

## **GENERAL CONDITIONS OF CONTRACTING**

Agility Spain S.A. (Sociedad Unipersonal)

### **1. GENERAL PROVISIONS**

- 1.1. Agility Spain S.A. is a Spanish company registered in the Commercial Registry of Madrid, Volume 4.953, Page 89, Sheet number 81.014, Inscription 37, with Spanish Tax Number A 28544765 and domicile in C/ Rumania 7, 28821 Coslada (Madrid).
- 1.2. Agility Spain S.A., in its capacity as freight forwarder, carriage operator and/or logistics operator, by itself or through third parties, is capable of performing all kinds of activities related to the carriage of goods, domestic and international, including handling and/or storage of goods and/or customs clearance.
- 1.3. The Customer is an individual or a legal person engaging the services of Agility Spain S.A. for activities related to the carriage of goods, and is responsible for full payment for the services provided by Agility Spain S.A.
- 1.4. The Customer will provide Agility Spain S.A. with a detailed description of the required services for the carriage of goods, together with specific instructions regarding the itineraries, means and modes of carriage. If such instructions are not provided, Agility Spain S.A. may choose those that in its judgment are the most appropriate to carry out the carriage and/or delivery of the goods under the best conditions.

### **2. CARRIAGE DOCUMENTS**

The carriage contracted by the Customer will be subject to the corresponding transport document (i.e. manifest, B/L, AWB, etc.) issued by Agility Spain S.A. or its subcontractors in accordance to the domestic or international rules. The Customer acknowledges that Agility Spain S.A. may, in addition to these General Conditions, benefit from the terms and conditions contained in the carriage documents issued by its subcontractors.

### **3. DESCRIPTION OF THE GOODS AND PACKAGING**

- 3.1. The Customer warrants to Agility Spain S.A. the accuracy of the declaration of the goods as regards their characteristics, description, marks, numbers, amount, weight and volume. The Customer will be responsible for such liabilities for loss, damages, defects, penalties and/or fines as may arise for Agility Spain S.A. and third parties from any inaccuracy of this information, as well as from improper, defective or misused packaging that causes damage to the goods or handling equipment or means of transport, even if such inaccuracies or deficiencies arise from operations not directly performed by Agility Spain S.A., which also will be indemnified for the related expenses caused to it thereby.
- 3.2. The Customer will be required to inform Agility Spain S.A. of the hazardous nature of the goods delivered to it for carriage, and of the precautions, if any, to be employed.

- 3.3. In the event of omitted or insufficient information, the Customer will be liable for the damages caused by the goods. Agility Spain S.A. will be entitled to reimbursement of the expenses caused to it thereby, and will be exempt from any liability if the goods must be unloaded, destroyed or neutralised, as required by the circumstances, with no liability to indemnify the Customer.

#### 4. EXTENT AND LIMITS OF LIABILITY

##### 4.1. General.

The liability of Agility Spain S.A. in relation to the goods begins when it receives them from the Customer or the person designated by it, and extends until delivery thereof to the consignee or the person designated by it.

The rules of liability contained in these General Conditions will apply to all claims the Customer makes against Agility Spain S.A., regardless of whether the claim is in contract or tort.

##### 4.2. Liability for storage and handling services.

In relation to the storage and handling services, the liability of Agility Spain S.A. for loss of or damage to the goods will be limited to one third of the daily Public Indicator of the Income of Multiple Effects (daily I.P.R.E.M. - "*Indicador Público de Renta de Efectos Múltiples / día*") for each kg of gross weight of the loss or damaged goods.

The same limit will apply when the damage occurs during or as a result of loading, stowage or lashing the goods in the vehicle or container for carriage, or during unloading, unstowage or unlashing of the goods from the vehicle or container once carriage is completed.

##### 4.3. Liability for customs clearance services.

The customs clearance services will be provided by Agility Spain S.A., always in the name and for the account of the Customer (direct representation).

Any such liability as Agility Spain S.A. may have in relation to providing the customs clearance services in no case will exceed the equivalent of the compensation received by Agility Spain S.A. for those services.

##### 4.4. Liability for carriage services.

The liability of Agility Spain S.A. for carriage services will be limited solely and exclusively to loss, damage to and delays in delivery of the goods.

The liability of Agility Spain S.A. for damages and delays during the carriage will be governed by mandatory domestic and international rules applicable to the route agreed and the mode or modes of carriage used.

Agility Spain S.A. will benefit from any applicable limitation of liability established by the above mentioned applicable rules. In any event the liability of Agility Spain S.A. may not exceed the liability that the subcontractors have effectively assumed vis a vis Agility Spain S.A.

The Customer is informed that the limits of liability contained in the above mentioned rules may be increased by way of a declaration of value and payment of an additional amount to be determined by Agility Spain S.A. in its sole discretion. Absent such declaration and payment any declaration of value will be of no effect. Any declaration of value given by the Customer will lack any legal effect unless payment is made of the supplement established by Agility Spain S.A. prior to the commencement of the contracted services.

When more than one mode of carriage is used in the carriage of the goods, the liability of Agility Spain S.A. will be governed by the rules applicable to the stage of the carriage in which the damage, loss or delay occurred.

If the stage of the carriage in which the damaging event occurred cannot be determined, the liability of Agility Spain S.A. will be governed by the provisions of Law 15/2009, of the 11<sup>th</sup> November, of the Contract of Carriage of Goods by Land.

The liability regime, including the limitation of liability, established by the Law 15/2009, of the 11<sup>th</sup> November, of the Contract of Carriage of Goods by Land will equally apply to the liability of Agility Spain S.A. for the intermediate stages of deposit or warehousing of the goods once the carriage services have commenced.

In no case will the liability of Agility Spain S.A. for delay of, damage to and loss of the goods occurring during the carriage services exceed the equivalent of the remuneration received by Agility Spain S.A. for such services.

#### 4.5. Valuation.

For purposes of this agreement the valuation of the loss of, damage to or delay in delivery of the goods will be as follows:

- i. In the case of loss, the replacement cost, meaning the cost of manufacture or acquisition, as applicable.
- ii. In the case of damage, the cost of replacement or the cost of repair by the Customer, if less.
- iii. In the case of delay in delivery, the price of the freight.

#### 4.6. Disclaimer of liability and Force Majeure.

In no case will Agility Spain S.A. be liable for any kind of damage and/or injury other than damages, losses and delays arising from the delivery of the goods. By way of example but not limitation, among the damages for which Agility Spain S.A. will not be liable are the following: indirect damages, moral damages, loss of reputation, consequential damages, lost of profits, loss of opportunity, loss of customers, loss of income, etc.

Agility Spain S.A. will not be liable for breach of any of the obligations assumed by virtue of this agreement when the breach is caused by a fact or circumstance that is unforeseeable or, even if foreseeable, could not have been avoided. Events of Force Majeure include, but are not limited, to the following:

- i. War, civil war, rebellion, sedition, public disorder, riots, local disputes, civil unrest and any situation in respect of which weapons may be used, regardless of whether there is a state of war.
- ii. Terrorism or acts of political violence, regardless of the number of people involved. Included therein are the acts of persons or groups of persons to achieve political, religious, ethnic, ideological or other ends, capable of spreading fear and terror in the population or parts of the population, thereby influencing the government and institutions or a part thereof.
- iii. Strikes or lockouts.
- iv. Earthquakes, cyclones, storms, floods, fires, plagues, fog or ice.
- v. Damage by nuclear energy or other ionising radiation.
- vi. Criminal acts of third parties such as: theft, fire, arson, etc.
- vii. The paralysation, detention, appropriation, arrest, rejection, inadmission in the territory, auction, disposal or destruction of the goods by order of the judicial or public authorities.

Agility Spain S.A. will not be liable for damages, losses or delays occurring during performance of this agreement that are caused by any of the following circumstances:

- i. The nature, obsolescence, or inherent vice or other defect of the goods.
- ii. The insufficiency or inadequacy of the packaging of the goods, unless that packaging was provided by Agility Spain S.A.
- iii. Damage to or loss of the goods occurring prior to the delivery to Agility Spain S.A.
- iv. Damage to or loss of the goods caused by personnel of the Customer or dependants or agents thereof.
- v. Insufficiency, error or omission in the product information provided to Agility Spain S.A. by the Customer.
- vi. The insufficiency, error or omission in the instructions given by the Customer to Agility Spain S.A.
- vii. The insufficiency, error or omission in the instructions, information and/or the documentation provided by the Customer to Agility Spain S.A. to carry out the customs clearance for the goods.
- viii. Defects in or improper functioning of the Customer's software or computer systems.

## **5. EXCHANGE RATE**

In any dispute related to the exchange rate applicable to the invoicing of Agility Spain S.A. for its services, it will be applied the official exchange rate of the European Central Bank in force on the date of issue of the corresponding invoice by Agility Spain S.A.

## **6. INSURANCE**

The goods will always be shipped on behalf and at the risk of the Customer. Cargo will be insured only at the prior request and in accordance with the written instructions received from the Customer and the Customer will reimburse to Agility Spain, S.A. all the expenses incurred for contracting the cargo insurance. The payment of the insurance premium will be made by the Customer.

## **7. DEPOSIT AND RIGHT OF RETENTION OF THE GOODS**

If the consignee does not take delivery of all or a part of the goods upon arrival, they will be deposited on behalf and at the risk of the Customer or the corresponding person pursuant to the provisions of law or, if applicable, the custom at the place of delivery. The Customer will indemnify Agility Spain S.A. for all damages, losses and expenses of any type that Agility Spain S.A. is obliged to incur arising from and/or caused by the late or lack of reception and/or the rejection of the goods by the receiver.

It is recognised that Agility Spain, S.A. has the general and specific right to retain the goods and documents of the Customer if it is not paid amounts owed and due related to the services provided by Agility Spain, S.A. This right of retention may be exercised by any appropriate means admissible in law. If the goods in respect of which the right of retention has been exercised are lost or destroyed, Agility Spain, S.A. will be entitled to receive such indemnifications as may be paid by insurance companies, carriage companies, storage facilities, etc., up to the amount of its debt.

Also, the credit of Agility Spain S.A. for all kinds of services provided to the Customer, in so far as secured by a pledge of the goods in its possession, will qualify as a credit with a special privilege, regulated in article 90 of Act 22/2003 (the Law of Insolvency). The same right will exist in the event of loss or destruction of the goods, as to such indemnifications as may be paid by insurance companies, carriage companies and others.

## **8. NOTIFICATIONS AND TIME LIMITS**

- 8.1. Claims for losses, defects or delays occurring during the carriage services may not be pursued if at the time of delivery of the goods the corresponding reservations were not made within the terms established in the rules applicable to the mode of carriage used.
- 8.2. Other claims for losses of or damages to the goods may not be pursued if the corresponding written reservations were not made at the time of delivery of the goods, in the case of apparent damages, or within the 24 hours following delivery, in the case of damages that are not apparent.
- 8.3. Claims for losses, defects or delays occurring during carriage services must be brought within the terms established in the rules applicable to the mode of carriage used.
- 8.4. Other claims related to the services provided by Agility Spain S.A. and the invoicing thereof must be pursued within the term of one year following the delivery of the goods or the occurrence of the damage claimed, this being a prescription period.

## **9. JURISDICTION**

The Customer, consignor and/or consignee expressly submit to the jurisdiction and competence of the courts of Madrid.

However, in disputes related with the performance of a contract of carriage of goods by road and the amount in dispute does not exceed Euros 15,000, it will be understood that there is an agreement to refer to arbitration by the Carriage Arbitration Boards (Juntas Arbitrales del Transporte) of Madrid unless before the carriage begins or should have begun, either of the parties has expressly stated otherwise.

In disputes when the amount exceeds Euros 15,000, the contracting parties may expressly agree to submit to the aforesaid arbitration.