's liability under various transport law conventions, such as CIM, CMR, the Hague-Visby Rules and the Warsaw Convention.

#### Applicability

##### § 1

Unless otherwise expressly agreed, these conditions will apply to members of national associations affiliated with the Nordic Association of Freight Forwarders, and also to other parties having agreed to apply them.

#### The freight forwarder contract

##### § 2

The freight forwarder contract may include the performance of:

- carriage of goods
- storage of goods
- other services in connection with the transport or storage of goods, such as
  - 1) clearance of goods,
  - 2) cooperation in the performance of the customer's obligations under public law,
  - 3) handling and marking of goods,
  - 4) signing of insurance,
  - 5) assistance with documents for export and import,
  - 6) collection of 'cash on delivery' charges and other assistance concerning the payment for the goods,
  - 7) advice in matters of transport and distribution.

The freight forwarder may carry out these services either on his own account or as intermediary.

A. The freight forwarder has a liability as carrier under §§15-23:

- a) when he performs the carriage of goods with his own means of transport (performing carrier), or
- b) when he has expressly or impliedly accepted liability as carrier (contracting carrier).

The freight forwarder shall be considered as contracting carrier:

- 1) when he has issued a transport document in his own name,
- 2) when in connection with marketing or in his offer he formulated his undertaking in such a way, e.g. quoting his own price for the transport, that it can be reasonably assumed that he has undertaken a liability as carrier,
- 3) when he undertakes carriage of goods by road.

B. Under §§ 24 – 26 the freight forwarder has a liability as intermediary, without liability as carrier, with regard to carriage of goods not covered by A.

C. The freight forwarder's liability includes liability for those he has engaged to perform the contract (agents and independent contractors):

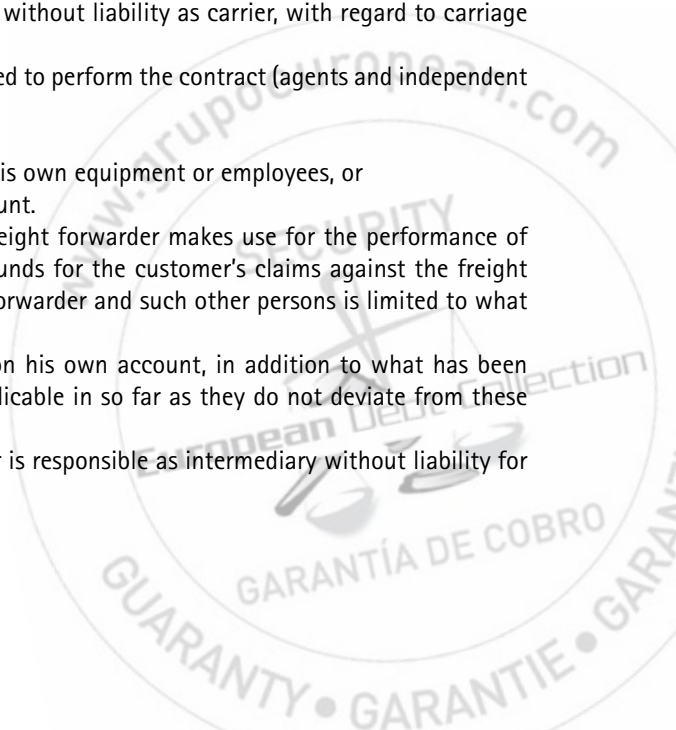
- a) when he has a liability as carrier in accordance with A.,
- b) when the services have been performed by himself with the help of his own equipment or employees, or
- c) when he has accepted responsibility for the services on his own account.

These conditions apply equally to the persons of whose services the freight forwarder makes use for the performance of the contract as to the freight forwarder himself, irrespective of the grounds for the customer's claims against the freight forwarder and such other persons. The aggregate liability of the freight forwarder and such other persons is limited to what applies to the freight forwarder's liability under these conditions.

When the freight forwarder has undertaken to perform the contract on his own account, in addition to what has been expressly agreed, general practice and generally accepted terms are applicable in so far as they do not deviate from these conditions.

In other cases than those mentioned under a) – c) the freight forwarder is responsible as intermediary without liability for other parties than his own employees.

D. With regard to warehousing, the conditions of § 27 apply.



#### The customer

##### § 3

In the present conditions, the customer is the party that has concluded a contract with the freight forwarder, or that has acquired the rights of that party. The liability of the customer is governed by the conditions of § 28.

### General Conditions.

#### The performance of the contract

##### § 4

It is incumbent upon the parties to provide each other with information necessary for the performance of the contract. The freight forwarder undertakes to collect, take care of and procure the transport of goods in accordance with the contract and in a suitable way for the customer with generally used means and routes of transport.

Instructions to the freight forwarder concerning the scope of the contract shall be given directly to him. Information contained in the invoice stating that goods have been sold cash on delivery or against a declaration of value specified in the dispatch instructions does not therefore mean that the freight forwarder has undertaken to collect the invoice amount or sign insurance.

##### § 5

It is the duty of the freight forwarder to prove that, according to the contract, he has protected the customer's interests in a diligent manner.

Should the freight forwarder, or any of those for whom he is responsible, wilfully have caused damage, delay or other loss, he may not invoke the rules in these conditions which exonerate him from or limit his liability, or alter the burden of proof, unless otherwise stated in § 23.

##### § 6

The freight forwarder is responsible for ensuring that the goods arrive within a reasonable time (without a time guarantee). When assessing such reasonable time, regard shall be had to information as to the expected time of arrival stated by the freight forwarder in his marketing or in connection with the signing of the contract.

The freight forwarder is (with a time guarantee) liable for the goods arriving within the time that:

- has been agreed upon in writing as a special, timeguaranteed transport
- has been submitted in writing as a condition of an offer expressly accepted by the freight forwarder
- has been presented by the freight forwarder in a written quotation that was accepted by the customer.

##### § 7

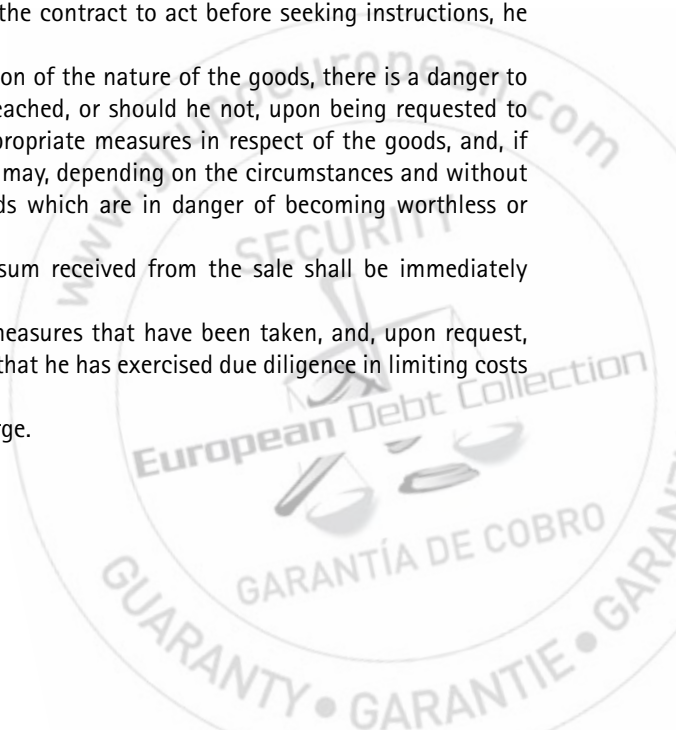
If it becomes necessary for the freight forwarder in the performance of the contract to act before seeking instructions, he does so at the customer's risk and for his account.

If the risk of depreciation of goods already taken over arises or, if by reason of the nature of the goods, there is a danger to persons, property or to the environment, and the customer cannot be reached, or should he not, upon being requested to remove the goods, arrange to do so, the freight forwarder may take appropriate measures in respect of the goods, and, if necessary, sell the goods in an appropriate manner. The freight forwarder may, depending on the circumstances and without notice, sell on behalf of the customer, render harmless or destroy goods which are in danger of becoming worthless or extensively depreciated, or which give rise to imminent danger.

After deduction of reasonable expenses connected with the sale, the sum received from the sale shall be immediately reported to the customer.

The freight forwarder shall notify the customer as soon as possible of measures that have been taken, and, upon request, supply evidence of any expenses in connection herewith, as well as prove that he has exercised due diligence in limiting costs and risks.

For such expenses the freight forwarder may debit a special expense charge.



#### **§ 8**

The freight forwarder has a duty to notify a claim against a third party, where goods have been damaged, delayed or when some other loss has occurred due to that party's acts or omissions. The freight forwarder shall inform the customer and consult with him in order to take such steps as are necessary to secure the customer's claim to compensation from the party who has caused the damage or loss, or who is responsible therefore, and shall, when requested to do so, assist the customer in his relation to the third party.

If so requested, the freight forwarder shall transfer to the customer all rights and claims that the freight forwarder may have under his agreement with a third party.

#### **§ 9**

The freight forwarder's quotation is based on information relevant to the contract supplied to the forwarder, or else on circumstances that are deemed by the forwarder as normal for the intended contract. If the circumstances do not indicate otherwise, the freight forwarder should be able to assume that the goods which have been handed over for carriage are of such a nature and such a relation between weight and volume as are normal for the type of goods in question.

Unless otherwise agreed, the customer is obliged, upon request, to make advance payment for such expenses as may be incurred in the performance of the contract.

#### **§ 10**

Notwithstanding the customer's obligations as to payment under contracts of sale or freight agreements with parties other than the freight forwarder, he has a duty upon request, to pay the freight forwarder what is due for the contract (remuneration, advance payment, refund of outlays) against appropriate documentation.

Unless otherwise agreed, when the goods have not been delivered for transport, and the contract therefore cannot be wholly or partially executed as agreed, the freight forwarder has the right to receive the agreed payment for freight and other remuneration less what the freight forwarder has saved, or could reasonably have saved, by not having to execute the contract.

Although the freight forwarder has given the customer the right to defer payment until the arrival of the goods at destination, the customer has nevertheless a duty, when so requested, to pay the freight forwarder what is due, if, due to circumstances beyond the freight forwarder's control, the contract cannot be performed as agreed provided such non-performance is not due to a cause which is the freight forwarder's responsibility under these conditions.

#### **§ 11**

The freight forwarder has the right to special compensation for work which is clearly necessary in addition to what has been explicitly agreed upon or normally follows from the freight forwarder's contract. The compensation is determined in accordance with the same principles as those applying to the compensation for the services under the contract.

As regards outlays in addition to those which have been expressly agreed upon, or which normally follow from the freight forwarder's contract and which have not been paid in advance to him, the freight forwarder has the right to compensation for documented outlays and costs connected therewith.

#### **§ 12**

If the freight forwarder has to pay additional amounts for the agreed services, the customer has a duty upon request to refund these amounts subject to appropriate documentation. It is the freight forwarder's duty to check, and if possible, ensure together with the customer, that the services rendered are within the scope of the contract, and that the amounts debited are reasonable. The freight forwarder shall, if possible, inform the customer prior to such payment being made.

#### **§ 13**

Should the performance of the contract be interrupted by reason of hindrances beyond the freight forwarder's control, he is entitled to refund of outlays incurred and work carried out against appropriate documentation.

Lien, etc.

**§ 14**

The freight forwarder has a lien on the goods under his control, for fees and expenses in respect of such goods – remuneration and warehousing charges included – as well as for all other amounts due from the customer under contracts according to § 2 above.

Should the goods be lost or destroyed, the freight forwarder has similar rights in respect of compensation payable by insurance companies, carriers or others.

Should the amount due to the freight forwarder not be paid, he has the right to arrange the sale, in a satisfactory manner, of as much of the goods as is required to cover the total amount due to him, including expenses incurred. The freight forwarder shall, if possible, inform the customer well in advance what he intends to do with regard to the sale of the goods.

**Special Conditions**

**The freight forwarder's liability as carrier**

**§ 15**

The freight forwarder is liable as carrier in accordance with §§ 16 – 23 for loss, depreciation of or damage to goods, occurring between the moment when the goods have been taken over for transport until the moment the goods have been delivered, as well as for delay in delivery.

In any event, the liability ceases 15 days after the freight forwarder has informed the party who has the right to receive the goods that the goods have arrived, or has forwarded a written notice in this respect to the address stated by the customer.

Thereafter, the freight forwarder is liable for taking care of the goods as agreed or follows from his duty to protect the customer's interests in a diligent manner under § 5.

**§ 16**

There is no liability if loss, depreciation, damage or delay is caused by:

- a) fault or neglect of the customer,
- b) handling, loading, stowage or unloading of the goods by the customer or anyone acting on his behalf,
- c) the inherent nature of the goods to be easily damaged, e.g. by breakage, leakage, spontaneous combustion, rotting, rust, fermentation, evaporation or being susceptible to cold, heat or moisture,
- d) lack of or insufficient packing,
- e) faulty or insufficient address or marking of the goods,
- f) faulty or insufficient information about the goods,
- g) circumstances which the freight forwarder could not avoid and the consequences of which he was unable to prevent.

The stipulations of a) – f) notwithstanding, the freight forwarder is liable to the extent that his fault or neglect has caused or contributed to the loss, depreciation, damage or delay.

When assessing the freight forwarder's liability under points b), d) and e), consideration shall be taken of whether, despite his knowledge of the circumstances, the freight forwarder has approved or failed to object to the customer's measures concerning the goods.

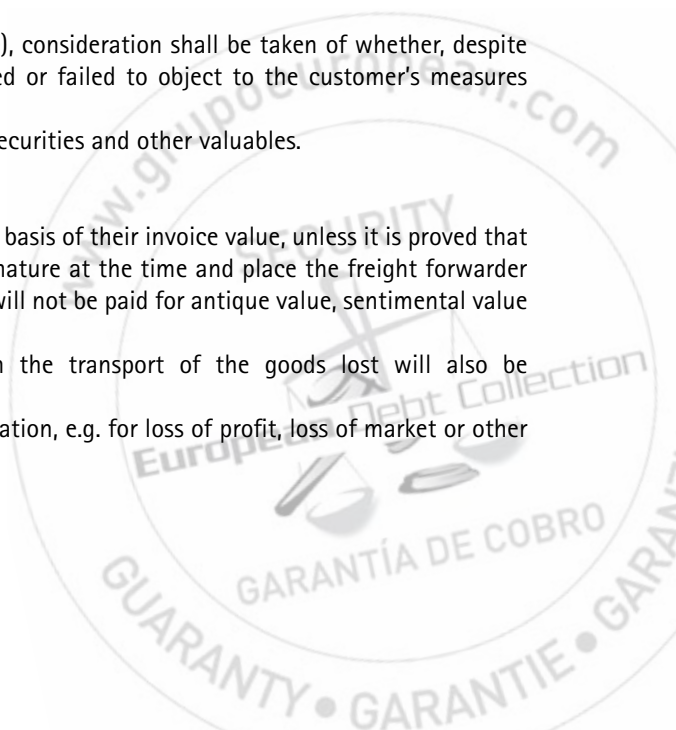
Unless specifically agreed, the freight forwarder is not liable for money, securities and other valuables.

**§ 17**

Compensation for loss or depreciation of goods shall be calculated on the basis of their invoice value, unless it is proved that their market value, or the current value of goods of the same kind and nature at the time and place the freight forwarder took over the goods was different from the invoice value. Compensation will not be paid for antique value, sentimental value or other special value.

Freight charges, customs charges and other outlays connected with the transport of the goods lost will also be compensated.

Apart from that, the freight forwarder is not obliged to pay any compensation, e.g. for loss of profit, loss of market or other loss of any kind whatsoever.



#### **§ 18**

Compensation for damaged goods shall be paid to an amount equivalent to the extent of depreciation in value. The amount is arrived at by using the percentage of depreciation in value consequent upon damage to the goods, in relation to the value of the goods, as laid down in § 17, par. 1. Expenses referred to in § 17, par. 2, first sentence, will also be paid to the same extent, but apart from this, the freight forwarder is not obliged to pay any further compensation.

#### **§ 19**

If the freight forwarder has paid the full value of the goods, he may take over title to the goods if he so desires.

#### **§ 20**

##### *Delay*

- A. If the goods are delivered too late under § 6, par. 1, the freight forwarder shall compensate the customer for such direct and reasonable expenses as could have been foreseen as probable consequences of the delay at the time of the conclusion of the contract, although with an amount not exceeding a sum equivalent to the freight or other compensation agreed in the contract.
- B. When a time guarantee has been agreed, according to § 6, par. 2, and the agreed time of transport has been exceeded, the freight forwarder shall, unless otherwise agreed, credit the customer for the freight or any other compensation agreed upon for the transport. This does not apply if the delay was caused by circumstances beyond the freight forwarder's own control, except that with regard to carriage of goods by road within Europe the freight forwarder is liable also for circumstances within the control of persons engaged by him for the performance.

The customer shall be considered to have suffered a loss equivalent to the amount of the freight, as long as it cannot be shown that the amount of the loss is smaller. In the latter case only the amount equivalent to the loss shall be credited. Compensation for delay shall never exceed the amount of the freight.

#### **§ 21**

##### *Delay and total loss*

The customer has the right to compensation as if the goods had been lost if no delivery has been made

- with regard to international road transports, within 30 days after the expiry of the agreed period of time, or, if no particular period of time has been agreed upon, within 60 days from the moment the goods were accepted for transport
- for other types of transport, within 60 days from the time when the goods should have arrived.

The customer has no right to compensation as if for total loss if the freight forwarder can prove within the above mentioned time limits that the goods have not been lost and that they can be delivered within a reasonable period of time.

#### **§ 22**

For loss, depreciation of or damage to goods the freight forwarder's liability is limited to SDR 8,33 per kg gross of the part of the goods which has been lost, depreciated or damaged.

#### **§ 23**

If a certain mode of transport has been expressly agreed upon, or if it is proved that loss, depreciation, damage or delay has occurred whilst the goods were being carried by a particular means of transport, the freight forwarder shall instead be liable in accordance with the law applicable to such mode of transport and the commonly used and generally accepted conditions of carriage, to the extent that these deviate from what is laid down in § 5, par. 2 or §§ 15 – 22.

### **The Freight Forwarder's Liability As Intermediary**

#### **§ 24**

The freight forwarder is liable for damage resulting from his lack of due diligence in the performance of the contract. It is the duty of the freight forwarder to prove that he has exercised such due diligence in order to protect the customer's interests according to the contract.

The freight forwarder is not liable for acts or omissions of third parties in performing the transport, loading, unloading, delivery, clearance, storage, collection or other services rendered by the freight forwarder, provided he can prove that he has acted with due diligence in choosing such third parties.

Unless specifically agreed, the freight forwarder is not liable for money, securities and other valuables.

#### **§ 25**

In calculating the extent of compensation for loss, depreciation, damage and delay, the stipulations of §§ 17 – 19 and § 20 A., shall be applied correspondingly.

#### **§ 26**

The freight forwarder's liability as intermediary, etc. is limited to SDR 50 000 in respect of each contract, always provided that compensation cannot exceed:

- a) for delay a sum equivalent to the agreed payment for the contract,
- b) for loss, depreciation of or damage to goods SDR 8,33 per kg gross of the part of the goods which has been lost, depreciated or damaged.

### **Storage**

#### **§ 27**

- A. For storage of goods in connection with a transport for which the freight forwarder is liable as carrier, he is liable for a period of 15 days after the transport in accordance with the provisions of §§ 15 – 23.
- B. When the freight forwarder arranges storage as intermediary the provisions of §§ 24 – 26 apply.
- C. For other storage the freight forwarder is liable also for persons engaged for the performance of the contract. The following additional conditions apply:

1. The freight forwarder shall check and issue receipts for whole packages of goods received, without any liability, however, for the content of the packages and invisible damage.

At the request of the customer the freight forwarder shall make an inventory of the stock.

The freight forwarder shall, upon opening the packages, immediately notify the customer of any defect or damage that he has observed or should have observed.

The freight forwarder shall take care of the necessary delivery control.

2. If the customer has not left any special instructions with regard to the storage of the goods, the freight forwarder may freely choose between various storage possibilities, provided that he exercises due diligence in so doing.
3. Unless otherwise instructed in writing by the customer, the freight forwarder shall sign insurance for the risks of fire, water and burglary in his own name and for account of the customer based upon the invoice value at the time of storage + 10 %.

For loss, depreciation of or damage to the goods not covered by insurance in accordance with the above, or when no insurance has been taken out, the freight forwarder is liable for negligent acts or omissions with the determination and limitation of liability specified in §§ 17 – 19 and § 22. The freight forwarder's liability in relation to all customers is limited, however, to SDR 500 000 with regard to damages occurring on one and the same occasion.

The freight forwarder is liable for delay according to §§ 20 – 21.

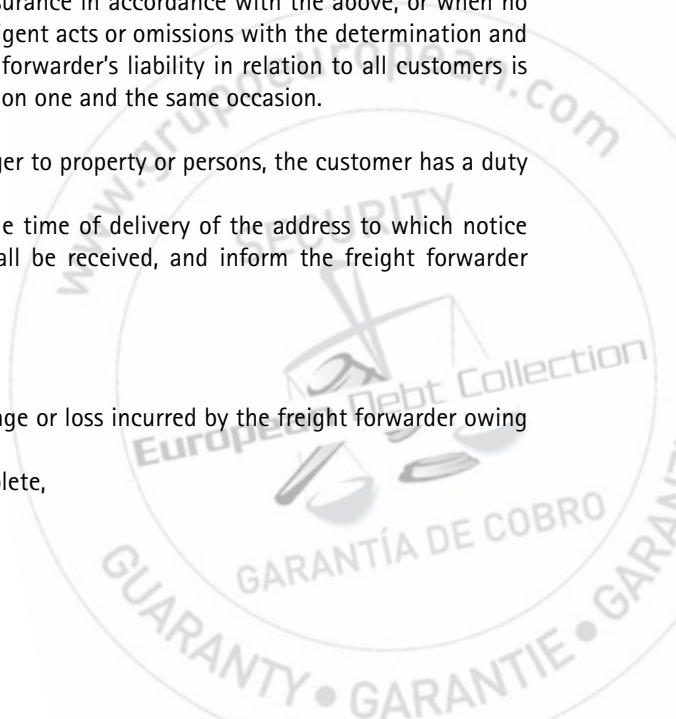
4. If goods in store, by reason of their nature, are deemed to be a danger to property or persons, the customer has a duty to remove the goods immediately.
5. The customer shall inform the freight forwarder at the latest at the time of delivery of the address to which notice concerning the goods shall be sent and at which instructions shall be received, and inform the freight forwarder immediately of any changes thereof.

### **The Customer's Liability**

#### **§ 28**

The customer has a duty to hold the freight forwarder harmless for damage or loss incurred by the freight forwarder owing to the fact that:

- a) the particulars concerning the goods are incorrect, unclear or incomplete,



- b) the goods are incorrectly packed, marked or declared, or incorrectly loaded or stowed by the customer,
- c) the goods have such harmful properties as could not have been reasonably foreseen by the freight forwarder,
- d) due to errors or omissions by the customer the freight forwarder is obliged to pay duty or official taxes or to provide security.

In assessing the customer's responsibility in accordance with a) and b) regard shall be had to whether the freight forwarder, despite his knowledge of the circumstances, has accepted or failed to make an objection to the measures taken by the customer in respect of the goods.

Should the freight forwarder, in his capacity as charterer or shipper become liable in connection with carriage of the customer's goods by sea, to pay general average contribution to the shipowner or the carrier, or become exposed to claims from third parties for reasons stated above, the customer shall hold the freight forwarder harmless.

## **Notice Of Claim And Disputes**

### **Notice of claim**

#### **§ 29**

Notice of claim shall be given to the freight forwarder without undue delay. In case of apparent depreciation or damage, notice should be given immediately upon the receipt of the goods.

If notice of claim is given later than within seven days from the day when the goods were received, it is up to the party who gave notice of claim against the freight forwarder to prove that the damage or depreciation of the goods had occurred before the goods were received. If the claimant fails to prove this, the goods will be considered to have been delivered in perfect condition.

Notice of claim concerning matters other than damage to, or depreciation or loss of the goods shall be given within fourteen days from the day on which the customer knew or ought to have known about the circumstances forming the basis of the freight forwarder's liability. If such notice of claim has not been given, the customer has lost his right of claim.

When a particular mode of transport has been agreed upon with the freight forwarder, the statutory provisions and the generally approved conditions applicable to such mode of transport shall apply instead, to the extent that they deviate from what is stated in par. 1 above.

### **Time-Bar (Denmark, Finland and Sweden)**

#### **§ 30.**

Legal proceedings against the freight forwarder shall be commenced within a period of one year, otherwise the right of claim will have become lost. The time limit period runs:

- a) upon depreciation of or damage to goods from the day upon which the goods were delivered to the consignee,
- b) upon delay, loss of the whole consignment or other kind of loss from the time at which the delay, total loss or other loss could at the earliest have been noticed.

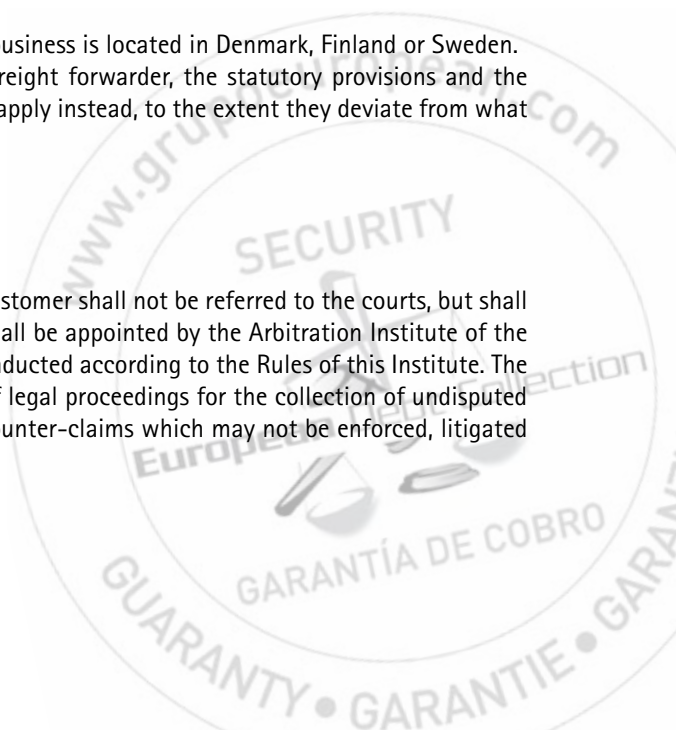
This time-bar shall apply when the freight forwarder's habitual place of business is located in Denmark, Finland or Sweden. When a particular mode of transport has been agreed upon with the freight forwarder, the statutory provisions and the generally approved conditions applicable to such mode of transport shall apply instead, to the extent they deviate from what is stated in par. 1 above.

### **Arbitration (Finland, Norway and Sweden)**

#### **§ 31.**

##### *Finland*

Except as stated below, disputes between the freight forwarder and his customer shall not be referred to the courts, but shall be decided by arbitration and according to Finnish law. The arbitrators shall be appointed by the Arbitration Institute of the Central Chamber of Commerce in Finland, and the arbitration shall be conducted according to the Rules of this Institute. The arbitration shall take place in the City of Helsinki. The commencement of legal proceedings for the collection of undisputed claims does not imply a waiver of arbitration with respect to disputed counter-claims which may not be enforced, litigated or set-off other than by means of arbitration.



Disputes concerning amounts which do not exceed EUR 30 000, or which concern customers who have entered into the contract mainly for private purposes shall not, however, be subject to arbitration.

#### *Norway*

Disputes between the freight forwarder and his customer shall not, except as stated below, be referred to the courts, but shall be decided by arbitration in accordance with the Rules for Arbitration and Alternative Dispute Resolution adopted by the Arbitration Institute of the Oslo Chamber of Commerce. This Institute will be allowed to decide whether the ordinary arbitration rules shall be applied in a given case, taking into consideration the complexity of the case, the value of the matter in dispute and other circumstances. The commencement of legal proceedings for the collection of undisputed claims does not imply a waiver of arbitration with respect to disputed counter-claims which may not be enforced, litigated or set-off other than by means of arbitration.

The Rules for Arbitration and Alternative Dispute Resolution of the Arbitration Institute of the Oslo Chamber of Commerce and Norwegian law shall apply when the freight forwarder's habitual place of business is located in Norway.

Disputes concerning amounts which do not exceed EUR 30 000, or which concern customers who have entered into the contract mainly for private purposes shall not, however, be subject to arbitration unless otherwise agreed.

#### *Sweden*

Disputes between the freight forwarder and his customer shall not, except as stated below, be referred to the courts, but shall be decided with the application of Swedish law by arbitration according to the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The Rules for Simplified Arbitration shall apply unless the Institute due to the complexity of the case, the value of the matter in dispute or other circumstances decides that the Arbitration Rules of the Institute shall apply. If so, the Institute shall also decide whether the Arbitration Tribunal shall be constituted with one or three arbitrators.

The commencement of legal proceedings for the collection of undisputed claims does not imply a waiver of arbitration with respect to disputed counter-claims which may not be enforced, litigated or set-off other than by arbitration.

Disputes concerning amounts which do not exceed EUR 30 000, or which concern customers who have entered into the contract mainly for private purposes shall not, however, be subject to arbitration unless otherwise agreed.

#### **Jurisdiction (Denmark)**

##### **§ 32.**

When the freight forwarder's habitual place of business is located in Denmark, legal proceedings against him shall be instituted before a court in Denmark and in accordance with Danish law.

