

# **CAP WORLDWIDE INTERNATIONAL CONDITIONS OF AIR CARRIAGE**

These **CAP Worldwide International Conditions of Air Carriage** apply only to shipments by air (or combined air and ground transportation) other than any shipment that originates in, is destined for, and does not include an ultimate destination or stop outside of the United States (“U.S.”) or any U.S. territory, possession, or commonwealth (a “Domestic U.S. Shipment”), and other than any shipments between the U.S. and Canada. For Domestic U.S. Shipments that involve air carriage, please see the **CAP Logistics U.S. Terms and Conditions of Air Carriage**. For shipments between the U.S. and Canada that involve air carriage, please see the **CAP Logistics International Conditions of Air Carriage**. By tendering a Shipment to CAP Worldwide, accepting a Shipment from Carrier, arranging with Carrier for a Shipment's transportation or signing Carrier's airbill, Shipper agrees to all of Carrier's International Conditions of Air Carriage. In the event any Shipment is tendered to Carrier on any shipping document other than Carrier's airbill, Shipper agrees that Carrier's International Conditions of Air Carriage shall supersede any rules, regulations or contractual terms contained on the shipping document on which the Shipment was tendered.

## **NOTICE CONCERNING 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 and in most instances will limit the liability of Carrier for damage or delay to cargo. Regardless of the law governing Carrier's liability for loss, damage or delay, unless a higher value is declared (and additional charges are paid with respect thereto), or a higher amount is imposed by mandatorily applicable law which cannot be waived, liability of the Carrier is limited to 22 Special Drawing Rights per kilogram with respect to loss or damage to cargo, including damage occasioned by delay.

## **CONDITIONS OF CONTRACT**

1. In this Contract and the Notices appearing hereon: CARRIER includes CAP Worldwide, Inc., the air carrier or air freight forwarder issuing the air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage. CONTRACT means the face of Carrier's Airbill and Carrier's International Conditions of Air 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: (i) the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; (ii) that Convention as amended at The Hague on 28 September 1955; (iii) 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. SHIPMENT means all pieces which are tendered to and are accepted by Carrier on a single airbill. SHIPPER means the party that tendered the Shipment, requested the Shipment be transported by Carrier, has an interest in the Shipment, or acts as an agent for any of the above.

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:

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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) 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.

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 of the air waybill 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./4.1 For carriage to which neither the Warsaw Convention nor the Montreal Convention applies, Carrier's liability limitation for cargo lost, damaged or delayed shall be 22 SDRs per kilogram unless a greater per kilogram monetary limit is required by any applicable law and cannot be waived, or unless a higher value is declared by the shipper and a supplementary charge paid.

4.2 If the sum entered on the face of the air waybill as a declared value represents an amount in excess of the applicable limits of liability and Shipper has paid any supplementary charges that may be required by Carrier, including those set forth in its conditions of carriage, or other applicable rule, this shall constitute a special declaration of value in which case, Carrier's total liability shall be the sum so declared.

4.3 Except as a Convention or other applicable law may require, Carrier shall not be liable for any loss, damage, misdelivery, delay, non-delivery not caused by its own negligence, or any loss, damage, delay, misdelivery, or non-delivery caused by the act, default or omission of Shipper, the consignee, or any other party that claims an interest in the shipment; the nature of the shipment or any defect, characteristic, or inherent vice thereof; or act of God, perils of the air, public enemies, public authorities acting with actual or apparent authority of law, acts, or omissions of customs or quarantine officials, riots, strikes, civil commotions, hazards incident to a state of war, weather conditions, or delay of aircraft or other vehicles used in providing transportation services.

4.4 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. Notwithstanding any other provision, for foreign air transportation as defined in the U.S. Federal Aviation Act, as amended, in case of loss or damage or delay of a shipment or part thereof, the weight to be used in determining the Carrier's liability shall be the weight which is used (or a pro rata share in the case of partial loss, damage or delay) to determine the transportation charge for the Shipment.

5./5.1 The shipper guarantees payment of all charges for the carriage due in accordance with Carrier's conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements. All charges are due without offset within thirty (30) days of Carrier's invoice. Any payment which is past due shall be subject to an additional charge of one and one-half percent (1-1/2%) per month of the outstanding balance due or the maximum interest rate permitted by applicable law, whichever is less, together with all collection costs, including reasonable attorney fees, incurred by Carrier. When a Shipment is tendered on a collect or third party

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billing basis, Shipper shall remain responsible for all charges not paid by the responsible party immediately when due.

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. Any exclusion or limitation of liability or other provision benefiting the Carrier shall apply to and be for the benefit of Carrier's agents, servants, subcontractors and representatives and any person whose aircraft is used for carriage and its agents, servants, subcontractors and representatives. Such persons include, without limitation, sub-carriers, connecting carriers, couriers, warehousemen, terminal operators, baggage handlers, security providers, consolidators, truckers, road, rail water and air transport operators and anyone assisting in the provision of carriage. The limitation shall be a single aggregate limitation, and satisfaction of the limitation by one or more of them shall result in a release of liability as to all protected parties.

7. While Carrier agrees to make reasonable efforts to complete the Carriage hereunder with reasonable dispatch, Carrier does not undertake to perform Carriage in accordance with any set schedule or timeframe and shall not be liable for failure to do so. Where permitted by applicable laws 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 of the air waybill.

8. 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.

8.1 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:

8.1.1 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;

8.1.2 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.

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

8.2 Unless a written complaint is made within the time limits specified in 8.1, no action may be brought against Carrier.

8.3 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.

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9. 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 documents as may be necessary to comply with such laws and regulations.

10. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of these International Conditions of Air Carriage.

11. Shipper certifies and represents to Carrier that Shipper is authorized to tender the Shipment for transportation and that all information provided to Carrier with respect to a Shipment is complete and accurate. Shipper warrants that each package in the Shipment is properly, accurately, and completely described, is properly classified, marked, labeled, and addressed, is packaged adequately to protect the enclosed goods to insure safe transportation with ordinary care and handling, and except as noted, is in good order and condition. Shipper authorizes Carrier to include any such information on the air waybill and hereby agrees to defend, indemnify and hold harmless Carrier from any and all direct and indirect claims, liabilities, losses, damages, fines or penalties arising from or related to Carrier's inclusion of any information provided by the Shipper on any air waybill or other shipping document. Carrier may in its sole discretion, but is not obligated and shall have no liability for failure to, repackage any goods which, in Carrier's sole discretion, are improperly packaged. Shipper will be responsible for all costs associated with such repackaging. Except as otherwise set forth herein with respect to claims for loss or damage for which Carrier is liable, in no event will Carrier be responsible for the consequences or effects arising from or related to any such repackaging including, but not limited to, loss, damage, or delay. For articles shipped in un-enclosed containers, Carrier shall not be liable for damage or loss unless mishandling and/or loss is evident and is so noted on the delivery receipt at the time of delivery.

12./12.1 The following articles shall not be accepted for carriage and shall not be tendered by Shipper: (a) any Shipment prohibited by law, including, but not limited to, hazardous waste; or (b) household goods and/or personal effects; perishables, computers or servers with data, original works of art, antiques, bonds, coins of any kind, currency, currency equivalents, furs, fur clothing, gems or stones (cut or uncut), industrial diamonds, gold or silver, coined concentrates, jewelry (other than costume jewelry), pearls, precious metals, securities (negotiable), time sensitive written material (for example, bids, contract proposals, etc.), or one-of-a-kind articles or models, prototypes, valuable rugs (that is, Oriental rugs, Persian rugs) and prints or lithographs when the total declared value of any Shipment under this sub-article (b) exceeds 22 Special Drawing Rights per kilogram. If Shipper tenders or Carrier unintentionally accepts any such Shipments, Carrier's liability shall in no event exceed the lesser of the actual value of the Shipment or 22 Special Drawing Rights per kilogram.

**12.2 UNDER NO CIRCUMSTANCES SHALL CARRIER BE LIABLE FOR PUNITIVE OR EXEMPLARY DAMAGES, OR SPECIAL OR CONSEQUENTIAL DAMAGES OR OTHER INDIRECT LOSS, HOWEVER ARISING WHETHER OR NOT CARRIER HAS KNOWLEDGE OR SHOULD HAVE HAD KNOWLEDGE THAT SUCH DAMAGES MIGHT BE INCURRED, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, INCOME, INTEREST, UTILITY OR LOSS OF MARKET.**

13./13.1 Except as noted in 5.2, no claim shall be processed by Carrier until all transportation charges have been paid. The amount of a claim may not be deducted from the transportation charges.

13.2 In the event of a claim the Shipment, its container(s), and its packing material shall be made available to Carrier for inspection at the delivery location shown on the Airbill.

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14. Claims for overcharges or duplicative payments shall be made in writing and are extinguished unless received by Carrier within one (1) year after the date of acceptance of the shipment by Carrier.

15. Shipper hereby consents to a search or inspection of the cargo, including screening of the cargo, by Carrier, the Transportation Security Administration of the U.S. Department of Homeland Security ("TSA"), or other authorized government authorities. Carrier is not obligated to open and inspect the contents of any Shipment. Carrier shall have the right to refuse any article, the transportation of which is prohibited by rule or by applicable law, orders or regulations, or the transportation of which, in Carrier's judgment, would be unsafe. If such Shipment should be accepted or transported, Carrier reserves the right to remove it and, if necessary, to abandon it. Where circumstances permit, such Shipment shall be stored at Shipper's expense pending receipt of disposition instructions from Shipper.

16./16.1 Carrier reserves the right to reject any Shipment for any reason whatsoever, including but not limited to, safety or security concerns. It is agreed that no time is fixed for the completion of carriage hereunder and that Carrier may, without notice and for any reason, (a) substitute alternate carriers or other means of transportation (including ocean and/or ground transportation) and (b) select the routing or deviate from that shown on the face of the air waybill. Carrier assumes no obligation to forward the goods by any specified carrier, transportation mode, or route or to make connection at any point according to any particular schedule, and Carrier is hereby authorized to select, or deviate from, the transportation mode(s), carrier(s), or route(s), notwithstanding that the same may be stated on the face of the air waybill. Shipper, consignee, and owner, jointly and severally guarantee payment of all charges and advances arising in such instances.

16.2 If Shipper requests motor carrier service or if Carrier decides that Shipper's shipment should be transported by motor carriage rather than air for all or part of the transportation, Carrier shall arrange with authorized motor carrier(s) to perform such transportation, which shall be done either as exempt carriage as defined by 49 U.S.C. § 13506(a)(8), or, if not exempt, as "contract carriage" within the meaning of 49 U.S.C. § 13102(4)(B) on the same cargo liability limitations and terms as contained in Carrier's International Conditions of Air Carriage. Shipper expressly waives all rights and remedies it may have as to Carrier and its subcontractor motor carriers under 49 U.S.C. Subtitle IV, Part B (excluding §§ 13703, 13706, 14101, and 14103) to the full extent permitted by 49 U.S.C. § 14101(b)(1), each as amended from time to time.

17. Shipper warrants and represents that the Shipment does not include any explosive, incendiary or other device, substance or weapon which may endanger life or the safety of any aircraft, vehicle or other transport conveyance used in connection with the transportation of the Shipment. Shipper shall limit all packages containing hazardous materials/dangerous goods to the materials and quantities authorized for air transportation under the U.S. Department of Transportation ("USDOT") hazardous materials transportation regulations (49 C.F.R. Parts 171, 172, and 173) and the current edition of the International Air Transport Association ("IATA") Dangerous Goods Regulations (together "HM/DG Regulations"). Shipper shall ensure that each Shipment requiring a Shipper's Declaration of Dangerous Goods under the IATA Dangerous Goods Regulations is accompanied by properly executed Declaration documents in conformity with the requirements of such IATA Regulations. Shipper shall also ensure, and Shipper hereby certifies, that, before tendering any Shipment containing hazardous materials/dangerous goods to Carrier, the contents of this consignment are fully and accurately described on the shipping papers by proper shipping name; are not prohibited for transport by air by the HM/DG Regulations; and are properly classified, packaged, marked, and labeled, and in proper condition for carriage by air as required by the HM/DG Regulations. Shipper hereby declares that all of the applicable air

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transport requirements have been met. This Paragraph shall apply regardless of the routing or transportation mode by which the Shipment is transported. Carrier reserves the right to reject any Shipment containing any known or suspected dangerous goods.

18. If for any reason, it is impossible or impracticable for Carrier to complete this contract or if the consignee fails to accept delivery of the Shipment or any part thereof, Carrier shall notify Shipper and then may store the goods in Carrier's facility at Carrier's then prevailing rates, or, at its option may store the goods in the public warehouse in which event the storage rates charges by such warehouse shall apply. Goods which remain unclaimed for a period of thirty (30) days from the date of notice to Shipper may be sold by Carrier at public or private sales and the proceeds of such sale may be applied against any outstanding freight charges, advances or charges of any kind which are due. Any balance remaining after payment of such charges shall be remitted to Shipper, the consignee, or owner. However, Shipper, consignee, and owner shall remain jointly and severally liable to Carrier for any deficiency should the proceeds of such sales be insufficient to offset all charges due Carrier with respect to the goods. Shipper and consignee agree jointly and severally to indemnify Carrier and to hold carrier harmless against all loss and expense, including attorney's fees of whatever nature brought by any other owner or other person having an interest in the goods sold under this provision.

19. Carrier is authorized (but shall be under no obligation) to advance any duties, taxes, or charges and to make any disbursements with respect to the goods, and Shipper, owner and consignee shall be jointly and severally liable for the reimbursement thereof. Carrier shall be under no obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the goods except against repayment by Shipper.

20. Carrier shall have a lien on any and all documents and Shipments of Shipper under Carrier's actual or constructive possession or control for monies owed to Carrier with regard to the Shipment on which the lien is claimed, prior Shipment(s) or both. In the event Carrier exercises its lien it shall notify Shipper of the amount of monies due and owing by Shipper. Carrier may refuse to surrender possession of the Shipment(s) until such charges are paid. Carrier shall release its lien upon receipt of payment by Shipper of the total amount due. In the event Shipper does not satisfy Carrier's lien within fifteen (15) days of Carrier's exercise of the lien, Carrier shall have the right, but not the obligation, to sell such Shipment(s) at public or private sale or auction without further notice to Shipper.

21. If any provision contained or referred to in Carrier's Airbill may be contrary to mandatory law, government regulations, orders, or requirements, such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part hereof.

22. Shipper and consignee shall defend, indemnify and hold Carrier and its agents, employees, representatives and contractors harmless for any claim, allegation, loss, penalty, fine or any other monetary losses which are a result of: (a) negligence or other wrongful conduct of Shipper, or its employees, agents, representatives or contractors; (b) breach of these Conditions of Contract by Shipper, or its employees, agents, representatives or contractors; (c) any claim for loss, damage or delay to cargo in excess of Carrier's limit of liability as set forth herein; (d) Carrier's compliance with Shipper's instructions; or (e) any auxiliary services including but not limited to local cartage, crating, uncrating, packing, and unpacking which are requested by Shipper or consignee and arranged by Carrier as a customer service unless such services are actually performed by Carrier or its agents.

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23. These CAP Worldwide International Conditions of Air Carriage and the services provided by Carrier under Carrier's Airbill shall be governed by and subject to the applicable federal law of the United States and by the laws of the State of Colorado, without regard to the choice-of-law rules of Colorado or any other State. SHIPPER AND CARRIER AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR CARRIER'S AIRBILL, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN STATUTES, REGULATIONS, OR COMMON LAW, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING DENVER, COLORADO. SHIPPER AND CARRIER HEREBY CONSENT TO THE JURISDICTION OF SUCH COURTS. In the event Shipper files an action against Carrier, Shipper hereby consents to any Carrier-instituted transfer of such action to any other venue in which Carrier is a party or subsequently becomes a party to an action concerning loss, damage or delay to the cargo that is the subject of Shipper's action. Should Carrier successfully defend itself or any legal actions brought by any party with an interest in this Shipment, Carrier shall be entitled to reasonable attorney fees and costs. NOTE: In lieu of legal actions, any disputed claim not greater than fifteen thousand U.S. dollars (US\$15,000.00), and all claims arising in the event of bankruptcy of Shipper, shall be settled through binding arbitration submitted to the Transportation Arbitration Board or the American Arbitration Association under its cargo claim arbitration program. An alternative arbitrator is to be selected by Carrier if the claim is unacceptable for arbitration by both of the foregoing arbitration organizations. The parties agree that no consolidated claims or class actions shall be arbitrated.

24. Shipper acknowledges that Carrier, like all indirect air carriers, is required by TSA to maintain an air cargo security program. **If Shipper is acting as an agent, authorized representative, broker, carrier, consolidator, or other freight intermediary for any other person or entity**, Shipper shall disclose that fact to Carrier and shall assist Carrier in complying with the TSA requirements by enabling Carrier to obtain any necessary documents from, or otherwise qualify, such other person or entity. If Shipper, as the person who originates and tenders cargo for air transportation or as such person's representative, is an individual (natural person), such person shall advise Carrier of that fact, and Carrier shall, if required by law, provide Shipper or such person with a Privacy Act Notice.