

## TERMS AND CONDITIONS

All services performed by Airways Freight Corporation (hereinafter called the "Company") for the Customer ("Customer") shall include the person or entity for which services are performed, its agents and/or representatives, including, but not limited to, shippers, exporters, importers, senders, receivers, owners, consignees, carriers, secured parties, warehousemen, insurers and underwriters, and transferees of shipments) will be handled by the Company on the following terms and conditions:

**1. Application of Terms and Conditions.** Company and Customer agree that these terms and conditions of service constitute a legally binding contract. The Customer acknowledges and agrees that it is responsible to provide notice and a copy of these terms and conditions of service to all of its agents or representatives.

**2. Standing of Company.** The Company is an independent contractor except with respect to the performance of the following services where Company acts as an "agent" of Customer: entry and release of goods; post entry services; the securing of export licenses; export documentation filing for the Customer; other dealings with government agencies in behalf of Customer.

**3. Services by Third Parties.** Unless the Company carries, stores, or otherwise physically handles the shipment, and loss, damage, expense or delay occurs during such activity, the Company assumes no liability as a carrier and shall not be held responsible for any loss, damage, expense or delay to the goods to be forwarded or imported except as provided in paragraph 10 and subject to the limitations of paragraph 11 below. The Company agrees to use reasonable care in the selection of carriers, truck men, lighter men, forwarders, customs brokers, agents, warehousemen and others with whom it may contract for transportation, cartage, handling and/or delivery and/or storage or otherwise. When the Company carries stores or otherwise physically handles the shipment, it does so subject to the limitation of liability set forth in paragraph 10 below unless a separate bill of lading, air Waybill or other contract of carriage is issued by the Company, in which event the terms thereof shall govern.

**4. Liability Limitations of Third Parties.** The Company is authorized to select and engage carriers, truck men, lighter men, forwarders, customs brokers, agents, warehousemen and others, as required, to transport, store, deal with and deliver the goods, all of whom shall be considered as the agents of the Customer, and not agents of the Company. The Company shall under no circumstances be liable for any loss, damage, expense or delay to the goods for any reason whatsoever when said goods are in the custody, possession or control of third parties selected by the Company to forward, enter and clear, transport or render other services with respect to such goods.

**5. Choosing Routes or Agents.** Unless express instructions in writing are received from the Customer and accepted by the Company, the Company has complete freedom in choosing the means, route and procedure to be followed in the handling, transportation and delivery of the goods. By selecting a particular person or firm to render services with respect to the goods Company in no manner warrants or represents that such person or firm will render such services nor does Company warrant or assume liability for the quality of the services rendered by such person or firm.

**6. Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon the Company unless the Company in writing specifically undertakes the handling or transportation of the shipment at a specific rate, and such rate is published and/or filed as required by any law, statute or regulation.

**7. Duty to Furnish Information** (a) On an import shipment at a reasonable time prior to entering of the goods through U.S. Customs, the Customer shall furnish to the Company invoices in proper form and other documents necessary or useful in the preparation of the U.S. Customs entry and also, such further information as may be sufficient to establish inter alia, the dutiable value, the classification, the country of origin, quantity, weight, admissibility and the genuineness of the merchandise and any mark or symbol associated with it, and the Customer's right to import and/or distribute the merchandise, pursuant to U.S. law or regulation. If the Customer fails to furnish in a timely manner such information or documents, in whole or in part, as may be required to complete U.S. Customs entry or comply with U.S. laws or regulations or if the information or documents furnished are inaccurate, incomplete, or otherwise insufficient, the Company shall be obligated only to use reasonable efforts in connection with the shipment and in no instance shall be charged with knowledge by the Customer of the true circumstances to which such inaccurate, incomplete, omitted or otherwise insufficient information or document pertains. Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, the Customer shall be deemed bound by the term of the bond notwithstanding the fact that the bond has been executed by the Company as principal, it being understood that the Company entered into such understanding at the instance and on behalf of the Customer, and the Customer shall indemnify and hold the Company harmless for the consequences of any breach of the terms of the bond. (b) On an export shipment at a reasonable time prior to exportation of the shipment, the Customer shall furnish to the Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods. (c) On either an export or import shipment, the Company shall not in any way be responsible or liable for increased duty, penalty, fine or expense unless, caused by the negligence of the Company, in which event its liability to the Customer shall be governed by the provisions of paragraphs 10-11 below. The Customer shall be bound by and warrant the accuracy of all invoices, documents and information furnished to the Company by the Customer or its agent for export, entry or other purposes and the Customer agrees to indemnify and hold the Company harmless against any increased duty, penalty, fine or expense including but not limited to attorneys' fees, costs, and expenses resulting from any inaccuracy, incomplete statement, omission or any failure to make timely presentation of required invoices, documents and information, even if not due to any negligence of the Customer.

**8. Declaring Higher Valuation.** Inasmuch as the truckers, carriers, warehousemen and others to whom the goods are entrusted (collectively, the "Third Parties") usually limit their liability for loss or damage unless a higher value is declared and the charge based on such higher value is agreed to by any such Third Party, unless the Company receives specific written instructions from the Customer to pay such higher charges based on valuation and any such Third Party accepts such higher declared value, any valuation placed by the Customer on the goods shall be considered solely for export or customs purposes and Company does not assume any additional liability for loss or damage and Company's liability shall remain subject to the limitations of liability set forth herein in paragraphs 10 and 11 below with respect to any claim against the Company and subject to the provisions of paragraph 4 above.

**9. Insurance.** The Company will make reasonable efforts to effect marine, fire, theft and other insurance upon the goods only after specific written instructions have been received and accepted by the Company in sufficient time prior to shipment from the point of origin, and the Customer at the same time states specifically the kind and amount of insurance to be placed. The Company does not undertake or warrant that such insurance can or will be placed. Unless the Customer has its own open marine policy and instructs the Company to effect insurance under such policy, insurance is to be effected with one or more insurance companies or other underwriters to be selected by the Company. Any insurance placed shall be governed by the certificate or policy issued and will only be effective when accepted by such insurance companies or underwriters. Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only and the Company shall not bear any liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to the Company by the Customer, or that the shipment was insured under a policy in the name of the Company. Customer agrees to pay all insurance premiums and any costs of the Company for arranging the same. If for any reason the goods are held in warehouse, or elsewhere, the goods will not be covered by any insurance, unless the Company receives and accepts written instructions from the Customer. Unless specifically agreed in writing, the Company assumes no responsibility to effect insurance on any export or import shipment, which it does not handle. Company shall have no obligation to procure insurance in behalf of Customer except as specifically provided for herein.

**10. Limitation of Liability for Loss; Warranty Disclaimer.** (a) The Customer agrees that the Company shall only be liable for its negligent acts that are the direct and proximate cause of loss, damage, expense or delay to the goods and Customer further agrees that subject to any applicable law, statute, or regulation to the contrary, Company's liability shall be limited to the lesser of the following: (i) Fifty Dollars (\$50.00) per shipment or transaction; (ii) where the claim arises from the Company's warehousing, fulfillment, and/or consolidation/de-consolidation services occurring in the Company's or its contracted facilities or premises, including owned or leased property, Company's liability shall be limited to Fifty Cents (\$0.50) per pound of goods lost or damaged or (iii) the fee(s) charged for the services, provided that, in the case of partial loss, such amount shall be adjusted pro rata. (b) Customer has the option of paying for additional liability coverage for services performed by Company up to the shipment's actual or declared value; however, such option must be exercised by written agreement, entered into prior to any covered transactions, and must set forth the limit of the Company's liability and the compensation received. (c) Customer agrees that the Company shall, in no event, be liable for consequential, indirect, incidental, punitive, statutory or special damages even if Company has been put on notice of the possibility of such damages. (d) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services.

**11. Limitation of Actions.** (a) Subject to any applicable law, statute or regulation, the Company shall not be liable under paragraph 10 for any claims not presented to it in writing within thirty (30) days of either the date of loss or incident giving rise to the claim. (b) All suits against Company must be filed and properly served on Company as follows: within one (1) year from

the date of loss except for claims arising out of preparation and/or submission of an import entry which shall be filed and properly served on the Company within seventy-five (75) days from the date of liquidation of the entry.

**12. Advancing Money.** The Company shall not be obliged to incur any expense, guarantee payment or advance any money in connection with the importing, entering, forwarding, transporting, insuring, storing or cooping of the goods, unless monies sufficient to satisfy such expense, payment, or advance is previously provided to the Company by the Customer on demand. The Company shall not be under an obligation to advance freight charges, customs duties or taxes, insurance charges, or other charges owed to third parties by the Customer on any shipment. No advance by the Company may be construed as a waiver of the provisions hereof. In the event that the Company should advance any such monies to any person or entity that subsequently refunds all or any portion thereof to the Customer, and the Customer at the time of the refund, has not reimbursed the Company for those monies, then any portion of the refund corresponding to such unpaid, advanced monies, and any interest paid thereon, shall be deemed the exclusive property of the Company to which the Customer shall have no claim, and which the Customer shall return to the Company immediately upon receipt.

**13. Indemnification for Freight Duties, etc.** In the event that a carrier, other person or any governmental agency makes a claim or institutes legal action against the Company for ocean or other freight, duties, fines, penalties, liquidated damages or other money due arising from a shipment of goods of the Customer, the Customer agrees to indemnify and hold the Company harmless for any amount the Company may be required to pay such carrier, other person or governmental agency together with reasonable expenses, including but not limited to attorney fees, costs, and expenses incurred by the Company in connection with defending such claim or legal action and obtaining reimbursement from the Customer. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to the Company to pay all charges or other money due promptly on demand.

**14. C.O.D. Shipments.** Goods received with Customer's or other person's instructions to "Collect on Delivery" (C.O.D.) by drafts or otherwise, or to collect on any specified terms by time drafts or otherwise, are accepted by the Company only upon the express understanding that it will exercise reasonable care regarding such instructions, and the Company will not be responsible for any refusal by a bank or consignee to pay for a shipment, or for any act, omission, default, suspension, insolvency or want of care, negligence, or fault of any bank, correspondent, carrier or agent, nor for any delay in remittance lost in exchange, or loss during transmission, or while in the course of collection.

**15. General Lien on any Property.** The Company shall have a general and continuing lien on any and all property (and documents relating thereto) of the Customer, either in its actual or constructive possession, custody or control or en route, for all claims or monies owed to Company, including without limitation charges, expenses or advances incurred by the Company, in connection with any shipments of the Customer, including prior shipments. 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 ongoing storage or other charges Customer shall notify all parties having an interest in its shipment of Customer's rights and/or the exercise of such lien. Unless, within thirty (30) days after receiving the notice of lien, Customer posts cash or a letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110 percent of the value of the total amount due in favor of the Company guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, the Company may sell at public or private sale, in accordance with governing law the goods, wares and/or merchandise, or so much thereof as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of the monies owed to the Company. Any surplus from such sale shall be transmitted to the Customer, and the Customer shall be liable for any deficiency in the sale.

**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. Except on ocean export shipments handled by the Company as a carrier, the Company shall, upon request, provide a detailed breakout of the components of all charges assessed on ocean export shipments, and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due to the Company, including but not limited to any action for the enforcement of any provision of the Master Customs Power of Attorney between the Customer and the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney's fees, costs and expenses.

**17. No Responsibility for Governmental Requirements.** It is the responsibility of the Customer to know and comply with the requirements, laws and regulations of any federal, state or local agencies pertaining in any way to the merchandise, including, but not limited to, regulations, laws, and requirements pertaining to marking, classification, licensing, transporting hazardous materials, export controls, and any other transporting, importing, or exporting requirements. The Company shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Customer by any such agency.

**18. Indemnity against Liability Arising from the Importation of Merchandise.** The Customer agrees to indemnify and hold the Company harmless from any claims and/or liability arising from the importation of merchandise and/or any conduct of the Customer which violates any federal, state and/or other laws or regulations 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, costs and expenses which the Company may hereafter incur, suffer or be required to pay by reason of such claims and/or liability. In the event that any such action, suit or proceeding is brought against the Company, the Company shall give notice in writing to the Customer by mail at its address on file with the Company. Upon receipt of such notice, the Customer at its own expense, and, at the Company's discretion, in cooperation with the Company's designated counsel, shall defend against such action and take all steps as may be necessary or proper to prevent the obtaining of a judgment and/or order against the Company.

**19. Loss, Damage or Expense Due to Delay.** Unless the services to be performed by the Company on behalf of the Customer are delayed by reason of the negligence of the Company, the Company shall not be responsible for any loss, damage or expense incurred by the Customer because of such delay. In the event the Company is at fault, as aforesaid, its liability is limited in accordance with the provisions of paragraphs 10 and 11 above.

**20. No Duty to Maintain Records For Customer.** Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 U.S.C. sections 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 and/or regulations, but not as a "record keeper" or "record-keeping agent" for Customer.

**21. 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 petitions and/or protests, etc.

**22. Preparation and Issuance of Bills of Lading.** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereupon the number of pieces, packages and/or cartons, etc. unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. Company shall be entitled to rely upon and use the cargo weight supplied by Customer.

**23. No Modification or Amendment Unless Written.** These terms and conditions of service represent the full and complete agreement of the parties and 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.

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

**25. Governing Law and consent to Jurisdiction and Venue.** These terms and conditions of service shall be construed according to the laws of the State of Arkansas, without giving consideration to principles of conflict of law. The Company and the Customer (a) irrevocably agree to the jurisdiction of the United States District Court located in the Western District of Arkansas and the State Courts of Arkansas; (b) agree that any action relating to the services performed by Company shall only be brought in said courts; (c) agree 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. (Revised 07/2005) Airways Freight Corporation, P.O. Box 1888, Fayetteville, AR 72702, USA

**26. Consent to Screen.** The Customer consents to the screening of all cargo transported by the Company.