

## BILL OF LADING TERMS AND CONDITIONS D.W. MORGAN, LLC

D.W. Morgan, LLC ("Carrier"), you, on your behalf, and on behalf of anyone with interest in Shipment ("Shipper"), receiver of Shipment ("Consignee") agree to be bound by the Bill of Lading ("BOL") and these Terms and Conditions ("T&C"). "Shipment" means all packages or articles traveling under one BOL.

**Section I.** Carrier shall be liable as at common law for any loss or damage to Shipment, except as hereinafter provided. Except for Carrier's gross negligence, Carrier shall not be liable for any loss, damage or delay of Shipment outside of its control, including, but not limited to, an Act of God, public enemy, authority of law, act or default of Shipper or owner, faulty or impassible highway, lack of capacity of a highway bridge or ferry; a defect or vice in Shipment; or riots or strikes. **Carrier, its agents, employees, and representatives shall not be liable to Shipper or Consignee for concealed loss and/or damage.**

**Section II.** (a) Carrier is not bound to transport Shipment by a specific vehicle, schedule or in time for a particular market, but is responsible to transport with reasonable dispatch. Carrier may forward Shipment to any other carrier.

(b) As a condition precedent to recovery, claims for refunds/reimbursements must be made in writing (i) within 30 days of delivery for loss or damage claim; (ii) within 120 days of delivery for an overcharge claim; or (iii) within 120 days of expected delivery for a delay in delivery.

(c) Suit for loss, damage, injury, or delay must be instituted against Carrier within 1 year and 1 day from the day when written notice is given by Carrier to the claimant that Carrier has disallowed the claim or any part of the claim. Where claims are not filed or suits are not instituted in accordance with the foregoing provisions, no Carrier shall be liable and those claims will not be paid.

(d) No claims shall be paid until the transportation, insurance, and all other fees have been paid to Carrier. The Seller, consignee, or other responsible party shall have no right of setoff from the amount due to Carrier.

(e) IN NO EVENT SHALL CARRIER BE LIABLE TO SHIPPER, CONSIGNEE OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DIMINUTION IN VALUE, ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CARRIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL CARRIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO BOL OR T&C, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF VALUE OF SHIPMENT, AS STATED ON THE BOL.

(f) Any Carrier or party liable for loss of or damage to any of Shipment shall have the full benefit of any insurance that may have been effected upon or on account of Shipment, so far as this shall not void the policies or contracts of insurance; provided, that Carrier receiving the benefit of such insurance will reimburse the claimant for the premium paid on the insurance policy or contract.

**Section III.** (a) Unless Shipper has declared a higher value and paid the insurance premiums, each Shipment is valued at \$50.00. The entry of a C.O.D. amount is not a declaration of value. Carrier provides insurance for an extra charge pursuant to its tariffs. No value may be declared which is above the level of available insurance limits.

(b) Shipper warrants to Carrier that Shipment (i) may be lawfully carried aboard airline, aircraft, or other federally regulated carriers; (ii) is not a prohibited commodity under any applicable statutes and regulations; (iii) is not a hazardous material; (iv) complies with all applicable customs, import, export,

and other laws and regulations; (v) is properly packaged, secured, and addressed; and (vi) does not include coins, currency, furs, gems (precious and semi-precious, artwork, bonds, negotiable securities, film, animals, liquor, plants, firearms or parts thereof, ammunition, human remains, pornography and illegal narcotics/drugs.

(c) Carrier reserves the right to open and inspect Shipment at any time at its sole discretion. Carrier reserves the right to reject Shipment, even after it has been accepted, in Carrier's sole discretion, if it may cause damage or harm, delay other shipments, or is prohibited by law or by Carrier's tariffs.

(d) Shipper and Consignee shall be liable for and indemnify, hold harmless, and defend Carrier, their agents, successors, officers, directors, employees and stockholders against claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) (collectively "Claims"), whether or not involving a third party claim, which arise out of or relate to: (1) any breach of any representation or warranty of Shipper contained in these T&C; (2) any breach or violation of any covenant or other obligation or duty of Shipper under these T&C or under applicable law; or (3) any Claim arising out of Shipment, except for Carrier's gross negligence or willful misconduct.

**Section IV.** (a) If Consignee refuses Shipment or if Carrier is unable to deliver Shipment because of fault or mistake of Shipper or Consignee, Carrier's responsibility shall be that of a warehouseman and may keep Shipment in the vessel, car, depot, warehouse, or place of delivery of Carrier. Carrier shall promptly provide notice to Shipper or another party, as designated. Storage charges, based on Carrier's tariff, shall start the next business day following the attempted notification. Storage may be, at Carrier's option, in any location that provides reasonable protection against loss or damage. Carrier may place Shipment in public storage at the owner's expense and without liability to Carrier.

(b) Where nonperishable property that has been transported is refused by Consignee or the party entitled to receive it, or Consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival has been given, Carrier may sell Shipment at public auction to the highest bidder; provided, that Carrier will first give to Shipper notice that Shipment has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of this BOL if disposition is not arranged for.

(c) Nothing contained in this section shall be construed to abridge the right of Carrier, at its option, to sell Shipment under such circumstances and in such manner as may be authorized by law. When perishable goods cannot be delivered and disposition is not given within a reasonable time, Carrier may dispose of Shipment to the best advantage.

(d) The proceeds of any sale made under this section shall be applied by Carrier to the payment of freight, demurrage, storage, and any other lawful charges and expenses. Shipper will be responsible for the balance of charges not covered by the sale of Shipment. Any excess balance will be paid to Shipper.

(e) Where a Carrier is directed by Consignee or Shipper to unload or deliver property at a particular location where Shipper, Consignee, or the agent of either, is not regularly located, Carrier assumes no risk or liability.

**Section V.** (a) Shipper or Consignee shall be liable for the freight and all other lawful charges accruing on Shipment, as billed or corrected, except that collect shipments may be moved without recourse to Shipper when Shipper so stipulates, by signature or endorsement in the space provided on the face of the BOL. Nevertheless, Shipper shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information provided by Shipper.

(b) Notwithstanding the provision above, Consignee's liability for payment of additional charges that may be found to be due after delivery shall be as specified by 49 U.S.C. §13706.

(c) Nothing contained in these T&C shall limit the right of Carrier to require, at time of shipment, the prepayment or guarantee of the charges. If on inspection it is ascertained that the articles shipped are not those described in this BOL, the freight charges must be paid on the articles actually shipped.

**Section VI.** If this BOL is issued on the order of Shipper, or Shipper's agent, in exchange or in substitution for another BOL, Shipper's signature on the prior BOL or in connection with the prior BOL as to the statement of value or otherwise, or as to the election of common law or BOL liability shall be considered a part of this BOL as fully as if it were written on or made in connection with this BOL.

**Section VII.** (a) If all or any part of Shipment is carried by water over any part of such route and loss, damage, or injury to Shipment occurs while Shipment is in the custody of a Carrier by water, the liability of such Carrier shall be determined by the BOL of Carrier by water (this BOL being such BOL if Shipment is transported by such water Carrier thereunder) and also subject to the terms and limitations of liability specified by the "Carriage of Goods By Sea Act" and any other pertinent laws applicable to water Carriers.

**Section VIII.** No agent, employee, or representative of Carrier has the authority to alter, modify, or waive any provision of this contract unless such alteration, waiver, or modification is in writing and is specifically authorized or ratified in writing by Carrier. These T&C are governed by, interpreted under and construed and enforced in accordance with laws of the State of California excluding its conflicts of law principles. All international Shipments shall be governed by the Warsaw Convention. The parties acknowledge and agree that the Superior Court of the State of California in and for the County of Contra Costa shall have jurisdiction pertaining to execution, performance, and interpretation of the terms contained in these T&C. The parties acknowledge and agree that in the event any action is brought to enforce these T&C or to enforce the obligations created, the prevailing party shall be entitled to reasonable attorneys' fees, expenses, and costs in addition to all other relief to which that prevailing party may be entitled.