



Serving the Mainland and All Points in Hawaii, Alaska and Guam  
Certified Freight Forwarder ICC FF 266

3623 Munster Avenue | Hayward, CA 94545 | Tel 510.783.6100 | Fax 510.782.5794

**Credit Application / Direct Billing Application**  
**All fields must be completed**

Business Name \_\_\_\_\_ DBA \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Billing Address (if different) \_\_\_\_\_

*If you have other shipping locations that this is the billing address for, please submit them on a separate page.*

Phone \_\_\_\_\_ Fax \_\_\_\_\_ A/P Contact \_\_\_\_\_

Years in Business \_\_\_\_\_ Parent Company Name \_\_\_\_\_

Taxpayer Identification # \_\_\_\_\_

Bank Name \_\_\_\_\_ Account # \_\_\_\_\_

Owner's Name \_\_\_\_\_

*Please list additional owners on a separate page*

Owner's Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Maximum Credit Requesting: \$ \_\_\_\_\_ (This amount will be taken into consideration during processing.)

**CREDIT REFERENCES**

Company Name / Contact Name / Phone / Fax

1. \_\_\_\_\_

2. \_\_\_\_\_

*CONTRACT NOTICE: We perform all carriage and non-carriage services subject to limitation of liability in the applicable (1) Bill of Lading Terms and Conditions of Contract or (2) for non-carriage services, Terms and Conditions of Service. Both sets of contract terms are available online at [http://www.hawaiianexpress.com/shipping\\_forms.php](http://www.hawaiianexpress.com/shipping_forms.php).*

I hereby authorize the Company, to whom this application is made, or any credit bureau or other investigative agency employed by such person, to investigate references herein listed or statements or other data obtained from me or from any other person pertaining to my credit and financial responsibility.

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*(Applications cannot be processed without authorized signature)*

Name of Hawaiian Express Sales Representative \_\_\_\_\_

*Thank You!*

## TERMS AND CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

### 1) Definitions.

- a) "Company" shall mean Hawaiian Express Service, Inc., its subsidiaries, related companies, agents and/or representatives;
- b) "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. 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 electronic form;
- d) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier" (NVOCC);
- e) "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".

### 2) Company as agent

The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the transportation of goods, Company acts as an independent contractor.

### 3) Quotations Not Binding.

Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational and estimation 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 of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

### 4) No Liability for the Selection or Services of Third Parties and/or Routes.

Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, 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, delivery of the shipment; advice by the Company that a particular person or firm 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.

### 5) Preparation and Issuance of Bills of Lading.

Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer.

### 6) Reliance On Information Furnished.

Customer acknowledges that it is required to review all documents, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customers behalf;

### 7) Declaring Higher Value to Third Parties.

Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of the third party to 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.

### 8) 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.

### 9) Indemnification/Hold Harmless.

The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation or exportation of customers merchandise and/or any 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; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

### 10) 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 (7) seven 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 thirty (30) days from the date of the loss;
- ii) for any and all other claims of any other type, within thirty (30) days from the date of the loss or damage.

**11) 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 (c) 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 goods, 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 therefore, 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 (b) above, the Company's liability shall be limited to the following:

- (i) where the claim arises from activities other than those relating to customs business, \$50.00 per shipment or transaction, or
- (ii) where the claims arise from activities relating to "Customs business," \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less.

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.

**12) C.O.D. or Cash Collect Shipments.** Company shall use reasonable care regarding written instructions relating to "Cash/Collect" on "Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have any liability if the bank or consignee refuses to pay for the shipment. Additional COD fees apply.

**13) Credit Extension and Terms.** All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company. Further, all shipments are subject to COD until this form is completed in its entirety, and accepted and approved by Hawaiian Express Service, Inc. Credit approval and terms will be forwarded by mail to the below signed officer(s).

In consideration of credit being extended by Hawaiian Express Service, Inc. to the above named applicant for services to be rendered, whether applicant is an Individual or Individuals, a proprietorship, a partnership, a corporation, or other entity, the undersigned guarantor or guarantors each hereby contract and guarantee to complete the faithful payment, when due, of all accounts of said applicant for the payment for services rendered within five years next after the date of this application. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guarantee, notice of extension of credit to applicant, presentment, and demand for payment on applicant, protest and notice to undersigned guarantor and guarantors of dishonor or default by applicant or with respect to any security held by Hawaiian Express Service, Inc. extension of time of payment to applicant, acceptance of partial payment or partial compromise, and all other notices to which the undersigned guarantor or guarantors might otherwise be entitled and demand for payment under this guarantee.

Absent written permission by creditor, this personal guarantee may not be revoked.

**14) Compensation of Company.** The compensation of the Company for all its services shall be included with and is in addition to the rates and charges of all carriers and all other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers, and others in connection with the shipment. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including all reasonable attorney fees.

**15) Collections.** If invoice has not been paid within 30 days, you will be notified of its delinquency and of the additional 1.5% interest rate fees attached to the invoice. If invoice goes beyond 60 days past due, you will be notified that in 7 days, the late invoice will proceed to collections and additional fees, as noted in #17 (below) will be imposed in addition to the additional interest fees and invoice amount. If customer has anything in Collections, they will be refused service until all due invoices are satisfied along with any and all additional fees due to the delinquency of payment.

**16) Costs of Collection.** In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company. If Customer is brought into collections, a 20% fee (20% of the total cost of the amount due) will be collected in addition to amount owed by the customer.

**17) 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) Customer agrees that any and all overdue balances past the agreed terms, and including all liens, are subject to 2% interest per month.

c) 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.

d) 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 owed, 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.

**18) No Modification or Amendment Unless Written.** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

**19) 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.

**20) 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 federal laws of the United States of America, without regard to its conflict of laws rules or, in the absence of such federal law, then according to the laws of the State of California, without regard to its conflict of laws rules. Customer and Company:

a) irrevocably consent to the jurisdiction of the United States District Court for the Central District of California in Los Angeles, California and the Los Angeles County Superior Court in Los Angeles, California, to the exclusion of all other courts.

b) agree that any action relating to the services performed by Company, shall only be brought in said courts;

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.

**I have read and understand the Terms and Conditions of Service**

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

# BILL OF LADING CONTRACT TERMS AND CONDITIONS

## 1. DEFINITIONS

"Carriage" means the operations and services that Forwarder undertakes to perform or arrange as to the Goods covered by this Bill of Lading. "Forwarder" means Hawaiian Express Service, Inc. and its servants and agents. "Person" means any natural person, corporation, any other legal entity, or any unincorporated association. "Merchant" includes the consignor, shipper, exporter, seller, consignee, owner of the Goods, or the lawful holder or endorsee of this Bill of Lading, and any Person lawfully acting on behalf of any of these Persons. "Goods" means the cargo that Merchant has shipped on Carriage, whether carried on or under deck, and includes any Container not supplied by or on behalf of Forwarder. "Vessel" includes the vessel named on the front page of this Bill of Lading or any substitute for that vessel, and any feeder vessel, lighter, barge, or other conveyance used by or on behalf of Forwarder for any part of the Carriage. "Sub-Contractor" includes Vessel owners and operators, water carriers, stevedores, terminals, warehouses, container freight stations, motor carriers, drayage companies, brokers, freight forwarders, rail carriers, and other transportation and transportation-related service providers. "Sub-Contractor" also includes direct and indirect sub-contractors and their respective servants, agents, or sub-contractors. "Package" means each Container that is stuffed and sealed by or on behalf of Merchant, and not the items packed in such Container if the number of such items is not stated on the front page of this Bill of Lading, and not where the number of such items is indicated by the terms such as "Said to Contain" or similar expressions. "Container" includes any shipping container, open top, trailer, transportable tank, flat rack, platform, pallet, and any other equipment or device used for or in connection with the Carriage. "COGSA" means the Carriage of Goods by Sea Act of the United States of America, Apr. 16, 1936, ch. 229, 49 Stat. 1207, *reprinted in note following 46 U.S.C. § 30701*. "Charges" includes freight, all expenses, costs, detention, demurrage, general average, and any other money obligations incurred in the Carriage of the Goods or payable by Merchant, and all collection costs for freight and other amounts due from Merchant, including attorneys' fees and court costs. "Dangerous Goods" includes any Goods classified or described as dangerous in the International Maritime Organization's International Maritime Dangerous Goods Code or in Forwarder's applicable tariff, and any Goods that could present or could be likely to present any hazard to the Vessel, any other transporting conveyance, to other cargo or property, or to any Person.

## 2. FORWARDER'S UNDERTAKING

Merchant understands that Forwarder is a domestic freight forwarder that operates no transportation conveyances that transport the Goods. Forwarder is a Title 49 freight forwarder, licensed by the Federal Motor Carrier Safety Administration, docket number FF00266. Forwarder contracts with Sub-Contractors to transport or handle the Goods.

## 3. AGREEMENT TO TERMS AND CONDITIONS

In tendering the Goods to Forwarder for Carriage, Merchant accepts this Bill of Lading and agrees to be bound by these Bill of Lading Contract Terms and Conditions, as well as those on the front page, whether written, typed, stamped, or printed, as fully as if signed by Merchant, any local custom or privilege to the contrary notwithstanding. This Bill of Lading is non-negotiable. Merchant has prepared this Bill of Lading or Forwarder or its authorized agents have done so on Merchant's behalf. Merchant agrees that this Bill of Lading supersedes all agreements or freight engagements for and in connection with the Carriage of Goods. The defenses and limits of liability of this Bill of Lading shall apply in any action against Forwarder under any legal theory, whether in contract, tort, bailment, indemnity, contribution, or otherwise.

## 4. SUB-CONTRACTING AND INDEMNITY

(A) Forwarder has the right at any time and on any terms to sub-contract the whole or any part of the Carriage, as well as any duties Forwarder has undertaken as to the Goods, or to substitute any other vessel or means of transport for the Vessel.

(B) Every Sub-Contractor, Person, and Vessel shall have the benefit of every exemption, defense, and limitation of these Bill of Lading Contract Terms and Conditions, as if such provisions were expressly for every such Sub-Contractor's, Person's, and Vessel's benefit, and in entering into this contract for the Carriage, Forwarder, to the extent of such exemptions, defenses, and limitations, does so not only on its behalf, but also as agent for such Sub-Contractors, Persons, and Vessel, and to the extent each is or shall be deemed to be parties to this Bill of Lading.

## 5. NOTICE OF CLAIM AND TIME-BAR

(A) Unless written notice of loss or damage and the general nature of such loss or damage is given in writing to Forwarder at the Port of Discharge or Place of Delivery, whichever is applicable to the Carriage, before or at the time of the removal of the Goods into the custody of the Person entitled to delivery thereunder upon this Bill of Lading, such removal shall be prima facie evidence of the delivery by Forwarder of the Goods as described in this Bill of Lading. If the loss or damage is not apparent, then the notice must be given within three days of the delivery.

(B) In any event, Forwarder and Sub-Contractors shall be discharged from all liability in respect of loss or damage unless suit is brought in the exclusive forum under clause 27 within one year after the delivery of the Goods or the date on when the Goods should have been delivered. But if that period shall be found to be contrary to any law that compulsorily applies to the segment of the Carriage during which the loss or damage occurred, then the prescribed limitations period or minimum period under such law shall then apply.

## 6. CLAUSE PARAMOUNT

(A) This Bill of Lading shall have effect subject to COGSA, which is incorporated into this Bill of Lading. All Carriage to, from, or within the United States of America, including its districts, territories, and possessions (collectively, the "U.S."), under this Bill of Lading shall have effect subject to COGSA—Forwarder and Merchant expressly agree, under section 13 of COGSA, that it shall apply to Carriage between ports of the U.S., in lieu of the Harter Act, 46 U.S.C. sections 30701-30707.

(B) COGSA shall also apply contractually and govern the Carriage before the Goods are loaded aboard the Vessel and after their discharge, and throughout the entire time that the Goods are in the custody of Forwarder or its Sub-Contractors.

(C) Forwarder Acting As Agent for Non-Carriage Services: Whenever Forwarder undertakes to accomplish any act, operation, or service not initially agreed to or stated on this Bill of Lading, Forwarder shall act as Merchant's agent and shall be under no liability for any loss of or damage to the Goods or any direct, indirect, or consequential loss arising out of or resulting from such act, operation, or service. Merchant understands and agrees that Forwarder shall perform such non-Carriage services under Forwarder's Terms and Conditions of Service, a copy of which is available upon request, and not under these Bill of Lading Contract Terms and Conditions.

## 7. FORWARDER'S RESPONSIBILITIES AS TO CARRIAGE

(A) The responsibilities of Forwarder for the Goods cover the entire period during which Forwarder is in charge of the Goods, starting from the time Forwarder has received the Goods at the Place of Receipt or Port of Loading, as applicable, until the time of delivery at the Port of Discharge or Place of Delivery, as applicable, to Merchant or to any authority to which Forwarder is required to make delivery by local law or regulation, whichever occurs earlier.

(B) Where the liability scheme for interstate motor transportation under United States of America laws collectively known as the "Carmack Amendment" (Carmack) would otherwise apply to any segment of the Carriage, Merchant expressly agrees to a waiver of the Carmack liability scheme. For such motor transportation, Merchant expressly agrees that this Bill of Lading, and particularly, this paragraph, satisfies the express written waiver required under 49 U.S.C. section 14101(b) of all Merchant's rights and remedies under Carmack, excluding the provisions governing registration, insurance, or safety fines.

(C) Notwithstanding clause 7(B), if a court were to hold that that Carmack nevertheless applies to any segment of the Carriage, then the following notice and time-for-suit periods shall apply:

(i) Any cargo claims subject to Carmack must be filed within nine months after the delivery of the Goods, or in the case of export traffic, within nine months after delivery at the port of export, except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed. The failure to file a claim within the applicable nine-month period shall result in the claim's being time-barred and Forwarder's discharge from any liability. Forwarder shall not pay any time-barred claims. A timely notice of claim is a condition to the right to institute a timely lawsuit against Forwarder, as set forth below in sub-paragraph (ii).

(ii) Any lawsuits for cargo claims subject to Carmack shall be filed against Forwarder no later than two years and one day from the date on which Forwarder has given written notice to the claimant that Forwarder has disallowed the claim, or any part or parts of the claim specified in the timely notice of claim. Assuming a timely notice of claim, the failure to file a timely lawsuit within the above two-year-and-one-day period shall result in the claim's being time-barred and Forwarder's discharge from any liability. Forwarder shall not pay any time-barred claims.

## 8. LIMITATION OF LIABILITY, OPPORTUNITY TO AVOID LIMITATION OF LIABILITY

Forwarder has established and offered alternative rates of freight for the Carriage and Merchant understands and agrees that it has made an election between those alternative rates, between (1) Forwarder's regular/lower rates for Goods with limited value, and (2) ad valorem rates for goods not so limited, which rates are dependent on the value declared by Merchant. Unless Merchant declares the nature and value of the Goods before the Carriage, states the same on the front page of this Bill of Lading, and pays the corresponding ad valorem rate, Merchant knowingly and willingly elects to ship the Goods under Forwarder's regular/lower rates, the consequence of which shall be that Forwarder's liability to Merchant shall be limited as follows:

(A) Limitation for Carriage to, from, or within the U.S.: The consequence of Merchant's knowing and willing election to ship under Forwarder's lower/lower/lower rates is that neither Forwarder nor any Sub-Contractors, or the Vessel, shall in any event be or become liable for any loss or damage to or in connection with the Carriage in an amount exceeding \$500 per package lawful money of the U.S., or in case of Goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency.

(B) Limitation Where Carmack Applies Notwithstanding Clause 7(B): If a court were to hold that Carmack applies notwithstanding the waiver in clause 7(B), then the consequence of Merchant's knowing and willing election to ship under Forwarder's lower/lower/lower rates is that neither Forwarder nor any Sub-Contractors, or any vessel that transports the Goods shall in any event be or become liable for any loss or damage to or in connection with the Carriage in an amount exceeding U.S.\$1 per kilogram of the gross weight of the Goods that has sustained loss or damage.

## 9. METHODS AND ROUTES OF CARRIAGE

Forwarder may at any time and without notice to Merchant:

- (A) Use any means of transport or storage whatsoever;
- (B) Transfer the Goods from one conveyance to another, including transshipment to a vessel other than the Vessel stated on the front page of this Bill of Lading, or any other means of transport whatsoever; or
- (C) Sail with or without pilots, proceed at any speed and by any route in Forwarder's sole discretion—irrespective of whether such route is the nearest, most direct, customary, or advertised route, proceed to, return to, and stay at any port or place whatsoever in any order, in or out of the route, or in a contrary direction to or beyond the Port of Discharge, once or more in order to, without limitation, bunker or load or discharge cargo, undergo repairs, adjust equipment, drydock, make trial trips, tow, or be towed.

Merchant agrees that anything done or not done in accordance with the above sub-paragraphs or any resulting delay shall be within the scope of the Carriage and not a deviation.

## 10. FORCE MAJEURE

Without prejudice to any of Forwarder's rights or privileges under this Bill of Lading or under applicable law, Forwarder shall not be responsible for any loss, damage, or delay that arises out of or is in any way related to, directly or indirectly, any event beyond the reasonable control of Forwarder, regardless of the event's foreseeability, including war, hostilities, warfare operations, terrorism, embargoes, blockades, port congestion, strikes or labor disturbances, regulations of any governmental authority pertaining thereto or any other official interferences with commerce that arise out of or are in any way related to the above conditions and affecting Forwarder's operations or the Carriage in any way, in which case Forwarder shall have the right to cancel any outstanding booking or the Carriage. Forwarder, at its sole discretion, without prior notice to Merchant and irrespective of whether the Carriage has begun, may treat the performance of the Carriage as terminated and place the Goods at Merchant's disposal at any place or port that Forwarder, at its sole discretion, deems to be safe and convenient, whereupon Forwarder's responsibility for such Goods shall cease. Forwarder shall nevertheless be entitled to full freight and Charges on such Goods, and Merchant shall pay any additional costs of transportation, transshipment, loading, unloading, delivery, storage, and all expenses related to each of the foregoing.

## 11. NOTIFICATION AND DELIVERY

(A) Any statement in this Bill of Lading of parties to be notified of the arrival of the Goods is solely for the information of Forwarder, and failure to give such notification shall not give rise to any liability on the part of Forwarder or relieve Merchant of any obligation to Forwarder.

(B) Merchant shall take delivery of the Goods within the time stated in the water carrier's or other Sub-Contractor's applicable tariff or as Forwarder may otherwise require because of circumstances at the Port of Discharge or Place of Delivery. If Merchant fails to do so, or whenever in Forwarder's sole discretion the Goods are likely to deteriorate, decay, become worthless, lose value, or incur charges in excess of their value, whether for storage or otherwise, then Forwarder, in its sole discretion and without prejudice to any rights Forwarder may have against Merchant, and without notice and without any responsibility attaching to Forwarder, may un-stuff, sell, destroy, or dispose of the Goods at Merchant's sole risk and expense. Any of the above shall constitute delivery to Merchant under this Bill of Lading, terminating Forwarder's responsibility for the Goods.

(C) Merchant's refusal to take delivery of the Goods notwithstanding its having received notice of their availability shall constitute an irrevocable waiver of any claims arising out of or relating to the Goods or the Carriage. Merchant shall be liable to Forwarder for any losses, damages, expenses, and liabilities it incurs arising out of such a refusal, including for the cost of returning the Goods to their place of origin.

(D) Merchant understands and agrees to the provisions on free storage time and demurrage in the water carrier's or other Sub-Contractor's applicable tariff.

## 12. FREIGHT AND CHARGES

- (A) All freight shall be deemed fully, finally, and unconditionally earned on Forwarder's receipt of the Goods and shall be paid and non-returnable in any event.
- (B) All freight and Charges shall be paid without any set-off or deduction.
- (C) Payment of freight and Charges to any Person other than Forwarder or its authorized agent is not and shall not be considered payment to Forwarder and shall be at Merchant's sole risk.
- (D) Merchant shall, where applicable, be jointly and severally liable to Forwarder for payment of all freight, demurrage, detention, general average, and Charges including court costs, interest, expenses, and attorneys' fees Forwarder incurs in collecting any sums due, failing which shall be considered a default by Merchant in the payment of freight and Charges.

## 13. FORWARDER'S SPECIFIC AND GENERAL LIENS AS TO THE GOODS AND ANY PROPERTY OF MERCHANT

(A) In addition to a specific cargo lien under law, including under California Civil Code section 3051.5, Forwarder shall have a general and continuing lien on the Goods and on any property of Merchant in Forwarder's actual or constructive possession or control as to any unpaid Charges including, for monies owed to Forwarder with regard to the shipment on which Forwarder is claiming the lien, a prior shipment, or both, including, as to freightage, dead freight, demurrage, detention, and for any expenses that Forwarder incurs for storage, security, repacking, remarking, fumigation, or required disposal of Goods, for fines, dues, tolls, or commissions that Forwarder has paid or advanced on behalf of the Goods, for any sums, including for attorneys' fees Forwarder has incurred because of any attachment or other legal proceedings brought against the Goods by governmental authorities or any person claiming an interest in the Goods. The failure to pay any Charges may result in a lien on a future shipment(s), including the cost of storage and appropriate security for the subsequent shipment(s) that Forwarder may hold under this section. Forwarder's lien(s) shall survive discharge or delivery of the Goods.

(B) Forwarder shall provide written notice to Merchant of Forwarder's intent to exercise its lien rights, which notice shall set forth the exact amount of monies due. Merchant shall notify all parties having an interest in the shipment(s) of Forwarder's lien rights and the potential exercise of such rights in the absence of the payment of the monies due.

(C) Unless, within thirty 30 days of receiving notice of lien, Merchant posts cash or letter of credit at sight, or if the amount due is in dispute, an acceptable bond equal to 110 per cent of the value of the total amount due, in favor of Forwarder, guaranteeing payment of all monies due, plus all ongoing and accruing Charges, Forwarder shall have the right to sell the Goods or other property of Merchant at public or private sale or auction and Forwarder shall refund to Merchant any net proceeds remaining after such sale.

## 14. DESCRIPTION OF GOODS AND NOTIFICATION

(A) Merchant's description of the Goods stuffed in a sealed Container by Merchant or on its behalf shall not be binding on Forwarder, and the description Merchant states on the front page of this Bill of Lading is solely for Merchant's own use. Merchant understands that Forwarder has not verified the contents, weight, or measurement of a sealed Container or Package, or the value, quantity, quality, description, condition, marks, or numbers of the contents. Forwarder is under no responsibility in respect of such description of particulars.

(B) Forwarder shall not in any circumstances be under any liability for insufficient packing or inaccuracies, obliteration or absence of marks, numbers, addresses or description, or for misdelivery due to marks or countermarks or numbers, or for failure to notify the consignee of the arrival of the Goods, notwithstanding any custom of the Port of Discharge or Place of Delivery, as applicable, to the contrary.

## 15. DANGEROUS GOODS

(A) At the time of shipment of Dangerous Goods, Merchant shall, in compliance with the regulations governing the transportation of such goods, have the same properly packed, distinctly marked, and labeled, and notify Forwarder in writing of their proper description, nature, and the necessary precautions.

(B) Goods that are Dangerous Goods or are otherwise of an inflammable, explosive, or dangerous nature to the shipment as to which Forwarder, the Vessel's master, or agent of Forwarder has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place and destroyed or rendered innocuous by Forwarder without compensation to Merchant, which shall be liable for all damages and expenses directly or indirectly arising out of such shipment.

(C) Merchant shall indemnify and hold Forwarder harmless from and against any loss, damage, liability, and expense, including attorneys' fees, Forwarder has incurred, arising out of or in any way connected with or caused by, in whole or in part, omission of full disclosure required by this clause or by applicable treaties, conventions, laws, codes, or regulations.

## 16. PERISHABLE CARGO

(A) Goods of a perishable nature shall be carried in ordinary Containers without special protection, services, or other measures unless there is stated on the front page of this Bill of Lading that the Goods will be carried in a refrigerated, heated, electrically ventilated, or otherwise specially-equipped Container, or that the Goods are to receive special attention in any way.

(B) The term "apparent good order and condition," when used in this Bill of Lading with reference to Goods that require refrigeration, does not mean that the Goods, upon Forwarder's receipt of the

same, were verified by Forwarder as being at the designated carrying temperature.

(C) Forwarder shall in no event be held liable for damage to Goods due to condensation.

## 17. DECK CARGO, ANIMALS AND PLANTS

Goods, other than Goods stuffed in Containers, that are stated on the front page of this Bill of Lading as contracted to stowed "on deck" and are so carried, and all live animals, including, fish and birds, or plants shipped hereunder, shall be carried solely at the risk of Merchant, which understands and agrees that Forwarder shall not be liable for any loss or damage during the Carriage, whether or not arising out of or in connection with the part of Forwarder. Merchant shall indemnify and hold Forwarder harmless from and against any extra costs Forwarder has incurred for any reason connection with the Carriage of such live animals or plants.

## 18. INSPECTION OF GOODS

Forwarder or any Sub-Contractor shall be entitled, but shall be under no obligation, to open any Container or Package at any time and to inspect the Goods.

## 19. MERCHANT-STUFFED CONTAINERS

(A) If a Container has not been stuffed by or on behalf of Forwarder, then Forwarder shall not be liable for the loss of or damage to the Goods and Merchant shall indemnify and hold Forwarder harmless from and against any loss, damage, liability, and expense, including attorneys' fees, that Forwarder has incurred if such loss, damage, liability, or expense arises out of or is in any way connected with or caused by, in whole or in part: (1) the manner in which the Container was stuffed, filled, packed, or loaded, including because of the inclusion of wood packing materials; or (2) the unsuitability of the Goods for Carriage in the Container; or (3) the unsuitability or defective condition of the Container, provided that, if the Container had been supplied by or on behalf of Forwarder, then that unsuitability or defective condition could have been apparent upon inspection by Merchant at or before the time when the Container was stuffed, filled, packed, or loaded.

(B) Merchant shall inspect Containers before stuffing them and the use of a Container shall be prima facie evidence of its being suitable and without defect.

## 20. CARRIAGE AFFECTED BY THE CONDITION OF THE GOODS

If it appears at any time that the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measure in relation to the Goods or the Container, then Forwarder may, without notice to Merchant, but as its agent only, take any measure or incur any additional expense to carry or to continue the Carriage, or to sell or dispose of the Goods, or to abandon the Carriage or store Goods ashore or afloat, under cover or in the open, at any place that Forwarder, in its sole discretion, considers most appropriate, which abandonment, storage, sale, or disposal shall be deemed to constitute delivery under this Bill of Lading. Merchant shall indemnify Forwarder against any additional expenses it has so incurred.

## 21. MERCHANT'S RESPONSIBILITIES

(A) The parties within the definition of "Merchant" shall be jointly and severally liable to Forwarder for the fulfillment of all obligations undertaken by any of them under this Bill of Lading.

(B) Merchant warrants to Forwarder that the particulars relating to the Goods stated on the front page of this Bill of Lading have been checked by Merchant on its receipt of this Bill of Lading. Merchant further warrants that any particulars relating to the Goods furnished by or on behalf of Merchant are adequate and correct for all purposes including for purposes of security filings or disclosures and all other government-required filings or disclosures. Merchant also warrants that the Goods are lawful goods and are not contraband.

(C) Merchant shall indemnify and hold Forwarder harmless from and against any loss, damage, liability, and expense, including attorneys' fees, that Forwarder has incurred, arising out of or in any way connected with or caused by, in whole or in part, any breach of the warranties in sub-paragraph (B) of this clause or from any other cause in connection with the Goods for which Forwarder is not responsible.

(D) Merchant shall provide Carrier with certified weights obtained on calibrated and certified weighing equipment of the Goods and the Container that are tendered to steamship lines and Merchant represents that Carrier is entitled to rely on the accuracy of such weights and to counter-sign or endorse it as agent of Merchant in order to provide the certified weight certificates or verifications of gross mass to the steamship line or terminal operator. Merchant agrees that if it shall indemnify and hold Forwarder harmless from any claims, losses, fines, penalties, or other costs resulting from any incorrect or improper statements of the weight or verified gross mass provided by Merchant or its agent or contractor on which Forwarder relies.

## 22. DELAY, CONSEQUENTIAL LOSS, ETC.

(A) Forwarder does not undertake that the Goods will be transported from the Place of Receipt or Port of Loading, as applicable, or will arrive at the Port of Discharge or Place of Delivery, as applicable, or will be transhipped on board any particular vessel or other conveyance at any particular date or time or to meet any particular market or in time for any particular use. The scheduled or advertised departure and arrival times are only expected times and may be advanced or delayed and Forwarder shall in no circumstances be liable for any direct, indirect, or consequential loss or damage caused by delay.

(B) Except as this Bill of Lading expressly states otherwise, Forwarder shall in no circumstances be liable for direct or indirect consequential loss or damage arising from any other cause.

## 23. GENERAL AVERAGE AND SALVAGE

Any general average shall be adjusted, stated, and settled according to the version of the York-Antwerp Rules and in a place and in a currency under Forwarder's agreement with the Vessel's owners' or operators' interests. Merchant shall give such cash deposit or other security as the general average adjusters require to cover the estimated general average contribution of the Goods before their delivery, irrespective of whether Merchant had notice of the general average lien at the time of delivery. Forwarder shall be under no obligation to take any steps to collect security for general average or salvage security or contributions due from Merchant.

## 24. NEW JASON CLAUSE

In the event of accident, danger, damage, or disaster before or after the commencement of the voyage resulting from any cause, whether due to negligence or not, for which or for the consequences of which, Forwarder is not responsible by statute contract or otherwise, the Goods and Merchant, jointly and severally, shall contribute with Forwarder in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods. If a salving vessel is owned or operated by Forwarder, salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers. Such deposit as the general average and salvage adjusters, or Forwarder or its agents, may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon shall, if required, be made by the Goods and Merchant, jointly and severally, before delivery.

## 25. BOTH-TO-BLAME COLLISION

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect, or default of the master, mariner, pilot, or any Sub-Contractor in the navigation or in the management of the Vessel, Merchant shall indemnify Forwarder against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damage to, or any claim of Merchant, paid or payable by the other or non-carrying vessel or its owners to Merchant and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying vessel or water carrier. The above provisions shall also apply where the owners, operators, or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects, are at fault in respect of a collision, contact, stranding, or other accident.

## 26. VARIATION OF THE CONTRACT; PARTIAL INVALIDITY

No employee, servant, agent, or Sub-Contractor of Forwarder has the power to waive or vary any of these Bill of Lading Contract Terms and Conditions unless Forwarder, in writing, has specifically authorized such a waiver or variation. If any provision of these Bill of Lading Contract Terms and Conditions shall for any reason be held to be invalid or unenforceable by any court or regulatory body, then the remainder of these Bill of Lading Contract Terms and Conditions shall be unaffected and shall remain in full force and effect.

## 27. MANDATORY LAW, VENUE, AND JURISDICTION

(A) MANDATORY CHOICE OF LAW. Merchant agrees that all claims or disputes arising out of or in any way connected to this Bill of Lading or the Carriage shall be determined under the federal law of the United States of America, without regard to its conflict of laws rules or, in the absence of such federal law, then under the laws of the State of California, without regard to its conflict of laws rules.

(B) MANDATORY VENUE. The exclusive and mandatory venue for any of the above claims or disputes shall be the United States District Court for the Central District of California in Los Angeles, California, to the exclusion of all other courts. But if in the plaintiff's judgment there were to be no federal subject matter jurisdiction as to a given claim or dispute, then the exclusive and mandatory venue for any of the above claims or disputes would become the Los Angeles County Superior Court in Los Angeles, California, to the exclusion of all other courts, subject to the defendant's right to remove the action to the above federal court if, in the defendant's judgment, there exists federal subject matter jurisdiction as to the given claim or dispute.

(C) MANDATORY CONSENT AND WAIVER. Forwarder and Merchant agree to irrevocably submit to the personal jurisdiction of the above courts and waive any jurisdictional, venue, or inconvenient forum objections to such courts.