



AIR WAYBILL TERMS AND CONDITIONS

1. By tendering the Shipment described on this Air Waybill to Phoenix Freight Forwarding, Inc. ("Phoenix") for handling and transportation, Customer agrees, for itself and all other parties at any time having an interest in the goods, to these Air Waybill Terms and Conditions, which no agent or employee of the parties may alter. This Air Waybill is non-negotiable. If a shipment is tendered to Carrier on any shipping document other than Carrier's own waybill, Carrier's conditions of contract shall supersede any terms, conditions, rules or regulations contained on the shipping document used.

2. **Definitions.** "Carrier" is Phoenix and any Third Parties through which Carrier undertakes to arrange carriage of the Shipment identified in this Air Waybill ("Services"). "Customer" means the shipper, consignee or receiver of the Shipment that is identified in this Air Waybill. "Shipment" means the goods which are identified on this Air Waybill, irrespective of the quantity or number of containers, packages or pieces. "Third Parties" shall include, but are not limited to, air carriers motor carriers, freight forwarders, property brokers, warehouses and others to which the Shipment is entrusted by Carrier or transportation, cartage, handling, storage or any other service with respect to the Shipment.

3. Customer warrants that: (a) it is the owner or authorized agent of the owner of the Shipment; (b) the Shipment is properly and completely described on this Air Waybill; (c) all goods in the Shipment have been properly and sufficiently prepared, packed, labeled and/or marked for the normal rigors of the intended transportation and in accordance with all government regulations pertinent to the transportation of the goods; (d), except as noted on the Air Waybill, all goods in this Shipment are in good order and condition; (e) the goods do not comprise or contain any explosive, incendiary or other device, hazardous substance or weapon which may endanger life or the safety of any transport conveyance or which may cause or is likely to cause loss, damage, injury to or death of any person or property; and the goods do not contain any undeclared dangerous or hazardous materials within the meaning of current IATA Dangerous Goods Regulations ("Regulations"), and Customer will not tender such goods to Carrier without obtaining Carrier's prior consent. Where such consent is granted, Customer warrants that all such goods are packed, marked, and labeled and otherwise meet all documentation requirements and provisions of the Regulations and it has complied with all statutes, rules and regulations of any and all governments and governmental agencies governing its activities. Customer agrees to defend and indemnify Carrier from and against any and all loss, damage, delay and expense, including reasonable attorney's fees and costs, arising out of Customer's breach of any of the warranties contained herein.

4. Carrier does not guarantee pick up, transportation, or delivery of the Shipment by a stipulated time, but only undertakes to complete the carriage hereunder with reasonable dispatch. Carrier is authorized to select the routing and such Third Parties to perform Services with respect to the Shipment as it deems appropriate for completing the carriage, handling and storage of the Shipment, and it may substitute alternate carriers or aircraft and may, without notice, and or select the routing and all intermediate stopping places it deems appropriate or deviate from any routing instructions shown on the face hereof.

5. **Limitation of Liability.** For domestic shipments, unless a higher value is declared, and a higher rate is paid for freight, the total liability of Carrier in the event of loss or damage to the shipment shall in no event exceed \$0.50 per pound, or the actual value of such lost or damaged piece, whichever is less. For Shipments having a value declared on the face of this Air Waybill prior to acceptance by Carrier, the total liability of Carrier shall in no event exceed the declared or the actual value of the lost or damaged Shipment/piece, whichever is less.

6. Carrier shall not be liable for any loss, damage, or delay caused by: Acts of God; public enemies; public authorities acting with actual or apparent authority, including acts of quarantine, impoundment and confiscation; riots, strikes, and civil commotion; hazards or dangers incident to any state of declared or undeclared war or nuclear risk; acts or defaults of the Customer, including any breach of these Terms and Conditions; and any defect or vice inherent in the nature of the Shipment itself. **IN NO EVENT SHALL CARRIER 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 UNDER THIS BILL OF LADING, EVEN IF CARRIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

7. **Cargo Insurance.** 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.

8. Notice of arrival of the Shipment at the time and place Carrier is entitled to make delivery will be given to the consignee, or to the person indicated on the face hereof, as the person to be notified, and delivery will be tendered to consignee. If the consignee declines to accept the tender of the Shipment, or cannot be contacted, disposition of the Shipment will be made in accordance with instructions of the Customer. Customer shall be liable for all costs in either returning the Shipment or warehousing the Shipment pending its disposition, or both. If after ten (10) days no instructions have been given by Customer to return the Shipment or to have it destroyed, Carrier shall have the option of returning, disposing of or salvaging the Shipment at Customer's expense.

9. **Notice of Damage and Inspection.** Receipt by the consignee of the Shipment without written notification of damage or exception on the delivery receipt shall be prima facie evidence that the Shipment has been delivered in good order and condition. If loss or damage is found, a notation must be entered on the Air Waybill or delivery receipt which accurately reflects the nature and extent of the damage. Notations such as "subject to inspection" and "subject to recount," are not valid exceptions. Notification of concealed loss/damage claims (i.e. claims for loss or damage discovered by the consignee after delivery and after a clear receipt has been given) must be received in writing by Carrier within (24) hours after delivery. For all damage claims and concealed loss claims, Carrier must be allowed the privilege to make inspection of the Shipment, container(s) and packaging material(s) at place of delivery in the same condition in which they were received.

10. **Claims.** All claims for loss, damage or delay to any cargo carried under this Air Waybill must be submitted in writing to the Carrier at 434 Madison St., Lake Geneva, WI 53147. For domestic air shipments, claims must be submitted no later than 30 days after the date of delivery. Payment of any claim is conditioned on Customer's submission of proof of the actual physical loss or damage suffered by the Shipment, and must include a copy of the purchase invoice, Air Waybill, delivery receipt and any other documentation reasonably requested by Carrier. Failure to submit all supporting documents within these time limitations will result in denial of the claim. In addition, no claim will be considered for adjustment or payment until all freight and other charges due and owing to Carrier for Services have been paid in full. Overcharge claims must be received in writing by Carrier within one year after date of acceptance of the Shipment by Carrier.

11. **Cash Collect Shipments.** Carrier 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 or loss to the Shipment, and additional cost and expenses incurred, that may result.

12. **Payment of Freight and Service Charges.** Payment terms for all freight and other charges incurred for Services performed or arranged by Carrier with respect to the Shipment shall be net thirty (30) days from the date of the invoice issued by Carrier. Invoices submitted by Carrier 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 thirty (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 Carrier'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 Carrier at the moment the Shipment has been tendered to Carrier for handling, transportation, and any other Services.

13. The Customer agrees that Carrier has a general, contractual lien on all Shipments which are the subject of Services rendered by Carrier while those Shipments are in possession of Phoenix or any Third Parties for any accounts receivable owed by the Customer to Carrier arising from the specific Shipment against which the lien is asserted, and/or arising from any previous Shipments. If Carrier elects to hold any Shipment based on these lien rights, it will provide written notice of that election to the Customer, and Customer agrees Carrier 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 Carrier's satisfaction within thirty days of such notice, Carrier 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 Carrier.

14. These Terms and Conditions shall be governed by Illinois law without the application of its conflict of laws principles. Any suit relating to this Shipment 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. Carrier 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 Carrier, or in any other action in which Carrier prevails in the enforcement of these Terms and Conditions.