



# Innovative Transport Solutions

## STANDARD TRANSPORTATION TERMS AND CONDITIONS

### 1. Definitions.

- (a). "Carrier" refers to the Carrier identified on the bill of lading or other transportation documentation, all those providing services as identified in section 8, below, all vessels, vehicles, aircraft and other conveyances used to perform transportation services hereunder, and the respective owners, employees and agents of each of the foregoing.
- (b). "Shipper" refers to the entity engaging Carrier with respect to the goods and, unless the context herein clearly indicates to the contrary, Shipper shall include the owner, consignee and all others who may have right of claim by, through or with respect to the goods, all of whom shall be jointly and severally liable for performance hereunder. Shipper expressly warrants that it has authority to bind each of the foregoing to the terms and conditions set forth herein.
- (c). "Goods" refers to those items with respect to which Carrier has been requested to or does perform services hereunder, including all packing and packaging as well as all other items or materials associated with such goods, including, without limitation, all wrappings, boxes, crates, cradles, pallets and containers.
- (d). "Consignee" refers to the entity identified to receive the goods.
- (e). "Montreal Convention" refers to the Convention For The Unification Of Certain Rules Relating To International Carriage By Air, signed at Montreal, 28 May 1999, including any Protocols thereto ratified by the United States.

**2. Basic Agreement.** In tendering goods to Carrier, Shipper agrees to the terms and conditions set forth herein as well as such additional terms and conditions set forth in Carrier's tariff. If Carrier should complete the bill of lading and/or execute it on the behalf of Shipper and/or Consignee, then Carrier shall be deemed to have done so at the request and on behalf of Shipper and/or Consignee, as applicable. The face of the bill of lading shall identify the places of departure and destination as well as all agreed upon stopping places, provided that Carrier is authorized to alter or add additional places/stops as needed. Shipper warrants the accuracy and completeness of all instructions and particulars relating to the goods, including their nature, description, special characteristics, marks, number, weight, volume and quantity, upon all of which Carrier shall be entitled to rely. Shipper shall reimburse Carrier for any loss or expense (including legal fees and other expenses) resulting from insufficient, inaccurate and/or incomplete instructions and/or particulars relating to the goods. The goods are received by Carrier in apparent good order (unless noted otherwise on the face of the bill of lading or other accompanying transportation documentation) for the intended carriage. Carrier shall have the right to refuse carriage of goods at any time if it deems the goods and/or intended carriage are in any way dangerous, likely to cause harm or otherwise inappropriate. Carrier shall have the right to re-weigh and/or inspect goods at any time for any reason.

### 3. Freight, Charges and Payment.

- (a). **Freight.** Freight, including all charges assessed pursuant to the transportation agreement to which these Terms and Conditions are attached or, if not identified therein, pursuant to Carrier's tariff, shall be based upon instructions or particulars furnished by Shipper but may be recalculated if the instructions or particulars are inaccurate and/or incomplete.
- (b). **Charges.** Charges shall be as set forth in the applicable transportation agreement or, if not identified therein, pursuant to Carrier's tariff. All other charges, dues, taxes, duties, fines, penalties applicable to the goods, all advances made by Carrier, all additional expenses incurred by Carrier by virtue of Shipper's actions, omissions or failure to comply with its obligations herein, and all expenses incurred as a result of any unforeseen or extraordinary circumstances shall be for the account of Shipper.
- (c). **Payment.** Freight and all charges shall be fully earned upon tender of the goods by Shipper and shall be due and payable as set forth in the applicable transportation agreement or, if not identified therein, pursuant to Carrier's tariff. All sums shall be paid in US dollars without deduction or offset. Sums which are due but which have not been paid shall accrue interest at the rate of one percent (1%) per month (or the highest rate allowed by law) from date due until paid in full. Shipper, including all entities identified in the definition of that term, shall be jointly and severally liable for the payment of all sums due Carrier.
- (d). **Lien.** Carrier shall have a lien upon the goods which shall survive delivery to secure payment of all sums due Carrier. Further, Shipper grants Carrier a consensual lien upon all Shipper's personal property subsequently in the possession of Carrier to secure payment of said sums. Carrier shall be entitled to assert such lien rights at any time, including withholding delivery until payment is made and/or holding public or private sale of personal property; sale proceeds shall be first applied to all costs of sale, then to sums due Carrier, with the balance to be paid to Shipper.

**4. Special and/or Hazardous Goods.** Shipper must identify to Carrier in writing and prior to shipment all goods requiring specialized handling and/or which are dangerous or hazardous in character, and Carrier must specifically assent to the carriage of such goods. If accepted by Carrier, Shipper shall provide complete and accurate handling instructions, including all relevant safety procedures, shall provide all documentation, and shall otherwise comply with all laws and regulations applicable to such goods. If the special, dangerous and/or hazardous character of such goods creates risk of harm to person or property or makes the continued carriage impractical, Carrier shall, at Shipper's sole risk and expense, discharge, store and/or dispose of such goods.

**5. Routes, Modes and Methods, Etc.** Carrier shall use reasonable dispatch and due diligence to complete carriage hereunder, but does not guarantee any particular departure, arrival or connection times or dates, and shall have liberty with respect to selection of conveyances, routes, procedures modes, and methods of carriage.

**6. Hindrances.** Carrier shall not be liable for delay, inability to perform or failure to perform caused by events beyond its direct and reasonable control. In the event such hindrances occur, Carrier shall, if feasible, notify Shipper for instructions with respect to the goods or, if insufficient time exists and/or instructions are not provided, shall, at Shipper's risk and expense, store and/or dispose of the goods as appears reasonable. Upon occurrence of any hindrance, either party may terminate the transportation agreement.

**7. Tender and Delivery.** Unless otherwise set forth in the applicable transportation agreement, Shipper shall tender the goods to Carrier at the location identified in good order and condition, packaged, protected, packed, stowed and/or shored sufficiently to withstand the rigors of the contemplated transportation services. Unless otherwise set forth in the applicable transportation agreement, the goods shall be deemed delivered to Consignee at the destination location identified upon notification to Consignee of their arrival, with Consignee obligated to receive and take the goods as promptly as they can be discharged and with such discharge to be at Shipper's sole risk and expense. Goods which have been received and taken by Consignee, which have been tendered to Consignee by notification but have either been refused or not promptly received or taken by Consignee, which have been taken or seized by governmental authorities or under legal process, or which cannot be delivered because of Shipper's fault or neglect or inaccuracy or inadequacy of instructions or for other reasons beyond Carrier's control, shall be deemed to have been fully delivered with Carrier's responsibility with respect to such goods to thereupon cease. Any actions taken by Carrier with respect to the goods after delivery shall be deemed performed solely as agent for Shipper and shall be at Shipper's sole risk and expense.

**8. Subcontracting.** Carrier shall be entitled to subcontract all or any portion of the transportation services hereunder. This agreement, including all benefits, defenses, exceptions, immunities and limitations upon liability set forth herein, shall apply whenever claim is made against Carrier and/or any carrier, servant, agent, contractor or any other whose services have been used to perform the transportation services. All claims arising out of and/or involving the goods or their transportation hereunder shall be subject to this agreement and commenced and maintained as set forth herein.

**9. Customs and Documentation.** Shipper shall furnish and attach to the air waybill or other accompanying transportation documentation all such information and documentation necessary to meet the requirements of foreign law and/or customs, and shall comply with all laws and regulations of any country to, from, through or over which the goods may be carried, including those relating to packaging, carriage and/or delivery. Carrier shall not be liable for loss, damage or expense occasioned by the absence, irregularity or insufficiency of any such information or documentation.

**10. Montreal Convention.** If the carriage involves a destination or stop(s) in a country other than the United States, the Montreal Convention may be applicable. The Montreal Convention governs, and in most cases limits the liability of carriers with respect to, loss, damage or delay to cargoes unless a higher value is declared in advance by Shipper and a supplementary charge is paid (if required). If the Montreal Convention is applicable, then it shall be deemed fully incorporated herein and shall override any conflicting provision hereof to the extent of such conflict but no more, and only for that portion of the carriage service as to which the Montreal Convention applies.

**11. Liability.** Carrier's liability with respect to the goods, Shipper and/or any other party claiming with respect to the goods, and whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, shall be only as follows:

(a). **Exceptions.** Carrier shall not be liable for loss, damage, delay, shortage, misdelivery, failure to deliver or other result caused by: acts of God; perils of the air; public enemies; acts of terrorism; acts of war; public authorities acting with actual or apparent authority; fire (unless caused by the actual fault or privity of Carrier); quarantines; acts or omissions of Shipper and/or the owner of the goods, including their agents or representatives; strikes; lockouts or other labor disputes; sabotage; riots and civil commotions; wastage in bulk or weight or arising from the nature of the goods; inherent vice; improper or insufficient packing, securing, packaging, marking or addressing; latent defect not discoverable by due diligence; compliance with instructions from Shipper; goods loaded by Shipper into sealed containers or other packages, provided the seal remains unbroken and the container or other package is not physically damaged; errors in aircraft piloting, handling or navigation; and/or any other cause arising without the actual fault and privity of Carrier.

(b). **Consequential Damages.** Carrier shall not be liable for any consequential or special damages of any type or nature whatsoever and howsoever arising, whether Carrier had or should have had knowledge such damages might be incurred, including without limitation loss of profits, income, business opportunities and ability to use undamaged component or system parts.

(c). **Limitation of Liability: Higher Value.** Carrier's liability with respect to the goods, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, shall be the lesser of the actual cost to repair, replace and/or deliver the goods or fifty cents (\$0.50) per pound actual weight of the lost, damaged, etc. goods, with a minimum liability of fifty dollars (\$50.00) for any given shipment, unless Shipper has declared to Carrier in writing a higher value for the goods, Carrier has agreed to carry the goods at that higher value and Shipper has agreed to pay increased freight with respect to such higher declaration, in which event Carrier's liability shall be the lesser of the actual cost to repair, replace and/or deliver such goods or the higher value so declared and agreed. Carrier shall not be liable to Shipper or any other party claiming with respect to the goods, whether for loss, delay, shortage, misdelivery, failure to deliver or otherwise, or in tort, contract or upon any other theory, other than as set forth herein, and Shipper agrees to indemnify and hold harmless (including legal fees and costs) Carrier of and from any loss, damage, expense, liability, claim and/or suit arising out of or in any fashion relating to the goods other than as specifically allocated to Carrier herein.

(d). **Delivery in Good Condition.** Delivery of the goods without written notification of damage on the face of the bill of lading or the delivery receipt shall be prima facie evidence that the goods have been delivered in the same good order, receipt and condition as when received by Carrier.

**12. Claims.** As a condition precedent to recovery against Carrier:

(a). The goods must be carefully inspected immediately upon delivery and any loss or damage then evident must be noted on Carrier's copy of the air waybill or on the delivery receipt.

(b). In the event of loss or damage which is not ascertainable at delivery, written notice of loss, damage, shortage, etc. involving the goods must be given to Carrier within seven (7) days following delivery, or in the case of perishables verbally within twenty four (24) hours and written follow-up within forty eight (48) hours from delivery, after which time it shall be conclusively presumed that the goods were delivered in the same condition as when received.

(c). In the event of goods which have been delayed, lost or otherwise not delivered, Carrier must be given written notice of said delay, loss or failure to deliver within fifteen (15) days from the date upon which the goods should have been delivered.

(d). Carrier shall have a reasonable opportunity to inspect the goods, including their packing or packaging, in the same condition as when delivered and before any alteration or destruction.

(e). A written claim for loss or damage specifying the particulars thereof must be filed with Carrier within one hundred and eighty (180) days of the date of delivery or date on which goods should have been delivered.

(f). Suit against Carrier must be filed within one (1) year following the date of delivery of the goods, date on which the goods should have been delivered, or date from which Carrier disallowed the claim or pertinent part of the claim, whichever is later.

(g). Notwithstanding the foregoing, there shall be no recovery from Carrier until the freight and all other sums due Carrier have been paid in full.

**13. Extension of Benefits.** All limitations upon, and exceptions and defenses to, liability granted to Carrier pursuant to this agreement shall be deemed automatically extended to all parent, subsidiary and affiliated entities and all subcontractors of Carrier, and the members, directors, officers, employees and agents of each of the foregoing.

**14. Law and Forum.** Any lawsuit relating to the goods, the transportation services and/or this agreement must be filed in the federal court located in Chicago, Illinois, United States. The parties consent to the exclusive jurisdiction of said court, and agree that the prevailing party shall be entitled to recover its legal fees and costs.

**15. Tariff Availability.** Carrier's tariff, incorporated herein, is available at any Carrier office during regular working hours.