



## **TERMS AND CONDITIONS OF SERVICE** **(Please Read Carefully)**

All shipments to or from Shipper (which term includes the exporter, importer, sender, receiver, owner, consignor, consignee, transferor or transferee of the shipments) will be handled by the forwarder and/or customs broker handling this shipment, CAP Worldwide Inc., (the "Company") on the following terms and conditions, except if lawfully prohibited by 19 CFR part 111.44. No vendor or employee of either party may alter or waive any of the following terms or conditions:

Pursuant to TSA IACSSP Section 3.1E1, shipper authorizes consent to screen all cargo tendered by the shipper for air carriage.

1. Choosing Routes and Vendors. Company shall have complete freedom in choosing the means, route and procedure to be followed in the handling, transportation and delivery of the goods. Advice by Company to Shipper that a particular person or firm has been selected to render services as to the goods shall not be construed to mean that Company warrants or represents that such person or firm will render such services.

2. Services by Third Parties. Unless Company carries, stores or otherwise physically handles the shipment, and the loss, damage, expense or delay occurs during such activity, Company assumes no liability as a carrier and shall not be held liable for any loss, damage, expense or delay to the goods shipped hereunder, except as provided in and subject to the limitations of Paragraphs 8 and 9. Company undertakes only to use reasonable care in the selection of carriers, truckers, forwarders, customhouse brokers, vendors, warehousemen and others to whom it may entrust the goods for transportation, cartage, handling, delivery and/or storage or otherwise. When Company carries, stores or otherwise physically handles the shipment, including in the performance of any local pick-up or delivery services, it does so subject to the limitation of liability set forth in Paragraph 8 unless a separate bill of lading, air waybill or other contract is issued by Company, in which event the terms thereof shall govern.

3. Liability Limitations of Third Parties. Company is authorized to select and engage carriers, truckers, forwarders, customhouse brokers, vendors, warehousemen and others as required, to transport, store, deal with and deliver the goods, all of whom shall be considered as vendors of Shipper. The goods may be entrusted to such parties subject to all conditions as to limitations of liability for loss, damage, expense or delay and to all rules, regulations, requirements and conditions, whether printed, written or stamped, appearing in bills of lading, receipts or tariffs issued by such carriers, truckers, forwarders, customhouse brokers, vendors, warehousemen and others. Company shall in no event be liable for any loss, damage, expense or delay to the goods for any reason whatsoever when such goods are in the custody, possession or control of third parties selected by Company to forward, enter and clear, transport or render other services with respect to such goods.

4. Shipments Subject to Re-Weigh/Re-Measurement. Shipper shall provide weight and measurements for its shipments. Shipments are subject to re-weigh and re-measurement by Company. If the weight or measurements of the goods as delivered are different from Shipper's representations, or if pick-up or delivery time or location is changed by Shipper, Company's rates, charges and fees are subject to change. If dimensional weight applies under tariff rule, dimensions shall be shown on the airbill as follows: Length x Width x Depth = Cubic Inches (or applicable metric measurement).

'Customer shipments will be rated at dimensional or actual weight, whichever is greater based on a domestic factor of 194 and an international factor of 166.'

5. Shipper's Duty to Furnish Information. (a) On an import, at a reasonable time prior to entry of the goods to U.S. Customs, Shipper shall furnish to Company invoices in proper form together with other documents necessary or useful in the preparation of the U.S. Customs entry, and such further information as may be sufficient to establish the dutiable value, classification and admissibility of the goods pursuant to U.S. law or regulation. If Shipper fails to timely furnish all of such information or documents, as may be required to complete U.S. Customs entry, or if such information or documents is inaccurate or incomplete, Company shall be obligated to use its best judgment in connection with the shipment. Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, Shipper shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by Company, it being understood that Company entered into such undertaking at the request and on behalf of Shipper, and Shipper shall indemnify and hold Company harmless for the consequences of any breach of the terms of the bond. (b) On an export, at a reasonable time prior to the exportation of the shipment, Shipper shall furnish to Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods. (c) On an export or import, Company shall not in any way be liable for increased duty, penalty, fine or expense unless caused by the gross negligence or other fault

of Company, in which event its liability to Shipper shall be governed by the provisions of Paragraph 8. Shipper shall be bound by and warrant the accuracy of all invoices, documents and information furnished to Company by Shipper or its vendors for export, entry or other purposes and Shipper agrees to indemnify and hold harmless Company against any increased duty, penalty, fine or expense, including attorneys fees, resulting from any inaccuracy or omission or any failure to make timely presentation, even if not due to any negligence or fault of Shipper.

6. Declaring Higher Valuation. Shipper acknowledges and agrees that truckers, carriers, warehousemen and others to whom the goods are entrusted usually limit their liability for loss or damage unless a higher value is declared and a charge based on such higher value is agreed to by said truckers, etc. Company must receive specific instructions from Shipper to pay such higher charges based on valuation and the trucker, etc., must accept such higher declared value; otherwise the valuation placed by Shipper on the goods shall be considered solely for export or customs purposes and the goods will be delivered to the truckers, etc., subject to the limitations of liability set forth in Paragraphs 3 and 8.

7. Insurance. Company will not insure the goods unless specific written instructions from Shipper providing the kind and amount of insurance have been received by Company in sufficient time prior to shipment from point of origin. Company does not undertake or warrant that such insurance can or will be placed. Unless Shipper instructs Company to effect insurance under Shipper's own open marine policy, insurance is to be effected with one or more insurance companies or other underwriters to be selected by Company. Any insurance placed shall be governed by the certificate or policy issued and will only be effective when accepted by such insurance companies and underwriters. Insurance cover provided by Company will be assessed at a rate negotiated between the parties separate from any freight charges. Insured value is not to exceed the actual value of the goods. Shipments must be packaged to withstand the normal hazards of transportation for any claim to be valid. In the event Shipper does not elect to insure all or part of a shipment, Company's liability for any losses, damages or delays to such shipment shall be limited in accordance with the provisions of Paragraph 8. Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only and Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to Company by Shipper, or that the shipment was insured under a policy in the name of Company. Insurance premiums and the charge of Company for arranging the same shall be at Shipper's expense. Insurance coverage is not available through Company on furs, gold, works of art, personal effects, used equipment or used machinery. If for any reason the goods are held in warehouse, or elsewhere, the same will not be covered by any insurance, unless Company receives written instructions from Shipper and same is provided in accordance with this Paragraph 7. Unless specifically agreed in writing by Company, Company assumes no responsibility to effect insurance on any export or import shipment which it does not handle.

8. Limitation of Liability Per Shipment. Shipper agrees that Company shall in no event be liable for any loss, damage, expense or delay to the goods for any reason except to the extent caused by its negligence or willful misconduct. The amount of such liability for any reason, including as a result of the gross negligence or other fault of Company shall be limited as follows: (a) In connection with single-country shipments or with goods tendered for storage in a warehouse, Company's liability is limited to \$.50/pound, \$50 per shipment, or the invoice value, whichever is less, and any partial loss or damage for which Company may be liable shall be adjusted pro rata on the basis of such valuation. (b) In connection with any international shipments, Company's liability is limited to the amounts set forth in the applicable international accord, or if no international accord applies to the shipment, the greater of \$50.00 per shipment or \$9.07/pound, unless a higher value is declared as provided for herein and the applicable charges are paid. (c) As to any shipments under this agreement, Shipper has the option in Paragraphs 6 and 7 above of paying special compensation to increase the liability for the shipment in excess of the above stated amounts in case of any loss, damage, expense or delay, but such options can be exercised only by specific written agreement made with Company prior to shipment which agreement shall indicate the limit of liability and the additional compensation for the added liability to be assumed. Company shall not in any circumstances be liable for consequential or indirect damages, including without limitation, damages arising from loss of profit.

9. Liability of Company. It is agreed that any claim or demand for loss, damage, expense or delay shall be only against the carriers, truckers, forwarders, customhouse brokers, vendors, warehousemen or other in whose actual custody or control the goods may be at the time of such loss, damage, expense or delay, and that Company shall not be liable or responsible for any claim or demand from any cause whatsoever, unless in each case the goods were in the actual custody or control of Company and the damages alleged to have been suffered be proven to be caused by the gross negligence or other fault of Company, its officers or employees, in which event the limitation of liability set forth in Paragraph 8 shall apply.

10. Presenting Claims. (a) Claims for lost or damaged shipments must be made within fifteen (15) days of the shipment's arrival at the final destination. Notification of concealed damage must be made to Company within 24 hours of receipt of delivery of the shipment. Original shipping carton and contents must be retained by consignee for inspection. Claims for

overcharges must be presented to Company within 90 days of the shipping date. (b) As to all shipments for export or import, in no event shall Company be liable for any act, omission or default by it in connection with an exportation or importation, unless a claim therefore shall be presented to it at its office within one hundred eighty (180) days from date of exportation or importation of the goods in a written statement to which sworn proof of claim shall be attached. No suit to recover for any claim or demand made under (a) or (b) of this Paragraph shall in any event be maintained against Company unless instituted within one year after presentation of the said claim, as above provided. No vendor or employee of Company shall have authority to alter or waive any of the provisions of this paragraph.

11. Advancing Money. Company shall not be obliged to incur any expense, guarantee payment or advance any money in connection with the importing, forwarding, transporting, insuring, storing or cooperating of the goods, unless the same is previously provided to Company by Shipper on demand. Company shall be under no obligation to advance freight charges, customs duties or taxes on any shipment, nor shall any advance by Company be construed as a waiver of the provisions hereof.

12. Indemnification for Freight, Duties. In the event that a carrier, other person or any governmental agency makes a claim or institutes legal action against Company for ocean or other freight, duties, fines, penalties, liquidated damages or other money due arising from a shipment of goods of Shipper, Shipper agrees to indemnify and hold harmless Company for any amount Company may be required to pay such carrier, other person or governmental agency together with reasonable expenses, including attorney fees, incurred by Company in connection with defending such claim or legal action and obtaining reimbursement from Shipper. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of Shipper to Company to pay all charges or other money due promptly on demand.

13. C.O.D. Shipments. Goods received with instructions to "Collect on Delivery" (C.O.D.) by drafts or otherwise, or to collect on any specified terms by time drafts or otherwise, are accepted by Company only upon the express understanding that it will exercise reasonable care in the selection of a bank, correspondent, carrier or vendor to whom it will send such item for collection, and Company will not be responsible for any acts, omission, default, suspension, insolvency or want of care, negligence, or fault of such bank, correspondent, carrier or vendor, nor for any delay in remittance lost in exchange, or loss during transmission, or while in the course of collection. Shipper must enter the amount of any Shipper's C.O.D. which shall be collected subject to the fee and rules of the delivering carrier. Unless caused by Company's willful or intentional misconduct, under no other circumstances shall Company's liability relating in any way to Shipper's C.O.D. exceed the limits of liability as set forth in Paragraph 8.

14. Shipper Liable for Fees. Shipper shall be responsible for all fees, costs, and charges of any kind hereunder if Company is unable to collect such charges from consignee or other third party within 155 days of delivery.

15. General Lien on Any Property. Company shall have a general lien on any and all property (and documents relating thereto) of Shipper, in its possession, custody or control or en route, for all claims for charges, expenses or advances incurred by Company in connection with any shipments of Shipper or storage of goods on behalf of Shipper or Consignee, even if previously delivered by Company, and if such claim remains unsatisfied for thirty (30) days after demand for its payment is made, Company may sell at public auction or private sale, upon ten (10) days written notice, sent certified or registered mail with return receipt requested from Shipper, the goods, wares and/or merchandise, or so much thereof as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of the amount due to Company. Any surplus from such sale shall be transmitted to Shipper, and Shipper shall be liable for any deficiency in the sale.

16. Compensation of Company. The compensation of 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 Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commission, dividends or other revenue received by Company from carriers, insurers and others in connection with the shipment. Fuel, Security, and Peak Season surcharges may apply. Company's surcharge policies may change from time to time in the sole discretion of Company and are published on Company's website at [www.capwwide.com](http://www.capwwide.com). In any referral for collection or action against Shipper for monies due to Company, upon recovery by Company, Shipper shall pay the expenses of collection and/or litigation, including reasonable attorneys' fees, plus 18% interest per annum compounded daily or the highest rate allowable by law, whichever is lesser. All billing or invoice inquiries or disputes must be presented to Company within one hundred and eighty (90) days of receipt of invoice. All payment inquiries or disputes must be presented to the other party within one hundred and eighty (90) days of receipt of payment. Any inquiries or disputes not presented within the time frames set forth herein shall be deemed waived. Notwithstanding the foregoing, Company may at any time offset any amounts owed or paid by the Shipper to Company against any amounts owed by Company to the Shipper, including,



without limitation, unidentified payments and credits in the Shipper's favor, duplicate payments by the Shipper, and accounts payable to the Shipper.

17. No Responsibility For Governmental Requirements. It is Shipper's responsibility to know and comply with the marking and other Customs' requirements of the U.S. and any country having jurisdiction over a shipment, the regulations of any applicable governmental agency, including but not limited to the U.S. Food and Drug Administration, and all other requirements, laws and regulations of any applicable country or governmental agency. Company shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of Shipper to comply with the laws, requirements or regulations of any country or governmental agency or with a notification issued to Shipper by any such agency.

18. Loss, Damage or Expense Due To Delay. Unless the services to be performed by Company hereunder are delayed by reason of the gross negligence or willful misconduct of Company, Company shall not be responsible for any loss, damage or expense incurred by Shipper because of such delay. In the event Company is at fault as above described, its liability is limited in accordance with the provisions of Paragraph 8.

19. Construction of Terms and Venue. The terms and conditions hereof shall be construed according to the laws of the State of Texas, it being agreed that venue for any legal proceedings shall be in Harris County, Texas.

20. Proof of Delivery. Shipper agrees that digitized signature or computer record of delivery receipt is acceptable as proof of delivery of any shipment hereunder.

21. Warsaw Convention. International air carriage (as defined in Company's tariff) is subject to the rules relating to liability established by the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, October 12, 1929.

22. 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 and shall not under any circumstances be binding upon the Company unless the Company in writing specifically undertakes the handling or transportation of the shipment at a specific rate.

23. Except for Customs entries and duties, we are independent contractors.

24. The submission of incomplete or inaccurate information related to an import entry, including descriptions quantities, weights, purchase prices, discounts, commissions, charged selling prices at time of exportation, assists, country of origin, etc., makes you liable to severe government penalties or sanctions. In the event the information forwarded to us, or which accompanied the shipment does not accurately reflect the entire transaction, it is essential that you immediately notify us so that we can take corrective action.

25. Indemnity Against Liability Arising From the Importation of Merchandise: The customer agrees to indemnify and hold the Company harmless from any claims and/or liability arising from the importation of merchandise which violates any federal, state and/or other laws or regulations and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of claims by any governmental agency or private party. In the event that any actions, suit or proceeding is brought against the Company by any governmental agency or any private party, the Company shall give notice in writing to the Customer by mail at its address on file with the Company. Upon receipt of such notice, the Customer at its own expense shall defend against such action and take all steps as may be necessary or proper to prevent the obtaining of a judgment and/or order against the Company.

26. Shipper must advise the type of service requested. If the type of service is not indicated, the shipment will be rated at the highest applicable tariff rate.

27. All charges are due and payable within 30 days of vessel or aircraft departure. Any payment which is past due shall be subject to legal fees and an additional charge at a rate of 1-1/2% per month of the outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less.

28. In the event of failure or inability of the Consignee to take delivery of the shipment, Forwarder will notify Shipper in writing at the address shown on the bill and request disposition instructions. If the Shipper fails to provide disposition instructions within 30 days after the date of Forwarder will return the shipment to the Shipper at the Shipper's expense. If the Shipper fails to accept delivery of a shipment thus returned, Forwarder may, upon 30 days written notice to the Shipper, dispose of the shipment at the public or private sale and pay itself out of the proceeds to satisfy the transportation charges owing on the shipment. Any sums collected by Forwarder in excess of such transportation charges will be paid to the Shipper. No sales or disposal pursuant to this rule will discharge any liability or lien to any greater extent than the proceeds thereof. The Shipper and the Consignee shall remain liable, jointly and severally, for any deficiency.