



OPĆI UVJETI POSLOVANJA POMORSKIH AGENATA HRVATSKE

(članica **Udruge pomorskih agenata Hrvatske**)

I - UVOD

Članak 1.

Ovi opći uvjeti reguliraju ugovorne odnose koji nastaju kada domaći ili strani nalogodavatelj naruči od hrvatskog pomorskog agenta obavljanje pomorskih agencijskih usluga. Smatra se da nalogodavatelj prihvaća ove uvjete kao sastavni dio ugovora o pomorskim agencijskim uslugama, ako ih stranke izričito ne isključe.

II - DEFINICIJA POMORSKOG AGENTA

Članak 2.

Pomorski agent je domaća pravna osoba registrirana za obavljanje pomorskih agencijskih poslova, koja u ime i za račun nalogodavatelja ili u svoje ime obavlja pomorske agencijske poslove.

III - OVLAŠTENJA POMORSKOG AGENTA

Članak 3.

Pomorski agent prilikom izvršenja primljenog naloga pomaže nalogodavatelju, zastupa ga na osnovi opće ili posebne punomoći i posreduje između nalogodavatelja i njegovih suugovornika.

Za poslove iz prethodnog stavka ugovor o posebnoj agenciji radi izvršenja pojedinačnog naloga, od slučaja do slučaja, može biti izričit pisan, usmeni ili prešutan, a ugovor o općoj agenciji radi obavljanja stalnih pomorskih agencijskih usluga u određenom području mora biti pisan.

Na zahtjev agenata, zaključeni ugovori moraju biti potvrđeni pisanim putom.

Članak 4.

Na osnovi ugovora o posebnoj agenciji, pomorski agent je ovlašten obaviti za nalogodavatelja određeni posao, a na osnovi ugovora o općoj agenciji pomorski agent je ovlašten na određeno ili neodređeno vrijeme obavljati sve poslove za nalogodavatelja, ili određene vrste poslova u određenom području.

U slučaju sumnje, da li je zaključen ugovor o općoj ili posebnoj agenciji, smatra se da je zaključen ugovor o posebnoj agenciji.

Članak 5.

Ako stranke nisu drukčije ugovorile smatra se da je pomorski agent ovlašten obavljati naročito slijedeće poslove:

1. pomagati nalogodavatelju,
2. pomagati zastupnicima prijevoznika, korisnicima prijevoza, posadi pri prihvatu i otpremi prijevoznog sredstva i stvari,
3. pomagati putnicima pri iskrcaju i ukrcaju,
4. posredovati pri zaključenju i zaključiti ugovore o:
 - a) iskorištavanju prijevoznih sredstava,
 - b) prijevozu putnika,
 - c) kupoprodaji, popravku i remontu prijevoznih sredstava,
 - d) ekonomskom iskorištavanju kontejnera,
 - e) osiguranju,
 - f) iskrcaju, ukrcaju, prekrcanju i uskladištenju tereta,
 - g) opskrbi prijevoznih sredstava gorivom i zalihama,
 - h) kontroli prijevoznih sredstava i tereta,
 - i) ostale ugovore u svezi s pomorskim agencijskim poslom,
5. ispitivati tržište i akvizirati teret (marketing i canvassing),
6. prodavati putničke karte,
7. voditi brigu o popuni prijevoznog sredstva posadom,
8. pomagati u poslovima u svezi sa generalnom havarijom,
9. ispostavljati prijevozne i ostale isprave pri prihvatu i otpremi prijevoznih sredstava,

GENERAL TERMS AND CONDITIONS OF THE CROATIAN MARITIME AGENTS

(Members of **The Association of Shipbrokers and Agents of Croatia**)

I - INTRODUCTION

Article 1

The General Terms and Conditions regulate the contractual relations arising when a national or foreign Principal engages ship or freight agency services from a Croatian Maritime Agent. Unless the contrary is expressly agreed upon between the parties it is presumed that the Principal accepts the General Terms and Conditions as an integral part of the contract for ship and freight agency services.

II - DEFINITION OF THE MARITIME AGENT

Article 2

The Maritime Agent is a national legal person, registered for performing ship and freight agency services, who performs ship and freight agent's functions for and behalf of the Principal or in his own name.

III - AUTHORITY OF THE MARITIME AGENT

Article 3

The Maritime Agent in executing an order shall assist the Principal, represent him in accordance with a general or special authority and mediate between the Principal and his co-contractors.

A special agency agreement for executing a single order from case to case, relating to the services mentioned in the preceding paragraph may be explicit in writing, oral or implied while a general agency agreement of standing engagement for performing ship and freight agency services in a designated area must be evidenced in writing.

At the request of the agents the concluded agreements shall be confirmed in writing.

Article 4

Under a special agency agreement the Maritime Agent is authorised to perform for the Principal a designated service and under a general agency agreement the Maritime Agent is authorised to perform for the Principal all services, or designated types of services in a designated area for a definite or indefinite period of time.

In case of doubt whether an agreement is a general or a special agency agreement it shall be presumed that a special agency agreement has been concluded.

Article 5

Unless otherwise agreed upon between the parties it is presumed that the Maritime Agent is authorised to perform particularly the following functions:

1. Assist the Principal;
2. Assist the representative of the carrier, the beneficiaries of the carriage, the crew in the clearance of the means of transport and of the goods;
3. Assist the passengers in embarking and disembarking;
4. Mediate in the negotiations for the conclusion of contracts and conclude contracts for:
 - a) The exploitation of the means of transport;
 - b) The carriage of passengers;
 - c) The sale and purchase, repair and maintenance of the means of transport;
 - d) The economical exploitation of containers;
 - e) Insurance;
 - f) The discharging, loading, transshipment and warehousing of cargoes;
 - g) Providing the means of transport with fuel and stores;
 - h) The supervision of the means of transport and of the cargo;
 - i) The conclusion of other contracts relating to the ship and freight agent's work;



10. pomagati prilikom rješavanja sporova u svezi s poslovima koji obvezuju nalogodavatelja
 11. obavljati poslove nadzora ukrcaja i iskrcaja,
 12. obavljati kvalitativno i kvantitativno utvrđivanje stanja tereta,
 13. obavljanje otpremničkih poslova naročito pri prekrcaju, prijevozu u kojem sudjeluje više prijevoznika, prijevozu kontejnerima i multimodalnom prijevozu uopće,
 14. upravljati prijevoznim sredstvima prijevoznika,
 15. obavljati sporedne poslove kao što su: turističko-agencijski poslovi, mjenjački poslovi, poslovi prijevoza motornim čamcima, poslovi prijevoza kopnenim putem vlastitim prijevozom, poslovi posredovanja prilikom ishodenja putnih isprava, viza i dozvola za kretanje u graničnom pojasu, poslovi stražarenja na brodu i slično.
5. Marketing and canvassing;
 6. The sale of passenger tickets;
 7. Assist in engaging crew for the means of transport;
 8. Assist in the general average proceedings;
 9. Issue transport and other documents for the clearance of the means of transport;
 10. Assist in the settlement of disputes relating to the activities in which the Principal is involved;
 11. Provide supervision service during loading and discharging;
 12. Determine the condition of the cargo as to quantity and quality;
 13. Perform forwarder's services, particularly services in transshipment, in carriages performed by several carriers, in carriage in containers and in multimodal carriage in general;
 14. Management of the means of transport of the carrier;
 15. Perform secondary services such as: travel agency, money exchange, motor boat transport, transport by land by own vehicles, mediation passports, visas and circulation permits in the border zone, engagement of watchmen on board the ship and other similar services.

Pomorski agent je dužan i ovlašten prilikom izvršenja naloga obavljati i sve poslove koji su uz njega vezani.

Članak 6.

Pomorski agent kada radi u ime i za račun nalogodavatelja dužan je svoje svojstvo agenta istaknuti riječima **“u ime i za račun”**, **“isključivo u svojstvu agenta”** kojima se dodaje naziv nalogodavatelja.

Ako agent ne istakne ogradu iz prethodnog stavka, smatra se da radi u svoje ime.

Članak 7.

Ako nalogodavatelj ograniči agentova ovlaštenja koja se odnose na poslove nabrojene u članku 5., to ograničenje nema pravni učinak prema trećim osobama koje nisu za nj znale niti su prema okolnostima za nj morale znati, iako je agent istaknuo ogradu iz članka 6.

Članak 8.

Ponude pomorskih agenata obvezuju nalogodavatelja ako su učinjene u granicama ovlaštenja.

Članak 9.

Pomorski agent nije ovlašten zastupati nalogodavatelja u sudskim, arbitražnim i upravnim postupcima.

IV - DUŽNOSTI POMORSKOG AGENTA

Članak 10.

Pomorski agent je dužan raditi pozornošću urednog agenta u skladu s običajima struke, domaće i međunarodne trgovine, i takvom pozornošću birati osobe kojima se u svom poslovanju služi.

Članak 11.

Agent-posrednik dužan je voditi posrednički dnevnik i izdavati posrednički list za poslove u kojima posreduje.

Članak 12.

Pomorski agent dužan je čuvati 3 godine kopije isprava koje ispostavlja i koje prima u svezi s izvršenjem naloga. Te se isprave smatraju poslovnom tajnom koje pomorski agent ne smije otuđiti bez odobrenja nalogodavatelja, ako drukčije nije propisano.

Članak 13.

Pomorski agent dužan je obavještavati nalogodavatelja o izvršavanju naloga i stanju na tržištu.

Članak 14.

Pomorski agent dužan je od nalogodavatelja zatražiti predujam za pokriće troškova i pomorsko agencijske nagrade.

Članak 15.

Pomorski agent dužan je obračunati nagradu i troškove za svoje usluge i položiti račun nalogodavatelju za njegova sredstva u propisanom roku.

The Maritime Agent is authorised and bound to perform also all other work while carrying out the order in connections therewith.

Article 6

When the Maritime Agent is acting for and on behalf of the Principal, he is bound to emphasise his capacity of an agent by using the words **“for and on behalf of”**, **“as agent only”** adding thereafter the name of the Principal.

If the agent fails to put the reserve according to the provisions of the preceding paragraph it is presumed that he acts in his own name.

Article 7

Should the Principal limit the ship agent's authorisation in respect to the functions enumerated in Article 5, such limitation shall have no legal effect against third persons to whom such limitation was unknown nor ought to have, according to the circumstances of the case, been known, even if the agent did put the reserve according to the provisions of Art. 6.

Article 8

The offers made by the Maritime Agent shall be binding for the Principal if made within the limits of their authorisation.

Article 9

The Maritime Agent is not authorised to represent the Principal in court, arbitration nor in administrative proceedings.

IV - DUTIES OF THE MARITIME AGENT

Article 10

The Maritime Agent shall act with the due diligence of a prudent agent and in accordance with the customs of the profession, of the national and international trade, and shall exercise such diligence in choosing persons whose services he engages.

Article 11

The agent-broker shall keep a mediation journal and shall issue a mediation memorandum for business in which he mediates.

Article 12

The Maritime Agent is bound to safe keep for three years the copies of the documents issued and received in connection with the execution of an order. Such documents shall be considered business secrets and cannot be alienated without the consent of the Principal unless otherwise prescribed.

Article 13

The Maritime Agent shall keep the Principal informed of the execution of the order and on the situation of the market.

Article 14

The Maritime Agent is bound to request from the Principal advance-money for covering the expenses and the ship and freight agency fee.



Članak 16.

Pomorski agent dužan je voditi poslovne knjige, gdje će posebno biti iskazane stavke u svezi s potraživanjima i dugovanjima nalogodavatelja.

Članak 17.

Posebni agent dužan je obavljati agencijske usluge osobno, ili preko svojih djelatnika. Opći agent može imenovati podagenta, o čemu je dužan obavijestiti nalogodavatelja. Agent ne može prenijeti na podagenta veća ovlaštenja od onih koja su njemu dana.

V - DUŽNOSTI NALOGODAVATELJA

Članak 18.

Nalogodavatelj je dužan dati agentu jasne naloge, informacije i isprave za obavljanje posla prije početka izvršavanja agencijskih usluga.

Članak 19.

Nalogodavatelj je sukladno Pomorskom Zakoniku dužan pomorskom agentu nadoknaditi troškove i platiti agencijsku nagradu.

Nalogodavatelj je sukladno Pomorskom Zakoniku dužan dati pomorskom agentu predujam u visini predvidivih troškova i nagrade.

VI - PRAVA POMORSKOG AGENTA

Članak 20.

Agencijska nagrada plaća se u obliku pristojbe ili provizije.

Agencijske nagrade je ugovorena ili propisana tarifom.

Ako prilikom posredovanja u zaključivanju ugovora o iskorištavanju prijevoznih sredstava nije ugovorena visina provizije, agentu pripada na ime provizije najmanje 2% od ukupnog bruto iznosa koji nalogodavatelj prima iz osnovnog posla.

Provizija za posredovanje prilikom zaključivanja ugovora pripada agentu ako je posredovao pri njegovu sklapanju, bez obzira da li je ugovor izvršen. U ostalim slučajevima, agentu pripada nagrada kada je usluga izvršena.

Članak 21.

Pomorski agent sukladno Pomorskom Zakoniku ima pravo na predujam za naknadu svojih troškova i onih učinjenih za nalogodavca i nagradu.

Svi troškovi doznaka su na teret nalogodavatelja.

Članak 22.

Pomorski agent sukladno Pomorskom Zakoniku ima ugovorno pravo pridržaja na imovini nalogodavatelja koja se nalazi u njegovom posjedu za pokriće svoje nagrade, troškova i ostalih tražbina, bez obzira iz kojeg razloga i u koje vrijeme su nastale.

Članak 23.

Pomorski agent ima pravo u svako vrijeme naplatiti dospjele tražbine prema nalogodavatelju prijebomem.

Nepodmirene tražbine pomorski agent ima pravo naplatiti sa kamatom od 12%.

Pomorski agent tražbine iskazane u stranoj valuti ima pravo naplatiti u toj valuti ili prema svom izboru u drugoj valuti, prema dnevnom tečaju te valute u odnosu one u kojoj je tražbina iskazana na dan dospelosti računa ili na dan isplate, prema izboru pomorskog agenta.

VII - ODGOVORNOST POMORSKOG AGENTA

Članak 24.

Pomorski agent odgovara nalogodavatelju za štetu koja se može pripisati njegovoj ili krivnji njegovih djelatnika.

Article 15

The Maritime Agent is bound, within the prescribed period of time, to settle with the Principal the fees and the expenses incurred for his services and also render to the Principal an account on the state of his funds.

Article 16

The Maritime Agent is bound to keep business books containing separate debt-and-credit items of the Principal.

Article 17

The special agent shall perform the agency services either personally or through his employees. The general agent may appoint a sub-agent of which he shall be bound to inform the Principal. The agent cannot transfer to the sub-agent a wider authority than the one, which has been given to him.

V - DUTIES OF THE PRINCIPAL

Article 18

The Principal is bound to give to the agent clear orders, information and documents for the performance of his functions before the rendering of the agency services has started.

Article 19

The Principal is bound according to Maritime Code to reimburse to the Maritime Agent the expenses incurred and pay him the agency fee.

The Principal is bound according to Maritime Code to give to the Maritime Agent advance-money for the expected expenses and fees.

VI - RIGHTS OF THE MARITIME AGENT

Article 20

The agency fee is paid as remuneration or as a commission.

The agency fee is fixed by contract or by tariff.

If in mediation for the conclusion of contracts for the employment of the means of transport the amount of the commission has not been agreed upon, the agent shall be entitled to a commission of not less than 2% on the total gross amount earned by the Principal's business.

The agent is entitled to a commission for mediation in the conclusion of the contract, irrespective whether it has been executed or not. In all other cases the agent shall be entitled to a fee after the service has been rendered.

Article 21

The Maritime Agent is entitled according to Maritime Code to the advance-money to cover his expenses, expenses incurred for Principal's account and remuneration.

All expenses incurred for the transfer of funds shall be borne by the Principal.

Article 22

The Maritime Agent according to Maritime Code have a contractual right of retention of the property of the Principal while in the agent's possession for covering his fees, expenses and other claims arising from whatever reason and at whatever time.

Article 23

The Maritime Agent is entitled to collect from the Principal at any time the matured credits by compensation.

The Maritime Agent is entitled to charge for the outstanding claims an interest of 12%.

The Maritime Agent is entitled to collect the claims expressed in a foreign currency in that same currency, or in another currency of his choice, at the daily rate of exchange of such currency against the one in which the credit was expressed on the day when the bill matured, or on the day of payment, in the option of the Maritime Agent.



Za štete uzrokovane krivnjom osoba kojim se agent u svom poslovanju služi ili koje pružaju usluge nalogodavatelju, agent odgovara samo za grubu nemarnost u izboru tih osoba, ako su štete u uzročnoj svezi s radnjama ili propustima tih osoba.

Članak 25.

Ako se šteta može pripisati gruboj nemarnosti agenta, njegovih djelatnika, od njega imenovanog podagenta, ili osoba izabranih za pružanje usluga nalogodavatelju, pomorski agent će odgovarati naročito zbog: nepostupanja po nalogu, prekoračenja ugovornih ovlaštenja, propusta u dužnoj pozornosti, neobavještanja ili pogrešnog obavještanja nalogodavatelja, te nepolaganja računa.

Članak 26.

Pomorski agent je za štete iz prethodnog stavka ovlašten uvijek ograničiti svoju odgovornost do visine iznosa nagrade koja mu pripada za pružanje usluga.

Pomorski agent je ovlašten, također, kada nalogodavatelj može ograničiti svoju odgovornost prema trećima, koristiti se blagodatima takva ograničenja.

VIII - RJEŠAVANJE SPOROVA

Članak 27.

Za sve sporove koji proizlaze u svezi s primjenom Općih uvjeta, u odnosu na ugovor o pomorskoj agenciji, stvarno je nadležan hrvatski sud prema mjestu sjedišta pomorskog agenta.

Članak 28.

Na svu djelatnost pomorskog agenta, ma gdje se ona odvijala, primijenit će se uvijek hrvatsko pravo.

IX - ZAVRŠNE RADNJE

Članak 29.

Opći uvjeti poslovanja i njihove izmjene i dopune donose se jednoglasnom odlukom članova na Skupštini Udruge pomorskih agenata Hrvatske.

Članak 30.

Opći uvjeti stupaju na snagu kada ih odobri Udruga pomorskih agenata Hrvatske, a primjenjivat će se od 1. ožujka 2009. godine.

Rijeka, 16. veljače, 2009.

Predsjednik
Jakov Karmelić, v. r.

VII - LIABILITY OF THE MARITIME AGENT

Article 24

The Maritime Agent is liable to the Principal for any damages, which may be attributed to his of his employees' fault.

The agent is liable for damages caused by the fault of the persons whose services he engaged for his activity, or who render services to the Principal, only in case of gross negligence in the choice of such persons, provided that the damages are in connection with the acts or omissions of such persons.

Article 25

If the damages may be attributed to the gross negligence of the agent, of his employees, of the sub-agent appointed by him, or of the persons chosen to perform services for the Principal, the Maritime Agent is liable particularly for: non-compliance with the orders received, exceeding the authorisation given to him in the agency agreement, failure to use due diligence, omissions in informing or inaccurate informing or the Principal and for non-rendering of account.

Article 26

The Maritime Agent is in any case entitled to limit his liability for damages mentioned in the preceding paragraph up to the amount of the fee due to him for his services.

When the Principal may limit his liability against third persons, the Maritime Agent is also entitled to avail himself of the benefits of such limitation.

VIII - SETTLEMENT OF DISPUTES

Article 27

Any dispute arising out of the application of the General Terms and Conditions in respect to the ship and freight agency agreement shall be referred to the Croatian Court materially competent in the main place of business of the Maritime Agent.

Article 28

The Croatian law shall always apply to the activity of the Maritime Agent wherever it may be exercised.

IX - FINAL PROVISIONS

Article 29

The General Terms and Conditions as well as any alterations of and additions to the same are brought by consensus of the members at the Assembly of the Association of Shipbrokers and Agents of Croatia.

Article 30

The General Terms and Conditions shall come into force after acceptance by the Association of Shipbrokers and Agents of Croatia and shall apply as from 1. March, 2009.

Rijeka, 16 February 2009

President
Jakov Karmelić