

## Collection, handling transport and delivery of goods

### Section 1. Purpose and scope

The purpose of these general terms and conditions (the **General Terms and Conditions of Transport**) is to set out the terms under which FORTIUS (‘FORTIUS’) organises, performs or has carried out in its own name and remaining liable for, services for the taking over and transportation of goods (‘**Transport Services**’), on behalf of the Client and using the means of its choosing. The Transport Services deal with fragile and valuable objects, including works of art and precious objects (the ‘**Goods**’).

The Transport Services may include:

- Ancillary transport services, such as packing and unpacking, handling the Goods, etc. (the ‘**Related Services**’),
- Specific services, such as insuring the Goods, the removal of origin marks and customs formalities (the ‘**Specific Services**’),

which will be carried out by FORTIUS or by substitutes that it calls upon to carry out the Transport Services (the ‘**Transporter**’ or ‘**Transporters**’).

Tax representation services and services for the storage of goods at Freeport are excluded from the scope of the General Terms and Conditions of Transport.

No special conditions nor any general terms and conditions emanating from the Client may, without FORTIUS’s express agreement in writing, prevail over the General Terms and Conditions of Transport.

### Section 2. Service offer

FORTIUS’s service offer is null and void if it is not accepted by the Client within the time limit defined in it.

The service offer duly signed by the Client (the ‘**Special Conditions**’), together with the General Terms and Conditions of Transport and any of its appendices, constitutes the contract binding on the parties, with effect from the date on which the service offer is signed by the Client (the ‘**Contract**’).

### Section 3. The Client’s obligations

On entering business relations with FORTIUS and at the latest when the Client accepts the Special Conditions, the latter undertakes to give FORTIUS precise transportation instructions and the information necessary for the proper performance of the Transport Services, namely:

- the name and address of the shipper and consignee;
- the name and address of the legal or natural person to be invoiced for the Transport Services;
- the time limit for the delivery and place of delivery;
- any problems of access to the Goods collection and delivery points;
- the chosen means of transport;
- a detailed description of the Goods, including its number, nature, dimension, weight, value and if it is a work of art, its title and the name of the artist;
- any special features of the Goods (for example, fragility, degradations due to age or condition, etc.);
- information as to the packaging or not of the Goods (for example, unpacked goods or packed, type of packaging, etc.);
- the documents necessary for the collection of the Goods;
- the Related Services to be effected;
- where applicable, the Specific Services to be effected.

The Client, without any recourse to FORTIUS, is solely liable for the consequences arising out of any fraudulent, incorrect, incomplete or inappropriate declaration or document and for those handed to FORTIUS late.

The Client is prohibited from requesting that FORTIUS organise the transportation of illegal or prohibited goods (for example, counterfeit goods).

In addition, FORTIUS is entitled to refuse to perform the Transport Services for the following goods, this list not being exhaustive: live animals, cash, securities, negotiable instruments, precious metals, weapons and ammunition, dangerous or high risk goods, food, radioactive or ionising materials, any object the transportation of which is illegal or transgress standards of public decency.

### Section 4. Packaging and labelling of the Goods

The Goods must be wrapped, packaged, marked or countermarked, in such a way as to tolerate transport and/or storage operations performed under normal conditions as well as successive handling that is necessary during the course of these operations.

They must not be a source of danger to persons and to other goods transported nor to the vehicles, materials or means of transport used.

On each package, object or load carrier, clear labelling must be affixed by the Client to allow immediate and unequivocal identification of the shipper, consignee, place of delivery and the nature of the Goods. This labelling must comply with all applicable regulations.

The Client is liable for all consequences arising out of the absence, inadequacy or defectiveness of packaging or labelling.

FORTIUS has the option to suspend the performance of the Transport Services where the Client does not fulfil the packaging and labelling requirements of the Goods.

On written instructions from the Client, FORTIUS may carry out the Ancillary Services of packing and unpacking, disassembly and reassembly and handling of the Goods.

### Section 5. Obligations of FORTIUS

#### 5.1. Obligation to perform the Transport Services

FORTIUS undertakes vis-à-vis the Client, as part of an obligation of means, to perform all the Transport Services referred to in the Special Conditions.

#### 5.2. FORTIUS’s obligations with regards to the Transporters and other substitutes

FORTIUS is not required to obtain the Client’s consent as to the name of the Transporters that it chooses. Unless it is at fault, FORTIUS is not liable for the transporters and other substitutes that have been imposed on it by the Client or by public authorities.

#### 5.3. Duty to advise

FORTIUS must inform the Client of the advantages and disadvantages of the modes of transport that can be used. FORTIUS has a duty to advise within its field of expertise and this duty is based on the level of the Client’s professional knowledge. This duty is exercisable where FORTIUS has the information it needs within good time to organise transportation.

On the prior written instructions of the Client, FORTIUS may arrange for the Goods to be transported by air freight as ‘valuable cargo’.

#### 5.4. Duty to inform

FORTIUS must check that it has been provided with the information and evidence required to draw up the documents necessary for the transportation and transit of the Goods, or failing that, have been given to the Transporters at the latest when collecting the Goods.

When the Client’s information or instructions appear to be improper or incomplete, FORTIUS has the right to suspend the Transport Services, while the Client provides it with additional details.

FORTIUS must inform the Client of any difficulties encountered in performing the Transport Services.

### Section 6. Performance of the Transport Services

#### 6.1. Collection of the Goods

When the Goods are collected, before they are accepted in any way, the Transporter must be able to check the condition of the Goods that are to be collected and that they correspond, as compared to the Client’s statements.

If the Transporter (being a driver) notices discrepancies or damage to the Goods, the Transporter will write down the reservations on the collection note to be signed and dated jointly with the person who delivers the Goods to the Transporter (the ‘**Sender**’).

If the Sender and Transporter observe on collection that the Goods are already damaged, the Transporter cannot be held liable for this damage. In the event that the Shipper is absent, the transporter may make a note of the reservations on the collection note without the Sender then being able to dispute this information.

FORTIUS disclaims any liability for the Goods if the Transporter cannot check the condition and conformity of the Goods when collected.

#### 6.2. Delivery of the Goods

The signing of the delivery note by the person designated by the Client to receive the Goods or by its representative (the ‘**Recipient**’) is proof of delivery of the Goods by the Transporter.

The Recipient who receives the Goods must check at the time of the delivery the condition and the conformity of the Goods. The Recipient must observe any damage to and anything missing from the Goods and record the reservations in writing on the delivery note, that must be signed jointly by the Transporter and the Recipient.

The Recipient must confirm these reservations in a letter sent by recorded delivery with proof of receipt within eight days following signature of the delivery note, to FORTIUS and to the Transporter. Failing this, no action may be brought against FORTIUS or the Transporter.

The Recipient who accepts delivery of the Goods without reservation is deemed to have received them intact and corresponding with the terms of the delivery order in every way.

The Client may ask FORTIUS in writing beforehand to take all the necessary steps to safeguard its rights at the time the Goods are delivered.

#### 6.3. Default by the Client

The Client has a duty to warn FORTIUS where the Goods could not be given to the Transporter on the agreed date, with sufficient notice in accordance with good professional practice and the means of transport chosen. Failing this, FORTIUS is entitled to damages to indemnify it for its proven, direct and foreseeable loss from the date that the Contract enters into force.

If the performance of the Transport Services is temporarily interrupted or becomes impossible, FORTIUS must inform the Client and ask the Client for instructions. In the absence of a response from the Client in good time, FORTIUS will take such steps as appear to be in the Client’s best interests to conserve the Goods or reroute them by other means. Expenses incurred must be borne by the Client.

In the event that delivery is impeded (absence of the Recipient, refusal of the Recipient to take delivery, inaccessibility of the place of delivery, etc.), the Client remains liable to pay all additional costs incurred, unless FORTIUS or one of its substitutes is at fault, as defined within Section 11.

#### 6.4. Delay in the transit of the Goods

Unless otherwise stipulated in the Special Conditions, the collection and delivery dates of the Goods are communicated by FORTIUS for information purposes only.

No indemnity for late delivery is due if no deadline has been expressly asked for by the Client and accepted in writing by FORTIUS. If a deadline has been fixed, the Client may only claim to be indemnified after having, unsuccessfully, sent notice of the late delivery to FORTIUS by recorded delivery with acknowledgement of receipt.

## Section 7. Specific Services

#### 7.1. Insurance

Where the value of the Goods exceeds the limits of liability set out in Section 11, the Client is responsible for taking out insurance with the company of its choosing or incurs the risks for the excess value.

At the Client’s prior written request, FORTIUS may take out insurance in the Client’s name and on the Client’s behalf with an insurance company known to be solvent. Its instructions must clearly specify the risk to be covered and the value of the goods to be insured.

In the event that the Client fails to provide these details, only ordinary risks are insured.

The insurance policy is sent to the Client and is deemed to have been approved by the latter.

#### 7.2. Origin mark

At the Client’s prior written request, FORTIUS may remove the origin marks from of the Goods and keep the identity of the Sender or Recipient confidential.

#### 7.3. Customs formalities

At the Client’s prior written request, FORTIUS may carry out or have carried out on its behalf customs formalities in relation to the Goods. In this context, the Client must indemnify FORTIUS and its substitutes against any financial consequences that may arise from any irregularity or breach of customs regulations that could result in the collection of duties, taxes, fines or other taxation of any kind that customs are responsible for recovering.

#### 7.4. Statement as to the value, special interest in delivery and cash on delivery

FORTIUS does not provide services of the kind that requires a declaration as to the value, special interest in delivery and cash on delivery.

## Section 8. Price for the Transport Services

The price is calculated based on the information provided by the Client taking into account the Transport Services to be performed, the goods to be transported and the terms and tariffs of the Transporters and other substitutes of FORTIUS as well as the applicable laws, regulations and international conventions.

It does not include the duties, taxes and fees due under any regulation, including tax and customs (such as excise, entry fees, etc.), which will be charged in addition.

In transactions subject to value added tax, prices are increased by the amount of the corresponding VAT.

In the event of a change in the economics of the Contract as a result of any unforeseen event or new Transport Services instructions, or if the elements taken into account to set the price were modified during the performance of the Transport Services (such as the means of transport or the chosen Transporter being unavailable), FORTIUS must inform the Client of the resulting price adjustment. In this event, the Client may refuse the adjustment and terminate the Contract. The Client will only be required to pay for the Transport Services and expenses incurred up to that date as well as any subsequent costs for preserving the Goods.

## Section 9. Terms of payment

The Transport Services are payable within thirty days from the date on which the invoice was raised, without discount, at the place it was raised.

Sums that remain unpaid at the due date will bear late payment interest, from the day after the due date stated on the invoice, under the conditions provided for by the amended law of 18 April 2004, on terms of payment and late payment interest:

<https://guichet.public.lu/en/entreprises/gestion-juridique-comptabilite/facturation/encassement/interets-retard.html>

FORTIUS is entitled to demand the payment of money on account for duties, taxes and fees to be incurred for the performance of the Transport Services as well as the reimbursement of any foreign exchange loss. If FORTIUS has been instructed to collect these fees from the Recipient or from a third party and the latter is in default, the Client will be required to pay these amounts, on first request from FORTIUS.

The Client is not entitled to offset any amounts due or allegedly due the Client by FORTIUS against invoices for the Services.

FORTIUS must be informed about any disputed invoice by registered letter with acknowledgement of receipt within thirty days from the date on which the invoice was raised.

## Section 10. Contractual right of lien

Pursuant to Article 92 of Luxembourg commercial law [‘Code de commerce’], FORTIUS has a contractual right of lien with the right of retention and general and permanent preference over all Goods, securities and documents of the Client entrusted to it, as security for all debts that the Client owes to FORTIUS (for example, invoices, interest, expenses incurred, etc.), even debts that relate to prior transportation or debts that are not linked to the goods, securities and retained documents.

## Section 11. Liability and indemnity

FORTIUS’s liability is limited, for any purpose whatsoever, to material, direct, proven and foreseeable loss when the Contract came into force. This notably excludes indemnity for lost opportunity, operating losses or loss of profit.

Indemnity for the Client’s material, direct, proven and foreseeable loss will take place under the following conditions:

#### Liability because of the substitutes

FORTIUS’s liability is limited to that legally incurred by its substitutes for the Transport Services in issue. When the substitutes’ indemnity limits are not known or are non-existent, they are deemed to be identical to those of FORTIUS referred to below.

## **FORTIUS's direct liability**

Except in the event of gross negligence or intentional misconduct, FORTIUS's liability is strictly limited as follows:

- in the event of loss of or damage to the Goods, the repair may not exceed 30 Euros per kilogram gross weight of the missing or damaged Goods, but may not exceed 30,000 Euros per transport operation;
- for all other loss, including in the event of late delivery of the Goods, the repairs cannot exceed i) the price of the Transport Services (duties, taxes, fees and various expenses excluded) and ii) the indemnity due in the event that the Goods have been lost or damaged.

## **Section 12. Limitation periods**

Any claims to which this Contract may give rise will lapse after a period of two years, without prejudice to the international conventions applicable to the Transport Services that provide for shorter limitation periods.

The limitation period runs, in the event of total loss, from the day on which the Goods should have been delivered and, in all other cases, from the date of delivery of the Goods to the Recipient.

## **Section 13. Personal data processing**

The Client authorises FORTIUS to process personal data that the Client has sent it within the scope of the Contract (the "Data"), on a legal basis and for the following purposes:

- legitimate interests pursued by FORTIUS for the following purposes:
  - prospecting;
  - managing its relations with its clients and prospects;
  - organising, registering and inviting to FORTIUS's events and those of its partners.
- or complying with legal and regulatory requirements when it processes the Data for the purpose of:
  - preventing money laundering and the financing of terrorism and combatting corruption,
  - invoicing,
  - accounting.
- or performance of the Contract:
  - processing, performing, managing Clients' requests and files.

The Client agrees that FORTIUS can send communications for marketing purposes electronically.

FORTIUS only stores the Data for so long as is necessary for the purposes for which it was collected and in compliance with the regulations in force.

The Data is kept for the duration of the contractual relations, increased to three years in respect of the purposes of animation and prospecting, without prejudice to storage period obligations and limitation periods. When the Data is collected with the purpose of preventing money laundering and terrorist financing, it is stored for five years after the end of contractual relations with FORTIUS. Data collected for accounting purposes is kept for ten years from the end of the financial year.

The data of prospective clients is stored for three years if there has been no participation in FORTIUS's events.

FORTIUS may transfer the Data, for non-commercial purposes, to its service providers and third parties required for the Contract to be performed, whether they are located inside or outside the European Union. In the context of any transfer, FORTIUS guarantees that the Data will remain confidential and the purposes for its being processed will be respected.

FORTIUS may be required to send Data to judicial or administrative bodies, particularly in the context of requisitions. In this event, and barring legal provisions that prevent it, FORTIUS will inform the Client and limit the Data sent to that expressly required by these bodies.

The Client agrees that the Data be stored on external third-party servers located exclusively in the European Union.

Under the terms of the European data protection regulation, natural persons have the right of access to Data relating to them and the right to rectify and restrict it, the right to data portability and the right to be forgotten.

Subjects of the Data processing also have the right to object to the Data processing that is legally founded on the legitimate interests of FORTIUS, at any time and for reasons that relate to their particular circumstances, and they also have the right to object to processing for direct marketing purposes.

The Data controller is FORTIUS. Data subjects can exercise the rights mentioned above by sending an e-mail to the following address:

backoffice@fortius.lu

or by post to the following address:

Fortius S.A., Parishoff, L-2315 Senningerberg

together with a copy of a signed piece of identity. A reply will be sent within a time limit of thirty days from reception.

Data subjects also have the right to lodge a complaint with the National Commission for Data Protection of the Grand Duchy of Luxembourg [Commission Nationale pour la Protection des Données] (Complaints Service, 1, avenue du Rock'n'Roll, L-4361 Esch-sur-Alzette).

## **Section 14. Nullity of a clause**

Should any of the clauses of the General Terms and Conditions of Transport be annulled, notably by court order, this will not result in the annulment of any of the other clauses that will continue in full force and effect. In this event, the Parties will, in so far as is possible, replace the annulled provision with a valid provision that is in keeping with the spirit of the General Terms and Conditions of Transport.

## **Section 15. No waiver**

The fact that FORTIUS does not at any given time avail itself of one of the contractual clauses or tolerates a contractual breach by the Client may not be deemed in the future to be a waiver by FORTIUS of such a contractual clause.

The non-exercise by FORTIUS of its rights can in no way be considered to be a waiver of these rights.

## **Section 16. Assignment of the Contract**

The parties are not authorised to assign the Contract, even partially, except with the prior written consent of the other party.

## **Section 17. Communications**

The parties agree that all communications between them must, to be valid, be made in writing and be sent by registered post with acknowledgment of receipt and/or by e-mail, in accordance with the procedures and to the addresses mentioned in the Special Conditions. The sender of an e-mail must provide evidence of receipt.

Save as otherwise provided, the stipulated time limits start to run from reception of the communication by the recipient. In the event that postal services are used, the communication is deemed to have been received on the date that the letter was first presented by the postal services to the recipient.

The Client must inform FORTIUS of any change in contact details within a time limit of eight days. Failing that, the communication will be validly sent to the Client's last known address, even in the absence of effective receipt by the latter.

## **Section 18. Calculation of time limits**

Save as otherwise specifically provided, time limits are calculated in calendar days and run from the day after their triggering event.

## **Section 19. Place of performance and law applicable**

All obligations arising from the Contract are deemed to have been executed at the place of FORTIUS's registered office.

The Contract is governed by the laws of Luxembourg, in terms of both substance and procedure.

## **Section 20. Dispute resolution**

Any dispute that could relate to the existence, interpretation, performance or termination of the Contract, will be referred to the Centre for Civil and Commercial Mediation of Luxembourg [Centre de Médiation civile et commerciale] and submitted to its mediation rules.

Pursuant to Article 1251-9 of the new Luxembourg law on civil procedure [Nouveau Code de Procédure Civile], the signing of the "Agreement to undertake mediation" suspends the running of the limitation period during mediation.

The obligation of dispute resolution through mediation provided for by the General Terms and Conditions of Transport is deemed to have been completed and the mediation is deemed to have been terminated if at the end of the first session before the mediator, one or any of the parties decide not to pursue the resolution of the dispute through mediation.

If the mediation does not lead to the settlement of the dispute, then the Courts within the jurisdiction of Luxembourg have sole jurisdiction to deal with and settle this dispute.

## **Section 21. Conditions specific to consumers**

The following provisions only apply to the Client that has the status of a consumer within the meaning of Article L 010-1 of Luxembourg consumer law [Code de la consommation]. They supplement the other provisions of the General Terms and Conditions of Transport which remain fully applicable, subject to the provisions below that expressly derogate from them.

### **21.1. Date for performance of the Transport Services**

FORTIUS agrees to perform the Transport Services from the date specified in the Special Conditions or, in the absence of any stipulation, within a maximum of three weeks from the entry into force of the Contract. If the Services are not started within this period, the Client may request the termination of the Contract by registered letter with acknowledgment of receipt. It will be effective from the day after the date of receipt by FORTIUS, provided that the Client has specified all information required for the Client to be identified. Any sums paid by the Client must be refunded within fourteen days of receipt by FORTIUS of the letter requesting termination.

### **21.2. Complaints**

Any complaint that relates to the Transport Services, may be addressed:

- as a first resort to Fortius S.A., by registered letter with acknowledgement receipt to the address Parishoff, L-2315 Senningerberg or by e-mail to: backoffice@fortius.lu
- secondly, where the Client, has not received a reply within thirty days of receipt of the complaint or in the event that the Client is not satisfied with the response, the Client may directly and free of charge contact the National Consumer Ombudsman [Service national du Médiateur de la consommation] detailed terms and conditions on the website <https://www.mediateurconsummation.lu>. The mediator's referral form is available on the website or from the National Mediator Service for consumer matters.