

Effective from 1 January 2020.

## **I. GENERAL TERMS**

### **Introduction**

Agility Magyarország Kft. (referred to as: Agility) is a company dealing with freight forwarding, logistics, customs brokerage and contract manufacturing services.

Agility is performing its activity in full compliance with ISO9001 and AEO license.

### **1. Application of the general terms and conditions**

These general terms and conditions (referred to as: Conditions) shall apply to those Contracts (referred to as: Contract) that are concluded by and between Agility and the customer (referred to as: Customer) for forwarding, warehousing, customs brokerage or other services (referred to as: Services) related to the agreed goods (referred to as: Goods). The Customer's general terms and conditions shall not apply.

Agility's price offer and the acceptance of the price offer in e-mail by the Customer (referred to as: Order) constitutes a Contract. The Customer approves the Conditions by sending the Order for the determined Services.

The Contract shall enter into effect if all the data required by Agility is provided.

### **2. Customer's obligations**

For the fulfilment of Services Customer shall provide Agility in due time with:

- (a) full, exact and trustworthy information;
- (b) necessary documents;
- (c) special conditions of the Services.

### **3. Customer's instructions**

Agility is obliged to follow the instructions of Customer, but it has to draw Customer's attention if the instructions are not proper. Consequences of inexpedient, unprofessional, incomplete, false und delayed instructions will be borne by the Customer.

If the Customer maintains the instructions despite warning, Agility may terminate the Contract unilaterally or can attend to it after providing of a security given by the Customer, to the Customer's risk.

Agility may differ from the Customer's instruction if the interest of the Customer – basing on the data staying at the disposal of Agility – indisputably requires it and there is no way to inform Customer beforehand. In such a case the Customer shall be informed without delay.

Agility has to refuse the fulfilment of the instruction if its execution leded to breach of law or regulation of authorities or it endangered the person or property of others.

If the Customer changes its Order so that Agility cannot fulfil same, Agility may terminate the Contract unilaterally, and claim payment of its costs and fee.

If Agility did not have receive instruction in due time from the Customer although having asked for those, it is entitled to act on his own judgement. When acting so, Agility shall consider avoiding and minimizing its own damages and costs and easing Customer's damage, and observe points of rationality. Damages arose to Agility this way, will be borne by the Customer.

If the Customer withdraws the Order and if Agility has already started acting in the interest of fulfilment of the same, damages and costs arising so, as well as the fee have to be refunded by Customer.

Agility shall fulfil only those Services which are agreed in the Contract or any amendment thereof.

#### **4. Special Goods**

Agility shall deal with special goods only in case of Agility's prior written approval.

Special goods (referred to as: Special Goods) shall mean any type of Goods that have special requirements regarding carriage, storage, handling, or security such as (but not limited to) Goods of a highly valuable nature, dangerous, hazardous or damaging Goods, Goods which are likely to taint or affect other Goods being stored or transported by Agility, fragile Goods, Goods which are likely to attract pests, and Goods which may be a risk of death or personal injury, damage to property, environmental damage or any other type of loss or damage.

The Customer shall – in addition to section 1.2. – provide Agility in due time with:

- a) specification confirming the Goods' safety, handlings instructions (e.g. material safety data sheet; dangerous goods declaration);
- b) other special documents necessary for the Contract entering into effect.

Agility – among others – may reject the performance of Services:

- a) if the Customer fails to provide the required information or documentation to Agility, or
- b) if the Goods are involving risk of death or personal injury, damage to property, environmental damage or any other type of loss or damage.

In case of rejecting of the performance of Services and if the Goods are stored in the warehouse, Agility may request the Customer to immediately remove the Goods from the warehouse at Customer's expense.

#### **5. Fee and payment**

##### **5.1. Fees and costs**

For the Services Customer shall pay to Agility the following:

- a) Fee for Services
- b) Agility's direct costs (if incurred directly during the performance of the Services and Customer has been advised in writing on time):
  - (i) All direct taxes, assessments, levies, imposts, duties, excises or fees in the nature of taxes, excluding, however, taxes levied on or measured by reference to Agility's income.
  - (ii) Other direct costs incurred by Agility directly in connection with the Services that are not specifically set forth herein and that are incurred with the prior written consent of the Customer, such as, but not limited to costs of Services (e.g. costs of special equipment).

The Customer shall reimburse the following:

- a) costs arising from the Customer's instructions not mentioned in or differ from the Contract (new Services; amendment of the instructions determined in the price offer);
- b) expenses connected with fulfilment of the Services and incidental expenses that arose through no fault of Agility if Customer was advised in writing on time.

Agility shall issue a separate invoice about these costs, the original invoice shall not be annulled.

##### **5.2. Payment**

The rules of payment (including the issuance of the invoice) shall be determined in the Contract.

The Customer shall pay to Agility all amounts that the invoice contains immediately at issuance unless the payment term is defined otherwise, via transfer to Agility's bank account determined on the invoice.

If Customer disputes any portion of any invoice, Customer shall notify Agility within 5 days after the issuance thereof and advise Agility in writing the amount of the disputed portion and the reasons for such disputation and shall pay to Agility all amounts of the invoice that have not been disputed.

### 5.3. Interests, recovery costs

Interest on late payment shall be calculated as the sum of the Hungarian central bank base rate in effect on the first day of the calendar half-year affected by the default - if the monetary claim is to be satisfied in a foreign currency, the base rate of the issuing central bank, or failing this the money market rate - plus eight percentage points. For the purposes of calculating the interest, the central bank base rate in effect on the first day of the calendar half-year affected shall apply for the entire period of the given calendar half-year.

In the event of late payment the Customer shall be required to provide compensation to Agility for recovery costs in Hungarian forints in an amount equivalent to at least forty euros translated by the medium foreign exchange rate of the Hungarian National Bank in effect on the first day of the period for which interest for late payment is charged.

### 5.4. Credit limit

Regardless of the due date of the invoices issued by Agility, the aggregate amount of the issued but not settled invoices of the Customer must not exceed certain amount (referred as: Credit Limit). Credit Limit is set- up by Agility based on the financial rating of the Customer and advised to the Customer at the agreement of the first Contract.

Should the aggregate amount of the issued but not settled invoices of the Customer exceed the Credit Limit, the Customer shall pay an amount for Agility without any delay in order that the aggregate amount of the not settled invoices not to reach the Credit Limit.

Should the aggregate amount of the issued but not settled invoices of the Customer exceed the Credit Limit or any of the invoices not settled within 30 days after due date, Agility may suspend to perform of any obligations arising of any valid Contracts until the Customer performs at least the payment obligation detailed in point 5.1. No claim under any title may be reported to Agility by the Customer due to the suspension of performance of a Contract.

Credit Limit may be revised and amended by Agility unilaterally regularly considering the Customer's turnover, net income and equity in the previous year; financial rating by credit rating companies and also the actual performance of its payment obligations. Agility shall inform the Customer on the amendment of the Credit Limit in writing.

### 5.5. Off-setting

The Customer is not entitled to set off any of his claims against Agility's claims.

## **6. Contract securities**

### 6.1. General lien

Agility shall be entitled to general lien on the Goods and documents he gained possession of in connection with the Service, or which are at his disposal on the basis of documentary evidence up to the amount of Agility's fee, charges and costs. The lien shall also cover other overdue and uncontested claims of Agility from the Customer arising from the Contract. Agility's claim may be asserted without judicial proceedings. After 15 days over the payment term agreed above Agility shall be entitled to sell or dispose of such Goods or documents at normal market price at the expense of the Customer and shall reimburse to him the income of the selling of them after deducting Agility's fee, charges and costs arising from the Contract and from the selling.

### 6.2. Right of retention

If the Customer does not fulfil its obligation of payment – may this obligation origin from any business between the parties ever – Agility may restrain its due Service up to the fulfilment of Customer's payment obligation or up to providing an appropriate security. Agility is entitled to terminate the Contract unilaterally with immediate effect if it has appointed 15 days deadline for payment and the Customer has not paid within this time period or it has not provided any appropriate security for fulfilment.

## **7. Customer's liability**

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

The Customer shall be liable that the Goods and its documentation shall be in accordance with the relevant legal rules. Agility is not obliged to examine the Goods or the documents, information received from the Customer.

## **8. Agility's liability**

### **8.1. Exclusion of liability**

Agility's liability is excluded for damage

- a) that could be attributed to liability of the Customer or his agents,
- b) which was caused by insufficiency or inadequacy of the package of the Goods,
- c) which was caused by insufficiency or inadequacy of the information or documents, instructions related to the Goods,
- d) which was caused because of an own defect or the nature of the Goods.

### **8.2. No liability for consequential damages**

Agility shall not be liable to the Customer or any other party for any special, indirect, exemplary, punitive or consequential loss or damage (including but not limited to damages or claims in the nature of lost revenue, income, profits or investment opportunities, furthermore travel and accommodation expenses, freight forwarding and production costs and any other production related cost arising from losses, damages, product shortages or non-conformities or service capacity limitations above the agreed output).

## **9. Force majeure**

Agility shall not be considered in default in the performance of the Service (other than an obligation to pay money) to the extent that the performance of such obligation is prevented or delayed by any event or circumstance that is beyond the reasonable control of Agility, and Agility could not have prevented or mitigated the consequences of such event or circumstance by the exercise of reasonable diligence and foresight and expenditure of reasonable sums of money, including, without limitation:

- (a) war, revolution, insurrection or hostilities (whether declared or not), including, without limitation, mutiny or terrorism;
- (b) a riot, civil commotion or civil uprising;
- (c) earthquake, flood, tempest, hurricane, lightning or other natural disaster;
- (d) any fire or explosions of major proportion; or
- (e) strike, lockout or other industrial disturbance on a national scale.

## **10. Confidentiality**

The Contract and any information disclosed by the other party or received from other sources in connection with the Contract shall be treated by the parties as business secret; such information shall not be disclosed to third persons without the prior written consent of the other party.

The obligations contained shall survive the date of termination of the Contract between the parties.

## **11. Governing Law, dispute resolution**

The Conditions and the Contracts shall be governed by the Hungarian law and the relevant international agreements. The rules of the Hungarian private international law concerning the conflict of laws shall not be governing (it means the exclusion of the renvoi [reference forth] from the Hungarian law to any foreign law).

Any dispute, controversy or claim arising out of or in relation to the Conditions or to any Contract, including the validity, invalidity, breach or termination thereof, shall be resolved by the Hungarian courts: Budai Központi Kerületi Bíróság (Buda Central District Court) and – if county court shall proceed in the case – Kecskeméti Törvényszék (Tribunal of Kecskemét) have exclusive competence.

## **12. Partial invalidity**

The invalidity or unenforceability of any provision of the Conditions shall not result in the invalidity of this document as a whole. In such cases, the parties shall replace such invalid provision with a provision best suiting their contractual will and their intentions at the time of making a Contract.

## **II. SPECIAL TERMS FOR FORWARDING SERVICES**

### **1. Customer's instructions**

Agility shall not be liable for damages occurred due to an erroneous address given by the Customer or due to incomplete or insufficient information pertaining to the change of the consignee's address.

The Customer shall be liable for any consequences that may arise from erroneous or incomplete instructions.

The loading and unloading party shall be liable for such activity.

### **2. Hindrances**

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

### **3. Temporary storage**

If it is necessary for the proper performance of the Services, the Goods shall temporarily be stored, at Agility's discretion, in his own warehouses or in those owned by third parties.

The term of the temporary storage lasts maximum 3 days. Agility's fee contains the storage fee.

After the 3rd day Agility shall be entitled to issue an invoice about warehouse services that is agreed by the parties.

### **4. Special terms for payment**

#### **4.1. Costs**

Section I./ 5.2. b) of the Conditions means among others cost of storage, port tariffs, BAF&CAF surcharges, safety and war risk surcharges, sea freight, airfreight and trucking charges, etc.

Section I./ 5.2. c) of the Conditions means among others expenses incurred due to detention of carriage means, over-normative cargo storage at sea, truck and air terminals, plus demurrage of containers and trucks. The Customer shall reimburse the demurrage to Agility at normal market price (after one hour downtime).

#### 4.2. Invoicing

Agility issues the invoice after 48 hours from the day when the domestic carriage vehicle (in case of domestic carriage) or the international carriage vehicle (in case of international carriage) departs.

### **5. Limitation of liability**

#### 5.1. Loss of or damage to the Goods

Agility's liability in connection with the carriage of Goods shall at all times be limited in accordance with the liability limiting rules of the Hungarian law and the international conventions on carriage as follows:

- (a) for international road carriage, in accordance with the CMR Convention,
- (b) for road carriage in Hungary, in accordance with the Hungarian Civil Code and the Government Decree 120/2016,
- (c) for sea carriage, - not involving the United States - in accordance with the Hague-Visby Rules,
- (d) for sea carriage - involving the United States -, in accordance with the U.S. COGSA,
- (e) for air carriage in accordance with the Montreal Convention.

If it cannot be established during the period of which carrying method the damage sustained, the extent of liability shall be the one from among the rules of carrying methods applied in the combined transport, which is the most favourable for the Customer.

If the loss of or damage to the Goods are derived from Services other than carriage, Agility's liability shall be limited to SDR 8.33 per kilogram of gross weight lost or damaged.

Agility will insure the Goods only on Customer's definite written Order and to Customer's account with insurance conditions specified by him, based on the data given in the Order.

#### 5.2. Exclusion of liability and limitation of liability for delay

In case of exoneration or delay of delivery, the following rules related to the carrier shall be applicable to Agility:  
- the above international conventions on carriage (for international carriage) and  
- the Hungarian law (for carriage in Hungary)

#### 5.3. Entire liability

The entire liability of Agility shall not exceed three (3) times the amount of the fees payable to Agility for the last month of Services preceding a valid claim by Customer pursuant to the Order.

### **6. Notice**

Customer shall notice Agility in writing about his claim for the loss of or the damage to Goods or the delay:  
- in case of international carriage within the deadline determined in the mentioned international conventions;  
- in case of carriage in Hungary within 30 days from the actual date of delivery or in case of delay the deadline of delivery.

## **III. SPECIAL TERMS FOR WAREHOUSING SERVICES**

### **1. Receipt and storage of Goods**

The Customer shall deliver the Goods, or shall procure that the Goods shall be delivered, to the warehouse and shall be properly marked and packaged for handling.

Customer shall ensure that all Goods have been properly and sufficiently prepared, packed, labelled in accordance with all applicable laws and regulations and Agility's reasonable requirements.

Agility shall issue receipts acknowledging Customer's delivery of the Goods to the warehouse, it being understood that Agility has no obligation to check the contents of the packages unless specifically agreed in writing. Agility may, at its own sole discretion, reject any shipment of Goods that it deems to be improperly marked, packaged or contains any dangerous or hazardous material.

If Customer has not given Agility any special written instructions in the Order in regard to how the Goods shall be stored, Agility may freely choose how to store the Goods.

If Agility agrees in writing to the special conditions requested by Customer and the provision of such special conditions requires a capital investment, prior to the commencement of the Services parties shall agree about the provision of the necessary capital that may be needed and about the property rights related to the investment.

## **2. Insurance**

Customer shall take out and maintain an "all-risk" type insurance for all of its Goods, which are stored and handled by Agility.

## **3. Return of the Goods in case of termination of the Contract**

In case that the Contract terminates due to any reason:

- a) if the Goods are not delivered after the termination of the Contract:
- parties may agree to prolong the Services; or
  - Agility notices the Customer to deliver it and after the 30<sup>th</sup> day from the expiry of the deadline he may sell or dispose of such Goods and documents at a normal market price at the costs of the Customer. Agility shall reimburse the income of the selling of Goods to the Customer after deducting Agility's fee and costs arising from the Contract and from the selling;
- b) if the Customer notices Agility to deliver the Goods before the termination of the Contract Agility will still be entitled to the whole storage fee settled in the Order.

## **4. Special terms for payment**

- a) If the Customer gives Order regularly to Agility, Agility issues the invoice till the 10<sup>th</sup> day of the month following the relevant Services.
- b) If the Customer gives Order eventually to Agility, Agility issues the invoice after that the Goods cease to be under Agility's control.

## **5. Limitation of liability**

### **5.1. Exclusion of liability**

After that the Goods are taken over by Agility in the warehouse, Agility shall examine the Goods (external visual quantity and quality check).

If in one working day from the taking over Agility gives notice about the loss of or damage to the Goods to the Customer parties shall consider the loss or damage occurred before commencement of the storage.

### **5.2. Limitation of liability**

The liability of Agility or any loss or damage to the Customer's property, including disappearance, theft or pilferage shall be limited to an amount of USD 5,000 per occurrence.

## **6. Notice**

If loss or damage occurs after that the Goods cease to be under Agility's control, Agility shall be noticed in writing about it.

- a) If Agility is noticed within one working day from the date when the Goods are handed over to the person entitled to receive, it is presumed that the loss or damage was arisen during the performance of Services by Agility.
- b) If Agility is noticed within 30 consecutive days from the date when the person entitled to receive knows about the loss of or damage to the Goods, he shall prove that the loss or damage is arisen from the Agility's Services.

No legal proceedings may be brought against Agility and Agility shall be discharged of all liability under this section unless it is commenced within six months following the date on which the Goods cease to be under Agility's control.

## **IV. SPECIAL TERMS FOR CUSTOMS CLEARANCE SERVICES**

### **1. Customer's instructions and provision of information**

Customer shall:

- a) hand over to Agility the proof of the existence of the Customer, its current place of business and names of the persons authorised to lawfully represent the Customer, such as a recent excerpt of the company's entry into the Trade Register of the Chamber of Commerce or a statement by the company to serve as evidence of the authority of the person issuing the authorisation. If the Customer is a private individual, that person shall hand over a copy of his passport/identity card;
- b) provide Agility, in due time, with full, exact and trustworthy information necessary for fulfilment by Agility's duties stipulated by the Order (including but not limited to invoice / statement of value, copy of the carriage document (e.g. B/L or CMR), other licenses or certificates as applicable per legislation, Binding Tariff Information, description of the Goods and any other information needed to determine the customs value);
- (c) notify Agility without undue delay of all changes in the data, documentation or in other material facts related or potentially related to the customs procedure and performance of the Services;
- d) assist in ensuring a smooth customs procedure and in case of finding a discrepancy on already cleared transactions immediately contact Agility in order to ensure a prompt correction of the data;
- e) grant Agility a power of attorney (direct representation/ indirect representation) which allows Agility to fulfil its obligations under the Contract.

Agility will perform the Services on the basis of the data, information and document given by the Customer in writing (in e-mail or by post).

In the event that the Customer has not provided the required information to Agility, then Agility has the right not to commence the performance of the Service until such information is provided.

### **2. Special terms for payment**

If Agility has made a disbursement in the form of direct taxes, assessments, levies, imposts, duties, excises or fees in the nature of taxes paid directly in connection with the performance of the Services, these disbursements may be invoiced separately and Customer shall reimburse those disbursements to Agility.

### **3. Limitation of liability**

Except where caused solely by Agility's breach of the Contract or Agility's negligent acts or omissions in performing the Services, Agility shall not be liable for any claims by the customs authority and Customer shall



indemnify and hold Agility harmless in connection thereto. As such, Customer shall pay any claims by the customs authority against Agility within five (5) days following Agility's written demand.

#### **4. Notice**

The Customer shall notice Agility about any claim in writing within 30 consecutive days from the day on which the Customer knew or should have known about the circumstances forming the basis of Agility's liability.

No legal proceedings may be brought against Agility and Agility shall be discharged of all liability under this section unless it is commenced within six months following the date on which the cause on which the claim is based could at the earliest been noticed.

#### **V. SPECIAL TERMS FOR OTHER SERVICES NOT LISTED IN SECTIONS II-IV.**

##### General rules

The parties may agree on any other services in writing.

In case of non-performance of the Contract the Act V of 2013 on the Hungarian Civil Code shall apply.

Any claim against Agility related to the Services determined in the Order shall be submitted to Agility in writing within 30 days of the date upon which the person entitled to receive the Goods became or should have become aware of any event or occurrence alleged to give rise to such claim.

No legal proceedings may be brought against Agility and Agility shall be discharged of all liabilities under this section unless it is commenced within six months following the date on which the Goods cease to be under Agility's control.

##### EKAER services

If the Customer requires Agility's Services to announce and handle the data in Hungarian Electronic Public Road Trade Control System (referred to as EKAER) he shall cooperate with Agility in order to ensure that Agility can fully meet the obligations related to EKAER and the Customer shall hand over the EKAER number of each carriage to Agility and gives right to Agility to announce the data.

Except where caused solely by Agility's breach of the Order or Agility's negligent acts or omissions in performing the Services, Agility shall not be liable for any claims of the Customer. Customer shall not oblige Agility to pay any fine of the authority.

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