



## UTIKAD RULES ON TRANSPORT AND LOGISTICS SERVICES

### PART I: GENERAL PROVISIONS

#### 1. Applicability

**1.1.** These rules, hereinafter called UTIKAD Rules, apply to any transport and logistics services, provided these are incorporated into the Logistics Service Provider's (LSP) contract by making reference to the UTIKAD Rules in writing, verbally or in any other manner.

**1.2.** If any part of the UTIKAD Rules is found to be in conflict with some of the provisions of the contract concluded with the LSP's Customer, the UTIKAD Rules shall prevail over those rules and provisions in the contract that are found to be conflicting with the UTIKAD Rules.

**1.3.** In any case, the UTIKAD Rules will be applicable unless they are found to be incompatible with the mandatory provisions of the National Law of Turkey or the International Conventions to which Turkey is a party. None of these Rules shall be interpreted as renouncing or waving any rights granted to the LSP by national or international Law or as increasing its liability in the service contract in question.

#### 2. Descriptions, meanings or definitions

**2.1.** Description of Transport and Logistics services: Transport and Logistic Services mean services of any kind relating to the carriage (performed by single mode or multimodal transport means), consolidation, storage, handling, packing or distribution of the Goods, as well as ancillary and advisory services in connection therewith, including but not limited to Customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents relating to the Goods.

**2.2.** Logistics Service Provider's description: In the field of freight transportation, the Logistics Service Provider (LSP) is the natural or legal person who has received the authorisation certificates or operating permits, in accordance with the applicable legislation, to have the goods transported on its own or its Customer's behalf and account by using the means, capabilities and capacities deriving from the services contracted on behalf of the Customer in the area of transport, storage, packing, labelling, packaging, order management, Customs, insurance, distribution, etc.

**2.3.** Transport document: Transport document means the evidence of the contract concluded between the consignor of the goods and the operator who holds the authorisation certificate and/or operating permit for the carriage of the goods, and contains the information described in the relevant legislation, or the carriage invoice, waybill or consignment note, which may replace the transport document, if containing the information which must be found in such contractual document.

**2.4.** Carrier: Carrier means the natural or legal person holding the authorisation certificate or the operating license in accordance with the applicable legislation, who accepts the contractual obligation to carry the traded goods and deliver these to the consignee by ensuring that the goods are transported from their departure point to their designated destination.

**2.5.** Customer: In the field of freight transportation, Customer means the natural or legal person who holds the rights and obligations of the transportation and logistics services contract concluded with the LSP.

**2.6.** Cargo and/or Goods: The terms Cargo and/or Goods refer to any property or merchandise, including livestock, that appears to be suitable for transport, including

containers, packing materials, pallets or similar transport equipment which is not provided or procured by the LSP.

**2.7. SDR:** The Special Drawing Right (SDR) represents a monetary unit as defined by the International Monetary Fund. If the SDR is to be used for evaluation purposes, its value shall correspond to the exchange rate published by the Central Bank of Turkey at the date of the event to be evaluated, unless otherwise provided by the Law applicable in the Republic of Turkey in this occurrence.

**2.8. Mandatory Law:** Mandatory Law means any legal provisions in the relevant legislation that cannot be changed by or with the mutual consent of the parties.

**2.9. In Written Form or in Writing:** Subject to applicable law, the expression "in written form" or "in writing" includes and is not limited to all communications and records made by registered electronic mail, electronic mail, telegraph, telex, telefax and similar messages and/or other electronic means of communication.

**2.10. Valuable Goods:** The expression "valuable goods" refers to bullion or processed gold, metal or paper money, valuable documents, precious stones, jewellery, antiques, paintings, works of art and any similar item.

**2.11. Hazardous (or Dangerous) Substance (or Goods or Cargo):** The expression "Hazardous (or Dangerous) Substance (or Goods or Cargo)" refers to substances, merchandise, goods or cargo (regardless of their nature, including radioactive materials) that appear to be and/or are toxic, flammable, explosive, noxious and/or otherwise dangerous for the environment and/or that may carry the risk of destroying or damaging any property or person, and are therefore officially classified as hazardous (or dangerous) materials (or goods, or cargo) in the National Law and/or International Conventions.

**2.12. Delay:** Except where otherwise provided by Mandatory Law, the term "delay" means exceeding the reasonable time required to carry out the agreed performance, in particular if referred to the carriage of the goods, or exceeding the agreed period for such performance to take place, unless the reasons for such delay to occur derive from the requirements of the contracted services.

### **3. Insurance**

**3.1.** In the freight transportation organised by the LSP, if the delivery conditions (e.g. INCOTERMS®) prescribe the obligation to take out insurance, the buyer or the seller or, if so required, the sender (or consignor) or the recipient (or consignee) is obligated to take out insurance for the shipment, and such insurance cover may be procured by the LSP. For delivery conditions not prescribing an insurance cover, the initiative to take out all-risk and/or liability insurance belongs to the seller and/or the buyer or any other party having interest to do so.

**3.2.** It is the responsibility of the LSP's Customer to take out shipping and transport insurance for the goods in transit. Unless its Customer has clearly requested to procure such service in writing, the LSP has no obligation to take out freight (or goods, or commodity) transport insurance.

Any insurance cover is offered according to, and within the limitations of the conditions and exceptions written in the relevant insurance policies, which are provided by the insurer or underwriter offering the insurance cover and are made available to the Customer upon request.

**3.3.** If it makes sense in respect of the contract, the LSP can take out carrier's liability insurance regarding its own responsibilities as may arise from the organisation and commissioning of transport and ancillary services.

#### **4. Hindrances**

If the LSP's fulfilment of its obligations becomes impossible or runs the risk of delay, where the hindrance or risk is not caused by the fault or negligence of the LSP and cannot be prevented by using reasonable care, the Customer:

- a. has to accept that the carriage of the cargo in its current state and condition may not continue. In such circumstance, the LSP is obliged to inform its Customer about the situation without delay and has the right to change the transportation method, duration and route, and to demand the transportation fee and additional expenses related to this;
- b. If the Customer fails to acknowledge such situation within reasonable time, the LSP may place, or have placed, the whole, or part of the cargo at the disposal of the Customer in a safe and appropriate site. In addition, the LSP may entrust the cargo to a third party with the approval of the Customer. In this case the LSP shall not bear any liability, except for the exercise of reasonable care in the choice of such third party; under such circumstances the cargo is deemed to have been delivered to the Customer and the LSP's obligations cease. In any case, the LSP is entitled to the fees agreed upon in the contract, and the Customer is obliged to pay the additional expenses that have been encountered due to the aggravation.

#### **5. Transport Means and Route**

**5.1.** The LSP performs its services according to the instructions received from its Customer. If these instructions are deemed to be inaccurate, incomplete or in violation of the contract provisions and/or if they imply a threat or damage to other shipments, i.e. goods consigned by other shippers and/or destined to other consignees, the LSP may act as it deems appropriate with a view to ensuring safety and security and is allowed to seek reimbursement of the costs incurred in doing so at the Customer's expense.

**5.2.** The LSP holds the right to sell the goods without awaiting instructions from the person entitled to dispose of them, if their value is at risk of significant reduction, and/or if there is a risk of causing damage to the environment, and/or if the condition of the goods warrants such a course, and/or if the storage expenses and/or any expenses to be paid to the LSP appear to grow out of proportion to the value of the goods, according to the selling procedure determined by the Law of the place where the goods are situated. In addition, the LSP may also lawfully sell the goods if, after the expiry of a reasonable period, the LSP has not received from the person entitled to dispose of the goods opposite instructions which the LSP may reasonably be required to carry out. The LSP may destroy the goods in the event that their sale or further evaluation is no longer possible. If the goods have been sold pursuant to this article, after the deduction of the transportation charges, sale costs and/or other reasonable expenses incurred by the LSP, as well as other expenditures chargeable against the goods, the proceeds of their sale shall be placed at the disposal of the person entitled to dispose of the goods. If the charges to be deducted exceed the proceeds, the LSP shall be entitled to the difference. In any case, the LSP is obliged to inform its Customer, without delay, of the measures taken.

**5.3.** A statement on the invoice accompanying the goods made to indicate that the goods are sold with a "payment on delivery" clause, or a similar notation, e.g. CAD, COD etc. shall not



mean that the LSP undertakes to collect the invoice amount or to insure the goods or to take any measure to accommodate such language in its own documents.

**5.4.** Except if and when otherwise agreed upon, the LSP is allowed to

a. load the goods or allow the goods to be loaded on deck and/or

b. determine and/or change the means of transportation, its route and the method of handling, stowing, storage and conveyance of the load

without any obligation to notify its Customer.

## **6. Shipping Instruction**

**6.1.** The instructions, explanations, notifications regarding the handling and carriage of the shipment, and/or the stowing, fastening and fixing of the load must be given in writing. Subsequent changes in such instructions or information must also be given in writing.

The Customer is obliged to provide the LSP with correct and complete information on the relevant addresses, container types and numbers, as well as marks and numbers of the packages, packaging type, content and the nature of the goods and all the information required for the correct execution of the transport service. It is preferable that such information is given in writing with a view to ensuring its accuracy.

**6.2.** The LSP is not obliged to check whether the signatures appearing on the written instructions or documents received are provided by persons who are authorised to represent the Customer and/or to ascertain their identity, unless there is a legal obligation in place to do so for safety and security reasons. The Customer may not claim that these communications, instructions and/or correspondence, which appear to emanate from the Customer, have no binding nature for him or her, on the ground that his or her employees, who communicate with the LSP during the commercial relationship, be unauthorised and therefore unfit to represent or bind the Customer.

**6.3.** In giving shipping instructions regarding dangerous goods, or goods that could be considered hazardous or dangerous, the shipper (or consignor, as may be applicable) is obliged to inform the LSP in writing, in a clear and understandable manner, about the type of danger and the measures to be taken, if it becomes necessary to mitigate the risk or damage. If the degree of danger of the goods deemed to be dangerous is defined by international rules and regulations e.g. IMDG Code, ADR, ADN, ICAO, etc. the Customer shall notify the LSP of the particulars required to identify the danger code applicable to the goods, in line with the applicable rules and regulations. The responsibility to ascertain the accuracy of such information rests on the Customer and the LSP is not obliged to check the accuracy of the information provided by the Customer to that effect. If the LSP is not informed of the type of danger on receipt of the goods, or by the time the goods reach the point agreed upon for being received by the contracted operator, and/or if no written notice to alert all third parties on the dangerous nature of the consignment has been given, the LSP may request the Customer to dump, store, remove or destroy the dangerous substances, if necessary, to make the consignment harmless, and to pay the expenses associated with these measures together with all the occurring damages, accordingly without any obligation to compensate the Customer for the possible loss of the consignment.

## **7. Customs Services**

Within the set of rules established by the Authorities according to the applicable legislation, for an agreed fee the LSP can provide the Customs clearance services required for the release of the goods from Customs. In order to perform such Customs clearance services requested by the Customer, the Customer may authorise the contracted Customs representative or broker, as appointed by the LSP, and must duly do so in the Customs territories where such appointment and/or authorisation are required by the applicable rules.

## **8. Storage, Order and Stock Management**

**8.1.** If requested by the Customer, the LSP may also offer storage, order and stock management services in its own warehouse or in a warehouse belonging to a third party, at the LSP's choice.

**8.2.** The LSP may request a guarantee from the Customer for these services.

## **9. Offer**

Through its concluding behaviour, upon giving the shipping instructions, and/or delivering the goods to the LSP for carriage, storage or other related services, the Customer is deemed to have accepted the LSP's previous offer, even without having expressly acknowledged or accepted such offer.

## **10. Payment of the LSP's Service Fees**

**10.1.** The Services provided by the LSP are to be paid in advance or latest by the invoice date, unless a different term is agreed upon by the parties.

**10.2.** The LSP may request a down payment in advance from its Customer, before providing the required services.

**10.3.** The fees payable to the LSP are to be paid in full, without any deduction, regardless of the manner in which the payment is made.

## **PART II: RESPONSIBILITIES**

### **11. LSP's Liability and Duty of Care**

**11.1.** The LSP shall perform or procure organisational and logistics services for the transportation of the goods with the necessary and reasonable attention and care.

**11.2.** The LSP cannot be held responsible for the actions and possible negligence of the contracted suppliers and third parties, except if it is ascertained that the LSP has not selected them with the required diligence.

### **12. Liability for Property Loss and/or Damage**

**12.1.** The liability of the LSP for the loss and/or damage to the goods described in the service contract and/or damage arising from breach of contract or tort during the time the goods are under the LSP's control shall be limited to the conditions and limitations of liability specified in the national legislation applicable in the Republic of Turkey and/or in the International Regulations and Conventions to which the Republic of Turkey is a party.

**12.2.** Where the applicable legislation does not stipulate a limit to the liability for loss and/or damage caused by transport and/or logistics services, and provided such liability does not

exceed the actual value of the goods, the liability of the LSP due to the loss of and/or damage to the goods shall not exceed the following limits:

- a. In case of complete loss of the goods or comparable damage, the amount of 2 SDR per kilogramme of the declared gross weight of the goods;
- b. In case of loss and/or damage of individual items or parts of the goods and if the whole consignment has lost its value, the amount of 2 SDR per kilogramme of the declared gross weight of the goods;
- c. If only a part of the goods has lost its value, the liability is limited to the amount of 2 SDR for each kilogramme of the gross weight of the part that was lost or damaged, or the repair cost, if it is lower.

**12.3.** In the calculation of the compensations specified in this article, the value of the goods to be taken as basis for reimbursement is calculated according to the market value of the goods at the place and time the consignment was received by the LSP for carriage, or, if the information is not available, the compensation is determined according to the current value of goods of the same type and quality in the market where the consignment was made available to the LSP for carriage.

### **13. Liability for Delay**

**13.1.** The transit times and duration reported by the LSP to its Customer, within the scope of the transport and logistics service contract, are to be considered as an estimate and are provided for information only. In general, the liability of the LSP emerging from exceeding the expected or announced transit times is limited and is subject to the liability limits enshrined in the applicable national or international rules and regulations.

**13.2.** Regardless of the reason why, in any circumstance or event whereby the LSP is made responsible for the delay, the maximum amount to be paid by the LSP in compensation for the delay shall not exceed the amount of the transport or service fees payable or paid to the LSP for the transportation which is claimed to have been delayed. This amount shall not be construed as fixed, on the contrary it represents the highest indemnity payable to the claimant, unless the ascertained damage suffered for the delay is lower.

### **14. Liability for Other Damages**

**14.1.** Except for the loss and/or damage of the goods covered by the LSP's contract for transportation and logistics services as specified above in art. 12, the LSP shall not be held liable for damages arising from breach of contract or tort for being unable to prevent the formation of such damage or loss, despite exercising due diligence as a cautious agent.

**14.2.** In case the LSP is held responsible for other damages not caused by the loss and/or damage of the goods covered by the LSP's contract for transportation and logistics services as specified above in art. 12, the maximum liability of the LSP is limited to whichever is the lowest of the following amounts:

- a. The maximum amount of indemnity payable for the complete loss of the goods in accordance with the mandatory provisions of the applicable national legislation or international rules and regulations, or,
- b. In case such indemnity limit is not foreseen due to the nature of the service, the amount of 2 SDR per kilogramme of the declared gross weight of the goods, provided that this amount does not exceed the actual value of the goods, or

c. an amount not exceeding 1000 SDR per incident.

These amounts are not to be construed as fixed, on the contrary they represent the highest indemnities payable to the claimant, unless the ascertained damage suffered for the delay is lower.

## **15. Circumstances excluding LSP's responsibility**

**15.1.** The LSP has no responsibility regarding third parties' claims and/or consequential damages.

**15.2.** The LSP is not responsible for the transportation of valuable, dangerous and/or special goods, unless their special nature was notified in writing to the LSP when the transport and logistics contract was concluded and their possible loss and/or damage evaluated.

**15.3.** The LSP is not responsible for any damages arising as a result of the following situations:

- a. If the damage and/or loss was caused by the Customer's own fault;
- b. If the damage and/or loss was caused by the loading, unloading, stacking, handling or similar, in the event such action was carried out by the Customer, its representative(s) or personnel;
- c. If the damage is caused by breakage, leaking, sudden flashing, deterioration, rusting, fermenting, evaporation or the result of cold, heat and/or humidity;
- d. If the loss and/or damage are caused by the very nature of the cargo;
- e. If the damage is caused by missing and/or insufficient packing and/or protection of the cargo;
- f. If the damage and/or loss derive from the incorrect and/or incomplete marking and labelling of the goods;
- g. If the damage and/or loss derive from the incomplete and/or insufficient information on the quality and/or quantity of the goods;
- h. If the damage and/or loss are such that the due diligence of a prudent merchant could not have prevented them;
- i. If the damage and/or loss result from the risk in the transmission, and possibly consequent loss, of import, export and/or circulation documents, which are issued by the Customer and/or by the competent Authorities and are required to accompany the goods.

**15.4.** The LSP shall not be held liable for decisions and actions taken by the competent public Authorities, ship-owners, airlines, asset-based carriers and their agents, as well as for the consequences of their employed personnel quitting their jobs due to war, riot, commotion, strike, employer/employee disputes, social upheavals, adversities due to weather conditions, or any other situation such as natural disasters, earthquakes, floods, fires, etc. that cannot be predicted, controlled, prevented or avoided and appear to be due to force majeure.

## **16. Customer's Responsibilities**

**16.1.** With a view to enabling the delivery of the goods, the Customer accurately provides the LSP personally, or the LSP's agents with all documents and information pertaining to the general character, brand, number, weight, volume and/or dangerous nature of the goods, if

applicable, as far as materially possible; the Customer is hence deemed to have confirmed that all responsibility regarding such assignment rests on him or her.

**16.2.** Except where the LSP is responsible pursuant to the above Article 11, the Customer is obliged to keep the LSP exempt from all liabilities that may entail in providing the requested services.

**16.3.** The Customer is obliged to fulfil its obligations, including those pertaining to general average as may be notified to the LSP, and to provide the guarantees that the LSP or the average adjuster will demand as required by the general average. In such circumstance the LSP does not have any responsibility for the expenses and costs incurred by the Customer, who shall indemnify the LSP's possible costs for providing such guarantee to the average adjuster on behalf of the Customer.

**16.4.** For all damages, costs and objective liabilities, arising from the delivery of the goods, suffered without any fault on its side by the LSP, or any person for whom the LSP is responsible, the Customer is responsible in the event that wrong, inaccurate or incomplete information or instructions given to the LSP personally, or to another person acting on his or her behalf, could cause death, bodily harm, property damage, environmental damage or any other damage.

**16.5.** Having regard to the fact that the Customer is either the owner or authorised representative or agent or contract party of the goods covered by the transportation and logistics service contract with the LSP, the Customer is solely and principally responsible toward the LSP for all liabilities and debts arising from the contract by merely being a party to such contract.

**16.6.** Within the scope of the LSP's service contract, the Customer agrees and undertakes to hold the LSP and/or its employees, workers, agents, sub-carriers, and/or insurers exempt from any embargo, prohibition or penalty which may be imposed by any national or international agency or authority and to bear all the liabilities which may entail in this regard.

**16.7.** Within the framework of, and having regard to the limitations specified in the provisions of the Law on the Protection of Personal Data, at the LSP's request the Customer shall identify and disclose the personal information, contact information and/or the purpose of use for all parties related to the goods covered by the contract of transportation and logistics services, as well as any legal, financial and/or commercial interest vested in the goods, including the persons and parties who will ultimately use the goods.

**16.8.** The Customer agrees and acknowledges that the LSP shall have no responsibility for any delay, loss and/or damage to the goods, which any public authority having the authority to carry out Customs, security and/or any other regulatory procedure may cause during the unpacking and checking processes required to examine the contents of the packages.

### **PART III: OBLIGATIONS AND LIABILITIES OF THE CUSTOMER**

#### **17. Fees and Unforeseen Circumstances**

**17.1.** The fees payable by the Customer for the transport and logistics services have been calculated for the agreed service to be provided in normal conditions, based on the information given by the Customer.



In the event that the services proposed by the LSP cannot be performed due to reasons created by the Customer or other parties related to the goods, the LSP is entitled to receive the payment of its service fees in full.

**17.2.** If there is a delay after the beginning of the carriage before the delivery takes place at destination and such delay is caused by the consignor, the LSP may request an appropriate amount in addition to the agreed carriage fees.

**17.3.** If the carriage fees are calculated according to the number, weight or volume of the goods as shown in another measuring system, it is assumed that the records contained in the waybill or consignment note are the correct ones for the calculation of such fees.

## **18. Damage or Loss Notification**

**18.1.** The person entitled to take delivery of the goods is required to report their loss or damage to the LSP in writing within seven days of receipt. If the person entitled to take delivery of the goods does not fulfil this obligation, the consignment is deemed to have been received in good conditions.

**18.2.** For any other loss and/or damage, the written notice to the LSP should be given within the fourteenth day after the Customer became aware of the occurrence. If the Customer proves that it was impossible to comply with this deadline and that he or she made the request at the earliest available opportunity, the right to claim will not be declined.

## **19. Statute of Limitations**

**19.1.** The LSP shall be released from all its liabilities as specified in these Rules, if a complaint is not filed against him or her within the time bar stipulated by the applicable rules for the selected mode of transport, starting from the date when the cargo was delivered or should have been delivered, or, if not delivered, the date when the cargo could be declared lost.

**19.2.** For damages other than the loss and/or damage of the goods, the time bar is calculated from the moment when the behaviour of the LSP, which caused the Customer to claim compensation, came to the latter's knowledge.

**19.3.** The Customer's acceptance of the goods without reservations shall be construed as a waiver of the entitlement to claim an indemnity from the LSP.

## **20. General Lien**

**20.1.** In as far as permitted by the applicable Law, the LSP may exercise a lien right and retain the goods belonging to the Customer and all the documents pertaining to them, as a guarantee of the payable amounts for the services rendered to the Customer.

**20.2.** In the event of loss and/or damage to the goods, the reimbursement to be paid by the insurer, carrier or third parties may replace the lien on the goods, and the LSP may exercise its rights on such compensation.

## **PART IV: DISPUTES AND MANDATORY LAW**

### **21. Assessment**

All kinds of losses, harms and/or damages subject to a dispute shall be evaluated according to a report prepared by accredited institutions and organisations.



## **22. Settlement of Disputes**

If these rules are incorporated or made reference to as a part of the contract between the Customer and the LSP, for the resolution of disputes arising from such contract arbitration rules and competent court can be decided by selecting such provisions in the contract concluded by the parties; the parties may also decide which Law will be applicable in the settlement of their disputes.

## **23. Mandatory Law Rules**

These Rules are valid to the extent that they are not in conflict with the mandatory provisions of the Turkish National Law and the International Conventions applicable to freight transport and logistics services.

