



TERMS & CONDITIONS OF SERVICE

DEFINITIONS. “Phoenix” means Phoenix Freight Forwarding, Inc. its subsidiary, affiliated and related companies, and its agents, representatives and employees. “Customer” means the individual, corporation or other entity which has retained Phoenix to perform property brokerage, warehousing, freight management, consulting and transportation intermediary services, as well as all agents, representatives and subcontractors of said individual, corporation or entity, including, but not limited to all shippers and consignees of the Shipment, or the insurers thereof, and any other party claiming a right or interest in the Shipment. The Customer agrees to provide notice of these Terms and Conditions of Service to all parties falling within this definition of “Customer.” “Shipment” means the goods which are carried or handled under the terms of a single bill of lading or air waybill, irrespective of the quantity or number of containers, packages or pieces. "Third Parties" shall include, but not be limited to, the following: motor carriers, rail carriers, truckmen, cartmen, lightermen, freight forwarders, air carriers, agents, warehousemen and others to whom the Shipment is entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise.

1. Contract and Scope of Services. Phoenix is a licensed property broker operating under License No. MC-1067609-B, which undertakes to arrange, as the “agent” on behalf of Customers, the interstate surface transportation of Shipments through Third Parties, from and to various origins and destinations throughout the United States. Customer agrees that if Customer or any other party prepares the bill of lading, and inserts Phoenix’s name as the carrier, such insertion shall be for Customer’s convenience only, and shall not change Phoenix’s status as a property broker, and Customer agrees that Phoenix’s preparation and issuance of any such bills of lading shall also not change Phoenix’s status as a property broker. Phoenix is also an air transportation intermediary, which undertakes to arrange, as the “agent” on behalf of Customers, domestic and international air Shipments through Third Parties. Said Third Parties may limit their liability and may operate under terms and conditions further defining their rights, obligations, and defenses, and Customer authorizes Phoenix to agree to those terms on Customer’s behalf. All Services provided by Phoenix to Customer are governed by these Terms and Conditions of Service, which form a contract between Phoenix and the Customer, with the exception that if Phoenix issues an air waybill in which it is identified as the indirect air carrier, then the terms and conditions set forth in such air waybill shall govern the services specified therein, and these Terms and Conditions of Service shall govern all other remaining obligations and services. These Terms and Conditions of Service supersede all agreements, representations, warranties, statements, promises, and understandings of the parties, written or oral, except as stated herein. Copies of Phoenix’s most recent Terms and Conditions of Service are available at Phoenix’s website: <http://phoenix-freight.com/service.asp>.



2. Limited Liability. (a) Phoenix agrees to select, on behalf of the Customer, the Third Parties to whom the Shipment will be entrusted for transportation, handling, delivery, storage and related Services. However, Phoenix shall have no liability for any acts or omissions of Third Parties which may damage or delay the Customer's Shipment, or cause other loss to the Customer and its interest in the Shipment, or for Shipments illegally obtained by unauthorized persons through identity theft and other fraudulent schemes. (b) THE MAXIMUM LIABILITY OF PHOENIX TO THE CUSTOMER FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND THE CUSTOMER'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO \$50.00 PER SHIPMENT, EXCEPT AS MAY BE SET FORTH HEREIN, PHOENIX MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING ITS SERVICES. IN NO EVENT SHALL PHOENIX BE LIABLE FOR ANY LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES PROVIDED TO THE CUSTOMER, EVEN IF PHOENIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (c) In no case will the maximum liability of any Third Party for damages to a Shipment be greater than \$100,000.

3. Claims. All claims in connection with the acts or omissions of a Third Party shall be brought solely against such party and/or its insurer, and Phoenix has no liability for any failure of the Third Party, or its insurer, to pay such claims. Phoenix agrees to reasonably assist the Customer in bringing such claims against Third Parties; however, Customer's timely payment of Phoenix's invoices is a condition precedent to such assistance. All claims and supporting documentation must be submitted within 30 days after delivery using Phoenix's Claim Form, found at <http://phoenix-freight.com/service.asp>. Claims for damages that are not readily apparent or noted upon delivery ("concealed damage") must be submitted within 24 hours.

4. Insurance. Unless otherwise agreed in writing, Phoenix will select Third Parties which have certificates of insurance showing liability insurance coverage limits for loss or damage to cargo up to \$100,000. In no event, however, shall Phoenix be responsible for any Third Party's failure to actually maintain such insurance, for any exclusion from coverage which may apply, or for any fraudulent act by Third Parties or any other persons or entities presenting fraudulent or false information to Phoenix or the Customer. Upon written request and for a separate charge, Phoenix can arrange first-party cargo insurance for the Customer's Shipment. However, Phoenix is under no obligation to arrange such insurance unless it receives specific written instructions from the Customer to do so prior to transportation of the Shipment, and the Customer pays the required premium. The Customer agrees Phoenix assumes no agency role for the Customer in procuring such first-party cargo insurance coverage; such coverage shall be governed exclusively by the terms of the certificate of insurance coverage and policy issued by the insurance company to Customer, and the insurance company is solely responsible for the payment of insurance claims.



5. Credit. Payment terms and credit limits are subject to credit approval at the sole and absolute discretion of Phoenix, which shall be determined periodically and after submission of a Credit Application, and may be revised or revoked if there is a change in Customer's payment history or financial condition. Customer grants Phoenix the right to perform such credit history and background searches as Phoenix deems necessary, and will submit a financial statement if requested. Phoenix's Credit Application Form can be found at <http://phoenix-freight.com/service.asp>.

6. Cash Collect Shipments. Phoenix can assist with Cash on Delivery ("C.O.D") Shipments, but the Customer assumes the sole responsibility and liability for any failure of a consignee or bank to pay, and for any delay in the Shipment or loss to the Shipment that may result.

7. Payment of Services. Payment terms for all charges incurred for Services performed or arranged by Phoenix shall be net thirty (30) days from the date of the invoice issued by Phoenix. Invoices submitted by Phoenix to Customer are deemed conclusively accepted and approved and fully payable on the terms contained therein unless disputed in writing by Customer within seven (7) business days of Customer's receipt thereof. Any amount remaining unpaid after 30 days (30) days shall accrue interest at a rate equal to the lesser of (a) 18% per annum of the average outstanding balance due; or (b) the highest rate allowed by law. Phoenix's charges for the Services it performs are in addition to the charges of all Third Parties retained by Phoenix on the Customer's behalf, which will be invoiced together. The Customer agrees to pay Phoenix's invoices without reduction or deferment on account of any alleged claim, counterclaim or set-off it believes it has for cargo loss, damage or theft, and all charges therein shall be considered as earned by Phoenix at the moment the Shipment has commenced transportation.

8. Lien on Customer's Goods. The Customer agrees that Phoenix has a general, contractual lien on all Shipments which are the subject of Services rendered by Phoenix while those Shipments are in possession of Phoenix or any Third Party for any accounts receivable owed by the Customer to Phoenix arising from the specific Shipment against which the lien is asserted, and/or arising from any previous Shipments. If Phoenix elects to hold any Shipment based on these lien rights, it will provide written notice of that election to the Customer, and Customer agrees Phoenix has the authority to direct Third Parties to hold shipments on the basis of these lien rights and to arrange unloading and storage at Customer's expense. If the Customer fails to make payment arrangements or post security to Phoenix's satisfaction within thirty days of such notice, Phoenix will have the right to sell the Shipment at private or public sale or auction, and will remit to the Customer any net proceeds after the sale which exceeds the total amount owed (including any accrued unloading, loading and storage charges). The Customer shall provide notice to any other parties having an interest in the Shipment of these lien rights and of any exercise of those rights by Phoenix.

9. Indemnification. The Customer agrees to indemnify, defend, and hold Phoenix harmless from and against any and all claims and/or liabilities, including, but not limited to attorney's fees and costs, arising from the Customer's acts or omissions in relation to the Shipment, and arising from the manner in which the Shipment was prepared and/or packed for Shipment.



10. Applicable Law, Venue and Time for Suit. These Terms and Conditions of Service shall be governed by Illinois law without the application of its conflict of laws principles. Any suit relating to this Agreement shall be instituted in a state or federal court in Cook County, Illinois, and the parties irrevocably consent and waive all objections to the jurisdiction of any such court. A suit to enforce a judgment against the Customer may be filed in any jurisdiction where the Customer has assets. Any cause of action against Phoenix relating to or arising out of the Services Phoenix provides to the Customer will not be valid unless such action is commenced by the filing of a complaint in the required venue within one year of the date of the loss. Phoenix shall be entitled to recover its courts costs and reasonable attorney's fees from the Customer in any action for collection of any payment due to Phoenix, or in any other action in which Phoenix prevails in the enforcement of these Terms and Conditions of Service.

11. Modification. No modification of these Terms and Conditions of Service shall be of any force or effect unless (a) reduced to writing and signed by both Phoenix and the Customer prior to Shipment, and (b) expressly referred to as being a modification of these Terms and Conditions of Service.

12. Severability. The provisions set forth in these Terms and Conditions of Service are severable, and if any particular provision should be held invalid, unenforceable or illegal by a court having competent jurisdiction, the remainder of these Terms and Conditions shall not be affected and shall be construed as if such invalid, unenforceable or illegal provision(s) was (were) omitted.