

Terms and conditions of Freight Forwarder's Liability

Valid from 01.11.2024, Unofficial translation



These insurance terms set forth the scope and conditions of the coverage specified in the freight forwarders liability insurance contract between the insurer and the policyholder. The contractual rights and obligations in this document apply to both the policyholder and persons equated with the policyholder.

1. Definitions

- 1.1. **Insurer** refers to Elama Kindlustus AS.
- 1.2. **policyholder** is a legal entity (freight forwarder) with an insurable interest, whose risk arising from the provision of services under the forwarding contract is insured.
- 1.3. **Person equivalent to the policyholder** is a person or company whose services the policyholder uses in fulfilling the transport contract (employees, carriers, subcontractors, agents).
- 1.4. **Insurance Period** is the agreed period (indicated on the policy) during which the insurance contract is valid. Generally, the insurance period is one year.
- 1.5. **Insurance contract** consists of these terms and conditions, the policy, the policyholder's application, and the agreed-upon attachments.
- 1.6. **Insurance Risk** is the risk against which the coverage is provided.
- 1.7. **Insured event** is a sudden, unexpected event defined in these terms that occurs during the insurance period and is beyond the control of the insured person. As a result, the insured person gains the right to compensation, and the insurer has an obligation to pay the compensation.
- 1.8. **Sum insured** is the maximum compensation agreed upon in the insurance contract. The insurance sum can be agreed upon for (a) a specific insurance risk, (b) an insurance event (accident), (c) a shipment, or (d) the entire insurance contract.
- 1.9. **Premium** the fee that the policyholder must pay to the insurer to establish the contract and obtain insurance coverage.
- 1.10. **Cover territory** is the region where, if the insured risk materializes, the insurer has an obligation to compensate. A loss event (materialization of risk) that occurs during freight forwarding and/or transport outside the insurance area is not considered an insurance event.
- 1.11. **Policy** certifies the conclusion of the insurance contract under the conditions stated on the policy.
- 1.12. **Beneficiary** is the person entitled to compensation in the event of an insurance event. Unless otherwise agreed, the beneficiary is the policyholder.

- 1.13. **Insurance indemnity** is the amount paid to cover losses and expenses arising from an insurance event.
- 1.14. **Deductible** is the amount that is not covered in the event of an insurance claim.
- 1.15. **Carrier** is a legal entity holding a state-recognized transport license and who, under a transport contract, undertakes to carry goods from the point of origin to the destination.
- 1.16. **Forwarder** is a legal entity who, under a forwarding contract, undertakes to arrange for the transportation of goods from the point of origin to the destination.
- 1.17. **ELEA** General Conditions (hereinafter ELEA) refer to the General Conditions of the Estonian Freight Forwarders Association, 2015.
- 1.18. **SDR**, or Special Drawing Rights, is a unit of account used by the International Monetary Fund (IMF)

2. Insured event

- An insured event is a loss event occurring during freight forwarding, where the forwarder is liable for damage caused by negligence, either as (A) the carrier (ELEA § 3.B) and/or (B) the intermediary (ELEA § 3.C). If noted on the policy, the policyholder's civil liability is insured in relation to:
- 2.1. The destruction and/or damage of goods occurring during transport, in accordance with:
 - 2.1.1. the provisions of international conventions that apply mandatorily (for international road transport, the "Convention on the Contract for the International Carriage of Goods by Road," hereinafter CMR);
 - 2.1.2. the provisions of relevant transport laws of respective countries;
 - 2.1.3. the standard terms approved by the forwarders and road carriers association of the policyholder's country.
 - 2.2. Financial losses. Coverage is provided for the policyholder's client's claim for damage due to delayed delivery of goods, as specified in CMR Article 23.5.
 - 2.3. Liability to third parties for damages caused to them by the goods, specifically regarding:
 - 2.3.1. the destruction or damage of third-party property (excluding damage to containers, trailers, or other transport equipment used for the carriage of goods);
 - 2.3.2. the death, injury, or illness of third parties, including costs related to medical assistance and burial.
 - 2.4. Reasonable and necessary expenses:
 - 2.4.1. for investigating the circumstances of the insurance event and defending the

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- policyholder's interests in courts and arbitration bodies in cases where the forwarder is liable;
- 2.4.2. for preventing or reducing damage when the forwarder is liable (including expenses for measures taken to preserve goods after an accident, as well as for sorting, repackaging, or realizing damaged goods).

3. Exclusions

Under these terms, the insurer is not obligated to indemnify:

- 3.1. For damages caused by terrorism, warfare, civil unrest, strikes, confiscation, or arrest; destruction of goods by military or civil authorities; or any other force majeure events.
- 3.2. For damages related to the use of nuclear energy or radioactive materials.
- 3.3. When the forwarder has no liability.
- 3.4. For damages caused by insufficient or damaged packaging.
- 3.5. For loss of revenue (freight fees) or fines imposed due to the insurance event.
- 3.6. For damages incurred by the policyholder's employees or other individuals under the policyholder's control or responsibility.
- 3.7. For shortages in goods when packaging or sender seals appear intact.
- 3.8. For damages related to the transport and forwarding of contraband or illicit goods.
- 3.9. For the transport of certain goods, specifically:
- 3.9.1. Raw precious metals and products made from them;
- 3.9.2. Precious stones and valuable jewelry;
- 3.9.3. Banknotes and coins;
- 3.9.4. Bonds, payment instruments, or other securities;
- 3.9.5. Artwork;
- 3.9.6. Plants (including cut flowers) and live animals;
- 3.9.7. Household and office furniture.
- 3.10. In cases of theft of a vehicle and/or trailer along with the goods.
- 3.11. For damages caused by theft, robbery, or loss of goods in certain areas:
- 3.11.1. East of the 100th meridian in Russia;
- 3.11.2. South of the 46th parallel in Russia;
- 3.11.3. East of Ankara and its suburbs in Turkey;
- 3.11.4. South of Rome and its suburbs in Italy;
- 3.11.5. In the Caucasus countries (e.g., Georgia, Azerbaijan, Armenia).
- #### **Under these terms, the insurer has the right to reduce or deny compensation:**
- 3.12. For breach of the obligation to pay the insurance premium.
- 3.13. If false information about the circumstances of the damage is provided to the insurer.
- 3.14. For breach of the obligations specified in Section 11 by the policyholder.
- 3.15. For damages caused by the policyholder, their employees, or other individuals under their

- control or responsibility (including agents or those providing services), due to:
- 3.15.1. Intentional acts or gross negligence, including (a) driving with loads exceeding permitted height or weight (e.g., under a low bridge/viaduct); (b) failure to verify the background of a contracting partner, including checking the carrier's liability insurance; (c) handing over goods to the wrong person;
- 3.15.2. Significant violations of standard loading, storage, or transportation requirements or specific requirements (e.g., transporting goods in an unsecured or unsealed cargo space);
- 3.15.3. Leaving valuable or easily stolen goods (such as tobacco, alcohol, electronics transported in a tarpaulin trailer) inadequately guarded;
- 3.15.4. Insufficient inspection of the number, temperature, and securing of goods when accepting them for transport;
- 3.15.5. Unreasonable deviation from the usual route or time;
- 3.15.6. Using a vehicle that does not meet technical requirements, including using a substandard refrigeration unit for transporting goods, except where the technical fault was unforeseeable. Damages due to temperature fluctuations for temperature-sensitive goods are not covered if the vehicle lacks the required measuring devices, if they are not properly installed or calibrated, or if the policyholder fails to provide readings from these devices.
- 3.16. For damages during the transportation of goods with refrigerated trucks or containers, if causally linked to:
- 3.16.1. Using a refrigeration unit that does not meet safety or preservation requirements (e.g., insufficient power);
- 3.16.2. Negligence in meeting requirements necessary for the transportation of goods (including violating temperature protocols);
- 3.16.3. Lack of a valid ATP certificate if such a certificate was required for the transport of the goods due to their nature.

4. Sum insured

The indemnity is limited to the sum insured stated on the policy. In addition, indemnity for damage or loss of goods cannot exceed:

- 4.1. 8.33 SDR per gross kilogram of missing or damaged goods;
- 4.2. the value of the goods prior to the insurance event;
- 4.3. the difference between the value of the goods before and after the insurance event;
- 4.4. the liability limits established by international conventions, agreements, and national laws (e.g., the limitations set forth in Articles 23–25 of the CMR Convention and § 795 of the Law of Obligations Act)).

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5. Cover period

- 5.1. The insurer's liability under the insurance contract begins when the goods are accepted for transport by the policyholder or a person equivalent to the policyholder and continues until the goods are handed over to the next carrier/forwarder or the recipient.

6. Cover territory

- 6.1. The insurance contract is valid for the usual reasonable route and/or time of transport or forwarding, but only within the territory specified on the policy.

7. Deductibles

- 7.1. policyholder's deductible applies to all claims related to a single insurance event. The amount of the deductible is specified on the policy.

8. Insurance contract

- 8.1. Unless otherwise stated on the policy, the insurance contract is concluded for one year.
- 8.2. The basis for concluding the insurance contract is the policyholder's written application, which forms an integral part of the contract.
- 8.3. If, when concluding the insurance contract, the policyholder fails to inform the insurer of significant circumstances that, by their nature, influence the insurer's decision to conclude the contract or do so on agreed terms, the insurer may withdraw from the contract. It is presumed that significant circumstances are those that the insurer inquired about on the carrier's liability insurance application form (available at www.elama.ee) or in writing.
- 8.4. The insurance contract takes effect on the date specified in the policy, but not before the payment of the first instalment of the policy.
- 8.5. At the request of the policyholder, the insurer must issue a replacement policy and a copy of any declarations made by the policyholder in a format that can be reproduced in writing. The insurer must also provide, upon request, any data and copies of documents held by the policyholder that affect the rights or obligations arising from the insurance contract, provided this does not conflict with mandatory legal requirements.
- 8.6. If the policyholder's risk changes significantly during the validity of the insurance policy, they are obligated to inform the insurer of these changes at the earliest opportunity in a format that can be reproduced in writing.
- 8.7. In the event of an increased insurance risk, the insurer has the right, within 30 days of becoming aware of the increase, to propose changes to the contract terms (e.g., a higher premium) or, as

stipulated by law, to terminate the insurance contract without prior notice.

- 8.8. If the increase in insurance risk has not been agreed upon with the insurer, the insurer is released from the obligation to compensate for damage to the extent that the increased risk contributed to the occurrence of the damage. 8.9. If the terms of the insurance contract are amended, the insurer issues an addendum to the policy.

9. Cover validity and termination

- 9.1. upon the expiration of the insurance period;
- 9.2. in the event of the policyholder's bankruptcy, liquidation, or reorganization;
- 9.2. upon termination of the insurance contract by either party.

10. Premium and payments

- 10.1. The insurance premium is determined individually for each policyholder based on disclosed information and risk assessment.
- 10.2. In the event of early termination or amendment of the insurance contract at the request of the policyholder, the prepaid premium is refunded to the policyholder, minus 5% for administrative and contract processing costs.
- 10.3. The policyholder is obligated to pay the premium in the amount and by the deadlines specified in the policy.
- 10.4. If the policyholder pays the premium after the specified due date, insurance coverage begins on the next working day after receipt of the premium payment.

11. Rights and Obligations of the Parties

- 11.1. The policyholder must notify the insurer of an insurance event in a reproducible written format at the earliest opportunity, but no later than one month after the policyholder became or should have become aware of the event.
- 11.2. Upon the occurrence of an insurance event, the policyholder is obligated to take all possible measures to prevent or minimize damage, for which the insurer may be liable for indemnity according to the policy. Reasonable costs incurred by the policyholder for this purpose are reimbursed by the insurer as per clause 2.4.
- 11.3. The insurer has the right to:
- 11.3.1. obtain necessary information and documents from the policyholder regarding the insurance event;
- 11.3.2. independently appoint experts, lawyers, and other persons on behalf of the policyholder to investigate the circumstances of the event and regulate losses;

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- 11.3.3. represent the policyholder in arbitration or court proceedings or before the claimant;
- 11.3.4. issue instructions for reducing the extent of the damage and conduct an investigation of the circumstances with the policyholder.
- 11.4. The policyholder is obligated to cooperate with the insurer and follow the insurer's instructions.
- 11.5. Procedure for indemnification and payment:
 - 11.5.1. Indemnity is paid in euros unless otherwise agreed.
 - 11.5.2. The insurer pays the indemnity to the policyholder's account or offsets it against any outstanding insurance premiums. In the case of offsetting, the insurer sends a notification to this effect. If the policyholder requests early termination of the insurance contract, any amount offset against the unused period of insurance premium will not be payable.
 - 11.5.3. The insurer fulfils its obligation arising from the insurance contract upon completion of the handling process as prescribed by law. Claim processing may be extended due to circumstances attributable to the policyholder or the injured party or if an alternative proceeding (e.g., police investigation) that significantly affects the decision-making is ongoing, extending the handling period accordingly.
 - 11.5.4. In case of delayed payment of indemnity, the insurer, upon the policyholder's request, pays interest at the rate prescribed by the Law of Obligations Act.
 - 11.5.5. Compensation to third parties (e.g., the injured party) is made only exceptionally upon agreement between the insurer and the policyholder.
- 11.6. Requirements for indemnity claims:
 - 11.6.1. The policyholder must attach to the indemnity claim, as reasonably expected, documents received from the claimant (documents supporting the claim and amount of damage), including: - consignment notes or other transport documents (with the consignee's or their representative's respective note on missing or damaged goods); - invoices for damaged goods; - packing lists; - inspection reports of goods, independent expert reports according to laws, practices, or customs of the location where the event occurred, assessing the shortage or damage to goods; - photos of the damaged goods and their placement in the vehicle/trailer; - assessment of the extent of damage from the claimant; - gross weight of the damaged/missing goods.
 - 11.6.2. Documents that the forwarder is obliged to obtain and present, including: - a traffic police report in the case of a traffic accident; - proof of the driver's report to the police or a law enforcement certificate regarding a criminal report in cases of theft or other criminal incidents; - a written statement from the driver about the incident (including, where applicable, notes on quantity verification, temperature measurement, loading, and securing of goods); - documents confirming expenses incurred by the policyholder to prevent or minimize damage and to protect their interests in arbitration or court; - copies of correspondence with the claimant; - a thermal printout from the refrigerated trailer maintenance history and ATP certificate extract, if damage was caused by a temperature breach; - tachograph data showing vehicle speed during transport and driver's work and rest times; - transport contract/order extract, instructions provided to the carrier for transport.
 - 11.6.3. The insurer has the right to request additional documents from the policyholder as reasonably required for indemnification.
 - 11.7. Indemnification of damage caused to the policyholder by third parties and subrogation:
 - 11.7.1. Upon payment of the indemnity, the insurer acquires the policyholder's right to claim compensation from those responsible for the damage, to the extent of the indemnity paid.
 - 11.7.2. If the policyholder's liability arises from the actions or inactions of third parties, the policyholder is obliged to take all necessary measures to assert their rights (to make a claim) against the responsible party or subsequently transfer those rights to the insurer for the recovery of indemnity.
 - 11.7.3. The policyholder must inform the insurer of any compensation received and the right to receive compensation for damages that fall under the insurer's indemnity obligation (including after the insurer has paid the indemnity).
 - 11.7.4. If the policyholder has received or has the right to receive compensation from third parties or under other insurance contracts, the insurer will only pay the difference between the amount to be indemnified under the policy and the compensation received or receivable from third parties.

12. Data processing

- 12.1. The insurer is the responsible data processor for the information disclosed in the conclusion and performance of the insurance contract.
- 12.2. By entering into the insurance contract, the policyholder consents to third parties (such as subcontractors, the cargo owner, the transport client, police, etc.) disclosing data necessary for

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investigating the occurrence of the insurance event to the insurer.

- 12.3. By requesting an insurance quote and/or entering into the insurance contract, the policyholder agrees to the insurer's right to process data. The insurer has the right to process the policyholder's data for assessing insurance risk, preparing and concluding the insurance contract, and determining the rights and obligations arising from the insurance contract. The insurer's data processing terms (AS Elama Kindlustus personal data processing terms) are available on the insurer's website at www.elama.ee.
- 12.4. The insurer may use information obtained through the conclusion or performance of the insurance contract for preparing, concluding, and fulfilling future insurance contracts.
- 12.5. The insurer has the right to forward data related to a claim to the authority responsible for handling the claim.
- 12.6. The policyholder has the right to access their personal data processed by the insurer and to request the correction of inaccurate data.

13. Applicable Law and Dispute Resolution

- 13.1. Estonian law applies to the insurance contract.
- 13.2. The policyholder has the right to refer any dispute with the insurer to the Insurance Conciliation Body operating under the Estonian Insurance Association (www.eksl.ee; Mustamäe tee 46, 10621 Tallinn).
- 13.3. All disputes arising from the insurance contract, including those unresolved by the Insurance Conciliation Body, shall be resolved in the Harju County Court.