

# **TERMS AND CONDITIONS OF SERVICE FOR LOGISTICS SERVICES**

## **1. DEFINITIONS.**

- 1.1 **“Customer”** shall mean and include the consignor, shipper, depositor, consignee, receiver and retriever of the Goods as well as any person, including any corporation, company or other legal entity having any interest in the Goods, or anyone acting on behalf of any such person.
- 1.2 **“Force Majeure Event”** shall mean any circumstance beyond the reasonable control of Company, to include but not be limited to, natural disasters, strikes or lockouts or stoppage/restraint of labor from whatever cause, equipment failure not attributable to the fault of Company (to include electrical power, heat, light, air conditioning or communications equipment), civil unrest, acts of war or armed conflicts, acts of public authorities, or acts or threatened acts of public enemies, hijackers or assailing thieves.
- 1.3 **“Goods”** shall mean the cargo tendered by or on behalf of the Customer for services to be performed by Company pursuant these terms, and shall include any and all packaging and/or containers not supplied by or on behalf of Company.
- 1.4 **“Company”** shall mean the logistics company performing any service(s) pursuant to these T&Cs.
- 1.5 **“Company Affiliate”** shall mean any corporate affiliate, subsidiary or parent company of the Company.
- 1.6 **“Ts&Cs”** shall mean these terms and conditions entitled “Terms and Conditions of Service for Logistics Services.”

## **2. SCOPE OF Ts&Cs AND APPLICABLE SERVICES.**

- 2.1 These Ts&Cs shall apply to all services performed by Company unless Company issues another document on its own behalf governing a specific service performed by Company, in which scenario that document shall govern such service to the extent of any term in conflict with these Ts&Cs. Services governed by these Ts&Cs shall specifically include, but not necessarily be limited to, warehousing and distribution handling services such as consolidation, deconsolidation, transloading, labeling, packing and cross-docking. The act of tendering Goods to Company or any Company Affiliate shall constitute acceptance of and agreement to these Ts&Cs. Customer purchase orders, receipts, order forms and all other Customer documents shall be for convenience purposes only and to the extent any term therein conflicts with any term of these Ts&Cs, these Ts&Cs shall prevail and control.
- 2.2 Unless either: (1) transportation and/or drayage services are performed with Company-operated equipment; or (2) Company issues a bill of lading identifying itself as “carrier,” any transportation services rendered by Company in conjunction with warehousing and distribution handling services or otherwise are rendered strictly in Company’s capacity as Customer’s agent and/or property broker, as defined under 49 USC § 13102 or any successor statute and in no event shall Company or any Company Affiliate be deemed to be a carrier of any type nor a freight forwarder as defined under 49 USC § 13102 or any successor statute. Third party freight forwarders, carriers and other vendors limit liability for loss or damage; Company will request excess valuation coverage on Customer’s behalf only upon specific written instructions from the Customer, which must agree to pay any charges therefore.
- 2.3 In the event that Company or any Company Affiliate performs transportation and/or drayage services with Company-operated equipment, or in the event that Company or any Company Affiliate issues a bill of lading identifying itself as “carrier,” or in the event that Company is held liable for transportation and/or drayage for any reason notwithstanding section 2.2 of these Ts&Cs, then the aggregate liabilities of Company and all Company Affiliates for such carriage shall be no greater than (and limited to the same extent as) Company’s liability for warehousing and distribution handling services under section 5.5 of these Ts&Cs.

## **3. CUSTOMER OBLIGATIONS, REPRESENTATIONS AND WARRANTIES.**

- 3.1 Customer represents and warrants that all Goods deposited with Company shall be properly marked and packaged for handling. The Customer shall furnish at or prior to time of deposit a manifest showing marks, brands and/or sizes to be kept and accounted for separately, and the class of storage and other services desired.
- 3.2 Customer warrants it shall not ship Goods to Company or any Company Affiliate with Company or any Company Affiliate being the named, nominated or otherwise designated consignee absent prior written permission from Company on a shipment-by-shipment basis. In the event Company or any Company is named, nominated or otherwise designated as consignee, Customer agrees to notify the carrier, with copy of such notice to Company, that Company is a warehouse and has no beneficial title or interest in such Goods. Customer further agrees to indemnify and hold harmless Company from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with Goods so shipped. Customer further agrees that, if it fails to obtain Company’s prior

written consent and fails to notify the carrier as required in this section, Company shall have the right to refuse such Goods and shall not be liable or responsible for any loss, injury, or damage of any nature to, or related to, such Goods.

- 3.3** The party tendering the Goods warrants their right to lawful possession of the Goods and also warrants their authority to bind each and every Customer to these Ts&Cs. Such party also represents and warrants that it has complied with all applicable privacy and data protection laws with respect to personally identifiable information about individual contacts of Customer and clients of Customer, has obtained consent to disclose and transfer such data to Company, and consents that Company may use such data for performing services and for general administration processes which may involve communicating such data to others.
- 3.4** Customer warrants that prior to, or simultaneous to, the deposit of Goods with Company for any service Customer will provide Company with comprehensive and accurate information concerning the Goods sufficient to facilitate Company's compliance with all laws and regulations concerning the storage, handling and transportation of the Goods. Inclusive thereof, Customer shall have the exclusive burden to provide verified gross mass (VGM) of Goods as obtained on calibrated and certified equipment. Company shall be entitled to rely on the accuracy of the weight information provided by Customer for all purposes, including compliance with the VGM requirement under the Safety of Life at Sea Convention (SOLAS). Company shall be entitled to tender, counter-sign or endorse such certificates, weight tickets or other weight data provided by Customer as Company's own VGM to third parties, including to any vessel operator(s) and/or other equipment operators.
- 3.5** In the event Company performs any type of packing for Customer, Customer shall be exclusively responsible for inspecting and acceptance testing of such packaging as being suitable for Customer's purposes and/or the anticipated rigors of transportation.
- 3.6** As to Goods which are the subject of any international shipment, Customer warrants and agrees:
- (a) to act as the importer, exporter, or other principal party (as the case may be) under all Import and Export Laws;
  - (b) that Customer is solely responsible for complying with all Import and Export Laws applicable to the export, re-export, import, transshipment, transfer, or release of any Goods from any country;
  - (c) that Customer is solely responsible for (i) properly classifying under the Import and Export Laws all Goods, Software, and Technology; (ii) obtaining any required licenses and other authorizations for export, re-export, import, transshipment, transfer, or release; (iii) correctly completing and filing with any government, as appropriate, all documents required under the Import and Export Laws; and (iv) ensuring that all export-related documents, including shipping and sales documents, generated in connection with the Services performed pursuant to this Agreement conform to and are maintained in accordance with the Import and Export Laws;
  - (d) that Customer is solely responsible for providing accurate written instructions to Company in advance of any export, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods which instructions will be in compliance with all Import and Export Laws and will set forth all information required for Company to comply with all Import and Export Laws in connection with that export, re-export, transshipment, transfer, release, delivery, pickup, or other activity.
- 3.7** Customer warrants that its insurers have waived all rights of subrogation for any losses or damages in excess of Company's liability under these Ts&Cs.
- 3.8** Where damage occurs to Goods for which neither Company nor any Company Affiliate is liable, the Customer shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss or injury of Goods. Customer shall also reimburse Company for all efforts taken to mitigate Customer's losses under circumstances of any Force Majeure Event, including but not limited to storage charges
- 3.9** Customer warrants and agrees to fully and completely release and forever discharge and indemnify Company and Company's Affiliates from and against all claims, damages and/or liabilities arising out of or caused by Customer's breach of any of its obligations, warranties and/or representations under sections 3.1 through 3.8 of these Ts&Cs.

#### **4. RESTRICTED COMMODITIES AND SERVICE RESTRICTIONS.**

- 4.1** Unless otherwise provided in a separate written agreement between Customer and Company, Customer warrants that it shall in no event deposit with Company for any services or for any reason:

- (a) any type of hazardous materials, hazardous waste, dangerous goods, or Goods containing hazardous materials or dangerous goods regulated under or subject to Title 49 of the Code of Federal Regulations, or the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, or the International Air Transport Association (IATA) Dangerous Goods Regulations, or the International Maritime Dangerous Goods Code ("Hazardous Goods" or "Dangerous Goods"). Dry ice packages/shipments prepared in accordance with applicable regulations do not require a Shipper's Declaration, and there is no special handling fee for transporting dry ice at this time. However, dry ice must be identified at time of making order for services. All dry ice packages/shipments require the proper marking and labeling. Company shall in no event be liable to add dry ice to packages/shipments in its system.
- (b) any type of Goods, which may be regulated by a governmental body, entity or agency, including but not limited to those Goods, which are regulated by the United States Food and Drug Administration, the United States Department of Agriculture, the United States Drug Enforcement Administration, the United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and analogous regulatory agencies in countries in which the Services are provided.
- (c) illegal and/or counterfeit merchandise, perishables, meat / fish / poultry, plants and plant materials (including but not limited to seedlings, plant plugs and cut flowers), animal remains, live animals, human remains, infectious substances, medical waste, human or animal biological substances, bullion, collector's coins and/or stamps, gem stones, weapons, explosives, ammunition, ivory items, negotiable instruments, currency, pharmaceuticals, narcotics, particularly fragile items (including but not limited to electronic and electrical devices, scientific testing equipment, fluorescent tubes, neon lighting, neon signs, x-ray tubes, laser tubes, light bulbs, flat panel display screens of all types, fragile glass, crystal, scale models, porcelain or china).

**4.2** All packages/shipments are subject to the size and weight limitations, as amended from time to time by Company.

**4.3** Blood, urine and other non-infectious liquid diagnostic specimens may only be submitted for services when packed in a sturdy outer container\* with a sealed, watertight primary receptacle placed inside of a sealed, watertight secondary receptacle. Absorbent material must also be placed inside of the secondary receptacle. NOTE: Regulated infectious substances must be shipped in the appropriate legal packaging. If multiple primary receptacles are placed into a single secondary receptacle, it should be wrapped individually to ensure that contact is prevented. The absorbent material, such as gauze or cotton wadding, must be sufficient to absorb the entire contents of all primary receptacles. It is the responsibility of the Customer to ensure that proper packaging is used. Sturdy outer packaging constructed of cardboard/corrugated fiberboard, wood metal or rigid plastic is required. The sturdy outer packaging must be larger than 7 inches in length, 4 inches in width and 2 inches in depth. Unacceptable packaging includes - but is not limited to - Styrofoam™, plastic bags, paper envelopes and paper tubes.

**4.4** In the event that shipments of firearms or ammunitions are accepted for any service, the following additional terms shall apply:

- (a) Company will only accept shipments of firearms or ammunition when either the shipper or recipient is a licensed manufacturer, licensed importer, licensed dealer or licensed collector, and is not prohibited from making such shipments by federal, state or local regulations when these conditions are met. By submitting any shipment of firearms or ammunition, Customer warrants the foregoing.
- (b) Firearms may not be sent C.O.D. Upon presenting the shipment for services, the shipper is required to inform Company that the package/shipment contains a firearm. Firearms may not be tendered in one complete piece. When tendered for services, the firearm must be rendered "inoperable", either by removing the firing pin in the gun and disconnecting the barrel, or by some other means so the shipment does not contain a completely assembled, usable weapon.
- (c) The outside of the shipment should bear no label, marking or other written notice that a firearm is contained within. This includes the abbreviation of the name of the shipper or recipient, if the name would clearly indicate that the shipment could contain a firearm. Firearms and ammunition may not be shipped in the same package/shipment. Ammunition is always an explosive and must be shipped as "Dangerous Goods". NOTE: Signature release is not available for packages/shipments that contain firearms or ammunition.

**4.5** In the event that shipments of alcohol and/or tobacco are accepted for any service, the following additional terms shall apply:

- (a) The shipper and consignee must both be either licensed wholesalers, dealers, distributors, manufacturers or importers. By submitting any shipment of alcohol, Customer warrants the foregoing.

(b) Signature release is not available for shipments that contain alcohol.

(c) Packaging must be pre-approved by Company.

**4.6** For any restricted commodities in this section 4 that are accepted by Company for any service, packaging must be first approved by Company. Company's approval of packaging for services shall not serve as a representation or warranty by Company of sufficient, adequate or proper packing, but the failure of Customer to obtain Company's prior approval of packaging shall relieve Company from any liability for loss or damage in addition to all other remedies of Company under applicable law.

**4.7** Company will not provide any special handling for shipments bearing labels "Fragile," "Refrigeration Required" or orientation markings, such as "UP" or "THIS END UP" arrows.

#### **COMPANY'S LIBERTIES AND LIABILITIES FOR SERVICES.**

**5.1** Company shall have the liberty to refuse goods for services and/or limit quantities for any reason in its discretion. Without any obligation to do so, Company shall have the unrestricted liberty to inspect the packaging and contents of accepted Goods for any purpose and to inquire and verify the accuracy or sufficiency of information provided and to seek assurances. Any discrepancies may result in delay and/or cancellation of services and/or additional charges assessed by Company. Company may disclose and report, whether on a mandatory or voluntary basis, any and all regulatory non-compliance to authorities; such authorities may exercise forfeiture and/or assess penalties against Customer. Where more than one type of service is indicated per package/shipment or if no service is indicated, Company shall have the liberty (but not the obligation) to assume that Customer's shipment requires the highest level service available at the time.

**5.2** Subject to 14 days prior notice by Company to Customer, Company shall have the liberty to move, at its expense, any Goods in storage from the warehouse in which they may be stored to any other warehouse of Company or an Company Affiliate. Company shall have the further liberty without any prior notice to move the Goods, at its expense, within and between any one or more of the warehouse buildings which comprise a single warehouse complex.

**5.3** Subject to 14 days prior notice by Company to Customer, Company shall have the liberty in its discretion to discard, destroy or sell by private or public auction or sale any Goods deemed by Company to be a hazard to other property, the warehouse and/or human life if such Goods are not removed within the notice period. For all other Goods, Company shall have the right to require that the Customer remove the Goods from the facility of Company for any reason, subject to 45 days prior notice by Company to Customer. In the event the Goods are not timely removed within this 45 day period, Company shall have the liberty in its discretion to discard, destroy or sell the Goods by private or public auction without further notice. In the event that Company's sale or auction of Goods produces proceeds in excess of the costs of sale plus debts to Company and Company Affiliates, such excess shall be refunded to Customer.

**5.4** Company shall have no recordkeeping obligations to Customer and shall only keep those records that it is required to maintain under applicable law.

**5.5** Except as otherwise agreed in writing between Company and Customer, the maximum aggregate liability of Company, Company Affiliates and any subcontractor(s) for whom Company is legally liable shall be limited as follows:

- (a) in the event of loss of or damage to Goods, however caused, 0.50 (fifty cents) per pound of the portion of the Goods lost or damaged, never to exceed \$50 per occurrence or shipment;
- (b) in the event of financial loss other than loss or damage to Goods, including but not limited to an error or omission however caused, \$50 per shipment or transaction, never to exceed \$500 in the annual aggregate.

**5.6** Customer may obtain additional protection in excess of the foregoing liability limitations at section 4.4 by making a written request and paying an additional charge prior to the provision of services, always subject to Company's written approval or confirmation prior to the provision of services. The knowledge of Company or any Company Affiliate of the value of Goods and/or Customer's declaration of the value of the Goods to Company or any Company Affiliate in regular course or for any other purpose, such as for Customs purposes, shall in no event constitute a declared value of the Goods for liability purposes. Declared value limitations apply as follows:

- \$50 for any shipments that include commodities of artwork (including but not limited to paintings, drawings, vases, tapestries, limited-edition prints, fine art, statuary, sculpture, collector's items, customized or personalized musical instruments); film (including but not limited to photographic images, negatives, chromes, slides and printed matter); any commodity that is particularly susceptible to damage or which has a subjective market value; antiques (including but not limited to furniture, tableware, glassware, collector's items such as coins, stamps, sports cards, souvenirs and

memorabilia); glassware (including but not limited to signs, mirrors, ceramics, porcelains, china, crystal, glass, framed art, flat panel display screens, plasma screens, and any other commodity with similar fragile qualities); jewelry (including but not limited to costume jewelry, watches and their parts, mount gems or stones (precious or semi-precious), industrial diamonds and jewelry made of precious metal; furs (including but not limited to fur clothing, fur-trimmed clothing and fur pelts); precious metals (including but not limited to gold and silver bullion or dust, precipitates or platinum except as an integral part of electronic machinery); stocks, bonds, cash letters or cash equivalents (including, but not limited to, food stamps, postage stamps, traveler's checks, lottery tickets, money orders, pre-paid calling cards, bond coupons and bearer bonds).

- \$100 for any C.O.D. shipment;
- \$5,000 for any other shipment.

Additional restrictions for declaration of value for greater liability may apply. Any effort to declare a value in excess of the maximums allowed is null and void and the acceptance for services of any shipment bearing a declared value in excess of the allowed maximums does not constitute a waiver by Company of the allowed maximum. The declared value for each package/shipment will be determined by dividing the total declared value by the number of packages within the shipment, unless verifiable evidence supporting a different allocation is presented. In no event will the Company's liability for a declared value shipment exceed the actual value or loss incurred.

**5.7** In no event shall Company be liable for an amount greater than the value of the affected portion of the Goods or for any delay, loss of electronic data, consequential, indirect, incidental, or punitive damages even if Company has been put on notice of the possibility of such damages. Company shall have no liability for loss of, or damage to, the Goods or any portion of the Goods in circumstances of: inherent defect, quality or vice of the Goods; defective packing not performed by the Company; inadequate or inaccurate information provided by Customer; any event not attributable to the negligence of Company or its Affiliates or subcontractors for whom Company is responsible; ordinary shrinkage, and/or any Force Majeure Event. Company shall have no default liability for inventory shortages or mysterious or unexplained disappearance of Goods and in such scenario the burden of proof of Company liability shall lie exclusively with the Customer to the maximum extent allowable by law. Goods retrieved from Company without written exception for damaged condition shall be deemed retrieved from Company in good order and condition. Company's liability shall be predicated on a duty of reasonable care, and Company shall have no liability for any damages not directly attributable to Company's breach of such duty except to the extent mandated by applicable law. Company makes no warranties, representations or guarantees, either express, implied, statutory, or otherwise, oral or written, with respect to services furnished under these Ts&Cs, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

**5.8** Neither Company nor any Company affiliate shall have any liability for loss or damage to Goods while in the custody of third party carriers, except as for any error or omission on the part of Company or such Company Affiliate in making any carriage preparations or carriage arrangements to the extent applicable. Otherwise, claims for such loss or damage shall be made directly to the responsible third party carrier(s). Third party carriers limit their liability and in the absence of Customer's prior written instructions to Company to declare a greater value on Customer's behalf or in the event the third party carrier refuses to agree to a higher declared value for liability, at Company's discretion the Goods may be tendered to the third party carrier, subject to the terms of the third party carrier's limitations of liability and/or terms and conditions of service. This section 4.7 shall not apply in the event: (1) of transportation and/or drayage services performed with Company-operated equipment; or (2) Company issues a bill of lading identifying itself as "carrier,"

**5.9** Neither Company nor any Company affiliate shall be liable for demurrage or detention, delays in unloading inbound conveyances or containers, or delays in obtaining and loading outbound conveyances or containers. In the event Company or any Company Affiliate shall nevertheless be held liable, such liability shall be deemed a single error or omission within the meaning of section 4.4(b) of these Ts&Cs.

**5.10** Liability of Company and/or any Company Affiliate(s) for services, however founded, shall be subject to the following conditions precedent:

- (a) Company receiving written notice of claim within 90 calendar days after delivery of the Goods or within 90 days from the date Customer became aware or should have become aware of the damage or loss which is the subject of the claim, whichever is shorter;
- (b) Legal action being commenced against Company within 9 months after delivery of the Goods or within 9 months from the date Customer became aware or should have become aware of the damage or loss which is the subject of the claim, whichever is shorter.

To the extent otherwise applicable, and for good and sufficient consideration hereby acknowledged received, Customer expressly waives pursuant to 49 U.S.C. § 14101 the minimum periods for the filing of claims and civil actions, as defined under 49 U.S.C. § 14706(e)(1), and any successor statute(s).

## **6. FEES AND CHARGES.**

- 6.1** Quotations as to fees, rates and/or other charges given by Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon Company unless Company in writing agrees to undertake the services at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Customer and Company.
- 6.2** Storage charges are billed by Company in advance on the first day of each month. All other charges will be invoiced in accordance with the customary practice of Company, details of which shall be provided upon request. Customer payments not received by Company within 30 days after the Company invoice date will cause Customer's account to be considered past due and late fees of 1.5% per month will apply.
- 6.3** Any quoted handling charges for warehouse services apply exclusively to ordinary labor involved in receiving Goods at warehouse door, placing Goods in storage and returning Goods to warehouse door. Minimum charges may apply. Extra charges note quoted may apply under certain circumstances, including but not limited to:
- (a) extra labor required because of unusually fragile Goods, damaged Goods, physical awkward Goods or other Goods requiring special handling for any reason in the discretion of Company;
  - (b) extra labor required to unload Goods from, or load Goods on, conveyances or containers not at warehouse door;
  - (c) extra labor required or performed for any reason other than the ordinary receipt of Goods at warehouse door, placing Goods in storage and returning Goods to warehouse door, including but not limited to consolidation and/or deconsolidation labor.
  - (d) need for dunnage, bracing and/or other packing materials or special services;
  - (e) deposit and/or retrieval of Goods and/or other services performed outside of ordinary business hours, if allowed in Company's discretion.
- 6.4.** Company shall have a general and continuing lien on any and all Goods and property of Customer coming into Company's actual or constructive possession or control for monies owed to Company or any Company Affiliate with regard to the shipment on which the lien is claimed, a prior shipment(s) and / or both. Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; the depositing Customer shall notify all parties having an interest in the Goods of Company's rights and / or the exercise of such lien. Unless, within thirty-five days of Company issuing notice of lien, Customer satisfies the full amount owing Company or provides alternative security satisfactory to Company, Company shall have the right to sell such Goods and property at public or private sale or auction. In the event that Company's sale or auction of Goods or property produces proceeds in excess of the costs of sale plus debts to Company and Company Affiliates, such excess shall be refunded to Customer.
- 6.5** Customer, shippers, consignees and bill-to parties are jointly and severally liable for the compensation of Company. Company's charges may be reversed to the responsible parties if a shipment is refused or payment is not made by the original bill-to party.

## **7. GENERAL PROVISIONS AND DISPUTE RESOLUTION.**

**7.1** The division of this Ts&Cs into sections is for convenience of reference only and shall not affect the interpretation or construction of these Ts&Cs. These Ts&Cs may only be modified, amended and/or supplemented by a written instrument signed by both Company and Customer. A waiver of any right by Company will not constitute a waiver of such right on any subsequent occasion. If any provision of these Ts&Cs is determined to be invalid, such invalidity will not affect the validity of the remaining portions of these Ts&Cs.

**7.2** All disputes arising from these Ts&Cs and/or services performed pursuant to these Ts&Cs shall be determined exclusively in the State and Federal courts located in the county in which the services giving rise to the claim were performed. If applicable, and for good and sufficient consideration acknowledged hereby, Customer expressly waives pursuant to 49 U.S.C. § 14101 the venue provisions of 49 U.S.C. § 14706(d) to the extent inconsistent with the foregoing.