

## TOC Logistics International – Terms & Conditions

This document is intended to allow customers to review, understand, and accept TOC Logistics' Terms & Conditions.

Tendering a shipment to TOC Logistics is considered acceptance of TOC Logistics' Terms & Conditions.

### TOC's liability limits:

Unless a higher value is declared on the bill of lading and the applicable "declared value charges" for such additional valuation are acknowledged by TOC and paid to TOC by SHIPPER, in no event shall TOC's liability for damage to or loss or destruction of any shipment transported exceed:

- \$500 per package\* or customary freight unit – ocean freight (or minimum allowed by applicable Hague Rules if COGSA does not apply).
- \$20 per kilogram – international air freight governed by Warsaw Convention (19 Special Drawing Rights per kilogram if by Warsaw Convention amended by Montreal Protocol, or if neither Warsaw Convention or Montreal Protocol apply).
- \$0.50 per pound – domestic air freight.
- \$0.50 per pound or \$100,000 per truckload/container, whichever is less – ground transportation (US/Canada). Used goods are limited to \$0.10 per pound or \$10,000 per truckload/container, whichever is less.
- If damage or loss occurs prior to issuance (or after termination) of international airway bill or ocean bill of lading (or is a ground shipment that does not require an International air or ocean bill of lading), origin/destination country standard liability limit laws will apply (with exception of US/Canada ground transportation).

However, even if a higher valuation is declared by SHIPPER, TOC will be responsible for payment only of the actual value of such piece(s) which are lost, damaged or destroyed, or that valuation, whichever is the least amount. Commodities may be deemed to have a lesser value, in which case the value as stated in the governing tariffs published by or for TOC or in an Agreement executed by TOC will apply.

*\*Package is governed by the legal count received by TOC on a house bill of lading. Total loose cartons may be considered total packages; Skid/Pallet lots, shipper assembled, are considered one package each regardless of carton count upon the skid/pallet. A FCL is considered one package or customary freight unit.*

Additional insurance may be purchased directly from TOC on a "per shipment" basis, with advance notice, or blanket coverage may be purchased from TOC. Insurance must be purchased for full value of a shipment (up to CIF +10%); and deductibles only may NOT be insured.

Customs Brokerage liability – Where a claim arises from activities relating to "Customs business," the Company's liability shall be limited to \$50 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less.

### Claim filing timelines:

- **Ocean freight** claims for visible damage or loss must be reported immediately upon delivery and notated on delivery paperwork. Claims for concealed loss or damage must be reported to TOC, in writing, within three (3) days of the date of delivery of the shipment.
- **Air freight** claims must be made immediately after discovery of damage and no later than 14 days after receipt of cargo, 21 days for delay from date cargo was placed at the disposal of the person entitled to delivery, and 120 days for non-delivery from date of issue of air waybill (or date of receipt if no air waybill was issued). Receipt by person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good condition and accordance with the contract of carriage.
- **Ground Transportation** shipment claims must be filed in writing with TOC within nine (9) months after delivery (delivery to port for export, delivery to consignee for import) of the goods, or in case of failure to make delivery, within nine (9) months of the shipment date.
- **Customs Brokerage** related claims must be made in writing and received by the Company, within 90 days of the event giving rise to claim.
- Any other claim type filing or lawsuit timeline (not listed below) is two (2) years.

### Lawsuit on claims must be filed within:

- **Ocean freight** – one (1) year after delivery of the Goods or the date when the Goods should have been delivered.
- **Air freight** – two (2) years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
- **Ground Transportation** – two (2) years from the date of notice in writing given by TOC to the claimant that TOC has disallowed the claim, either in whole or in part.
- **Customs Brokerage** – must be filed and properly served on Company within 75 days from the date of liquidation of the entry(s) for claims arising out of the preparation and/or submission of an import entry(s).

### Terms & Conditions notes:

- Shipper must ensure goods are packed in a manner to withstand ordinary risk of Carriage based on the mode of transportation.
- No claim for loss of or damage to a shipment will be entertained until all charges relating to that shipment have been paid.
- Freight payment terms – 15 days from date of invoice (unless superseded by separately negotiated agreement).
- Claims against TOC shall be handled as provided in 49 CFR Part 1005 | Carriage of Goods by Sea Act or applicable Hague Rules | Montreal Convention / Warsaw Convention and the regulations promulgated with respect thereto.
- All shipments as to which a claim may be made must be retained in the original shipping container for a period of five (5) business days after TOC has received notice of the damage or concealed loss, in order that TOC or its agent may inspect that shipment.
- TOC and its agents shall have the privilege to inspect the shipment in case of a concealed loss or damage claim.
- TOC shall not be liable for delay, loss or damage of any kind, to any shipment or part of a shipment when that delay, loss or damage is caused by Force Majeure (which includes but is not limited to – riot, war, labor dispute, act of God, governmental order or regulation, or other circumstances beyond the reasonable control of carrier such as, but not limited to, carrier insolvency).
- TOC shall not be held responsible for consequential damages (including but not limited to downtime and expedites), loss of revenue, and shortages without evidence of tampering or breakage, or sorting / inspection costs.
- TOC will not be liable for rust, discoloration, marring, denting, scratching, oxidation, or electrical or mechanical derangement on used goods.
- TOC will acknowledge US domestic trucking claims within 30 days and bring resolution to the claim within 120 days of receipt (or update claimant on reason for delay).

Please initial each of the line items below to confirm receipt and understanding of the attachments listed below:

- TOC Logistics Terms & Conditions Summary (page 1) \_\_\_\_\_
- Appendix A – Ocean Freight Terms & Conditions (page 3) \_\_\_\_\_
- Appendix B – International Air Freight Terms & Conditions (page 4) \_\_\_\_\_
- Appendix C – Domestic Trucking Terms & Conditions (page 5) \_\_\_\_\_
- Appendix D – Brokerage Terms & Conditions (Page 6) \_\_\_\_\_

I have read and accept TOC's terms and conditions (including this summary page and attached mode specific terms and conditions appendices).

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Company Legal Name \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_



## NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention or the Montreal Convention may be applicable and in most cases limit the liability of the Carrier in respect of loss of, damage or delay to cargo. Carrier's limitation of liability in accordance with those Conventions shall be as set forth in subparagraph 4 unless a higher value is declared.

### CONDITIONS OF CONTRACT

1. In this contract and the Notices appearing hereon:  
CARRIER includes the air carrier issuing this air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage. SPECIAL DRAWING RIGHT (SDR) is a Special Drawing Right as defined by the International Monetary Fund. WARSAW CONVENTION means whichever of the following instruments is applicable to the contract of carriage: the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; that Convention as amended at The Hague on 28 September 1955; that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be. MONTREAL CONVENTION means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.
2. 2.1. Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.  
2.2. To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:
  - 2.2.1. applicable laws and government regulations;
  - 2.2.2. provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. When carriage is to/from the USA, the shipper and the consignee are entitled, upon request, to receive a free copy of the Carrier's conditions of carriage. The Carrier's conditions of carriage include, but are not limited to:
    - 2.2.2.1. limits on the Carrier's liability for loss, damage or delay of goods, including fragile or perishable goods;
    - 2.2.2.2. claims restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the Carrier for its acts or omissions, or those of its agents;
    - 2.2.2.3. rights, if any, of the Carrier to change the terms of the contract;
    - 2.2.2.4. rules about Carrier's right to refuse to carry;
    - 2.2.2.5. rights of the Carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate Carrier or aircraft and rerouting.
3. The agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and place of destination, set forth on the face hereof or shown in Carrier's timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive Carriers is regarded as a single operation.
4. For carriage to which the Montreal Convention does not apply, Carrier's liability limitation for cargo lost, damaged or delayed shall be 19 SDRs per kilogram unless a greater per kilogram monetary limit is provided in any applicable Convention or in Carrier's tariffs or general conditions of carriage.
5. 5.1. Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with Carrier's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements.  
5.2. When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.
6. 6.1. For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.  
6.2. In carriage to which neither the Warsaw Convention nor the Montreal Convention applies Carrier shall, in accordance with the procedures set forth in its general conditions of carriage and applicable tariffs, permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if so required.
7. 7.1. In cases of loss of, damage or delay to part of the cargo, the weight to be taken into account in determining Carrier's limit of liability shall be only the weight of the package or packages concerned.  
7.2. Notwithstanding any other provisions, for "foreign air transportation" as defined by the U.S. Transportation Code:
  - 7.2.1. in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and
  - 7.2.2. in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.
8. Any exclusion or limitation of liability applicable to Carrier shall apply to Carrier's agents employees, and representatives and to any person whose aircraft or equipment is used by Carrier for carriage and such person's agents, employees and representatives.
9. Carrier undertakes to complete the carriage with reasonable dispatch. Where permitted by applicable laws, tariffs and government regulations, Carrier may use alternative carriers, aircraft or modes of transport without notice but with due regard to the interests of the shipper. Carrier is authorized by the shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.
10. Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good condition and in accordance with the contract of carriage.
  - 10.1. In the case of loss, damage or delay to cargo, the person entitled to delivery must make a written complaint to Carrier. Such complaint must be made:
    - 10.1.1. in the case of damage to the cargo, immediately after discovery of the damage and at the latest within 14 days from the date of receipt of the cargo;
    - 10.1.2. in the case of delay, within 21 days from the date on which the cargo was placed at the disposal of the person entitled to delivery.
    - 10.1.3. in the case of non-delivery of the cargo, within 120 days from the date of issue of the air waybill, or if an air waybill has not been issued, within 120 days from the date of receipt of the cargo for transportation by the Carrier.
  - 10.2. Such complaint may be made to the Carrier whose air waybill was used, or to the first Carrier or to the last Carrier or to the Carrier, which performed the carriage during which the loss, damage or delay took place.
  - 10.3. Unless a written complaint is made within the time limits specified in 10.1 no action may be brought against Carrier.
  - 10.4. Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
11. Shipper shall comply with all applicable laws and government regulations of any country to or from which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws and regulations. Carrier is not liable to shipper and shipper shall indemnify Carrier for loss or expense due to shipper's failure to comply with this provision.
12. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.

# UNIFORM STRAIGHT BILL OF LADING

## Terms & Conditions

### Sec. 1

(a) The carrier or the party in possession of any of the property described in this Bill of Lading shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier shall be liable for any loss or damage to a shipment or for any delay caused by an Act of God, the public enemy, the authority of law, or the act or default of shipper. Except in the case of negligence of the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage or delay which results: when the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such requests; or from faulty or impassible highway, or by lack of capacity of a highway bridge or ferry; or from a defect or vice in the property; or from riots or strikes. The burden to prove freedom from negligence is on the carrier or the party in possession.

### Sec. 2

Unless arranged or agreed upon, in writing, prior to shipment, carrier is not bound to transport a shipment by a particular schedule or in time for a particular market, but is responsible to transport with reasonable dispatch. In case of physical necessity, carrier may forward a shipment via another carrier.

### Sec. 3

(a) As a condition precedent to recovery, claims must be filed electronically or in writing with the receiving or delivering carrier, or carrier issuing the bill of lading or carrier on the line of which the alleged loss or damage occurred. When claims are not filed or a civil action is not filed within the time limits set forth below, the carrier shall not be liable and such claims will not be paid.

(b) Claims for loss or damage must be filed within nine (9) months after the delivery of the property (or, in the case of export traffic, within nine (9) months after delivery at the port of export, or in the case of import traffic, not more than nine (9) months after pickup at the place of tender). Claims for failure to make delivery must be filed within nine (9) months from the date of the bill of lading.

(c) Suits for loss, damage, injury or delay shall be instituted against any carrier no later than two (2) years from the day when written notice is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts of the claim specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier shall be liable, and such claims will not be paid.

(d) Any carrier or party liable for loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance, provided, that the carrier receiving the benefit of such insurance will reimburse the claimant for the premium paid on the insurance policy or contract.

### Sec. 4

(a) If the consignee refuses the shipment tendered for delivery by carrier or if carrier is unable to deliver the shipment, because of fault or mistake of the consignor or consignee, the carrier's liability shall then become that of a warehouseman. Carrier shall promptly attempt to provide notice, by telephonic or electronic communication as provided on the face of the Bill of Lading, if so indicated, to the shipper or the party, if any, designated to receive notice on this Bill of Lading. Storage charges, based on carrier's tariff, shall start no sooner than the next business day following the attempted notification. Storage may be, at the carrier's option, in any location that provides reasonable protection against loss or damage. The carrier may place the shipment in public storage at the owner's expense and without liability to the carrier.

(b) If the carrier does not receive disposition instructions within 48 hours of the time of carrier's attempted first notification, carrier will attempt to issue a second and final confirmed notification. Such notice shall advise that if carrier does not receive disposition instructions within ten (10) days of that notification, carrier may offer the shipment for sale at a public auction and the carrier has the right to offer the shipment for sale. The amount of sale will be applied to the carrier's invoice for transportation, storage and other lawful charges. The owner will be responsible for the balance of charges not covered by the sale of the goods. If there is a balance remaining after all charges and expenses are paid,

such balance will be paid to the owner of the property sold hereunder, upon claim and proof of ownership.

(c) Where carrier has attempted to follow the procedure set forth in subsections 4(a) and (b) above and the procedure provided in this section is not possible, nothing in this section shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law. When perishable goods cannot be delivered and disposition is not given within a reasonable time, the carrier may dispose of property to the best advantage.

(d) Where a carrier is directed by consignee or consignor to unload or deliver property at a particular location where consignor, consignee, or the agent of either, is not regularly located, the risk after unloading or delivery shall not be that of the carrier.

### Sec. 5

(a) In all cases not prohibited by law, where a lower value than the actual value of the said property has been stated in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum recoverable amount for loss or damage, whether or not such loss or damage occurs from negligence.

(b) No carrier hereunder will carry or be liable in any way for any documents, coin money, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed on this bill of lading.

### Sec. 6

Every party, whether principal or agent, who ships explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods. Such goods may be warehoused at owner's risk and expense or destroyed without compensation.

### Sec. 7

(a) The consignor or consignee shall be liable for the freight and other lawful charges accruing on the shipment, as billed or corrected as specified in 49 U.S.C. §13710, except that collect shipments may move without recourse to the consignor when the consignor so stipulates by signature or endorsement in the space provided on the face of the Bill of Lading. Nevertheless, the consignor shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information provided by the consignor.

(b) Notwithstanding the provisions of subsection (a) above, the consignee's liability for payment of additional charges that may be found to be due after delivery shall be as specified by 49 U.S.C. §13706, except that the consignee need not provide the specified written notice to the delivering carrier if the consignee is a for-hire carrier.

(c) Nothing in this Bill of Lading shall limit the right of the carrier to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery. If the description of articles or other information on this Bill of Lading is found to be incorrect or incomplete, the freight charges must be paid based upon the articles actually shipped.

### Sec. 8

If this Bill of Lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another Bill of Lading, the shipper's signature on the prior Bill of Lading or in connection with the prior Bill of Lading as to the statement of value or otherwise, or as to the election of common law or Bill of Lading liability shall be considered a part of this Bill of Lading as fully as if the same were written on or made in connection with this Bill of Lading.

### Sec. 9

If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the terms and provisions and limitations of liability specified by the "Carriage of Goods By Sea Act" and any other pertinent laws applicable to water carriers.

## Brokerage Terms and Conditions

### 1. Definitions.

(a) "Company" shall mean TOC Logistics International, Inc., its subsidiaries, related companies, agents and/or representatives;

(b) "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;

(c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(d) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";

(e) "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".

**2. Company as Agent.** The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the Customer and other dealings with Government Agencies: as to all other services, Company acts as an independent contractor.

### 3. Limitation of Actions.

(a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss related to Customs business must be made in writing and received by the Company, within ninety (90) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.

(b) All suits against Company must be filed and properly served on Company within seventy five (75) days from the date of liquidation of the entry(s) for claims arising out of the preparation and/or submission of an import entry(s).

### 4. No Liability For The Selection or Services of Third Parties and/or Routes.

Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods shall not be construed to mean that the Company warrants or represents that

such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

**5. Quotations Not Binding.** Quotations as to fees, rates of duty, or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

### 6. Reliance On Information Furnished.

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with Customs and Border Protection, other government agencies, and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's behalf;

(b) In preparing and submitting customs entries, applications, documentation to the United States and/or a third party, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to insure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect or false statement by the Customer upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

### 7. Disclaimers; Limitation of Liability.

(a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its Customs brokerage services;

(b) Customer agrees that in connection with any and all Customs brokerage services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of third parties;

(c) Where a claim arises from activities relating to "Customs business," the Company's liability shall be limited to \$50.00 per entry or the amount of

brokerage fees paid to Company for the entry, whichever is less.

(d) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages.

**8. Advancing Money.** All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

**9. Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation of Customer's merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

### 10. C.O.D. or Cash Collect Shipments.

Company shall use reasonable care regarding written instructions relating to "Cash/Collect on Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have liability if the bank or consignee refuses to pay for the shipment.

**11. Costs of Collection.** In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company.

### 12. General Lien and Right To Sell Customer's Property.

(a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

(b) 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; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.

(c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or

to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

### 13. No Duty To Maintain Records For Customer.

Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.

### 14. Obtaining Binding Rulings, Filing Protests, etc.

Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post- Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

### 15. No Modification or Amendment Unless Written.

These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

### 16. Compensation of Company.

The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

**17. Severability.** In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

### 18. Governing Law; Consent to Jurisdiction and Venue.

These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Indiana without giving consideration to principals of conflict of law. Customer and Company (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Indiana; (b) agree that any action relating to the services performed by Company, shall only be brought in said courts; (c) consent to the exercise of *in personam* jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.