



Trade Management Solutions

## **BILL OF LADING TERMS AND CONDITIONS**

The parties agree TMS and/or one or more of its subsidiaries and or contractors (collectively "TMS") will perform services for, and/or at the request of Consignee/Customer, as well as for any Shipper, Exporter, Consignee, Notify Party, or any Person entitled to possession of the Goods or any Bill of Lading. While performing said services, any Person or entity having a present or future interest in the Goods, or a Holder of any properly endorsed Bill of Lading, and the receiver and owner of the Goods (each of whom are recognized as specifically identified third party beneficiaries of the services provided by TMS) agree to the Terms and Conditions herein and any and all limitations of liability recognized by applicable State and Federal law. The terms below apply unless specifically superseded by a written agreement executed by all parties prior to the date goods are received by TMS. Part of the consideration for the rates offered by TMS and charged pursuant to this Agreement are the limitations of liability as stated herein. Customer agrees and acknowledges that the rates are dependent upon these limitations. All documents referred to in this Agreement are available from TMS upon request.

### **I. TRANSPORTATION**

All transportation services, ground, air, or ocean, are subject to the terms, conditions, and limitations of liability of specific carrier bills of lading, which will be provided by TMS to Customer at time of shipping or are available from TMS upon request. Customer agrees to terms and conditions without reservation and further agrees to be bound by conditions of the contracts between TMS and its subcontractors.

#### **A. Other Shipments**

For claims relating to any other shipments damaged in transit that are not covered by the foregoing, TMS's liability insurance shall be limited to the lesser of: (a) Customer's actual damage sustained; or (b) 20.00USD per unit affected.

#### **B. Forwarder Cargo Shipments**

Where TMS has performed consolidation and forwarding services pursuant to a Forwarder cargo Receipt, the receipt, custody, consolidation and forwarding of any cargo is governed by the provisions of the applicable TMS Forwarder Cargo Receipt, Service Agreement and TMS's governing tariffs covering the performance of consolidation services by TMS.

### **II. WAREHOUSING**

Any and all warehousing services rendered by TMS for which payment is sought through this Agreement, are subject to the terms and conditions printed on TMS's Warehouse receipt or On-hand notice. TMS will pay to Customer all sums TMS shall become legally obligated to pay (excluding sums arising from Act of God, terrorism, loss or shortage disclosed upon the taking of inventory mysterious disappearance, inherent vice and deterioration, for which TMS shall NOT be liable), arising from TMS's negligence, gross negligence and willful misconduct, by reason of liability imposed as a warehouseman, for loss, destruction or damage to Goods placed in TMS's care, custody, and control. This liability is limited to \$0.50 per pound based upon the weight of the Goods lost, destroyed or damaged, but under no circumstances shall TMS' liability exceed \$5,000 USD per occurrence.

### **III. OCEAN FORWARDER SERVICES**

In all cases where TMS has provided Ocean Forwarder Services, involving the nomination, selection or engaging of carriers on behalf of the Customer receiving the invoice, TMS shall in no event be liable for any loss, damage, expense, delay or claim resulting from the negligence or other fault of TMS in performing that service in excess of \$50.00 per shipment, and any partial loss or damage for which TMS may be liable shall be adjusted pro rata on the basis of the valuation.

### **IV. LIMITATION OF DAMAGES**

IRRESPECTIVE OF ANY STATEMENT TO THE CONTRARY IN THIS OR ANY OTHER AGREEMENT OR DOCUMENT, CUSTOMER AGREES TO LIMIT DAMAGES TO ACTUAL ECONOMIC DAMAGES INCURRED BY CUSTOMER. CUSTOMER FURTHER AGREES TMS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE IN PERFORMING OR FAILING TO PERFORM THE SERVICES WHICH FORM THE BASIS FOR THE CHARGES HEREIN, REGARDLESS OF WHETHER SUCH LOSS WAS FOUND TO BE REASONABLY FORESEEABLE, OR WHETHER TMS WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS. THIS LIMITATION CLAUSE APPLIES TO DAMAGES ARISING IN TORT (INCLUDING NEGLIGENCE) OR CONTRACT.

### **V. FORCE MAJEURE CLAUSE**

If TMS is unable to perform its obligations in whole or in part due to an event of Force Majeure as defined herein, then the obligations of the Customer shall be suspended to the extent made necessary by such event. The term "Force Majeure" means any cause not within the control of and not caused by TMS, including, but not limited to, Acts of God, governmental authority, civil disorder, strikes or labor disputes, the failure of the subcontractors to receive, transport, or deliver, or otherwise perform, unless due to the failure of TMS to perform its obligations hereunder, or any other cause which by the exercise of reasonable diligence TMS could not have prevented or is unable to overcome. Any such event of Force Majeure shall, so far as possible, be remedied with all reasonable dispatch. It is understood and agreed that the settlement of strikes or lockouts will be entirely within the discretion of the entity having the difficulty, and that the above requirement of the use of diligence in restoring normal operating conditions will not require the settlement of strikes or lockouts by acceding to the terms of the opposing party when such course is inadvisable in the discretion of the entity having the difficulty. Neither financial distress nor the inability of TMS to make a profit or avoid a financial loss shall be deemed a force majeure event, nor shall (i) changes in the market prices of fuel, energy, or electricity, or (ii) TMS's financial inability to perform its obligations under this Agreement, constitute an event of Force Majeure hereunder. Customer agrees TMS inability to perform its obligations under this Agreement will not be considered a breach of this Agreement if an event of Force Majeure is the sole or contributing cause of the lack of performance.

### **VI. APPLICATION FOR ACCOUNT OR CREDIT**

1. Customer hereby certifies that the information furnished under the Application for Account or Credit, attached hereto as Exhibit A, and on any financial statements furnished in connection therewith, is true and correct and that this information is being furnished to TMS for the purpose of inducing TMS to extend credit to Customer for the sole purpose of completing this Agreement, and understands that TMS intends to rely upon such information as true and correct.
2. If credit is extended to Customer and TMS discovers incorrect information on Customer's Application for Credit or Account, TMS may, in its sole discretion, terminate this Agreement, or demand immediate payment from Customer or Guarantor for the amount of credit extended to Customer or for the full amount owed to TMS pursuant to this Agreement. If TMS demands immediate payment, failure to comply will be taken as a breach of this Agreement.

### **VII. BILLING AND PAYMENT**

1. If services are ordered prior to credit approval, Customer agrees to remit to TMS, in advance, 50 % payment for each and every move ordered.
2. If TMS has extended credit to Customer, TMS agrees to send Customer an invoice with the specifics of the transaction and requesting payment. Upon receipt of that invoice, Customer agrees to submit payment within 15 calendar days of Customer's receipt of Goods or within 20 days of the date the invoice was issued, whichever is earlier.
3. Payment of the purchase price for goods and/or services acquired from TMS shall be made pursuant to the terms set forth on each invoice, and Customer agrees to pay all charges according to the payment terms established in said invoice. The entire outstanding balance due on all invoices shall become due to TMS in full immediately upon default in the payment of any invoice.
4. Customer agrees to pay interest in the amount of 1.5% per month, or the highest rate permitted by the law, whichever is less, on any payment past due, pursuant to the terms set forth on each invoice until collected.
5. Customer agrees to not withhold payment in lieu of settlement of claims.
6. Customer agrees to remit payment to TMS via Wire Transfer or Cashier's Check

### **VIII. PROVISION OF INSURANCE**

1. Cargo Insurance for the protection of the Goods is not included in this Agreement.
2. Customer may, at its further cost and discretion, purchase insurance available from TMS or its subcontractors. Insurance terms and conditions will vary based on the specific policy purchased. For the terms of the specific policy, refer to the policy in effect or the specific Bill of Lading.
3. If Customer elects to purchase, or accept insurance available from TMS or its subcontractors, the specific insurance Terms and Conditions will be in effect and are available on request from TMS.
4. If Customer elects not purchase, or accept insurance, Customer accepts all risk of loss or damage to Goods and further agrees to hold TMS harmless for said loss or damage. Customer further agrees that if loss or damage of Goods is caused by subcontractor, Customer will hold TMS harmless and seek restitution from subcontractor who caused the loss.

### **IX. GENERAL CONDITIONS**

1. No modification hereof shall be binding upon either party unless the modification is in writing and signed by a duly authorized representative of both parties.
2. This Agreement shall be binding upon and, except as otherwise provided herein, shall inure to the benefit of the parties hereto and their respective successors and assigns.
3. The rights and remedies granted herein are non-exclusive to those otherwise available under the law of equity.
4. The terms and conditions of this contract and of any sales and payments made pursuant hereto are performable in Williamson County, Texas.
5. All terms not specifically defined herein shall have the definition commonly used in the transportation industry.

### **X. NOTIFICATION OF DEFECT**

Customer must notify TMS, in writing, within 24 hours of receipt of shipment of:

- (i) any shortage or discrepancies existing between the items charged to Customer on this particular invoice and the goods / services actually received by Customer in the corresponding shipment;
- (ii) any damages to the corresponding goods
- (iii) any objections to the terms or total amount of the invoice.

If written notice of such shortage or discrepancy, damage or other objection is not received by TMS within the allotted time, the Customer shall be deemed to have accepted the goods in accordance and compliance with all the terms, conditions, and specifications of the invoice and/or this Agreement, and Customer agrees to pay the amount charged on the invoice.

### **XI. TMS EXPENSES**

Customer shall reimburse TMS for all costs and expenses, including, without limitation, reasonable attorney's fees, costs of a collection agency, courts costs, and all other reasonable expenses incurred by TMS in exercising any of its rights or remedies in this Agreement, or enforcing any of the terms, conditions or provisions herein. Customer agrees TMS is liable under this Agreement for only actual economic damages; under no circumstances shall TMS be liable for special, direct, indirect, consequential or incidental damages, including without limitation, lost profits or revenues, damage to or loss of the use of facilities, damage to property, etc., whether or not TMS has been advised for the potential for such Damages.

### **XII. COUNTERPART EXECUTION**

This instrument may be executed in multiple counterparts, and each counterpart instrument shall be deemed an original, and, together the counterparts shall have the same force and effect as if all parties hereto had executed one instrument.

### **XIII. VENUE**

The parties agree that all disputes in any way relating to, arising under, connected with, or incident to this Agreement, and over which the federal courts do not have subject matter jurisdiction, shall be litigated, if at all, exclusively in the District Court of Williamson County, Texas, and, if necessary, the corresponding appellate courts. The parties further agree that all disputes in any way relating to, arising under, connected with, or incident to this Agreement and over which the federal courts have subject matter jurisdiction, shall be litigated, if at all, exclusively in the United States District Court for the Northern District of Texas, Austin Division, or the federal district with jurisdiction over Williamson County, Texas, and, if necessary, the corresponding appellate courts. In this regard, Customer hereby expressly agrees to waive any right that Customer may have to remove any suit filed against Customer for damages or other actions hereunder to any federal court. The parties also agree that Texas law exclusively shall govern all terms of this Agreement, including this paragraph. The parties expressly submit themselves to the personal jurisdiction of the State of Texas; Customer agrees not to object to the jurisdiction of said courts.