

CONDITIONS OF CONTRACT

IMPORTANT NOTICE

When ordering services from Agility Logistics Corp. or one of its affiliates operating in the U.S. (“AGILITY”), you, as “Shipper”, are agreeing, on your behalf and on behalf of anyone else with an interest in the Shipment, that the terms and conditions set forth in these conditions of contract shall apply from the time that AGILITY accepts the Shipment unless otherwise agreed in writing by an authorized officer of AGILITY.

Definitions:

Agility may be referred to as the Company or Carrier.

“Shipment” means all documents, parcels, or goods that travel under one bill of lading and which may be carried by any means the Carrier chooses, including air, road or any other carrier.

“Shipper” shall include and be defined as Consignor, exporter, or seller named in the shipping documents as the party responsible for initiating a Shipment.

“Consignee” shall include and be defined as person or firm named in bill of lading as the party to whose order a consignment will be delivered at the port of destination.

“Bill to Party” shall include and be defined as the person or firm named in the bill of lading or invoice, as the party to whom the bill must be sent for payment.

1. The Shipper, Consignee and Bill to Parties are jointly and severally liable for any freight or other charges associated with the instant Shipment and further are jointly and severally responsible for any indemnification responsibilities pursuant to the provisions below.
2. **Non-Negotiable Document** – In tendering this Shipment for carriage and/or transportation logistics services the Shipper, Consignee and Bill to Party agree to these Conditions of Contract, which no agent or employee of the Company is authorized to waive or modify. The Shipper, Consignee and Bill to Party also acknowledge that this air bill is non-negotiable and has been prepared by them or specifically on their behalf. The Shipper, Consignee and Bill to Party agree that all services hereunder are subject to the terms and conditions stated herein.
3. **Carrier Tariffs Govern** – It is mutually agreed that the Shipment described herein is accepted on the date hereof in apparent good order (except as noted) for carriage as specified herein, subject to governing tariffs in effect as of the date hereof. Said tariffs

are available for inspection by the parties hereto and are hereby incorporated into and made part of this contract.

4. **Contract Carriage and Opting out of the Carmack Amendment (ICC Termination Act of 1995)** - Where the Carmack Amendment (ICC Termination Act of 1995, and hereinafter referred to as "The Act"), might otherwise be applicable, the Shipper, Consignee and/or Bill to Party, together with the Company, hereby specifically and expressly agree to opt out of the application of the Act and further state that at the sole option and discretion of the Company, the Company may choose to offer transportation services for the instant transaction on a contract carriage or forwarding basis; however in all cases, the Shipper, Consignee and/or Bill to Party specifically and expressly agree to waive any and all rights and remedies under the Carmack Amendment and/or ICC Termination Act of 1995 and carriage of goods which would otherwise be subject to the Act. Specifically the aforementioned parties hereby agree that the provisions of the Act which pertain to notice of claim requirements, time for suit provisions, and limitations of liability provisions are without application. The terms and conditions and tariff provisions governing these areas are paramount and applicable to the exclusion of the Act.
5. **Limitation of Liability** - For all Shipments, liability, in the absence of a higher declared value for carriage having been entered in the appropriate area on the face hereof and the corresponding charges having been paid, is limited to \$.50 cents per pound or \$50.00 whichever is higher. The liability amount will be determined based upon the actual weight of the damaged or missing goods without regard to the total weight per Shipment. In no event shall the Company's liability exceed the declared value of the Shipment or the amount of loss or damage actually sustained, whichever is lower. While subject to the liability limitations above, in no event may a Shipper, Consignee, or Bill to Party seek to declare value or otherwise increase the Company's liability on high value items such as artwork or jewelry, or other non-reproducible items such as cash, stocks, precious metals, negotiable instruments, etc. In such event, the maximum liability for same will be limited to \$500.00 per shipment.

The Shipper, Consignee, and/or Bill to Party agrees that the Carrier shall in no event be liable for any loss, damage or expense incurred by the Shipper, Consignee, and/or Bill to Party, whether arising out of delay, physical damage to the goods, or other goods or property belonging to third parties, documentary error(s), mis-delivery, loss of property, tender to unauthorized parties, or any other act or omission or other cause resulting from the negligence or other fault of the Carrier for any amount in excess the limitations of liability set forth in paragraph 5.

Furthermore, the Carrier's responsibility shall cease when delivery has been made to merchant, and person authorized by Shipper, Consignee, and/or Bill to Party to receive the goods, or authorized governmental or customs personnel as required or authorized by local authorities or regulations, or in accordance with this agreement as more specifically set forth herein, at the sole option of the Carrier. The Carrier shall further not be liable for any loss, damage, delay, or other result caused by Carrier's duty or responsibility of compliance with governmental regulation or order, but in any event any such loss, damage, delay or result would be limited in accordance with the liability limitations set forth in paragraph 5.

6. **Exclusions** – The Carrier shall not be liable for loss, damage, delay, or other result caused by (a) Acts of God, perils of the air, public enemies, public authorities acting with actual or apparent authority in the premises, authority of law, quarantine, riots, strikes, civil commotions, or hazards or dangers incident to a state of war or undeclared war; (b) the act or default of the Shipper or Consignee; (c) the nature of the Shipment, or any defect, characteristic or inherent vice thereof; (d) violation by the Shipper or Consignee of any of the rules contained in applicable tariffs, including, but not limited to, improper or insufficient packing, securing, marking, or addressing, and failure to observe any of the rules relating to Shipments not acceptable for transportation or Shipments acceptable on or under certain conditions, or (e) compliance with delivery instructions from the Shipper or Consignee or non-compliance with special instructions from the Shipper or Consignee but not authorized by applicable tariffs.
7. **Quotations Not Binding** - “Quotations as to fees, rates-of duty, freight charges, insurance premiums or other charges given by Carrier to Shipper, Consignee, and/or Bill to Party are for informational purpose only and are subject to change without notice and shall not under any circumstances be binding upon Carrier. The Shipper, Consignee, and/or Bill to Party hereby understands and agrees that the Carrier may be relying upon the rates of sub-contracting third-party carriers in offering these rates, and that those rates may be subject to space availability, and where said subcontracting third-party carriers do not honor quoted rates, or where the agreed upon rates are otherwise not honored due to circumstances beyond the control of the Carrier, Carrier shall not be liable thereunder and in no event shall be liable in excess of the amounts as specified in Paragraph 5 above.
8. **Consequential Damages** - In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, including but not limited to damage to third parties, damage to third parties' goods, lost profits, market share, or otherwise, whether or not Carrier had knowledge that such damages might be incurred. Subject to the foregoing and without waiving same, any such liability is limited to the amounts set forth in Paragraph 5 above.

9. **Schedules Not Guaranteed** – Except as otherwise expressly agreed to in writing by an authorized representative of the Company and on the face hereof, the Carrier has no obligation to commence or complete transportation within a certain time according to any specific schedule, or make connections with any other carrier, or for error in any statement of times of arrival or departure (estimated or otherwise). Subject to the foregoing and without waiving same, any such liability is limited to the amounts set forth in Paragraph 5.

10. **Insurance** - The Company shall be under no obligation to procure insurance unless requested in writing and agreed to by the Company in writing.

If Carrier offers insurance and such insurance is requested in writing, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by this bill are insured under an open policy of insurance for the amount requested as set out on the face hereof (recovery being limited to the actual value of goods lost or damaged provided that the amount does not exceed the insured value). This shall in no way serve as a declaration of value for carriage and shall not increase the liability limitations of the Carrier. Further, the insurance is subject to the terms, conditions and coverage (from which certain risks are excluded) of the open policy, relevant portions of which are available upon request. Claims under such policy must be reported immediately in accordance with the terms and conditions of said policy. Carrier makes no warranties or representations as to coverage or entitlement to payment, and Carrier shall have no liability for any action or inaction of the insurer, including but not limited to disposition of any claim under the policy.

11. **Non-Carrier Functions** - The Carrier may also perform non-carrier functions related to, and incidental to, the transportation described in this bill; including the arranging for customs brokerage services, arranging for or procurement of insurance; forwarding services, temporary storage and warehousing services, and other logistics functions related to the effectuation of the delivery of the goods to the ultimate destination or consignee. Where the loss or damage occurs as a result of acts or omissions, breaches, or other liability arising from the Company's provision of non-carrier services, the Company's general terms and conditions shall apply. Same are incorporated herein by reference, and are available for inspection upon request.

12. **C.O.D. Shipments** - Shipper, Consignee, and/or Bill to Party must enter the amount of any shipper's C.O.D. which shall be collected subject to the fee and rules of the delivering carrier. Goods received with merchant's or other person's instructions to "Collect on Delivery" ("C.O.D.") by drafts or otherwise, or to collect any specified terms by time drafts or otherwise, are accepted by Carrier only upon the express understanding that it will exercise reasonable care in selection of a bank, correspondent, carrier or agent to whom it will send such item for collections, and the Carrier will not be responsible for

any act, omission, default, suspension, insolvency or want of care, negligence or fault of such bank, correspondent, carrier or agent, nor for any delay in remittance lost in exchange or during transmissions, or while in the course of collection.

- a) Carrier shall not be liable for the fraudulent acts of third parties, or forgery of documentation presented to Carrier.
- b) Carrier shall be entitled to rely upon the facial validity of documents presented to Carrier and/or upon written instructions from the merchant or merchant's agents or representatives. In no event shall the Carrier be liable for mis-delivery in excess of the amounts as set forth in paragraph 5, herein.

13. **Terms of Payment and Lien Provisions** – Net/15 days. A one and a half % per month late charge will be assessed against all past due balances.

The Company shall have a general lien on any and all property of the Shipper, Consignee, or Bill to party in its possession, custody, control or en route, for all claims for charges, expenses or advances incurred by the Company in connections with any Shipments of the Shipper, Consignee, or Bill to Party.

The Carrier reserves the right to sell the goods at public auction or private auction at the sole discretion of the Carrier upon proper and due notice to the Shipper, Consignee, and Bill to Party who hereby warrant and represent that they have title to the subject goods, and that upon receipt of notice in accordance with these provisions, they will undertake to notify any other parties with a beneficial interest in the subject goods. Shipper, Consignee, and Bill to Party further warrant, represent and agree to indemnify and hold harmless Carrier from any actions brought by any such third parties arising out of said Shipper's, Consignee's, and Bill to Party's breach of said warranties, or failure to pay for storage charges. Additionally, the lien shall be applicable for all outstanding storage charges whether arising out of the subject goods, or on a past due account.

14. **Merger** - If any provision of this contract is determined to be invalid or unenforceable, the remainder of the contract shall not be affected thereby.
15. **Third Parties** - In any case or event wherein the Carrier utilizes the services of a third-party in the delegation of any contractual or other obligations on the part of the Carrier, said third-party shall be deemed to be an agent of the Shipper, Consignee, and/or Bill to Party, and Carrier states that it will only exercise reasonable care in the selection of said third parties, and Carrier shall not be directly or vicariously liable for any act or omission on the part of said third-party.

16. **Moisture Disclaimer** - The Shipper, Consignee, and/or Bill to Party hereby agrees that whether or not Carrier has agreed to pack, load, or otherwise package or secure Goods, the Carrier is not liable for exposure to rain or other moisture unless the Carrier specifically agrees in writing to protect the Goods from same, and the Shipper, Consignee, and/or Bill to Party pays additional and special compensation. In no event shall Carrier be liable in excess of the liability limits set forth in paragraph 5.

17. **Use of Other Carrier** – Shipment may, without notice, be diverted to motor or other carrier as per tariff rule unless Shipper, Consignee, and/or Bill to Party provide express written instructions to the contrary.

18. **Shipper Responsibility** –

a) The Shipper is responsible for preparing, marking, packing, and labeling its Shipment so as to ensure safe transportation with ordinary care in handling. Carrier will accept all Shipments subject to inspection but shall not be obligated to perform such inspections.

b) **Unacceptable Shipments**

Shipper warrants that its Shipment is acceptable for transportation and that it does not contain:

- any article classified as hazardous material, dangerous goods, prohibited or restricted by the DOT (Department of Transportation), TSA (Transportation Security Administration), IATA (International Air Transport Association), or any applicable government agency or other relevant organization;

- animals; articles of extraordinary value such as but not limited to bullion, currency, bearer form negotiable instruments, precious metals and stones; firearms, parts thereof and ammunition; human remains; pornography or illegal narcotics/drugs. AGILITY will not accept any Shipment that contains the articles listed above, or that contains any articles that AGILITY decides cannot be transported safely or legally, as stated in Unacceptable Items of AGILITY's Tariff.

c) **Shipper's Warranties and Indemnity**

Shipper shall indemnify and hold AGILITY harmless for any loss or damage arising out of Shipper's failure to comply with any applicable laws or regulations and for Shipper's breach of the following warranties and representations:

1. all information provided by Shipper or its representatives is complete and accurate;
2. Shipper protected the Shipment against unauthorized interference during preparation, storage and transportation to AGILITY;

3. the Shipment is properly marked and addressed and packed to ensure safe transportation with ordinary care in handling;
4. all applicable laws and regulations have been complied with;
5. the waybill has been signed by Shipper's authorized representative and these Conditions of Contract constitute binding and enforceable obligations of Shipper; and
6. the materials constituting the Shipment are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and TSA.

Violation of any of these warranties will excuse AGILITY from any liability whatsoever for loss of or damage to a Shipment incurred as a result of the violation. Furthermore, Shipper shall be liable to AGILITY for all claims, fines, penalties, damages, and costs incurred by or imposed upon AGILITY as a result of a violation of these warranties.

The Shipper, Consignee, and Bill to Party shall be liable, jointly and severally, to pay or indemnify the Carrier for all claims, fines, penalties, damages, costs or other sums which may be incurred, suffered or disbursed by Carrier by reason of any violation of any of the rules contained in applicable tariffs or any other default of the Shipper, Consignee, and Bill to Party or such other parties with respect to a Shipment.

19. **Inspection** - AGILITY has the right to open and inspect a Shipment without prior notice to Shipper.
20. **Claims Time Limits and Procedures** - All claims, including claims for overcharges, must be made in writing to the Company within a period of thirty (30) days after the date of acceptance of the Shipment. Failure to comply shall constitute a full waiver and abandonment. Damage and/or loss discovered by the Consignee, or its agents, after delivery and after a clear receipt has been given to the Carrier must be reported in writing to the Company within 5 days after delivery of the Shipment, with privilege to the Carrier to make inspection of the Shipment and container(s) within 15 days after receipt of such notice. Compliance herewith will constitute a condition precedent to maintenance of action and it shall also be presumed that any damage, loss, or shortage not noted within this period of time occurred after said time period. No action will be maintained on any claims until all transportation charges have been paid and Shipper shall have no right to set off any amount claimed against charges due to the Company. Carrier shall not be liable on any action brought to enforce a claim unless the above provisions have been met by the proper claimant and unless such action is brought within one year of notice of loss or damage, or the date the cargo arrived or was to have arrived, whichever is shorter. In the event any provision herein is held to be unenforceable, the time period for the notice, claim, or suit shall be the shortest allowable by law.

21. **Venue and Choice of Law** - Any action or legal proceeding brought against the Carrier and arising out of the instant waybill shall be commenced in the United States District Court for the Southern District of New York, and same shall be the exclusive forum and jurisdiction for such disputes where subject matter jurisdiction is present. In all other cases, the exclusive forum and jurisdiction shall be the State Courts in and for the State of New York. Any disputes shall be determined according to the substantive law of New York; and the Shipper, Consignee, and Bill to Party agree to pay all reasonable attorneys, legal, court costs and or collections fees incurred by the Company in enforcing any of the terms of this agreement. Shipper, Consignee or Bill to Party further agree to pay interest on all charges older than 30 days from invoice date, at the rate of 18% per year, or the highest rate permissible by law, whichever is greater.