

# FORWARDER'S WAYBILL TERMS AND CONDITIONS OF CONTRACT

## 1. DEFINITIONS

"Forwarder" means Watchpoint Logistics, Inc.

"Waybill" means Forwarder's two-page Non-Negotiable Waybill.

"Customer" includes the consignor, shipper, consignee, owner of the Goods, and any person lawfully acting on behalf of any of those persons.

"Goods" means articles of every kind and description, including their packaging, containers, or other shipping units or materials, as to which Customer desires Forwarder to arrange Carriage.

"Carriage" means the air or motor transportation of the Goods from a place of receipt to a place of delivery and all services, undertakings, and procedures that Forwarder performs or arranges that are related to the transportation, security, and handling of the Goods.

"Charges" includes freight for the Carriage or other transportation, storage, detention, demurrage, transloading, crossdocking, dead freight, interest, and any other costs Forwarder incurs or pays that arise out of or are in any way related to the Carriage or any services Forwarder provides or arranges, and all costs Forwarder incurs or pays to collect Charges due from Customer, including reasonable attorneys' fees and court costs.

## 2. AGREEMENT TO FORWARDER'S WAYBILL TERMS AND CONDITIONS OF CONTRACT

By Customer's tender of the Goods for Carriage, Customer agrees to Forwarder's Waybill Terms and Conditions of Contract (the "Waybill Terms"), which no agent or employee of the parties may alter. This Waybill is non-negotiable. Customer has prepared this Waybill, or Forwarder or its authorized agents have done so on Customer's behalf. Customer agrees that the Carriage is subject to these Waybill Terms and those stated on the front page of this Waybill, which are also available online at [https://watchpointlogistics.com/contract\\_terms/](https://watchpointlogistics.com/contract_terms/). The defenses and limits of liability stated in these Waybill Terms shall apply in any action against Forwarder under any legal theory, whether in contract, tort, bailment, indemnity, contribution, or otherwise.

## 3. LIMITED WAIVER OF CARMACK AMENDMENT AND OTHER PARTS OF TITLE 49, SUBTITLE IV, PART B OF THE U.S. CODE

Where the liability scheme for interstate motor transportation under U.S. laws collectively known as the Carmack Amendment and other parts of Title 49, Subtitle IV, Part B of the United States Code (collectively, the "Title 49 Laws") would otherwise apply to interstate motor Carriage, Customer expressly agrees to a limited waiver of the Title 49 Laws, but only to the extent that they are inconsistent with sections 6, 9, and 25 of the Waybill Terms. For such Carriage, Customer agrees that this Waybill, and particularly, this clause, satisfies the express written waiver required under 49 U.S.C. § 14101(b) as to the waiver of any of Customer's rights and remedies under the Title 49 Laws. The Title 49 Laws shall otherwise apply to Forwarder and such interstate surface Carriage.

## 4. FORWARDER'S UNDERTAKING

(a) Customer understands that Forwarder is a non-asset-based domestic air and surface freight forwarder. Forwarder is not a direct air carrier and it operates no aircraft. For interstate surface transportation, Forwarder is a Title 49 freight forwarder with licensing from the Federal Motor Carrier Safety Administration—docket number FF18765. Forwarder contracts with service providers, including direct air carriers, motor carriers, drayage companies, brokers, freight forwarders, rail carriers, warehouses, or other transportation and transportation-related service providers (collectively, the "Service Providers") to transport or handle the Goods.

## 5. FORWARDER ACTING AS AGENT FOR NON-CARRIAGE SERVICES

Whenever Forwarder undertakes to perform or arrange any service other than the Carriage to which service Forwarder and Customer did not initially agree or one that is not stated on this Waybill, Forwarder shall act as Customer's agent and shall neither undertake nor have any liability for any loss of or damage to the Goods or any direct, indirect, or consequential loss arising out of or resulting from such service.

## 6. NOTICE OF CLAIM AND TIME-BAR

(a) As a condition to Forwarder's processing of a freight claim, all freight charges must have been paid in full as to the Goods in question.

(b) Any claims (i) for the loss of or damage to the Goods, (ii) that arise out of or are in any way connected to Carriage or any services other than the Carriage, or (iii) for overcharges must be filed in writing against Forwarder within 30 days after receipt of the Goods by Customer or the person entitled to delivery, whichever occurs first, except that claims for failure to make delivery must be filed within 30 days after a reasonable time for delivery has elapsed. The failure to file a claim within the above 30-day period shall result in the claim's being time-barred and Forwarder's discharge from any liability. Forwarder shall not pay any time-barred claims. A timely notice of claim is a condition to the right to file a timely lawsuit against Forwarder under section 6(c).

(c) Any lawsuits (i) for the loss of or damage to the Goods, (ii) that arise out of or are in any way connected to Carriage or any services other than the Carriage, or (iii) for overcharges must be filed against Forwarder in the mandatory venue under section 25(a) no later than one year from the day on which Forwarder has given written notice to the claimant that Forwarder has disallowed the claim or any part or parts of the claim stated in the timely notice of claim. Conditioned on a timely notice of claim, the failure to file a timely lawsuit in the mandatory venue within the above one-year period shall result in the claim's being time-barred and Forwarder's discharge from any liability. Forwarder shall not pay any time-barred claims.

## 7. SPECIAL SECURITY/PROTECTIVE SERVICES

Forwarder's failure to arrange any agreed-to special security services or requirements, including team drivers, shall not negate Forwarder's limitation of liability, which is stated below in section 9.

## 8. EXEMPTIONS FROM LIABILITY

Forwarder shall have no liability for the loss of or damage to Goods because of (1) an act of God; (2) the public enemy; (3) an act or omission of Customer; (4) public authority; (5) the inherent vice or nature of the Goods; or (6) perils of the air.

## 9. LIMITATION OF LIABILITY FOR LOSS OF OR DAMAGE TO GOODS; CHOICE AS TO LIMITATION AND OPPORTUNITY TO AVOID LIMITATION BY SPECIAL AGREEMENT, BY DECLARING AN INCREASED LIABILITY VALUATION AS TO THE GOODS

(a) Forwarder 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 Forwarder's liability and has made its choice as to Forwarder's liability limit as follows: Customer has had the choice to ship the Goods and to pay (A) Forwarder's regular/low rates for goods with limited value and a corresponding limited liability for Forwarder or (B) at valorem rates for goods not so limited in value and a corresponding increased level of liability for Forwarder, the basis for which rates is Forwarder's regular/low rates plus an increased liability charge.

(b) Unless Customer declares the nature and value of the Goods before the Carriage by stating a value on the front page of this Waybill and initialing in the "SPECIAL AGREEMENT" box, then Customer knowingly and willingly elects to ship under Forwarder's regular/low rates, the consequence of which is that in no event shall Forwarder or its servants or agents be or become liable for any loss of or damage to the Goods, or in connection with the Carriage, in an amount exceeding \$50 per pound. For any claims arising out of or in any way connected to services other than Carriage, Forwarder's liability shall be limited to Customer's actual loss or \$50, whichever is less.

## 10. CARRIAGE METHODS/ROUTES, SUBSTITUTION OF MODE/EQUIPMENT

Customer understands and agrees that without notice to Customer, Forwarder or Service Providers performing the Carriage 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 an aircraft, truck, or trailer other than those that Forwarder arranged in the first instance; or

(c) Proceed by any route in Forwarder's or any Service Provider'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-sections or any resulting delay shall be within the scope of the Carriage and not a deviation.

## 11. FORCE MAJEURE

Without prejudice to any of Forwarder's rights or privileges under this Waybill or under applicable law, Forwarder shall not be responsible for any loss, damage, or delay that arises out of or is in any way related to, directly or indirectly, any event beyond the reasonable control of Forwarder, regardless of the event's foreseeability, including 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 Forwarder's operations or Carriage in any way, in which case Forwarder shall have the right to cancel any outstanding booking or the Carriage. Forwarder, at its sole discretion, without prior notice to Customer and irrespective of whether the Carriage has begun, may treat the performance of the Carriage as terminated and place the Goods at Customer's disposal at any place or port that Forwarder, in its sole discretion, deems to be safe and convenient, at which place or port Forwarder's responsibility for such Goods shall cease. Forwarder shall nevertheless be entitled to full freight and Charges on such Goods, and Customer shall pay any additional costs of transportation, transshipment, loading, unloading, delivery, storage, demurrage, detention, and all expenses related to each of the above, including Forwarder's reasonable attorneys' fees.

## 12. REFUSED DELIVERY

Refusal of the consignee or Customer to take delivery of the Goods notwithstanding its 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.

## 13. FREIGHT AND CHARGES

(a) All freight shall be deemed fully, finally, and unconditionally earned on Forwarder's or any Service Provider's receipt of the Goods.

(b) All freight and Charges shall be paid without any set-off, counterclaim, or deduction.

(c) If Customer's description of the Goods in this Waybill or in any documents Forwarder receives from or on behalf of Customer is inaccurate, incorrect, or misleading in any respect, then Customer shall pay for any damages that Forwarder suffers as a result, including any reasonable attorneys' fees.

(d) Payment of any Charges to anyone other than Forwarder or an authorized agent that Forwarder identifies in writing to Customer shall not be considered payment to Forwarder and shall be at Customer's sole risk.

(e) The class of persons within the definition of "Customer" shall be jointly and severally liable to Forwarder for payment of all Charges. Customer understands and agrees that it has the duty to so notify all other such persons of their potential liability to Forwarder for Charges.

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

(a) In addition to a specific cargo lien under law, including under California Civil Code § 3051.5, Forwarder shall have a general and continuing lien on the Goods and on any property of Customer coming into Forwarder's actual or constructive possession or control as to any unpaid Charges, including for monies Customer owes to Forwarder as to the shipment on which Forwarder is claiming the lien, a prior shipment, or both, including all Charges and for any expenses that Forwarder pays or incurs for storage, security, repacking, remarking, fumigation, or disposal of Goods, for fines, dues, tolls, or commissions that Forwarder has paid or incurred on behalf of the Goods, for any sums, including reasonable attorneys' fees Forwarder 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 the subsequent shipment or shipments that Forwarder may hold under this section. Customer understands and agrees that any delivery of Goods shall be conditioned on the survival of the above liens.

(b) Forwarder shall provide written notice to Customer of Forwarder's intent to exercise its lien rights, which notice shall state the exact amount due. Customer shall notify all parties having an interest in the shipment or shipments at issue of Forwarder's lien rights and the

potential exercise of such rights in the absence of the payment of the amount 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 percent of the value of the total amount due in favor of Forwarder guaranteeing payment of all amounts due, plus all accruing Charges, Forwarder shall have the right to sell the Goods or other property of Customer at public or private sale or auction and Forwarder shall refund to Customer any net proceeds remaining after such sale.

## 15. DESCRIPTION OF GOODS AND NOTIFICATION

(a) Customer's description of the Goods in a sealed trailer, shipping container, or package that Customer or its agents have prepared shall not be binding on Forwarder, and the description declared by Customer on any document is information Customer provides solely for its own use. Customer understands that Forwarder 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. Forwarder is under no responsibility as to such description of particulars and Customer shall indemnify and hold Forwarder harmless from and against any loss, damage, liability, and expense, including reasonable attorneys' fees Forwarder has paid or incurred, arising out of or in any way connected with or caused by, in whole or in part, such description of particulars.

(b) Forwarder, its agents, and servants 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 place of delivery to the contrary.

## 16. 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 Forwarder 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, as to the shipment of which neither Forwarder nor any Service Provider has consented with knowledge of their nature and character, may at any time before delivery be unloaded at any place and destroyed or rendered innocuous by Forwarder or a Service Provider without compensation, and Customer shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such Goods shipped with such knowledge and consent shall become a danger to the transporting conveyance or to any cargo, then they may in like manner be loaded in any place or destroyed and rendered innocuous by Forwarder without liability on the part of Forwarder or any Service Provider.

(c) Customer shall indemnify Forwarder from and against any loss, damage, liability, and expense, including attorneys' fees Forwarder 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.

## 17. PERISHABLE GOODS

(a) Forwarder 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 Forwarder of their nature and the required temperature-setting of the thermostatic controls before Forwarder'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 Forwarder's or a Service Provider'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 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 Forwarder shall not be 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 Forwarder shall not be liable for any loss of or damage to the Goods.

(b) The term "apparent good order and condition" when used in this Waybill or other document with reference to Goods that require temperature control does not mean that the Goods were verified by Forwarder as being at the designated carrying temperature.

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

## 18. GOODS UNACCEPTABLE FOR CARRIAGE

(a) Unless Forwarder otherwise agrees in writing, Forwarder shall not accept any of the following for Carriage: accounts, bills, deeds, evidences of debt, notes, securities, currency, money, coins or stamps, jewelry, precious stones, fine arts, bullion, specie, or other precious metals, furs, garments trimmed with furs, weapons, ammunition, explosives, live animals and plants, Christmas trees, batteries, used household goods and personal effects, used machinery, used automobiles, used aircraft, used boats, temperature-controlled commodities, cigarettes and other tobacco products, hazardous materials, human remains, antiques, plants, live animals, pharmaceuticals, lewd, obscene or pornographic materials, D.O.T.-restricted articles, including dangerous goods and hazardous or combustible materials, any material prohibited from transport by any law, regulation, or statute of any country, state, or other political subdivision in which the shipment may be carried.

(b) If Customer tenders any of the above without the prior written disclosure to Forwarder and gets its written agreement to transport the same before the Carriage, then Customer shall indemnify Forwarder from and against any loss, damage, liability, and expense, including reasonable attorneys' fees Forwarder has paid or incurred, arising out of or in any way connected with or caused by, in whole or in part, such Goods.

## 19. INSPECTION OF GOODS

Forwarder or any Service Provider shall be entitled, but shall be under no obligation, to open any trailer, package, carton, or other shipping unit at any time and to inspect the Goods.

## 20. 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 Forwarder, then Forwarder shall not be liable for the loss of or damage to the Goods, and Customer shall indemnify Forwarder from and against any loss, damage, liability, and expense, including attorneys' fees Forwarder 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:

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

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

(3) 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 Forwarder, 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.

## 21. 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 aircraft, truck, trailer or shipping container, then Forwarder 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 to sell or dispose of the Goods, or to abandon the Carriage or to store Goods, or any combination of the above, under cover or in the open, at any place that Forwarder, in its sole discretion, considers most appropriate, which abandonment, storage, sale, or disposal shall be deemed to constitute delivery and completion of the Carriage. Customer shall indemnify Forwarder against any additional expenses it has so incurred.

## 22. DELAY, CONSEQUENTIAL LOSS, ETC.

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

(b) Forwarder shall in no event be liable for any special, incidental, indirect, or consequential loss or damage arising from any other cause, notwithstanding Forwarder's notice of the possibility of such damages at the time Forwarder arranged such Carriage.

## 23. NO MODIFICATION OR WAIVER

No person has the power to change or waive any of these Waybill Terms unless the president or chief executive officer of Forwarder, in writing, has expressly agreed to such a change or waiver.

## 24. PARTIAL INVALIDITY

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

## 25. MANDATORY LAW, VENUE, AND JURISDICTION

(a) Subject to Forwarder's option under section 25(b), all claims or disputes arising out of or in any way related to these Waybill Terms 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 courts serving or the state courts in San Mateo 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.

(b) To recover any damages or sums due arising out of Customer's non-payment of Charges, Forwarder shall have the option to file an action in any court with subject matter jurisdiction and with personal jurisdiction over Customer.

A late fee of 1.5% per month, with a minimum of \$500, will be assessed and due upon any invoice that remains unpaid five (5) or more days after its due date.