

TERMS AND CONDITIONS

1. DEFINITIONS.

- a. "Carrier" refers to Alaska West Express, Inc., its subcontractors, authorized agents and all directors, officers and employees thereof.
- b. "Consignee" refers to the entity identified on the face of this bill of lading to receive the goods.
- c. "Goods" refers to those items of personal property with respect to which Carrier has been requested to or does perform services, including all packing and packaging of the goods as well as all other items or materials associated with the goods, including, without limitation, crates, cradles, pallets, tanks, platforms and containers. The term "goods" shall be deemed synonymous with "shipments," "cargo," "cargoes," "pieces," "packages," "commodities," and "personal property."
- d. "Entity" refers to all forms of business entities as well as to natural persons.
- e. "Shipper" refers to the entity engaging Carrier with respect to the goods and, unless the context herein otherwise clearly indicates to the contrary, Shipper shall include the owner, consignor, consignee and all others who may have right of claim by, through or with respect to the goods.

2. FREIGHT, PAYMENT, ETC.

- a. **Freight.** Freight shall be as identified by Carrier in its applicable rate quotation, transportation agreement, bill of lading and/or tariff.
- b. **Charges.** Shipper shall also be responsible for all assessments, charges and/or expenses upon or against the goods pursuant to this bill of lading and/or Carrier's tariff, including, without limitation, all dues, taxes, duties, fines, penalties applicable to the goods, advances made by Carrier, additional expenses incurred by virtue of Shipper's actions, omissions or failure to comply with its obligations hereunder and expenses incurred as a result of unforeseen or extraordinary circumstances. Freight and/or charges based upon inaccurate or incomplete instructions or particulars from Shipper may be recalculated by Carrier.
- c. **Payment.** Freight and all other charges shall be deemed fully earned upon tender of the goods by Shipper or commencement of performance by Carrier, whichever shall first occur, and payable in advance and/or prior to delivery of goods unless otherwise agreed in writing by Carrier. All sums due shall be payable in U.S. dollars without deduction or offset. Interest on sums which are due but have not been paid shall accrue at the rate of one percent (1%) per month or the highest rate allowed by law until fully paid. Shipper, specifically including all entities identified in the definition of that term, shall be jointly and severally liable for payment of all sums due Carrier hereunder.
- d. **Lien.** Carrier shall have a lien upon all goods transported hereunder, which lien shall survive delivery, to secure payment of sums due hereunder. Further, Shipper grants Carrier a consensual lien upon all Shipper's personal property subsequently in the possession of Carrier to secure payment of all charges due hereunder. Carrier may assert such lien rights at any time, including withholding delivery until full payment is made and/or public or private sale of the personal property; sale proceeds shall be first applied to all costs of sale, then to sums due Carrier, with the balance to be paid to Shipper.

3. **ROUTES, METHODS, ETC.** Carrier shall perform hereunder with due diligence, but does not warrant or guarantee any particular departure/arrival times or dates. Carrier shall have liberty with respect to selection of conveyances, routes, procedures, modes and methods of transportation.

4. **HINDRANCES.** Carrier shall not be liable for delay, inability to perform or failure to perform caused by events beyond its direct and reasonable control. In the event any such hindrance should occur, Carrier shall, if feasible, notify Shipper for instructions, or, if insufficient time exists or instructions are not provided, shall, at Shipper's risk and expense, store and/or dispose of the goods as appears reasonable under the circumstances.

5. **TRANSPORTATION BY WATER.** If any portion of the transportation of the goods is by water, such portion shall be subject to the Carriage of Goods By Sea Act (46 U.S.C. §1300 *et seq.*) and the liability of Carrier for loss or damage to the goods shall be limited as follows: neither Carrier nor the vessel shall in any event be or become liable for any loss or damage to or in connection with the transportation of the goods in an amount exceeding \$500 per package (with any Shipper provided and/or stuffed container or trailer to be considered the relevant package) lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared in writing by Shipper to Carrier before shipment, inserted on the front of this bill of lading, and Shipper has paid increased freight charges resulting from such declaration. In the event of transportation by water, standard New Jason/General Average and Both-To-Blame clauses, the full text of which are set forth in Carrier's tariff available at www.awe.lynden.com or upon request to Carrier, shall be deemed fully incorporated herein. Shipper authorizes on deck or under deck transportation, at Carrier's option, including transportation on unmanned, open deck barges.

6. **INFORMATION RELATING TO GOODS.** Shipper warrants the accuracy and completeness of all instructions and all particulars relating to the goods, including their nature, description, special characteristics, marks, number, weight, volume and quantity, upon all of which Carrier shall be entitled to rely. Shipper shall reimburse Carrier for any loss or expense (including any additional charge) resulting from inaccurate and/or incomplete instructions or particulars.

7. **HAZARDOUS GOODS.** Shipper must identify to Carrier in writing and prior to shipment all goods requiring specialized handling or which are dangerous or hazardous in character, and Carrier must specifically assent to the transportation thereof. If accepted by Carrier, Shipper shall provide complete and accurate handling instructions, including relevant safety procedures, and shall complete all documentation and otherwise comply with all laws applicable to such goods. If the special, dangerous or hazardous character of the goods creates a risk of harm to persons or property, or makes the continued transportation thereof impractical, Carrier shall be at liberty to discharge, store and/or dispose of such goods at Shipper's risk and expense.

8. **TENDER OF GOODS.** Shipper shall be responsible for tendering the goods to Carrier at the time and place identified, with all such goods to be in good order, count and condition, and packaged, protected, packed, stowed and/or shored sufficiently to withstand the rigors of transportation.

9. **DELIVERY OF GOODS.** Carrier shall deliver or arrange for delivery of the goods to Consignee at the location identified on the face of this bill of lading. Consignee shall be obligated to receive and take the goods as promptly as they can be discharged/unloaded from the conveyance, with such discharge or unloading to be at Shipper's sole risk and expense. Consignee shall be obligated to receive and take the goods during normal working hours. Goods which have been received and taken by Consignee, which have been tendered to Consignee and either refused or otherwise not received and taken by Consignee, which have been seized by governmental authorities or under legal process, which cannot be delivered because of Shipper's fault or neglect, including inaccuracy/inadequacy of instructions or particulars, or which for any other reason beyond Carrier's control have not been received and taken, shall be deemed to have been fully delivered to Consignee and Carrier's responsibility with respect to such goods and this agreement shall thereupon cease. Any actions taken by Carrier with respect to the goods thereafter shall be performed as Shipper's agent at Shipper's sole risk and expense.

10. **SUBCONTRACTING.** Carrier shall be entitled to subcontract on any terms the whole or any part of the transportation services hereunder. Carrier shall be authorized to subcontract with affiliated and related entities, which shall be considered as dealing with third parties.

11. **LIABILITY FOR LOSS, DAMAGE, ETC. TO GOODS:** Carrier's liability with respect to the goods, Shipper and any other person or entity claiming with respect to the goods, and whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, shall be only as follows:

- a. **Exceptions.** Carrier shall not be liable for loss, damage, delay, shortage, misdelivery, failure to deliver or other result caused by: act of God; peril of the sea or air; act of terrorism; act of a public enemy; act of war; act of public authority or other with apparent public authority; fire, unless caused by the actual fault or privity of Carrier; quarantine; act or omission of Shipper or the owner of the goods, or their agent or representative; strike, lockout or other labor dispute; sabotage; riot or other civil commotion; wastage in bulk or weight or arising from the nature of the goods; inherent vice; improper or insufficient packing, securing, packaging, marking or addressing; latent defect not discoverable by due diligence; compliance with instructions from Shipper; goods loaded by Shipper into sealed containers or other packages, providing the seal remains unbroken and the container is not physically damaged itself; error in operation or navigation; and/or any other cause arising without the actual fault and privity of Carrier, its agents and representatives.
- b. **Consequential Damages.** Carrier shall not be responsible or liable for any indirect, consequential or special damages of any type or nature whatsoever and howsoever arising, including, without limitation, loss of profits, loss of income, loss of business opportunity, business interruption, loss of use and/or loss of ability to use undamaged component or system parts, whether resulting from negligence, breach of contract or otherwise, and regardless of whether such damages may have been foreseeable by any person or entity.
- c. **Limitation of Liability: Higher Value.** Except as noted in section 5., above, Carrier's liability with respect to the goods, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, shall be the lesser of the actual cost to repair, replace and/or deliver the goods or ten cents (\$0.10) per pound actual weight of the lost, damaged, etc. goods. If Shipper has declared to Carrier in writing a higher value for the goods and Carrier has agreed to carry the goods at the higher value so declared, then Carrier's liability shall be the lesser of the actual cost to repair, replace and/or deliver such goods or the value so declared. An additional charge shall be incurred for any such higher declaration. Carrier shall not be liable to Shipper or any other claiming with respect to the goods, whether for loss, delay, shortage, misdelivery, failure to deliver or otherwise, or in tort, contract or upon any other theory, other than as set forth herein, and Shipper agrees to indemnify and hold harmless (including legal fees and costs) Carrier of and from any loss, damage, expense, liability, claim and/or suit arising out of or in any fashion relating to the goods other than as specifically allocated to Carrier herein.
- d. **Delivery in Good Condition.** Delivery of the goods without written notification of damage on the front of the bill of lading or delivery receipt shall be prima facie evidence that the goods have been delivered in the same good order, count and condition as when received.
- e. **Claims.** As a condition precedent to recovery against Carrier:
 1. The goods must be carefully inspected by Shipper or Consignee immediately upon delivery, and any loss or damage which would then be evident must be noted on Carrier's copy of the bill of lading and/or delivery receipt or the goods shall be conclusively presumed to have been delivered in the same good order, count and condition as when received.
 2. In the event of loss or damage which is not ascertainable at delivery, written notice of loss, damage, shortage, etc. involving the goods must be given to Carrier within fifteen (15) days of delivery, after which time with no such notice having been given it shall be conclusively presumed that the goods were delivered in the same good order, count and condition as when received.
 3. In the event of goods which are delayed, lost or otherwise not delivered, Carrier must be given written notice of the delay, loss or failure to deliver within fifteen (15) days from the date upon which the goods should have been delivered or the goods shall be conclusively presumed to have been delivered in the same good order, count and condition as when received.
 4. Carrier shall have a reasonable opportunity to inspect the goods, including their packing and packaging, in the same condition as upon delivery and before any alteration or destruction thereof.
 5. Written claim for loss/damage, specifying the particulars thereof, must be filed with Carrier within nine (9) months of delivery, date by which the goods should have been delivered, or date on which Carrier disallowed the claim or pertinent part of the claim, whichever is later.
 6. Any suit against Carrier must be filed within two (2) years following date of delivery of the goods, date which the goods should have been delivered, or date from which Carrier disallowed the claim or pertinent part of the claim, whichever is later.
 7. There shall be no recovery against Carrier until freight and all charges due Carrier have been paid in full.

12. **EXTENSION OF BENEFITS.** All limitations upon, and exceptions and defenses to, liability granted to Carrier pursuant to this agreement shall be deemed automatically extended to all parent, subsidiary and affiliated entities and all subcontractors of Carrier, and the members, directors, officers, employees and agents of each of the foregoing.

13. **GOVERNING LAW AND FORUM.** The federal laws of the United States shall be applicable to this bill of lading to the extent there is a specific federal statute or rule of law, but otherwise the laws of the state of Washington shall apply. Any suit relating to this bill of lading must be filed in, and the parties hereby consent to the exclusive personal jurisdiction of, the state or federal court located in Seattle, Washington; unless specifically prohibited by law, the substantially prevailing party in any such litigation shall be entitled to recover its reasonable legal fees and costs from the other party.

14. **EXECUTION.** This bill of lading may be executed by agents and/or representatives of the parties; upon Shipper's consent, verbal or otherwise, Carrier may sign for and on behalf of Shipper as its agent for such limited purpose. Upon tender of the goods to Carrier, Shipper shall be deemed to have consented to the terms and conditions of this bill of lading and carrier's tariff, regardless of whether this bill of lading shall have been issued to, or executed by, Shipper. This bill of lading may be executed in counterparts and/or by facsimile, with a facsimile signature deemed equivalent to an original signature.

15. **ENTIRE AGREEMENT.** This bill of lading, including any transportation agreement, rate quotation, load confirmation, delivery receipt, freight invoice and/or other document issued by Carrier with respect to the goods as well as Carrier's tariff, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous communications and agreements, whether oral or written. This bill of lading supersedes and replaces any bill of lading or other document issued by a party other than Carrier with respect to the goods, including any bill of lading or other document from Shipper. The headings used herein are for convenience of reference only, and are not substantive. This bill of lading shall be construed neutrally, and as the mutual assent of both parties, rather than for or against either party. This bill of lading may not be altered or amended without Carrier's written consent.