

# Fenex Market Surveillance Conditions

## Article 1. Definitions

- 1.1. **Client:** any natural or legal person who provides the Freight Forwarder with an order to perform services and concludes to that effect the Agreement, irrespective of the agreed method of payment;
- 1.2. **Conditions:** these Fenex Market Surveillance Conditions;
- 1.3. **Freight Forwarder:** the natural or legal person who performs services on behalf of the Client and who uses these Conditions; this person is not to be understood solely as being the Freight Forwarder referred to in Book 8 of the Dutch Civil Code.
- 1.4. **Regulation:** Regulation (EU) 2019/1020 on market surveillance and compliance of products.
- 1.5. The definitions as used in Article 3 of the Regulation apply equally to these Conditions.

## Article 2. Client's guarantees

- 2.1. Before the placement of each individual order with the Freight Forwarder either by the Client or by third parties on the Client's behalf, whereby products are placed on the Union market as described in Article 4(1) in conjunction with Article 3(1) and (2) of the Regulation, the Client guarantees that it shall check whether or not import of the product is subject to harmonisation legislation or the legislation referred to in Article 4(5) of the Regulation.
- 2.2. If the products fall within the scope of harmonisation legislation, the Client guarantees that it will act in compliance with that legislation, and that the products comply with that legislation.
- 2.3. If the products fall within the scope of Article 4(1) of the Regulation, the Client guarantees and will ensure that there is either a manufacturer in the Union, or an importer in the Union, or an authorised representative in the Union with respect to all products contained in an individual order and that the manufacturer, importer or authorised representative falls within the meaning of Article 4(2) (a)–(c) of the Regulation.
- 2.4. The Client guarantees that it will provide written notification (including electronic mail or other electronic means of communication) of the manufacturer(s), importer(s) or authorised representative(s) established in the Union, who acts with respect to the products or specified products, as economic operator within the meaning of the Regulation. The notification shall be received by Freight Forwarder no later than when the individual order is placed, including at least the name, registered trade name or registered trade mark, postal address, place of establishment and contact information (including at least an e-mail address and phone number) of the economic operator(s) covering all products that are in the individual order.

## Article 3. Designation of Freight Forwarder by market surveillance authorities

- 3.1. In case Freight Forwarder – for whatever reason – is considered as economic operator within the meaning of the Regulation by the market surveillance authorities:
  - a. The Client shall, at first request and without delay, provide either the Freight Forwarder or the market surveillance authorities directly, an EU declaration of conformity or an EU declaration of performance and all technical documentation concerning the specific products in the English language. The Client guarantees that

this information and documentation is correct, entirely valid, complete, authentic and in no way whatsoever, misleading.

- b. The Client shall, at first request and without delay, cooperate fully and provide all information needed to the Freight Forwarder or directly to the market surveillance authorities concerned and ensure that the immediate, necessary and corrective action is taken to remedy any case of non-compliance with the requirements set out in Union harmonisation legislation applicable to the product in question; alternatively, if that is not possible, the Client shall mitigate the risks presented by that product either at the request of the market surveillance authorities or on its own initiative, if the Freight Forwarder itself is of the opinion, or has any reason to believe that the product concerned presents a risk.
- 3.2. The Freight Forwarder is entitled to take immediate, necessary and corrective action to remedy any case of non-compliance with the requirements set out in Union harmonisation legislation applicable to the product in question, or, if that is not possible, to mitigate the risks presented by that product, when required to do so by the market surveillance authorities or on the own initiative of Freight Forwarder, where he considers or has reason to believe that the product in question presents a risk.

#### **Article 4. Liability**

- 4.1. The Freight Forwarder is not liable for any damage suffered by the Client, except in the case of intent or wilful recklessness on the part of the Freight Forwarder.
- 4.2. the Client is liable towards the Freight Forwarder for all costs and damages, including but not limited to material damage, immaterial damage, consequential damage, fines, interest, costs and other losses relating to inspections, enforcement, investigation, recall, legal proceedings and prosecution, negative publicity, loss of profit, as well as penalties and forfeitures, including consequences due to the designation as fulfilment service provider by market surveillance authorities, non-clearance or tardy clearance of customs documents and claims due to product liability and/or intellectual property rights – that the Freight Forwarder suffers directly or indirectly resulting from (amongst other things): the designation of the Freight Forwarder by market surveillance authorities as fulfilment service provider; the failure of the Client to comply with any obligation pursuant to an agreement or pursuant to applicable national and/or international legislation; any incident within the Client's scope of risk; and resulting from the fault or negligence in general of the Client and/or its employees and/or third parties called in or engaged by the Client, irrespective of whether the damage ensues from claims brought by the government or by third parties.
- 4.3. The Client shall indemnify the Freight Forwarder at all times against third-party claims, including claims brought by employees of both the Freight Forwarder and the Client, relating to or ensuing from the damage referred to in the previous paragraph.
- 4.4. If and insofar as the Freight Forwarder, its employees or third parties engaged by it within the scope of this agreement is/are held liable or prosecuted by any public authority, the Client is obliged to cooperate fully with the Freight Forwarder, its employees or third parties engaged by it within the scope of this agreement and provide all information and documents that are or may be of importance within the scope of the liability claims or prosecution, including, but not limited to, substantiation, defence or the provision of information.
- 4.5. The Client grants a mandate to the Freight Forwarder, giving the Freight Forwarder the right, but explicitly not the obligation, to dispute or to take legal action, including, but not limited to civil law or public law proceedings against any claim, statement or action on the part of the market surveillance authorities; the Freight Forwarder can act on its own behalf or instruct a third party to act accordingly in the name of the Client.



- 4.6. At first request of the Freight Forwarder, the Client will provide a sufficient bank guarantee or, upon agreement, another form of security for all costs and damages as referred to in article 4.2.
- 4.7. The period of limitation for all claims that can be brought against the Client is 5 years.

#### **Article 5. Arbitration and jurisdiction**

- 5.1. Dutch law applies exclusively.
- 5.2. Any disputes between the Client and the Freight Forwarder shall be settled according to the relevant clause(s) of the agreement between the parties concerning the provision of services by the Freight Forwarder.
- 5.3. In derogation of the preceding paragraph, the Freight Forwarder has the right to start interim injunction proceedings before the Dutch court where Freight Forwarder has its place of business.