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NORMAN KRIEGER, INC. AGREEMENT DOCUMENTS PACKET

Norman Krieger, Inc. ("NKI") is a transportation and logistics intermediary and a customs broker that performs and arranges various services, including services in different modes of transportation, such as air, ocean, and surface transportation. As an intermediary, NKI may perform services or arrange them. The applicable terms and conditions of contract will depend on the service or services that NKI performs or arranges. When NKI performs or arranges more than one service, more than one set of terms and conditions of contract may apply.

The following pages of this packet contain NKI's five most common sets of terms and conditions of contract:

Section	Pages
I. NKI's Terms and Conditions of Service is a "default" set of terms and conditions of contract that apply to non-carriage services, including customs brokerage, freight forwarding, and most other non-carriage services.	2-6
II. NKI's Warehouse Receipt Terms and Conditions of Contract apply to storage, packing, crating, and any other non-transportation services that an NKI-operated warehouse may perform or arrange.	7-13
III. NKI's NVOCC Bill of Lading Contract Terms and Conditions apply to ocean carriage that NKI performs when acting as a non-vessel-operating common carrier.	14-22
IV. NKI's House Air Waybill Conditions of Contract apply to air carriage that NKI performs when acting as an indirect air carrier.	23-25
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CUSTOMER'S CONFIRMATION OF RECEIPT AND OF APPLICATION OF NKI'S TERMS AND CONDITIONS OF CONTRACT

Company
(Legal name of the corporation, LLC, partnership, sole proprietorship, or individual who will be conducting business)

Signed

Name
(Printed name of authorized signer)

Date

Title
(Title of authorized signer)



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I. 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. "Company" shall mean Norman Krieger, Inc., its subsidiaries, related companies, agents and/or representatives;

(a) "Customer" shall mean the person for which the Company is rendering service, as well as its principals, 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;

(b) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(c) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel-operating carrier";

(d) "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 entry and release of goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of the Customer and other dealings with Government Agencies, or for arranging for transportation services, both domestically and internationally, or other logistics services in any capacity other than as a carrier.

3. 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 30 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 year from the date of the loss;
- (ii) For claims arising out of brokering domestic motor carrier transportation, within one year from the date of loss;
- (iii) For claims arising out of air transportation, within one year from the date of the loss;
- (iv) For claims arising out of the preparation and/or submission of an import entry(s), within 45 days from the date of liquidation of the entry(s);
- (v) For any and all other claims of any other type, within one year from the date of the loss or damage.

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, clearance and 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



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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. 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 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.

6. Reliance on Information Furnished.

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agency and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customers behalf;

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation, delivery orders and/or other required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

(c) Customer acknowledges that it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to steamship lines and represents that Company is entitled to rely on the accuracy of such weights and to countersign or endorse it as agent of Customer in order to provide the certified weight to the steamship lines. The Customer agrees that it shall indemnify and hold the Company harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable statements of the weight provided by the Customer or its agent or contractor on which the Company relies.

(d) Customer acknowledges that it is required to advise Company in advance of its intention to tender hazardous material goods and that it will otherwise comply with all federal and international hazardous material regulations.

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.



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9. Disclaimers; Limitation of Liability.

- (a) Except as specifically set forth in these terms and conditions, Company makes no express or implied warranties in connection with its services;
- (b) Customer may obtain insurance coverage for cargo loss or damage, 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).
- (c) In all events, 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 per shipment or transaction, or
 - (ii) where the claim arises from activities relating to "Customs business," \$50 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less;
- (d) 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, or for the acts of third parties.
- (e) With respect to domestic transportation, Company shall not be liable for a motor carrier's failure to maintain insurance or for the accuracy of any documentation furnished by a motor carrier to Company or Customer evidencing said coverage.

10. Advancing Money. 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.

11. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, 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, penalties, fines 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.

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 liability if the bank or consignee refuses to pay for the shipment.

13. 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 percent per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.

14. General Lien and Right to Sell Customer's Property.

- (a) Company shall have a continuing lien on any and all property and documents relating thereto of Customer coming into Company's actual or constructive possession, custody or control or enroute, which lien shall survive delivery, for all charges, expenses or advances owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both. Customs duties, transportation charges, and related payments advanced by the Company shall be deemed paid in trust on behalf of the Customer and treated as pass through payments made on behalf of the Customer for which the Company is acting as a mere conduit.



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(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 30 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.

15. No Duty to Maintain Records for Customer. Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 U.S.C. §§ 1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.

16. Obtaining Binding Rulings, Filing Protests, etc. Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post-Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

17. No Duty to Provide Licensing Authority. Unless requested by Customer in writing and agreed to by the Company in writing, Company shall not be responsible for determining licensing authority or obtaining any license or other authority pertaining to the export from or import into the United States.

18. 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.

19. 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.

20. 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 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. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. 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 a reasonable attorney fee.

21. Force Majeure. Company shall not be liable for losses, damages, delays, wrongful or missed deliveries or nonperformance, in whole or in part, of its responsibilities under the Agreement, resulting from circumstances beyond the control of either Company or its sub-contractors, including but not limited to: (i) acts of God, including flood, earthquake, tornado, storm, hurricane, power



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failure, epidemic or other severe health crisis, or other natural disaster; (ii) war, hijacking, robbery, theft or terrorist activities; (iii) incidents or deteriorations to means of transportation, (iv) embargoes, (v) civil commotions or riots, (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment, (viii) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or (ix) strikes, lockouts or other labor conflicts. In such event, Company reserves the right to amend any tariff or negotiated freight or logistics rates, on one day's notice, as necessary to provide the requested service.

22. 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. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

23. 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 California without giving consideration to principles of conflict of law. Customer and Company:

- (a) irrevocably consent to the jurisdiction of the United States District Court for the Central District of California and the state courts in Los Angeles County, California;
- (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.



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II.

Warehouse Receipt Terms and Conditions of Contract

1. Definitions

- (a) "Warehouse" means Norman Krieger, Inc. and its subsidiaries, related companies, agents, or representatives.
- (b) "Depositor" means the shipper, consignee, or owner of the Goods or the shipper's, consignee's, or owner's contractors or agents, including motor carriers, drayage companies, forwarders, brokers, or any entity that places or maintains a chassis/trailer pool at any of Warehouse's facilities.
- (c) "Equipment" means any chassis, container, trailer, or tractor.
- (d) "Goods" means the merchandise, cargo, or freight that Depositor tenders for storage, packing, crating, and any other non-transportation service (collectively, the "Services") as stated on the front or first page of this warehouse receipt.
- (e) "Facility" means any warehouse facility of Warehouse or of a third party.
- (f) "Yard Storage" means the placement of containers or trailers, with or without tractors, empty or loaded, secured or unsecured, in the yard of Warehouse or at a third-party location.
- (g) "Contract" means this Warehouse Receipt Terms and Conditions of Contract.

2. Acceptance

- (a) Depositor may accept this Contract, including any attached accessorial charges, by wet or electronic signature, by e-mail, or by the tendering of Goods for Services.
- (b) If Goods that Depositor tenders for Services do not conform to the description stated on the front or first page of this warehouse receipt, then Warehouse may refuse to accept such Goods. If Warehouse accepts such Goods, then Depositor agrees to the rates and charges that Warehouse will invoice and to all terms of this Contract.
- (c) Any merchandise, cargo, or freight that Warehouse accepts from Depositor shall constitute Goods under this Contract.
- (d) Either party may terminate this Contract upon 30 days' written notice to the other party.

3. Shipping

Depositor shall not designate Warehouse to be the consignee for any Goods under any bill of lading, waybill, or any other transportation contract, receipt, or delivery document. If, in breach of this Contract, Goods arrive at Warehouse and it is the named consignee, then Depositor agrees immediately to notify the carrier in writing, with copy of such notice to Warehouse, that Warehouse is only a warehouse that has no beneficial title or interest in such Goods and Depositor further agrees to indemnify Warehouse from and against any claims for unpaid transportation charges, including undercharges, demurrage, detention, or any other charges that arise out of or are in any way connected to the Goods. Depositor further agrees that if it fails to notify the carrier as the preceding sentence requires, then Warehouse shall have the right to refuse such Goods and it shall not be liable for any loss, injury, or damage that arises out of or is in any way connected to such Goods.



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4. Tender for Storage

Goods that Depositor or its agents deliver to the Facility shall be properly marked and packaged for storage, handling, or other Services. Depositor shall furnish at or prior to such delivery a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other Services Depositor desires.

5. Storage Period and Charges

- (a) Unless Warehouse and Depositor otherwise agree in a writing signed by both parties, all charges for storage are per package or other agreed unit, per month.
- (b) The storage month begins on the date Warehouse accepts care, custody, and control of Goods, regardless of their unloading date or the date of issue of the corresponding warehouse receipt.
- (c) Subject to paragraph 5(d), a full month's storage charge will apply on all Goods received between the first and the 15th, inclusive, of a calendar month; one-half month's storage charge will apply on all Goods received between the 16th and the last day, inclusive, of a calendar month; and a full month's storage charge will apply to all Goods in storage on the first day of the next and succeeding calendar months. All storage charges are due on the first day of storage for the initial month and after that, on the first day of the calendar month.
- (d) Warehouse and Depositor may agree in a writing signed by both parties that a storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding months. All storage charges shall be due on the first day of the storage month.

6. Transfer, Termination of Storage, Removal of Goods

(a) Instructions to transfer Goods in storage are not effective until delivery to and acceptance by Warehouse. Depositor understands and agrees that all charges up to the time of transfer are chargeable to Depositor. If a transfer involves rehandling the Goods, then such rehandling will be subject to a charge. If there is a transfer of Goods in storage from one party to another through issuance of a new warehouse receipt, then the date of transfer shall be the new storage date.

(b) Upon 14 days' written notice to Depositor, Warehouse reserves the right to move, at its expense, any Goods in storage at one Facility to any other Facility. Warehouse will store the Goods at, and may without notice move the Goods within and between, any one or more of the warehouse buildings that comprise a Facility.

(c) At any time and for any reason, and upon giving 30 days' written notice to Depositor and to any other person Warehouse knows to claim an interest in the Goods, Warehouse may require the removal of the Goods, or any portion of them, and the immediate payment of all amounts then due. If Depositor fails to remove the Goods before the end of the notice period, then Warehouse may sell them in accordance with applicable law.

(d) If Warehouse in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Warehouse's lien before the end of the 30-day notice period of section 6(c), then Warehouse may specify in the notification any reasonable shorter time for removal of the Goods and, if Depositor fails to remove the Goods, then Warehouse may sell them in accordance with applicable law.

(e) If as a result of a quality or condition of the Goods of which Warehouse had no notice at the time



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of deposit the Goods are a hazard to other property or to the Facility or to persons, then Warehouse may sell the Goods at public or private sale without advertisement or reasonable notification to all persons known to claim an interest in the Goods. If Warehouse after a reasonable effort is unable to sell the Goods, then it may dispose of them in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale, or return of the Goods, Warehouse may remove the Goods from the Facility and shall incur no liability by reason of such removal.

7. Handling

- (a) The handling charge covers the ordinary labor involved in receiving Goods at the warehouse door, placing Goods in storage, and returning Goods to the warehouse door. Handling charges are due upon receipt of Goods.
- (b) Unless Warehouse and Depositor otherwise agree in a writing signed by both parties, labor for unloading and loading Goods will be subject to a charge. Additional expenses Warehouse incurs in receiving and handling damaged Goods, and additional expenses in unloading from or loading into cars or other vehicles not at warehouse door will be charged to Depositor.
- (c) Labor and materials used in loading rail cars or other vehicles are chargeable to Depositor.
- (d) When Goods are ordered out in quantities less than in which received, Warehouse may make an additional charge for each order or each item of an order.
- (e) Warehouse shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers, or other containers, or any delays in obtaining and loading cars, trailers, or other containers for outbound shipment unless Warehouse has failed to exercise reasonable care, in which case its liability shall be subject to section 12 of this Contract.

8. Delivery Requirements

- (a) No Goods shall be delivered or transferred except upon receipt by Warehouse of Depositor's complete written instructions. Written instructions may be by fax, EDI, or e-mail, provided Warehouse has no liability when relying on the information contained in the communication as Warehouse receives it. Warehouse may deliver Goods upon instruction by telephone further to Depositor's prior written authorization, but Warehouse shall not be responsible for loss or error occasioned by such instruction by telephone.
- (b) When Goods are ordered out, Warehouse shall have a reasonable time to carry out instructions, and if Warehouse is unable to do so because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots or civil commotions, or any other cause beyond Warehouse's reasonable control, or because of loss of or damage to Goods for which Warehouse is not liable, or because of any other excuse under law, Warehouse shall not be liable for failure to carry out such instructions and Goods remaining in storage will continue to be subject to regular storage charges.

9. Extra Services

- (a) Warehouse shall additionally charge Depositor for any labor required for services other than ordinary handling and storage.
- (b) Warehouse shall additionally charge Depositor for any special services Depositor may request, such as compiling of special stock statements, reporting marked weights, serial numbers, or other data



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from packages, physically checking the Goods, and handling transit billing.

- (c) For an additional charge, Warehouse may provide dunnage, bracing, packing materials, or other special supplies.
- (d) By prior arrangement and for an additional charge, Warehouse may receive or deliver Goods outside normal business hours.
- (e) Warehouse may additionally charge Depositor for communication expenses, including postage, overnight delivery, or telephone, if such communications concern more than normal inventory reporting or if, at the request of Depositor, communications are by other than First-Class mail.

10. Bonded Storage

- (a) Warehouse shall additionally charge Depositor for merchandise in bond.
- (b) Where a warehouse receipt covers Goods in U.S. Customs and Border Protection bond, Warehouse shall have no liability for Goods seized or removed by U.S. Customs and Border Protection.

11. Minimum Charges

- (a) A minimum handling charge per lot and a minimum storage charge per lot per month will apply. When a warehouse receipt covers more than one lot or when a lot is in assortment, a minimum charge per mark, brand, or variety will apply.
- (b) A minimum monthly charge to one account for storage or handling will apply. That charge will also apply to each account when one customer has several accounts, each requiring separate records and billing.

12. Liability and Limitation of Damages

- (a) Warehouse shall not be liable for any loss of or damage to Goods that Warehouse has received for Services, however caused, unless such loss or damage was because of Warehouse's failure to exercise care in regard to the Goods that a reasonably careful person would exercise under similar circumstances. Warehouse shall not be liable for damages that could not have been avoided by the exercise of that care.
- (b) Goods are not insured by Warehouse against loss or damage.
- (c) Depositor understands and agrees that Warehouse's liability for loss of or damage to the Goods shall be limited to \$.50 per pound. Depositor further understands and agrees that at the time of acceptance of this Contract under section 2, Depositor may, upon its written request, increase Warehouse's level of liability on part or all of the Goods covered by this Contract, in which event Warehouse shall charge increased rates based on Depositor's increased valuation of the Goods.
- (d) If loss of or damage to Goods occurs as to which Warehouse is not liable, then Depositor shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss of or damage to the Goods.

13. Notice of Claim and Time-Bar

- (a) Depositor or any other person must provide Warehouse with written notice within a reasonable time, and in no event any later than the earlier of (i) 60 days after the date of delivery by Warehouse or (ii) 60 days after Warehouse notifies Depositor of a loss of or damage to part or all of the Goods. Failure to provide a timely notice of claim shall extinguish any liability of Warehouse.



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(b) In any event, Warehouse shall be discharged from all liability to Depositor or any other person as to any Services that Warehouse has provided unless Depositor or such other person files an action in the mandatory venue under section 23 by no later than the earlier of (i) nine months after the date of delivery by Warehouse or (ii) nine months after Warehouse notifies Depositor of a loss of or damage to part or all of the Goods.

(c) When Goods have not been delivered, notice may be given of known loss of or damage to the Goods by mailing of a letter by certified mail or overnight delivery to Depositor. The above notice-of-claim period and time-bar limitations period shall begin on the date of mailing of such notice by Warehouse.

14. No Liability for Consequential Damages

In no event shall Warehouse be liable for any loss of profit or for any special, indirect, or consequential damages, notwithstanding Warehouse's notice of the possibility of any of the above types of damages.

15. Liability for Misshipment

If Warehouse negligently misships Goods, then Warehouse shall pay the reasonable transportation charges of returning the misshipped Goods to the origin Facility. If a consignee fails to return the Goods, then Warehouse's maximum liability shall be subject to the contractual limitation of liability stated in section 12, and Warehouse shall have no liability for damages due to the consignee's acceptance or use of the Goods, regardless of their ownership.

16. Mysterious Disappearance

Warehouse shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes that such loss occurred because of Warehouse's failure to exercise the care required under section 12. Any presumption of conversion imposed by law shall not apply to such loss and a claim by Depositor of conversion must be established by affirmative evidence that Warehouse converted the Goods to Warehouse's own use.

17. Right to Store Goods and Receive Services

Depositor states that it is lawfully possessed of the Goods and has the right and authority to store them with Warehouse and to receive Services. Depositor agrees to indemnify Warehouse from and against any loss, cost, and expense, including reasonable attorneys' fees, which Warehouse pays or incurs as a result of any dispute or litigation, whether instituted by Warehouse or others, as to Depositor's right, title, or interest in the Goods. Such amounts shall be subject to Warehouse's liens in section 20.

18. Accurate Information

Depositor shall provide Warehouse with information concerning the Goods that is accurate, complete, and sufficient to allow Warehouse to comply with all laws and regulations concerning the storage, handling, and transporting of the Goods. Depositor shall indemnify Warehouse from and against any loss, cost, penalty, and expense, including reasonable attorneys' fees, which Warehouse pays or incurs as a result of Depositor's breach of its duties under this section.



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19. Severability, Non-Waiver, and Entire Agreement

- (a) If any portion of this Contract shall for any reason be held to be invalid or unenforceable, then the remainder of this Contract shall be unaffected by such holding and shall remain in full force and effect.
- (b) Warehouse's waiver of any right under this Contract on one occasion shall not constitute a waiver of such right on any subsequent occasion.
- (c) This Contract is the parties' final expression and entire agreement arising out of or in any way relating to the Goods or Services. This Contract states the parties' entire understanding and it supersedes any contemporaneous or prior oral or written understandings or agreements that arise out of or are in any way related to the Goods or Services. This Contract shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each party.

20. GENERAL AND SPECIFIC LIEN

Warehouse shall have a general and a specific lien for all lawful charges for storage and preservation of the Goods, and also, for money Warehouse has advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Warehouse shall further have a general warehouse lien for all such charges, advances, and expenses as to any other goods stored by Depositor in the Facility or in any other facility Warehouse owns, operates, or uses to store goods or provide Services. To protect its liens, Warehouse may require advance payment of all charges prior to shipment of Goods. Warehouse may exercise its lien rights under this Contract and any applicable law. Depositor agrees that Warehouse's liens shall survive delivery.

21. Yard Storage

The liability of Warehouse for any Yard Storage of containers or trailers, whether loaded or empty, secured or unsecured, shall be subject to this Contract.

22. Hazardous Goods

- (a) Prior to tendering hazardous goods, as defined under applicable federal and state law and regulations, Depositor shall, in compliance with the laws and regulations governing the transportation and storage of such goods, properly pack, distinctly mark, and label such Goods, and notify Warehouse in writing of their proper description, nature, and the necessary precautions.
- (b) As to Goods that are hazardous goods or are otherwise of an inflammable, explosive, or dangerous nature, as to the storage of which Warehouse has not consented with knowledge of their nature and character, Warehouse may, in its sole discretion and without compensation to Depositor, remove and destroy such hazardous goods, or render them innocuous, and Depositor shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such storage or other Services. If any such Goods that Warehouse receives with such knowledge and consent shall become a danger to any facility, personal property, or to any other goods, then Warehouse may, in its sole discretion and without compensation to Depositor, remove and destroy such hazardous goods, or render them innocuous, and Depositor shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such storage or other Services.



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(c) Depositor shall indemnify Warehouse from and against any loss, damage, liability, and expense, including attorneys' fees Warehouse has paid or 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 section or by applicable treaties, conventions, laws, codes, or regulations.

23. Mandatory Law, Venue, and Jurisdiction

All claims or disputes arising out of or in any way related to this agreement or any Services shall be determined under the laws of the State of California, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.



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III.

NVOCC Bill of Lading Contract Terms and Conditions

1. Definitions

“Carriage” means the operations and services undertaken or performed by or on behalf of Carrier as to the Goods covered by this Bill of Lading.

“Carrier” means Norman Krieger, Inc. dba Krieger Sea Services, OTI license no. 002435 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 those Persons.

“Goods” means the cargo that Merchant has tendered for Carriage, whether carried on or under deck, and includes any Container not supplied by or on behalf of Carrier.

“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 Carrier for any part of the Carriage.

“Sub-Contractor” includes Vessel owners and operators, stevedores, terminals, warehouses, container freight stations, road and rail transport operators, and any Person employed by Carrier in the performance of the Carriage.

“Sub-Contractor” 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 in the “packages” column, 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.

“Hague Rules” means the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels, August 25, 1924.

“Hague-Visby Rules” means the amendments by the Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, adopted at Brussels, February 23, 1968.

“SDR Protocol” means the amendments by the Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, adopted at Brussels, December 21, 1979.

“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 Carrier’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. Carrier’s Tariff

Carrier’s applicable tariff or tariffs are incorporated into these Bill of Lading Contract Terms and Conditions. Upon request, Carrier shall provide copies of or online access to the applicable tariffs, or where applicable, through the government body with which the tariffs may be on file. In case of any inconsistency between these Bill of Lading Contract Terms and Conditions and any applicable tariff, the former shall prevail.



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3. Agreement to Terms and Conditions

Merchant understands and agrees that by tendering the Goods to Carrier 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, notwithstanding any local custom or privilege to the contrary, and Merchant agrees that this Bill of Lading supersedes all agreements or freight engagements for and in connection with the Carriage. The defenses and limits of liability of this Bill of Lading shall apply in any action against Carrier under any legal theory, whether in contract, tort, bailment, indemnity, contribution, or otherwise.

4. -Contracting and Indemnity

(A) Carrier 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 other duties Carrier has undertaken as to the Goods, or to substitute any other vessel or means of transport for the Vessel.

(B) Every Sub-Contractor 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 and Vessel's benefit. In entering into this contract for the Carriage, Carrier, to the extent of such exemptions, defenses, and limitations, does so not only on its behalf, but also as agent for such Sub-Contractors and Vessel, and to that extent, each is or shall be deemed to be a party 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 Carrier 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 under this Bill of Lading, such removal shall be *prima facie* evidence of the delivery by Carrier 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, Carrier 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 which the Goods should have been delivered. But if such time period were to 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 period or minimum period under such law shall then apply.

6. Clause Paramount

(A) This Bill of Lading shall have effect subject to COGSA unless a court were to rule that any other legislation of a nature similar to the Hague Rules, the Hague-Visby Rules, or the SDR Protocol compulsorily applies to this Bill of Lading. Where the Hague Rules, Hague-Visby Rules, or the SDR Protocol (collectively, "Hague Rules Legislation") compulsorily applies, this Bill of Lading shall have effect subject to such Hague Rules Legislation. Notwithstanding anything else to the contrary in this Bill of Lading, on all Carriage to or from the United States of America, including its districts, territories, and possessions (collectively, the "U.S."), this Bill of Lading shall have effect subject to COGSA, and Carrier and Merchant agree that under the section 13 of COGSA, it shall apply to Carriage between ports of the U.S., in lieu of the Harter Act, 46 U.S.C. §§ 30701-30707.

(B) COGSA or the Hague Rules Legislation, whichever is applicable under clause 6(A), shall also apply contractually and govern the Carriage before the loading of the Goods aboard the Vessel and after their discharge, and throughout the entire time that the Goods are in the custody of Carrier or its Sub-Contractors.

(C) COGSA or the Hague Rules Legislation, whichever is applicable under clause 6(A), is incorporated into this Bill of Lading.

(D) Agency: Whenever Carrier undertakes to accomplish any act, operation, or service to which Carrier and Merchant did not initially agree or that is not stated on this Bill of Lading, Carrier shall act as Merchant's



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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 or resulting from such act, operation, or service.

7. Carrier's Responsibilities

(A) The responsibilities of Carrier for the Goods cover the entire period during which Carrier is in charge of the Goods, starting from the time Carrier 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 Carrier is required to make delivery by local law or regulation, whichever occurs earlier.

(B) Subject to clause 7(C), if it can be proven that loss or damage to the Goods has occurred during a particular segment of the Carriage, then the liability of Carrier, if any, and its right to limit its liability under this Bill of Lading shall be subject to any national law or international convention that is compulsorily applicable to that segment of the Carriage.

(C) Where the liability scheme for interstate motor transportation under U.S. 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 clause, satisfies the express written waiver required under 49 U.S.C. § 14101(b) of all Merchant's rights and remedies under Carmack, excluding the provisions governing registration, insurance, or safety fitness.

(D) For any segment of the Carriage that would otherwise be non-exempt rail transportation under Title 49 and, therefore, subject to that part of Carmack that governs rail transportation, Merchant expressly agrees that this Bill of Lading is a contract to provide specified services under specified rates and conditions under 49 U.S.C. § 10709. For any segment of the Carriage that would otherwise be exempt rail transportation as part of a continuous intermodal movement, Merchant expressly agrees that this Bill of Lading is a contract of exempt rail transportation under 49 U.S.C. § 10502. For such transportation, Merchant understands and agrees that Carrier has offered Merchant contractual terms for liability and claims that are consistent with the provisions of 49 U.S.C. § 11706 and that Merchant has instead elected to ship the Goods under the alternative terms for liability and claims of this Bill of Lading, in exchange for Carrier's regular/lower rates for Goods with a limited value.

(E) Notwithstanding clauses 7(C) and (D), if a court were to hold 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 Carrier's discharge from any liability. Carrier shall not pay any time-barred claims. A timely notice of claim is a condition to the right to file a timely lawsuit against Carrier, as stated below in sub-paragraph (ii).

(ii) Any lawsuits for cargo claims subject to Carmack shall be filed against Carrier no later than two years and one day from the date on which Carrier has given written notice to the claimant that Carrier 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 Carrier's discharge from any liability. Carrier shall not pay any time-barred claims.

8. Limitation of Liability, Opportunity to Avoid Limitation of Liability

Carrier 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) Carrier'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 Carrier's



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regular/lower rates, the consequence of which shall be that Carrier's liability to Merchant shall be limited as follows:

(A) Limitation for Carriage to or from the U.S.: The consequence of Merchant's knowing and willing election to ship under Carrier's lower/regular rates is that neither Carrier 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 U.S.\$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 for Carriage Under Hague Rules Legislation: The consequence of Merchant's knowing and willing election to ship under Carrier's lower/regular rates is that neither Carrier 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 the applicable package or unit limitation.

Under the Hague Rules, such limitation value is 100 pounds sterling current value, and under the Hague-Visby Rules and SDR Protocol, the limitation is 666.67 Special Drawing Rights ("SDRs") per package or 2 SDRs per kilogram, whichever amount is greater.

(C) Limitation for Other Trades or Where Carmack Applies Notwithstanding Clauses 7(C) or 7(D): In trades where neither COGSA nor the Hague Rules Legislation applies compulsorily, or where COGSA does not apply under the terms of this Bill of Lading, or if a court were to hold that Carmack applies notwithstanding the waiver in clause 7(C) or the language of clause 7(D), the consequence of Merchant's knowing and willing election to ship under Carrier's lower/regular rates is that neither Carrier 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 have sustained loss or damage.

9. Methods and Routes of Carriage

Carrier may at any time and without notice to Merchant:

(A) Use any means of transport or storage;

(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; or

(C) Sail with or without pilots, proceed at any speed and by any route in Carrier'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, 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 delay arising from the above shall be within the scope of the Carriage and not a deviation.

10. Force Majeure

Without prejudice to any of Carrier's rights or privileges under this Bill of Lading or under applicable law, Carrier 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 Carrier, regardless of the event's foreseeability, including events such as war, hostilities, warlike operations, terrorism, hijacking or robbery, use of force or threats to use force, embargoes, blockades, port congestion, strikes or labor disturbances, pandemics or epidemics, regulations of any governmental authority pertaining to any of the above, or any other official restrictions on commerce that arise out of or are in any way related to the above conditions and that affect Carrier's operations or Carriage in any way, in which case Carrier shall have the right to cancel any outstanding booking or the Carriage. Carrier, 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 Carrier, at its sole discretion, deems to be safe and convenient, at which place or port Carrier's responsibility for such Goods shall cease. Carrier 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,



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demurrage, detention, and all expenses related to each of the above, including Carrier's reasonable attorneys' fees.

11. Notification and Delivery

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

(B) Merchant shall take delivery of the Goods within the time Carrier's applicable tariff requires or as Carrier may otherwise require because of circumstances at the Port of Discharge or Place of Delivery. If Merchant fails to do so, or whenever in Carrier'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 Carrier may, in its sole discretion and without prejudice to any rights Carrier may have against Merchant, and without notice and without any responsibility attaching to Carrier, 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, after which delivery Carrier's responsibility for the Goods shall cease.

(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 Carrier for any losses, damages, expenses, and liabilities it pays or incurs arising out of such a refusal, including for the cost of returning the Goods to their place of origin and any court costs, interest, expenses, and reasonable attorneys' fees Carrier pays or incurs because of such refusal.

(D) Merchant understands and agrees to the provisions on free storage time and demurrage in Carrier's applicable tariff.

12. Freight and Charges

(A) All freight shall be deemed fully, finally, and unconditionally earned on Carrier'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 Carrier or its authorized agent is not and shall not be considered payment to Carrier and shall be at Merchant's sole risk.

(D) Merchant shall, where applicable, be jointly and severally liable to Carrier for payment of all freight, demurrage, detention, general average, disposal costs, and Charges, including court costs, interest, expenses, and reasonable attorneys' fees Carrier pays or incurs in collecting any sums due, failing which shall be considered a default by Merchant in the payment of freight and Charges.

13. Specific and General Liens

(A) Carrier shall have a general and continuing lien on the Goods as well as on any other property of Merchant coming into Carrier's actual or constructive possession or control for monies owed to Carrier with regard to the shipment on which the lien is claimed, a prior shipment(s), or any other prior obligation, including for freight, dead freight, demurrage, detention, any Charges, and for any expenses Carrier pays or incurs for storage, security, repacking, remarking, fumigation, or disposal of Goods, for fines, dues, tolls, or commissions Carrier has paid or incurred on behalf of the Goods, for any sums, including court costs, interest, expenses, and attorneys' fees, Carrier has paid or 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 future shipments, including the cost of storage and appropriate security for the subsequent shipments Carrier may hold under this clause. In any event, Carrier's lien shall survive discharge or delivery of the Goods.

(B) Carrier shall provide written notice to Merchant of Carrier's intent to exercise its lien rights, which notice shall state the exact amount of monies due. Merchant shall notify all parties that it knows to have an interest in the shipment of Carrier's lien rights and the exercise of such rights.



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(C) Unless, within 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 Carrier, guaranteeing payment of all monies due, plus all ongoing and accruing charges, such as storage, Carrier shall have the right to enforce its lien by public or private sale of the Goods or any other property of Merchant, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after which Carrier 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 Carrier, and the description declared by Merchant on the front page of this Bill of Lading is solely for Merchant's own use. Merchant understands that Carrier 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. Carrier is under no responsibility as to such descriptions of particulars.

(B) Carrier 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.

(C) Merchant shall indemnify Carrier from and against any loss, damage, liability, and expense, including any court costs, interest, expenses, and reasonable attorneys' fees Carrier pays or incurs, arising out of or in any way connected with or caused by, in whole or in part, any of the above issues stated in sub-paragraphs (A) or (B).

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, ensure their proper packing, marking, and labeling, and shall notify Carrier 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 Carrier, master, or agent of Carrier 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 Carrier 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 Carrier from and against any loss, damage, liability, and expense, including any court costs, interest, expenses, and reasonable attorneys' fees Carrier pays or incurs, 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 Carrier's receipt of the same, were verified by Carrier as being at the designated carrying temperature.

(C) Carrier 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



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shipped under this Bill of Lading, shall be carried solely at the risk of Merchant, which understands and agrees that as to such Goods, Carrier shall not be liable for any loss or damage arising during the Carriage, whether or not arising out of negligence on the part of Carrier. Merchant shall indemnify Carrier from and against any loss, damage, liability, and expense, including any court costs, interest, expenses, and reasonable attorneys' fees Carrier pays or incurs, arising out of or in any way connected with or caused by, in whole or in part, the Carriage of such live animals or plants.

18. Inspection of Goods

Carrier 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 Carrier, then Carrier shall not be liable for the loss of or damage to the Goods and Merchant shall indemnify Carrier from and against any loss, damage, liability, and expense, including any court costs, interest, expenses, and reasonable attorneys' fees Carrier pays or incurs, if such loss, damage, liability, or expense arises out of or is in any way connected with or is 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 Carrier, that unsuitability or defective condition could have been apparent upon inspection by Merchant at or before the time when Merchant or its agents stuffed, filled, packed, or loaded the Container.

(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 Carrier 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 Carrier, 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 Carrier from and against any additional expenses it has so paid or incurred, including any court costs, interest, expenses, and reasonable attorneys' fees.

21. Merchant's Responsibilities

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

(B) Merchant expressly states 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 states 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 customs entry, port or security filings or disclosures, and all other government-required filings or disclosures. Merchant also states that the Goods are lawful goods and are not contraband.

(C) Merchant shall indemnify Carrier from and against any loss, damage, liability, and expense, including any court costs, interest, expenses, duties, taxes, fines, imposts, charges arising out of the Goods' general order status, and reasonable attorneys' fees Carrier pays or incurs, arising out of or in any way connected with or caused by, in whole or in part, any breach of representations in sub-paragraph (B) of this clause or from any other cause in connection with the Goods for which Carrier 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



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that Carrier is entitled to rely on the accuracy of such weights and to countersign 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 it shall indemnify Carrier 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 Carrier relies, including any court costs, interest, expenses, and attorneys' fees Carrier pays or incurs.

22. Delay, Consequential Loss, Etc.

(A) Carrier 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 transshipped 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 Carrier shall in no circumstances whatsoever be liable for direct, indirect, or consequential loss or damage caused by delay.

(B) Except where these Bill of Lading Terms and Conditions of Contract expressly state otherwise, Carrier shall in no other circumstance be liable for any special, indirect, or consequential loss or damage.

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 Carrier'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. Carrier 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 whatsoever, whether due to negligence or not, for which or for the consequences of which, Carrier is not responsible by statute contract or otherwise, the Goods and Merchant, jointly and severally, shall contribute with Carrier 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 Carrier, 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 Carrier 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 the servants of Carrier in the navigation or in the management of the Vessel, then Merchant shall indemnify Carrier from and against all loss or liability to the other or non-carrying vessel or its 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 her 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 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 or contact.



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26. Variation of the Contract; Partial Invalidity

No employee, servant, agent, or Sub-Contractor of Carrier has the power to waive or vary any of these Bill of Lading Contract Terms and Conditions unless Carrier, 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

All claims or disputes arising out of or in any way related 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. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Orange County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.



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IV.

House Air Waybill Conditions of Contract

NOTICE CONCERNING CARRIERS' LIMITATION OF LIABILITY

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention may be applicable to the liability of the Carrier in respect of loss of, damage or delay to cargo. Carrier's limitation of liability in accordance with those Conventions shall be as set forth in subparagraph 4 unless a higher value is declared.

CONDITIONS OF CONTRACT

1. In this contract and the Notices appearing hereon:

CARRIER includes the air carrier issuing this air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage.

SPECIAL DRAWING RIGHT (SDR) is a Special Drawing Right as defined by the International Monetary Fund.

WARSAW CONVENTION means whichever of the following instruments is applicable to the contract of carriage: the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; that Convention as amended at The Hague on 28 September 1955; that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be.

MONTREAL CONVENTION means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.

2.2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.

2.2 To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:

2.2.1 applicable laws and government regulations;

2.2.2 provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. When carriage is to/from the USA, the shipper and the consignee are entitled, upon request, to receive a free copy of the Carrier's conditions of carriage. The Carrier's conditions of carriage include, but are not limited to:

2.2.2.1 limits on the Carrier's liability for loss, damage or delay of goods, including fragile or perishable goods;

2.2.2.2 claims restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the Carrier for its acts or omissions, or those of its agents;

2.2.2.3 rights, if any, of the Carrier to change the terms of the contract;

2.2.2.4 rules about Carrier's right to refuse to carry;

2.2.2.5 rights of the Carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate Carrier or aircraft and rerouting.



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3. The agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and place of destination, set forth on the face hereof or shown in Carrier's timetables as scheduled stopping places for the route.

Carriage to be performed hereunder by several successive Carriers is regarded as a single operation.

4. For carriage to which the Montreal Convention does not apply, Carrier's liability limitation for cargo lost, damaged or delayed shall be 22 SDRs per kilogram unless a greater per kilogram monetary limit is provided in any applicable Convention or in Carrier's tariffs or general conditions of carriage.

5./5.1 Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with Carrier's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements.

5.2 When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.

6./6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

6.2 In carriage to which neither the Warsaw Convention nor the Montreal Convention applies Carrier shall, in accordance with the procedures set forth in its general conditions of carriage and applicable tariffs, permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if so required.

7./7.1 In cases of loss of, damage or delay to part of the cargo, the weight to be taken into account in determining Carrier's limit of liability shall be only the weight of the package or packages concerned.

7.2 Notwithstanding any other provisions, for "foreign air transportation" as defined by the U.S.

Transportation Code:

7.2.1 in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and

7.2.2 in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.

8. Any exclusion or limitation of liability applicable to Carrier shall apply to Carrier's agents, employees, and representatives and to any person whose aircraft or equipment is used by Carrier for carriage and such person's agents, employees and representatives.

9. Carrier undertakes to complete the carriage with reasonable dispatch. Where permitted by applicable laws, tariffs and government regulations, Carrier may use alternative carriers, aircraft or modes of transport without notice but with due regard to the interests of the shipper. Carrier is authorized by the shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.

10. Receipt by the person entitled to delivery of the cargo without complaint shall be *prima facie* evidence that the cargo has been delivered in good condition and in accordance with the contract of carriage.

10.1 In the case of loss of, damage or delay to cargo a written complaint must be made to Carrier by the person entitled to delivery. Such complaint must be made:



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10.1.1 in the case of damage to the cargo, immediately after discovery of the damage and at the latest within 14 days from the date of receipt of the cargo;

10.1.2 in the case of delay, within 21 days from the date on which the cargo was placed at the disposal of the person entitled to delivery.

10.1.3 in the case of non-delivery of the cargo, within 120 days from the date of issue of the air waybill, or if an air waybill has not been issued, within 120 days from the date of receipt of the cargo for transportation by the Carrier.

10.2 Such complaint may be made to the Carrier whose air waybill was used, or to the first Carrier or to the last Carrier or to the Carrier, which performed the carriage during which the loss, damage or delay took place.

10.3 Unless a written complaint is made within the time limits specified in 10.1 no action may be brought against Carrier.

10.4 Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

11. Shipper shall comply with all applicable laws and government regulations of any country to or from which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws and regulations. Carrier is not liable to shipper and shipper shall indemnify Carrier for loss or expense due to shipper's failure to comply with this provision.

12. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.



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**V.
Brokerage Terms and Conditions of Contract**

1. Definitions

- (a) "Broker" means Norman Krieger, Inc.
- (b) "Customer" includes the consignor, shipper, consignee, owner of the Goods, and any person lawfully acting on behalf of any of the above persons.
- (c) "Goods" means articles of every kind and description, including their packaging, containers, or other shipping units or materials, as to which Customer desires for Broker to arrange motor transportation from a place of receipt to a place of delivery (the "Carriage").
- (d) "Charges" includes freight, all expenses, costs, detention, demurrage, and any other money obligations arising out of or in any way related to the Carriage of the Goods, and all collection costs for freight and other amounts due from the Customer, including attorneys' fees and court costs.

2. Agreement to Brokerage Terms and Conditions

By Customer's request to Broker to arrange the Carriage, Customer agrees to these Brokerage Terms and Conditions of Contract, which no agent or employee of the parties may alter. Customer will prepare a bill of lading for the Carriage, or Broker, its authorized agents, or contracted motor carriers or freight forwarders will do so on Customer's behalf. Customer agrees that the Carriage is subject to these Brokerage Terms and Conditions of Contract, which are also available online at <https://www.nkinc.com/document-center/>. The defenses and limits of liability stated in these Brokerage Terms and Conditions of Contract shall apply in any action against Broker under any legal theory, whether in contract, tort, bailment, indemnity, contribution, or otherwise.

3. Broker's Undertaking

Customer understands and agrees that Broker is a Title 49 property broker with such operating authority from the Federal Motor Carrier Safety Administration—docket number MC770726. Customer understands and agrees that as to the Carriage, Broker is neither a motor carrier nor a freight forwarder (collectively, "Carriers") and that Broker does not hold itself out in those capacities. Customer understands and agrees that Broker will contract Carriers to perform the Carriage or, alternatively, another property broker to arrange it.

4. Notices of Claim and Time-Bars as to Broker and as to Carriers

- (a) **NOTICE OF CLAIM TO BROKER FOR ITS ASSISTANCE.** Customer must provide Broker with written notice of a claim for the Goods' loss, damage, or non-delivery within 90 days after delivery of the Goods or the date on which the Goods should have been delivered. Conditioned on Customer's timely notice of claim, Broker will forward the same onto the Carriers that performed or undertook to perform the Carriage of the Goods. As further condition to Broker's assisting of Customer with such a claim, Customer must first pay all freight charges in full. Customer's failure to provide written notice to Broker within the above 90-day period shall extinguish Broker's duty to forward the claim to the potentially responsible Carriers.

- (b) **TIME-BAR AS TO BROKER.** In any event, Broker shall be discharged from all liability to Customer



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as to any services that the Broker has provided unless Customer files an action in the mandatory venue within nine months after the delivery of the Goods or the date on which the Goods should have been delivered.

(c) **NOTICE OF CLAIM TO CARRIERS.** Carriers typically have contractual notice-of-claim periods within which a claimant must make a claim for the loss of or damage to cargo. Unless the Carriage is exempt carriage under 49 U.S.C. § 14101(b), then under the federal law known as the “Carmack Amendment,” a contractual notice-of-claim cannot be less than nine months after delivery of the Goods or the date on which the Goods should have been delivered. Subject to section 4(a), Customer understands and agrees that it, and not Broker, shall be responsible to make such a timely notice of claim, understanding that the consequence of failing to make such a timely notice of claim is that Customer’s claim against the Carriers of the Goods will be time-barred.

(d) **TIME-BAR AS TO CARRIERS.** Carriers also typically have contractual time-bar or limitations periods within which a claimant must sue the Carrier for the loss of or damage to cargo. Unless the Carriage is exempt carriage under 49 U.S.C. § 14101(b), then under the Carmack Amendment, a contractual limitations period cannot be less than two years from the day on which the Carrier has given written notice to the claimant that the Carrier has disallowed the claim or any part or parts of the claim specified in the timely notice of claim. Customer understands and agrees that it, and not Broker, shall be responsible to file such a timely action, understanding that the consequence of failing to timely file such an action is that Customer’s action against the Carriers of the Goods will be time-barred.

5. Special Security/Protective Services

Broker’s failure to arrange any agreed-to special security services or requirements, including team drivers, shall not negate Broker’s limitation of liability, which is stated below in section 7.

6. Carrier’s Possible Limitations of Liability

Customer understands and agrees that Carriers may limit liability for loss of or damage to cargoes they transport, undertake to transport, or handle. Broker will request declared-value or excess valuation coverage only upon receiving specific written instructions from Customer, which must agree to pay any charge for such declared-value or excess valuation coverage. Customer understands and agrees that there is a distinction between excess valuation coverage, which increases the legal liability amount of a Carrier beyond a released value or limited-liability amount, and Customer’s purchase of cargo or “shipper’s interest” insurance on the Goods.

7. Broker’s Limitation of Liability; Choice as to Limitation and Opportunity to Avoid Limitation

(a) Broker has established and has offered Customer alternative levels of liability for the Carriage. Customer understands and agrees that it has had a reasonable opportunity to choose between two or more levels of Broker’s liability and has made its choice as to Broker’s liability limit as follows: Customer has had the choice to ship the Goods and to pay (A) Broker’s regular/lower rates for goods with limited value and a corresponding limited liability for Broker or (B) ad valorem rates for goods not so limited in value and a corresponding increased level of liability for Broker, the basis for which rates is Broker’s regular/lower rates plus a declared valuation charge of \$.75 per \$100 of declared value for the Goods, the sum of which equals



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an "Increased Liability Freight Rate" for the Carriage.

(b) Unless Customer declares the nature and value of the Goods prior to the Carriage and pays the corresponding Increased Liability Freight Rate, Customer knowingly and willingly elects to ship under Broker's regular/lower rates, the consequence of which is that in no event shall Broker or its servants or agents be or become liable for any loss of or damage to or in connection with the Carriage of the Goods in an amount exceeding \$.50 per pound or \$50, whichever is greater. Broker's declared values for cargoes in excess of \$.50 per pound shall be subject to an excess valuation charge.

8. Carriage Methods/Routs, Substitution of Mode/Equipment

Customer understands and agrees that without notice to Customer, Broker may arrange or the Carriers may perform the Carriage and:

- (a) Use any means of transport or storage;
- (b) Transfer the Goods from one conveyance to another, including transshipment or carrying on a truck or trailer other those that Broker arranged in the first instance, or any other means of transport; or
- (c) Proceed by any route in any Carrier's sole discretion, irrespective of whether such route is the nearest, most direct, customary, or advertised route.

Customer understands and 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.

9. Matters Affecting Performance

If at any time and for any reason the performance of the Carriage of the Goods is or is likely to be affected by any hindrance, risk, delay, difficulty, or disadvantage of any kind, other than the inability of the Goods to be safely or properly carried or carried further, and howsoever arising (even though the circumstances giving rise to such matters as stated above existed at the time this contract was entered into or the Goods were received for shipment), the Carrier in question, at its sole discretion, without prior notice to Customer and irrespective of whether the Carriage has commenced, may treat the performance of the Carriage as terminated and place the Goods at Customer's disposal at any place that the Carrier, in its sole discretion, deems to be safe and convenient, at which place the Carriage shall cease. Broker shall nevertheless be entitled to full freight for the Carriage of the Goods and Customer shall pay any additional costs of transportation to and delivery and storage at such place.

10. Refused Delivery

Refusal of the consignee or Customer to take delivery of the Goods notwithstanding having received notice of the Goods' availability shall constitute an irrevocable waiver of all claims arising out of or in any way relating to the Goods or the Carriage. Customer shall be liable for any losses, damages, expenses, and liabilities it incurs arising out of such a refusal, including the return of the Goods to their place of receipt.

11. Freight and Charges

- (a) All freight shall be deemed fully, finally, and unconditionally earned upon a Carrier's pick-up of the Goods.
- (b) All freight and Charges shall be paid without any set-off, counter-claim, deduction, or stay of



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execution before delivery of the Goods.

(c) If Customer's description of the Goods in a bill of lading or in any documents Broker receives from or on behalf of Customer is inaccurate, incorrect, or misleading in any respect, then Customer shall pay for any actual damage that Broker suffers as a result.

(d) Payment of any Charges to anyone other than Broker or its authorized agent shall not be considered payment to Broker and shall be made at Customer's sole risk.

(e) The class of persons that make up the definition of "Customer" shall, where applicable, be jointly and severally liable to Broker for payment of all freight, demurrage, detention, and Charges, including any court costs, expenses, and reasonable attorneys' fees Broker has paid or incurred in collecting any sums due, failing which shall be considered a default by Customer in the payment of freight and Charges.

12. Broker's Specific and General Liens as to the Goods and any Property of Customer

(a) In addition to any specific cargo lien arising under law, including under California Civil Code § 3051.5, Broker shall have a general and continuing lien on the Goods and on any property of Customer coming into Broker's actual or constructive possession or control as to any unpaid Charges, including for monies owed to Broker with regard to the shipment on which Broker is claiming the lien, a prior shipment, or both, including freightage, dead freight, demurrage, detention, and for any expenses that Broker incurs for storage, security, repacking, remarking, fumigation, or required disposal of Goods, for fines, dues, tolls, or commissions that Broker has paid or advanced on behalf of the Goods, for any sums, including reasonable attorneys' fees, Broker has paid or 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 or shipments, including the cost of storage and appropriate security for any subsequent shipments that Broker may hold under this section. All Broker's liens shall survive discharge or delivery of the Goods.

(b) Broker shall provide written notice to the Customer of Broker's intent to exercise its lien rights, which notice shall state the exact amount of monies due. Customer shall notify all parties having an interest in the shipment or shipments of Broker'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, Customer 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 Broker, guaranteeing payment of all monies due, plus all ongoing and accruing Charges, Broker shall have the right to sell the Goods or other property of Customer at public or private sale or auction and Broker shall refund to Customer any net proceeds remaining after such sale.

13. Description of Goods and Notification

(a) Customer's description of the Goods in a sealed trailer, shipping container, or package by Customer or on its behalf shall not be binding on Broker, and the description declared by Customer on any document is information Customer provides solely for its own use. Customer understands that Broker has not and will not verify the contents, weight, or measurement of a sealed trailer, shipping container, or package, or the weight or measurement, or the value, quantity, quality, description, condition, marks, or numbers of the contents. Customer understands and agrees that Broker has no responsibility as to such



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description of particulars and Customer shall indemnify and defend Broker from and against any loss, damage, liability, and expense, including reasonable attorneys' fees that Broker has paid or incurred, that arise out of or are in any way connected with or caused by, in whole or in part, such description of particulars.

(b) Customer understands and agrees that neither Broker nor its agents or servants undertake or shall have 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 place of delivery to the contrary.

14. Hazardous Goods

(a) Prior to tendering hazardous goods, as defined under applicable federal and state law and regulations, Customer shall, in compliance with the laws and regulations governing the transportation of such goods, have the same properly packed, distinctly marked, and labeled, and notify Broker in writing of their proper description, nature, and the necessary precautions.

(b) Goods that are hazardous goods or are otherwise of an inflammable, explosive, or dangerous nature to the shipment as to which neither Broker nor any Carrier has consented with knowledge of their nature and character, may at any time before delivery be landed at any place and destroyed or rendered innocuous by a Carrier without compensation to Customer, which shall be liable for all damages and expenses directly or indirectly arising out of such shipment. If any such Goods shipped with such knowledge and consent nevertheless become a danger to the transporting conveyance or to any other goods, then Carrier may, in like manner, land such Goods in any place, or destroy and render them innocuous without liability on the part of Broker or the Carrier.

(c) Customer shall indemnify and defend Broker from and against any loss, damage, liability, and expense, including reasonable attorneys' fees that Broker has paid or incurred, that arise out of or are in any way connected with or caused by, in whole or in part, omission of full disclosure required by this section or by applicable treaties, conventions, laws, codes, or regulations.

15. Perishable Goods

(a) Broker shall arrange Carriage of Goods of a perishable nature in ordinary trailers without special protection, services, or other measures unless Customer provides written instructions for the Carriage to be in a refrigerated, heated, electrically ventilated, or otherwise specially-equipped trailer or shipping container, or that the Goods are to receive special attention in any way. In case of refrigerated trailers or shipping containers packed by or on behalf of Customer, it undertakes not to tender for Carriage any Goods that require refrigeration without giving written notice to Broker of their nature and the required temperature-setting of the thermostatic controls before Broker's arranging of the Carriage. Customer undertakes that the Goods have been properly stowed in the trailer or shipping container and that the thermostatic controls have been adequately set before the Carrier's receipt of the Goods and, if necessary, that the Goods have been pre-cooled before their stuffing into the trailer or shipping container. Customer's understands and agrees that refrigerated trailers and shipping containers are not designed to freeze down Goods that have not been presented for stuffing at or below their designated carrying temperature, and Broker shall not be



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responsible for the consequences of Goods tendered at a higher temperature than that required for the Carriage. If Customer fails to comply with the above requirements, then Broker shall not be liable for any loss of or damage to the Goods.

(b) Customer understands and agrees that the phrase "apparent good order and condition" or its equivalent, when used in a bill of lading or other document with reference to Goods that require refrigeration, does not mean that Broker has verified that the Goods are at the designated carrying temperature.

16. Customer-Packed Goods, Customer-Stuffed Trailers and Containers

(a) If Goods have not been packaged, and if a trailer or shipping container has not been stuffed by or on behalf of Broker, then Broker shall not be liable for the loss of or damage to the Goods, and Customer shall indemnify and defend Broker from and against any loss, damage, liability, and expense, including reasonable attorneys' fees that Broker has paid or incurred if such loss, damage, liability, or expense arises out of or is in any way connected with or is caused by, in whole or in part:

(i) The manner in which the Goods, trailer, or shipping container was stuffed, filled, packed, or loaded; or

(ii) The unsuitability of the Goods for Carriage in their packaging or in a trailer or shipping container; or

(iii) The unsuitability or defective condition of the trailer or shipping container, provided that, if the trailer or shipping container had been supplied by or on behalf of Broker, that unsuitability or defective condition could have been apparent upon inspection by Customer at or prior to the time when the trailer or shipping container was stuffed, filled, packed, or loaded.

(b) Customer shall inspect trailers or shipping containers before stuffing them and Customer's use of a trailer or shipping container shall be *prima facie* evidence of its being suitable and without defect.

17. 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 or measures in relation to the Goods or the trailer or shipping container, then the Carrier may, without notice to Customer, take any measure or measures or incur any additional expense or expenses to carry or to continue the Carriage, or sell or dispose of the Goods, or abandon the Carriage or store Goods, or any combination of the above, under cover or in the open, at any place that the Carrier, in its sole discretion, considers most appropriate, which abandonment, storage, sale, or disposal shall be deemed to constitute delivery and completion of the Carriage. Customer shall indemnify Broker against any additional expenses it has so incurred.

18. Delay, Consequential Loss, Etc.

(a) Broker does not undertake that the Goods will depart from the place of receipt or arrive at the place of delivery, or will be shipped on board any particular truck 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 Broker shall in no event be liable for direct, indirect, or consequential loss or damage caused by delay.

(b) Unless these Brokerage Terms and Conditions of Contract expressly state otherwise, Broker shall



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in no event be liable for direct or indirect consequential loss or damage arising from any other cause.

19. Variation of the Contract

No person has the power to waive or vary any of these Brokerage Terms and Conditions of Contract unless an officer of the Broker, in writing, has expressly agreed to such a waiver or variation.

20. Partial Invalidity

If any provision of these Brokerage Terms and Conditions of Contract shall for any reason be held to be invalid or unenforceable by any court or regulatory body, then the remainder of these Brokerage Terms and Conditions of Contract shall be unaffected, and remain in effect.

21. Mandatory Law, Venue, and Jurisdiction

All claims or disputes arising out of or in any way related to these Brokerage Terms and Conditions of Contract 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. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.