

OVERSEAS CARGO TERMS AND CONDITIONS OF SERVICE

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY AGREEING TO USE THE SERVICES OF COMPANY AND ITS AFFILIATED ENTITIES, CUSTOMER SIGNIFIES ITS ASSENT TO THESE TERMS AND CONDITIONS. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. THESE TERMS AND CONDITIONS OF SERVICE CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN THE COMPANY AND CUSTOMER. ALL SERVICES RENDERED BY COMPANY ON BEHALF OF, OR FOR THE BENEFIT OF CUSTOMER, SHALL BE PERFORMED IN ACCORDANCE WITH, AND BE SUBJECT TO, THESE TERMS AND CONDITIONS.

1. **Definitions.** (a) "Company" shall mean Overseas Cargo, Inc., its subsidiaries, successors or assigns, related companies, agents and/or representatives. (b) "Customer" shall mean the person or entity for which the Company is rendering service, as well as its agents and/or representatives. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives; (c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electric form; (d) "Third parties" shall include, but not be limited to the following: carriers, truckmen, cartmen, warehouseman, lightermen, forwarders, agents, and others to which goods are entrusted for transportation, cartage, handling, loading, unloading, and/or delivery and/or storage or otherwise. (e) "Invoice". Invoice shall refer to the quote, order confirmation, invoice or other documentation issued by Company reflecting the purchase of services from Company. (f) "Services". Services shall mean any and all services offered or performed by Company on behalf of Customer, its agents and/or representatives, whether or not referenced in an Invoice.

2. **Application.** These terms and conditions shall apply to and shall govern all Invoices, agreements or other documents which memorialize an agreement to purchase Services from Company, regardless of whether the Invoice or other document references these terms and conditions. All shipments, services, sales and quotations between Company and Customer are subject to these terms and conditions.

3. **Acceptance.** No terms, conditions or prices for, or relating to any Services submitted by Customer shall be effective unless confirmed in writing by Company. No effect shall be given to any terms or conditions proposed in Customer's purchase order, proposal, request for quote, sales note, or any other document which add to, vary from, or conflict with the Invoice, with these terms and conditions, or any terms and conditions contained on or referenced in any agreement between Customer and Company, including, but not limited to, a bill of lading or contract of carriage. Any such proposed terms shall be void. Customer shall be deemed to have assented to and acknowledged these terms and conditions unless Customer notifies Company in writing within three (3) working days of Customer's receipt of the Invoice that it rejects the Invoice and these terms and conditions.

4. **Price.** Unless another currency is specified on the Invoice, all monetary amounts are deemed to be expressed in United States Dollars. Quotations as to fees, charges or rates given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless

the Company in writing agrees to undertake the handling or transportation, or arrangement thereof, of the shipment as a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

5. **Payment.** Customer shall pay for Services and related services in accordance with the terms set forth in the Invoice, or as otherwise set forth in writing between the Customer and Company. In the event the Invoice does not contain payment terms, all Invoices are payable no later than thirty (30) days after receipt by Customer. Payment shall not be contingent upon any payment to the Customer from any third party. Customer may not set off any sums owed to Company for any reason.

6. **Costs of Collection.** In any dispute involving monies owed to Company, Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 18% per annum or the highest rate allowed by law, whichever is lower. The confiscation or detention of a shipment by any governmental authority shall not affect or diminish the liability of Customer to Company to pay all charges or other money due promptly on demand.

7. **Company as Independent Contractor.** Company shall be an independent contractor with respect to the performance of all services performed on behalf of Customer and neither Company nor anyone employed by Company shall be deemed for any purpose to be the employee, agent, servant or representative of Customer in the performance of any service or part thereof in any manner dealt with hereunder.

8. **Limitation of Actions.** (a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within ninety (90) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer. (b) All suits against Company must be filed and properly served on Company as follows: (i) For claims arising out of ocean transportation, within one (1) year from the date of the loss; (ii) For claims arising out of air transportation, within two (2) years from the date of the loss; (iii) For claims arising out of the preparation and/or submission of an import entry(s), within seventy five (75) days from the date of liquidation of the entry(s); (iv) For any and all other claims of any other type, within two (2) years from the date of the loss or damage or the shortest period permitted by law, whichever period is shorter.

9. **Selection of Third Parties and/or Routes.** Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, loading, unloading, storage and delivery of the shipment. Advice by the Company that a particular person or entity has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the act of a third party shall be brought solely against such party and/or its agents, in connection with any such claim, the Company shall reasonably

cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

10. **Disclaimers; Limitation of Liability.** (a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services; (b) Subject to (d) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's shipments, and the Company shall in no event be liable for the acts of third parties; (c) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s). (d) In the absence of additional coverage under (c) above, the Company's liability shall be limited to the following: (i) where the claim arises from activities relating to customs brokerage, \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less; (ii) where the claim arises from activities performed by Company as an NVOCC, the liability as set forth in Company's tariff or applicable bill of lading, whichever is less; (iii) in all other cases, \$50.00 per shipment or transaction, (e) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages, including any and all loss or damages arising from delay of services.

11. **Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising in any way from the transportation, storage, loading, unloading and/or delivery of the shipments and/or any action, inaction, omission, or conduct of the Customer, which violates any Federal, State and/or other laws, 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, which the Company may hereafter incur, suffer or be required to pay by reason of such claims, including any claims by any Third Party for freight or other charges, duties, fines, penalties, liquidated damages or other money due arising from services provided to or on behalf of the Customer. Customer agrees to indemnify, defend and hold the Company harmless from any claim, suit, demand or action in whatever form, asserted against Company for any injury, death, property damage, environmental damage or advertising injury arising in any way from the transportation, storage, loading, unloading and/or delivery of the shipments.

12. **General Lien And Right To Sell Customer's Property.** (a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both; (b) 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 on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien. (c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing

payment of the monies wed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

13. **Modification.** Company reserves the right to change, modify, add, or delete portions of these terms and conditions from time to time without further notice. The headings contained in these terms and conditions are included for convenience and shall not affect the language included herein.

14. **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 handle the shipments and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and other in connection with the shipment. In any referral for collection or action against the Customer for the monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

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

16. **Force Majeure.** Company shall not be liable for any delay in performance of its obligations and responsibilities under an Invoice due to causes beyond its control, and without its fault or negligence, such as but not limited to war, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood or other natural disaster, provided that said party has taken reasonable measures to notify the other promptly in writing, of delay.

17. **Notice.** Any notice or other communication required or permitted by these terms and conditions must be given in writing and must be delivered by personal delivery (including personal delivery by overnight courier such as Federal Express, DHL, or similar overnight courier), first class mail (registered or certified), telecopy or e-mail (with a copy sent by personal delivery or first class mail), in each case addressed as follows, or to such other address or addresses as may be hereafter furnished by one party to the other party in compliance with the terms hereof. Notice will be deemed given when received or delivered. Notice shall be given:

If to Company: Attn.: _____, Telefax: _____;
_____ Email: _____

If to Customer at such address, physical or electronic, as furnished in the Invoice or such other address utilized or referenced by Customer in its correspondence with Company.

18. **Governing Law; Consent to Jurisdiction and Venue.** These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of New York, without giving consideration to principals of conflict of law. Customer and Company (a) irrevocable consent to the jurisdiction of the United States District Court and the State courts of New York County, New York; (b) agree that venue for any and all disputes hereunder shall lie exclusively in New York County, and agree that any action relating to the services performed by Company, shall be brought in the federal or state courts in said county; (c) consent 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.

19. **Application of Tariff, Bills of Lading.** To the extent that Company is performing Services as a non-vessel operating common carrier, the provisions of the Company's applicable tariff, if any, and the Company's bill of lading terms and conditions of service are incorporated herein. In accepting this Invoice, Customer acknowledges the receipt, and application of the tariff and/or Company bill of lading terms and conditions. Copies of the provisions of the Company's applicable tariff are obtainable from the Company or its agents upon request or, from the Company's publicly available tariff, which is published at the location reported to the appropriate government body. The tariff is also available by subscription. The Company's tariff and bill of lading terms and conditions of service are provided to the Customer by the Company in other commercial documents related to the carriage of goods by sea (which may include, but are not limited to, the Company's invoices, the shipper's letter of instructions, the credit application, powers of attorney, and other commercial documents), and at the Company's offices. Nothing herein shall be understood to replace or supersede any applicable terms as contained in Company's tariff or bill of lading. With respect to the provision of services as a non-vessel operating common carrier, in the case of inconsistency the following order shall govern: Company's tariff, Company's bill of lading terms and conditions, these terms and conditions of service.

20. **Brokerage Services.** To the extent that Company is performing Services in the United States as a domestic transportation broker, it is understood that Company's responsibility shall be limited to arranging for transportation of Customer's freight as a broker of freight transportation, as that term is defined by 49 U.S.C. § 13102(2). These terms and conditions of service shall apply to the provision of brokerage services by Company unless otherwise set forth in writing between Company and Customer regarding the provision of brokerage services.

- 20.1 Customer shall be responsible for providing Company with timely and accurate delivery instructions and description of the cargo, including weight, dimensions, any special handling requirements, for any shipment.
- 20.2 Customer shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that any shipments constitute hazardous materials. Customer is obligated to inform Company immediately if any such shipments do constitute hazardous materials. Customer shall defend, indemnify and hold Company harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of Customer's failure to comply with applicable hazardous materials laws and regulations.

- 20.3 Customer shall be primarily responsible for the payment of all carrier charges, including freight and accessorial charges, for the shipments.
 - 20.4 Customer shall be responsible for the accurate freight classification for all shipments.
 - 20.5 Company shall use reasonable care in its selection of third parties to perform the transportation of Customer's freight. In the performance of its brokerage duties hereunder, Company has entered into, or may enter into, agreements with entities which will perform the carriage and/or freight forwarding services for the transportation of Customer's freight. It is expressly understood that Company does not assume responsibility as a carrier or freight forwarder of cargo under said agreements and Customer expressly acknowledges that Company does not assume such responsibility as a carrier. In the event that Company performs other services relating to the transportation of Customer's freight, Company's liability shall be limited to \$50 per shipment, or the limitation as set forth in the applicable bill of lading or transport document, whichever is less. In the event Company agrees to perform other functions, separate and apart from broker services, including, but not limited to, the arranging for customs brokerage services, ocean freight forwarding services, temporary storage and warehousing services, and other logistics functions, where any loss or damage occurs as a result of acts or omissions, breaches, or other liability arising from the provision of services not related to the performance of broker services, the liability of Company shall be as set forth herein.
 - 20.6 It is understood that the insertion of Company's name on the bill of lading and/or delivery receipt shall be for the convenience of the Customer or carrier only and shall not change Company's status as a property broker or make Company liable as a carrier of the shipment.
21. **Warehousing Services:** The following provisions shall apply to govern warehousing services provided by Company:
- 21.1 Definition. "Warehousing Services" shall include all services performed by Company at Company's warehouse, or in a warehouse leased or otherwise utilized by Company. These services shall include, but not be limited to, storage, on-forwarding, warehouse distribution, packing and crating.
 - 21.2 In the performance of the warehousing services, Company shall be considered as a warehouseman under applicable local law.
 - 21.3 For all property of Customer or Customer's customers entering into the possession of Company as a warehouseman, Company shall issue a warehouse receipt which shall note the description of the merchandize entering the warehouse, including, if available, quantity, type, condition and value of the merchandize. The warehouse receipt may also include the rate of storage and any other charges for services to be rendered with respect to the merchandize. In the event a warehouse receipt is not issued, these terms and conditions shall apply and Customer agrees to pay the rate for storage as set forth in the invoice for services issues by Company.

- 21.4 All goods for storage shall be delivered at the warehouse property marked and packed for handling. Customer shall furnish, at or prior to such delivery, a manifest showing marks, brands or sizes to be kept and accounted for and the class of storage desired, otherwise the goods may be stored on bulk or assorted lots, in freezers, coolers or general storage at the discretion of Company and will be charged accordingly. Company undertakes to store and deliver goods only in the packaging in which they are originally received, unless by special arrangement and subject to charge.
- 21.5 All goods are stored on a month to month basis unless otherwise agreed prior to commencement of the storage period. Unless otherwise agreed by the Company and Customer, a full month's storage charge will apply on all goods received between the first and fifteenth inclusive of calendar month and one half month's storage charge will apply on all goods received between the sixteenth and the last date inclusive of the month, and a full month's charge will apply to all goods in storage on the first day of the next succeeding calendar month.
- 21.6 Except where another procedure is provided by statute, Company may, upon written notice to Customer and to any other person known by Company to claim an interest in the goods, require the removal of all or any part of the goods by the end of the next succeeding storage month. Such notice shall be given by delivery in person or by registered or certified letter addressed to the last known address of the person to be notified.
- 21.7 In all circumstances where freight is received at the warehouse, transit shall be deemed to have ceased and the storage of said goods shall be pursuant to the terms of the warehouse receipt issued or in accordance with these terms and conditions of service.
- 21.8 Company is specifically authorized at its sole discretion and without notice to store the subject goods with third parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; Company will request excess valuation coverage only upon specific written instructions from Customer, which must agree to pay any charge therefore. Customer expressly acknowledges that there is a distinction between excess valuation coverage, which increases the legal liability amount of the subject service provider beyond a released value rate, and a request for insurance. In the absence of written instructions from Customer, and/or in instances in which the third party does not agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party subject to the terms of the third party's limitations of liability and/or terms and conditions of service.
- 21.9 **Liability.** Company's liability for loss or damage for warehouse services provided at a warehouse it operates or owns shall be limited to 50 cents per pound per item, unless otherwise provided in the warehouse receipt. Company shall in no way be liable for any loss or damage occurring in a third-party warehouse.

The responsibility of Company, in the absence of any other written

provision is that of reasonable care and diligence required by law. Company shall not be responsible for loss or damage caused by acts of God, fire, insects or rodents, rust, normal wear and tear, leakage, extremes in temperature or ambient moisture, inherent vice, latent defect, loss of market due to delay or any other consequential loss or damage, wars, strikes, riots, civil commotion or any other cause beyond the control of Company. Further Company shall not be responsible for breakage of any fragile items unless packed and/or unpacked by Company. In the absence of any visible signs of damage, Company shall not be responsible for the mechanical operation of any musical instrument, electronic device of any description or of any photographic equipment. Perishables of any description, which susceptible to damage through temperature changes or other causes incidental to general storage, are accepted for general storage at Customer's risk.

22. **Insurance.** Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

23. **Severability/Survivability.** In the event that the operation of any portion of terms and conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the terms and conditions shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of this Agreement for any reason.

24. **Nonwaiver.** Failure of either party to insist upon performance of any provision of these terms and conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the provisions hereof, shall not be construed as thereafter waiving any such provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

25. **Entire Agreement.** These terms and conditions, together with, as applicable, Company's tariff and Company's bill of lading terms and condition, contain all of the terms and conditions governing provision of Services by Company.