

HU LOGISTICS INC. (D.B.A. HULI SHIPPING INTERNATIONAL MOVERS)
TERMS AND CONDITIONS

Last Updated: June 29, 2022

THE CUSTOMER'S ATTENTION IS DRAWN TO THE TERMS AND CONDITIONS BELOW THAT LIMIT THE COMPANY'S LIABILITY AS WELL AS THOSE THAT REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND EMPHASIZE THE FACT THAT THE COMPANY DOES NOT INCLUDE INSURANCE FOR GOODS AS PART OF ITS SERVICES UNLESS SPECIAL ARRANGEMENTS ARE MADE BY THE CUSTOMER WITH THE COMPANY IN THIS REGARD. BY CONFIRMING A BOOKING, THE CUSTOMER IS AGREEING TO THESE SHIPPING TERMS AND CONDITIONS.

SECTION 1 - GENERAL TERMS AND CONDITIONS

1.1 Definitions. In these Terms and Conditions, capitalized terms shall have the following meanings:

- (a) **"Applicable Law"** any applicable federal, provincial or local law as may be appropriate in the context, including consumer protection legislation, privacy legislation, other statutory law and regulations, the Civil Code of Québec, common law, and any other applicable laws. Applicable Law may, as appropriate in the context, define the rights and liabilities, subject to the disclaimers, limitations of liability, and other provisions of these Terms and Conditions.
- (b) **"Article"** means any item of tangible personal property other than a fixture, and may include the Goods.
- (c) **"Attorney's Fees"** means the reasonable fees charged by the Company's attorney(s) including court costs, disbursements, expert fees, investigation costs, and other costs incurred by the Company.
- (d) **"Business Day"** means each day except Saturday, Sunday, or a day that is a statutory holiday in Canada.
- (e) **"Carrier"** means a person, who on their own behalf or through an agent, issues a Contract of Carriage indicating they are the actual carrier of the Goods.
- (f) **"Company"** means Hu Logistics Inc. (d.b.a. Huli Shipping International Movers), the issuer of the Receipt, and its subsidiaries, related companies, agents, or representatives.
- (g) **"Contract of Carriage"** means a bill of lading or waybill covering the carriage of the Goods, whether it be hard copy or transmitted electronically, and includes a FIATA Multimodal Transport Bill of Lading, trucking receipt, Straight Bill of Lading, Straight Bill of Lading – Short Form, and a Shipper-Provided Short Form Bill of Lading.
- (h) **"Customer"** means the party giving Instructions for which the Company is rendering the services provided hereunder, as well as its agents and representatives, including, but not limited to, shippers, importers, exporters, Carriers, owner of the Goods, secured parties, warehousemen, buyers and sellers, shipper's agents, insurers, underwriters, and consignees.

- (i) **“Dangerous Article(s)”** means Article(s) as statutorily defined in Canadian Federal or Provincial legislation or regulations as dangerous goods.
- (j) **“Freight Forwarder”** means where the Company arranges, as agent of the Customer, for the carriage, transportation, Storage, packing, or handling of the Goods or any other services in relation thereto.
- (k) **“Goods”** means the object(s) of the Customer in respect of which the Company is rendering the services provided hereunder and shall include any packing containers or equipment.
- (l) **“Instruction(s)”** means a written statement of the Customer’s specific requirements.
- (m) **“Parties”** means collectively the Company and the Customer.
- (n) **“Receipt”** means the non-negotiable warehouse receipt, including face page, and any rates and charges that may be attached to these Terms and Conditions, which acknowledges in writing the Company’s receipt for Storage of the Goods.
- (o) **“Storage”** or **“Stored”** or **“Storing”** includes cross-dock, trailer-drop, transloading, warehousing, and other such storage services.
- (p) **“Terms and Conditions”** means these terms and conditions, as may be updated from time to time.
- (q) **“Third Party”** shall include, but not be limited to the following: Carriers, trucking companies, freight forwarders, ocean transport intermediaries, customs brokers, agents, other warehousemen, and others to which the Goods are entrusted for transportation, cartage, handling, customs clearance, delivery, Storage, or otherwise.
- (r) **“Transport Unit(s)”** means containers, trailers, flats, tilts, railroad cars, tanks, igloos, or any other unit load device specifically constructed for the carriage or transportation of the Goods by land, sea, or air.
- (s) **“Warehouse Facility”** means the warehouse premises of the Company.
- (t) **“Warehouseman”** means where the Company arranges for the Storage of the Goods in its Warehouse Facility or any other services in relation thereto.

1.2 Contract. These Terms and Conditions constitute a legally binding contract between the Company and the Customer and shall apply to all transactions with the Company. By delivery or tender to the Company, the Customer hereby agrees to be bound by and acknowledges receipt, review, and understanding of these Terms and Conditions. The Company reserves the right to revise and update these Terms and Conditions of contract that may apply to and govern the Customer’s transactions with the Company and the Customer further agrees to be bound by such Terms and Conditions as revised. A notification of any update to these Terms and Conditions shall be posted on the Company’s website home page sixty (60) days prior to the change. Where required by Applicable Law, the Customer shall be notified in accordance with Subsection 1.24.

1.3 Application.

- (a) Section 1 shall apply to all business or services performed by the Company, including those described in Section 1 to 4 inclusive, whether or not such business or services performed by the Company are described in Section 2 to 4.
- (b) Where the Company issues a Receipt, Contract of Carriage, or provides a guarantee, the rights and obligations of the Company shall be governed by Section 2 (where the Company acts as Warehouseman) or Section 4 (where the Company acts as Carrier).
- (c) In the event the Company subcontracts the whole or any portion of its services to a Third Party, the Company is liable only to the same extent as the Third Party who performs any carriage or guaranteed service, as may be limited by the conditions on which that party customarily offers its services.

1.4 Headings. The headings in these Terms and Conditions are for reference only and shall not affect the interpretation of these Terms and Conditions.

1.5 Company's Lien. All advances and charges are due and payable prior to shipment or transfer of the Goods from the Warehouse Facility. The Company shall have a lien upon, right of retention, and security interest in all Articles of Customer, including the Goods, at any time heretofore and hereafter deposited by Customer in any Warehouse Facility owned or operated by the Company. Such lien, right of retention, and security interest shall be for all past and present charges, advances, and expenses, whether or not the Articles to which the charges, advances, and expenses relate are released from the Warehouse Facility. In the event of nonpayment of any such amounts, the Company has the right, after reasonable notice, to sell or otherwise dispose of the Customer's Articles in any manner that it may reasonably think fit to satisfy its lien, subject to legislation in force governing the disposition of such Articles in the province where such Articles are Stored. Where the Company decides, in its sole and exclusive discretion, to ship or transfer the Goods prior to receipt of payment of all charges, advances, and expenses in relation to the Goods, the Customer shall deliver to the Company, immediately upon its request, a signed acknowledgment of indebtedness on an invoice or other statement of account.

1.6 Dangerous Articles.

- (a) No Articles shall be delivered to the Warehouse Facility that are or may become of a dangerous, inflammable, combustible, radioactive, hazardous, explosive, cytotoxic, or damaging nature (whether or not they are regulated under the *Transportation of Dangerous Goods Act*, 1992, SC 1992, c 34, as amended from time to time, or other applicable legislation) or in the opinion of the Company, may create a condition hazardous to any personnel or other Articles in the Warehouse Facility or to the Warehouse Facility itself, except where the Customer has obtained the prior written approval of the Company and the Customer has given full particulars of such Articles. Any such Articles may upon being discovered (or any Articles that in the opinion of the Company, or the person who has custody or possession thereof, are or may become dangerous and present a hazard), may at any time or place be unloaded, destroyed, dumped, sold, rendered harmless, or otherwise disposed of as the Company reasonably sees fit at the risk and expense of the Customer, without liability on the part of the Company and without prejudice to any other remedies that may be available to the Company. The Company shall have the right to require the removal from its Warehouse Facility any Articles of any kind or description, at any time, without stated reasons, upon written notice.

- (b) The Customer undertakes to mark the Articles and warrants that the Articles and the outside of any packages or container in which they may be placed, comply with all laws and regulations that govern the handling or Storage of Dangerous Articles. The Customer assumes all liability for costs incurred or damages resulting from Customer's failure to do so and shall indemnify the Company against all losses, damages, or expenses, including without limitation, loss, damage, or expense arising out of the Articles being Stored at the Warehouse Facility, tendered for transportation, or handled or carried by or on behalf of Third Parties retained by the Company.

1.7 Insurance.

- (a) If requested by the Customer, the Company shall recommend an insurance broker to arrange insurance appropriate for the Customer, however, the Customer must give the Instructions in writing to arrange insurance on the Goods in a reasonable time before the tender of the Goods for Storage or transport. The coverage on the Goods is subject to the terms and conditions of the insurance policy that may have been effected on the Goods by the Customer. After making its recommendation, the Company has no further duty regarding insurance, and no liability for loss of or damage to the Goods during transport or Storage that could have been covered by insurance on the Goods in excess of what is otherwise covered by these Terms and Conditions, whether such loss or damage has been caused or contributed to by its negligence or breach of these Terms and Conditions, or otherwise.
- (b) The Company shall receive the benefit of any insurance policy that may have been effected on the Goods by the Customer, including any payment received by the Customer under any insurance policy, except in situations where for the Company to receive such benefit would invalidate the insurance coverage of the Customer.

1.8 Limitation of Liability.

- (a) Notwithstanding Subsections 2.10, 3.12 and 4.6, the Company shall not be liable for consequential damages including, without limiting the generality of the foregoing, claims for loss of use, losses resulting from delays in pick-up or delivery of the Goods, business interruption, loss of profits or revenue, interest, fixed or variable costs, loss of goodwill, work stoppage, impairment of other Articles, loss by reason of shut down or non-operation, increased expenses of operation, or loss due to exchange rate fluctuations, increased levies, or taxes by authorities.
- (b) Advice given by the Company to the Customer is for the Customer only and is not to be furnished to any other party without the Company's prior written consent. Gratuitous advice and information that is not related to Instructions accepted by the Company is provided without liability of any kind, including for negligence or gross negligence.
- (c) The Company shall be relieved of liability for any loss or damage if such loss or damage was caused or contributed to by an act or omission of the Customer or a Third Party.
- (d) Claims against the Company based upon a claim in bailment or the laws of bailment are specifically excluded.

- (e) All exclusions or limitations of liability apply whether the claim against the Company is based upon a claim in warranty, statute, contract, tort (including negligence and strict liability), bailment, or any other cause of action.
- (f) Whenever the liability of the Company is excluded or limited under these Terms and Conditions, such exclusion or limitation, as well as time limits for the bringing of actions and provisions pertaining to notice of actions or benefits of any insurance policy effected by the Customer shall apply to claims made against directors, officers, employees, agents, or representatives of the Company.
- (g) Part of the consideration for the rates offered by the Company is the limitations and exclusion of liability as stated in these Terms and Conditions. The Customer agrees and acknowledges that the rates are dependent upon this limitation.

1.9 Notification of Claims. To the fullest degree allowable by Applicable Law, any claim of the Customer against the Company, shall be in writing and shall be given by facsimile, electronic mail, or by hand delivery. The Customer shall notify the Company as soon as events which may give rise to a claim are known, and in any event:

- (a) in case of loss or damage to the Goods, within three (3) days of delivery (and in the case of the Goods that are picked up directly from the Warehouse Facility of the Company, the Customer shall notify the Company in writing within three (3) days from the date on which the Goods were picked up from the Warehouse Facility);
- (b) in case of delay in delivery or non-delivery, within thirty (30) days of the date when the Goods should have been delivered; or
- (c) in any other case, within thirty (30) days of the event giving rise to the claim.

The Customer shall give the Company and any Third Parties a reasonable opportunity to examine the Goods and shall cooperate with the Company or the Third Parties to make the Goods available for inspection.

Failing notice as required by this Subsection, the claim is absolutely time barred and no action can be brought against the Company to enforce the claim.

1.10 Time Bar. To the fullest degree allowable by Applicable Law, the Company shall, unless otherwise expressly agreed, be discharged of all liability under these Terms and Conditions unless a suit is brought within nine (9) months from:

- (a) the date of delivery of the Goods, for claims for damage to the Goods; or
- (b) the date when the Goods should have been delivered, for claims for delay in delivery or loss of the Goods.

With respect to loss or damage other than loss of or damage to the Goods, the nine (9) month period shall be counted from the time when the act or omission of the Company giving rise to the claim occurred.

1.11 Indemnity.

- (a) The Customer represents and warrants that it is lawfully possessed of the Goods and has the right and authority to Store them and tender them for carriage with the Company and further agrees to defend, indemnify, and hold the Company harmless against any and all liability, loss, damages, costs, claims 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 any dispute or litigation, whether instituted by Company or others, respecting Customer's right, title or interest in the Goods. Any such amounts shall be charges in relation to the Goods and subject to the Company's lien. The obligation to indemnify and hold the Company harmless shall include, but not be limited to, the obligation to reimburse reasonable Attorney's Fees. In the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer of such claim, suit or proceeding.
- (b) The Customer represents and warrants that the Goods can be lawfully exported from Canada and imported in the country of destination and further agrees to defend, indemnify, and hold the Company harmless against all duties, taxes, payments, fines, penalties, costs, expenses, losses, damages, claims or liabilities, including without limitation any Storage, demurrage, port, or terminal charges and any liability to indemnify any other person against claims made against such other person by the Customer:
 - (i) for which the Company may be held responsible unless caused or contributed to by any negligence or breach of duty of the Company;
 - (ii) in excess of the liability of the Company in accordance with these Terms and Conditions; or
 - (iii) resulting from or connected with the actions of the Company related to any service to which these Terms and Conditions apply.
- (c) The Customer shall be solely liable for any loss, damage, cost, claim or expense arising from the importation or exportation of the Goods or a violation by the Customer of any federal, state, provincial or other Applicable Laws. The Customer further agrees to defend, indemnify, and hold the Company harmless against any and all liability, loss, damages, costs, claims 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 such claims.
- (d) The Customer shall indemnify the Company against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities in excess of the liability of the Company in accordance with these Terms and Conditions, suffered or incurred by the Company in the performance of its obligations under any contract to which these Terms and Conditions apply.
- (e) The Customer shall indemnify the Company in respect of any claims of a general average nature, which may be made on it and shall provide such security as may be required by the Company in this connection.

1.12 Claims against Others. These Terms and Conditions also apply whenever any claim is made against any employee, representative, agent, or independent contractor engaged by the Company to perform any transport or related service for the Goods, whether such claims are founded in

contract or in tort, and the aggregate liability of the Company and all such persons shall not exceed the limitations of liability in these Terms and Conditions. For purposes of this Subsection, the Company acts as agent for all such persons who may ratify such agency at any subsequent time.

1.13 Customer's General Responsibilities.

- (a) The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of its business, including terms of purchase and sale, the need for insurance, the extent of coverage available for the type of the Goods being tendered for shipment, the need to preserve and retain documentation, the need for care to avoid transmitting viruses by electronic communications, the need for confidential handling of information relating to high value Articles, and all other matters relating thereto.
- (b) The Customer shall give sufficient and executable Instructions and assumes full responsibility for the accuracy of all Instructions and information provided by the Customer or on the Customer's behalf to the Company.
- (c) The Customer represents and warrants that it is either the owner of the Goods or the authorized agent of the owner of the Goods and that it is accepting these Terms and Conditions not only for itself, but also as agent for and on behalf of the owner of the Goods if acting as agent of the owner of the Goods.
- (d) The Customer represents and warrants that all information in whatever form relating to the general and dangerous character of the Goods, their description, bar-coding, marks, number, weight, volume, and quantity of the Goods, as furnished by the Customer or on its behalf, was accurate and complete at the time the Goods were taken in charge by the Company or any Third Party whose services it has engaged. The Customer further undertakes to provide independent confirmation of such particulars on the request of the Company.
- (e) In preparing and submitting customs entries, export declarations, applications, documentation or export data to customs or Third Parties, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by the Customer. The 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 or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect or false statement by the Customer upon which the Company reasonably relied. The Customer agrees that they have an affirmative non-delegable duty to disclose any and all information required to import, export, or enter the Goods.
- (f) The Customer acknowledges that it is required to review all documents and declarations prepared or filed with the customs service, other government agency or Third Parties, and shall immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on the Customers behalf.
- (g) When the Goods are accepted or dealt with upon Instructions to collect freight, duties, taxes, charges, or other expenses from the consignee or any other person, the Customer shall remain responsible for these amounts if they are not paid by such consignee or other person immediately when due.

- (h) The Customer acknowledges that the Company does, and shall be deemed to, contract as agent for the Customer pertaining to contracts entered into with any other party.
- (i) The Customer shall warn the Company if any Goods which are the subject of any transaction to which these Terms and Conditions apply are liable to taint or affect other Articles, or are likely to harbor or encourage vermin, rodents, insects, or other pests, and the Customer shall indemnify the Company against any liability, loss, damage, costs, or expenses incurred by the Company as a consequence of the Customer's failure to do so or for failure to do so in a timely fashion.
- (j) The Customer represents and warrants that all Goods have been properly and sufficiently prepared, packed, stowed, labeled, and marked, and that the preparation, packing, stowage, labeling, and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- (k) The Customer represents and warrants that it is not involved with any person listed on any national or international sanction list for denied parties.

1.14 Customer Has No Right of Set Off. The Customer shall pay to the Company in cash, or as otherwise agreed, all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off.

1.15 Company's Right to Terminate Provision of Its Services. Without in any way negating or diminishing the Company's Lien under Subsection 1.5, the Company shall have the right to immediately terminate without notice any and all services it is providing to the Customer in the event of any of the following occurring:

- (a) the Customer failing to pay any invoice received from the Company within fourteen (14) days of receipt of such invoice by the Customer, and whether such invoice is transmitted to the Customer in hard copy or electronically;
- (b) insolvency of the Customer;
- (c) initiation of any proceedings in bankruptcy by or against the Customer, whether such proceedings be under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended from time to time, or similar legislation of any other jurisdiction;
- (d) initiation of any proceedings by or against the Customer under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended from time to time, or similar legislation of other jurisdictions, or legislation of other jurisdictions whereby the Customer is doing or would do some form of business re-organization, including but not limited to situations where the Customer is insolvent; or
- (e) any assignment by the Customer for the benefit of creditors.

1.16 Force Majeure. The Company shall not be liable for losses, damages, delays, wrongful or missed deliveries, or non-performance in whole or in part, of its responsibilities under these Terms and Conditions, resulting from circumstances beyond the control of either Company or any independent contractor engaged by the Company, including but not limited to: (a) acts of God, including flood, earthquake, storm, hurricane, power failure or other natural disaster, (b) epidemics, pandemics and quarantines, such as the events connected with COVID-19; (c) war, hijacking, robbery, theft or

terrorist activities; (d) incidents, derailments or deteriorations to means of transportation; (e) embargoes; (f) civil commotions or riots; (g) defects, nature or inherent vice of the Goods; (h) acts, breaches of contract or omissions by Customer, shipper, consignee or anyone else who may have an interest in the shipment; (i) any law or any action taken by any government or public authority or any agency or subdivision thereof, including without limitation denial or cancellation of any import/export or other necessary license, or imposing quota or prohibition; (j) collapse of buildings, fire, explosion or accident, (k) congestion in marine or rail terminals, (l) unavailability of multimodal containers, trailers or other equipment necessary to transport the Goods, or (m) strikes, lockouts or other labor conflicts (each a “**Force Majeure Event**”).

- 1.17 Privacy and Data Protection.** The Customer provides consent to the collection, use, disclosure and retention of its personal information by or on behalf of the Company as explained in the Company’s privacy policy (online: www.huliinternationalmovers.ca/legal/), as revised from time to time, and as otherwise permitted or required by Applicable Law.
- 1.18 Confidentiality.** Electronic communications, including over the internet and through email, are not secure means of communication and the privacy, integrity or authenticity of any communication over the internet with the Customer shall not expose the Company to any liability for damages the Customer may suffer as a result of communicating with the Company by electronic communications or if the Company communicates such information to the Customer at the Customer’s request.
- 1.19 Severability.** If any provision of these Terms and Conditions shall at any time, for any reason, be declared invalid, void or otherwise inoperative by a court of competent jurisdiction, such declaration or decision shall not affect the validity of any other provision or provisions of these Terms and Conditions, or the validity of these Terms and Conditions as a whole and, to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect. The invalidity and unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.
- 1.20 Waiver.** No delay or failure by the Company to exercise any right or remedy under these Terms and Conditions shall operate as an amendment to or waiver of any term of these Terms and Conditions, except where specifically provided to the contrary.
- 1.21 Successor and Assigns.** The provisions of these Terms and Conditions and the Receipt shall be binding upon the Customer’s heirs, executors, successors, and assigns and cannot be modified except in writing signed by Company. The Customer may not assign any of its rights or obligations hereunder without the prior written consent of the Company. No assignment shall relieve the assigning Party of any of its obligations hereunder.
- 1.22 Currency.** Unless specified otherwise, all statements of or references to dollar amounts in these Terms and Conditions and the Receipt are to lawful money of Canada.
- 1.23 Electronic Data.** The Company shall have no responsibility for errors resulting from the corruption of electronically transmitted data or from verbal or telephoned Instructions.
- 1.24 Notices.** Any notice or other communication required or permitted to be given under these Terms and Conditions shall be in writing and shall be given by facsimile, electronic mail, or by hand delivery. Any notice or other communication shall be deemed to have been received on the Business Day following the sending by facsimile or electronic mail or at the time it is delivered by hand to the applicable address noted below to an individual at that address having apparent authority to

accept deliveries on behalf of the addressee designated below. A confirmation page from the transmitting facsimile machine or an electronic mail delivery receipt showing time and date and destination of the successful transmission shall be sufficient evidence of transmission. Notice of change of address shall also be governed by this Subsection. Notices and other communications shall be addressed, if to the Company at legal@huli.ca and, if to the Customer, to the address or email provided by the Customer to the Company.

- 1.25 Electronic Communications.** Documents, including these Terms and Conditions, may be issued either in physical or electronic form at the option of the Parties. The Parties agree that where they have used electronic communications to transact in whole or in part any business, such communications shall be given legal effect in accordance with the provisions (so far as they may be applicable) of the *Uniform Electronic Commerce Act*, as amended from time to time, as approved by the Uniform Law Conference of Canada.
- 1.26 Applicable Law and Jurisdiction.** These Terms and Conditions shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein, except where the mandatory provision of law would lead to the application of any other laws. By accepting the services provided under these Terms and Conditions, the Customer irrevocably attorns to the exclusive jurisdiction of the Courts of Alberta and the Federal Court of Canada.
- 1.27 Language.** The Parties have each expressly requested and required that these Terms and Conditions and all related notices and other documents be drawn up in the English language. *Les parties conviennent et exigent expressément que ce Contrat et tous les documents qui s'y rapportent soient rédigés en Anglais.* Subject to Applicable Law, any non-English translation of these Terms and Conditions provided by the Company is for convenience only, and if there is a conflict or inconsistency between the English version and a non-English version then the English version of these Terms and Conditions shall take priority and govern.
- 1.28 Entire Agreement.**
- (a) These Terms and Conditions are the sole and entire agreement between the Parties with respect to the subject matter hereof and supersede and cancel all prior written or oral agreements between them with respect to the subject matter hereof. These Terms and Conditions may not be modified or amended orally, and no claimed modification or amendment shall be valid unless the same is embodied in writing signed by the authorized representatives of each of the Parties.
 - (b) Since the Parties wish for these Terms and Conditions to exclusively govern the services, any Contract of Carriage provided to or issued by the Company shall be considered only evidence of the shipment's receipt by the Company. It is understood and agreed that any and all terms, conditions and provisions of any documents shall be subject and subordinate to these Terms and Conditions. In the event of a conflict between the terms, conditions and provisions of any such documents and these Terms and Conditions, these Terms and Conditions shall govern and control. Nothing contained in any such documents shall be construed to expand or amend the rights and obligations of the Parties under these Terms and Conditions.
- 1.29 Contradiction of Sections.** In the event of any contradiction, discrepancy, ambiguity, inconsistency or conflict in or between Section 1 on one hand and Section 2, 3, or 4 on the other hand, then Section 2, 3, or 4, as applicable, shall take precedence over Section 1.

SECTION 2 - ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN THE COMPANY ACTS AS WAREHOUSEMAN

2.1 Role of the Company as Warehouseman. Sections 1 and 2 shall constitute the contract between the Customer and the Company acting as Warehouseman. The Company only acts as a Warehouseman when it receives the Goods into its possession for purposes of Storage in a facility actually owned or controlled by the Company itself or in any other situation where the Company itself issues the Receipt. The Company acting as Warehouseman includes any situation where the Company is handling the Goods in and around the Warehouse Facilities that it owns or controls. The Company does not act as a Warehouseman in any other circumstances. For greater clarity, the Company does not act as Warehouseman when Third Parties receive the Goods into their possession, except in those situations where the Company itself has issued the Receipt. The Company assumes and shall have absolutely no responsibility or liability for the actions or inactions of Third Parties where the Company itself has not issued the Receipt.

2.2 Basis of Charges.

- (a) Any charge made with respect to the Goods shall conform to the Company's rates and charges that may be attached to the: (i) Receipt; (ii) quotation; or (iii) tariff in effect at the time the service is performed.
- (b) A fraction of a month shall be reckoned as a full Storage month. Provided that if reasonable notice has been given before the expiry of the Storage month that the Goods are to be delivered out of the Warehouse Facility at or before expiry of the current Storage month, then if any delay in so delivering such Goods extends beyond the expiry of the last day of the current Storage month (the "**Expiry Date**") and such delay is not due to the Customer or the agent of the Customer, the Company shall limit the Storage charges for the period beyond the Expiry Date to one thirtieth (1/30) of the monthly charge for each day that the Goods remain in the Warehouse Facility beyond the Expiry Date.
- (c) Charges for services required by the Customer beyond Storage of the Goods, charges necessitated by the nature of the Goods and that are incurred after issuance of the Receipt, and handling charges after delivery of the Goods from Storage, shall be charged by the Company in addition to the monthly Storage charges, in accordance with the rate sheet or to be decided between the Customer and the Company.
- (d) Charges incurred preliminary to issue of the Receipt as set out on the face the Receipt, are due upon issue of the Receipt. Charges incurred subsequently shall be billed monthly and due forthwith, save for charges incurred in the thirty (30) days immediately preceding delivery of any Goods out of Storage which are due at or before delivery of the Goods.
- (e) The Company tariff may be reviewed at the office of the Company during regular office hours. Quotations for services not included in such tariff shall be given on request. No increase in regularly recurring charges shall be made on the Goods in Storage until thirty (30) days after a notice of such increased charge has been mailed to the Customer, unless otherwise agreed to by the Customer.
- (f) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise provided in the quotation, the Company may, after acceptance, revise quotations or charges upon notice in the event of changes beyond the

Company's control, including changes in exchange rates, rates of freight, Carrier surcharges, governmental fees or any charges applicable to the Goods.

- (g) All overdue amounts shall bear interest, compounded monthly, at the rate of 2% per month (26.82% per annum) from the date each amount became due. Any waiver by the Company of accrued interest on a particular invoice shall not be construed as a waiver of its right to impose such interest on other invoices.
- (h) The Customer agrees to pay any Attorney's Fees incurred by the Company in collecting any overdue amount, including the costs associated with the enforcement of the Company's lien (as provided for in Subsection 1.5).
- (i) All sums remitted by the Customer, or recovered by the Company, shall be applied to the expenses of collection or litigation, including Attorney's Fees first, followed by interest accrued on overdue amounts and then to the oldest invoices.
- (j) A charge, in addition to regular rates, shall be made for merchandise in bond pursuant to the *Customs Bonded Warehouses Regulations*, SOR/96-46, as amended from time to time, and *Customs Sufferance Warehouses Regulations*, SOR/86-1065, as amended from time to time, of the Government of Canada.

2.3 Tender for Storage. Unless the Company in its absolute discretion agrees otherwise, all Goods tendered for Storage shall be delivered at the Warehouse Facility properly marked and packaged for handling. The Customer 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 desired.

2.4 Delivery and Transfer Requirements.

- (a) Unless the Company in its absolute discretion agrees otherwise, no Goods covered by the Receipt shall be delivered or transferred except upon surrender of the Receipt to the Company. If required by the Company in its absolute discretion, no Goods covered by the Receipt shall be delivered or transferred unless the Company also receives written Instructions acceptable to the Company from the appropriate party allowing such delivery or transfer of the Goods. In the event that the Receipt is lost or destroyed, unless in the absolute discretion of the Company, the Company decides otherwise, the Goods covered by the Receipt shall not be delivered or transferred until the Company is furnished with a bond of indemnity acceptable to the Company or an order of a court having jurisdiction over the Goods.
- (b) If the Receipt is endorsed "non-negotiable" and a request is made orally or in writing by the Customer or his representative for delivery of all or part of the Goods covered by the Receipt, the Company shall not be held responsible for any loss or damage arising from any error in the giving or receiving of such Instructions by or from the Customer or his representative, including any claim for mis-delivery.
- (c) Unless all unpaid charges incurred with respect to the Goods to be delivered or transferred are paid in full, the Company may refuse transfer or delivery of the Goods.

2.5 Physical Transfer of Goods. Unless decided otherwise by the Company in its absolute discretion, no physical transfer of the Goods covered by the Receipt involving a change in the class of Storage,

the Storage rate or the Company's insurance rate shall be made except upon receipt of written Instructions signed by the Customer or other party acceptable to the Company, and if appropriate, upon surrender of the Receipt for the purpose of endorsing thereon the change in class, rate of Storage, or insurance rate.

2.6 Refusal of Articles. All incoming Articles to the Warehouse Facility must be consigned to the Customer, c/o the Company, freight prepaid. The Company reserves the right to refuse acceptance of any Articles improperly consigned or shipped freight collect and shall not be liable or responsible for any loss, injury or damage of any nature to or related to such Articles.

2.7 Removal of Goods.

(a) The Company may, upon written notice to the Customer, require the removal of the Goods within five (5) Business Days.

(b) Where the Goods are of a perishable nature, may deteriorate greatly in value, may potentially damage other Stored property, the Company may upon giving notice the Customer, requiring the Customer to satisfy the lien upon the Goods and to remove them from the Warehouse Facility; and upon failure of the Customer to satisfy the Company's Lien and remove the Goods within the time specified in the notice given, the Company may dispose of or destroy the Goods or sell the Goods at public or private sale without advertising or in such other manner deemed appropriate by the Company, apply the proceeds of sale of the Goods to any amount owing to the Company by the Customer, whether for warehousing charges or otherwise, and the Customer shall be liable to the Company for the balance owing to the Company after it applies the proceeds to such balance owing.

(c) Where in the opinion of the Company the nature or the condition of the Goods Stored creates a condition hazardous to the safe keeping and Storage of other Stored property in the Warehouse Facility or to any property or person, the Company may immediately remove such Goods Stored from the Warehouse Facility and shall subsequently give such notice to the Customer of such removal and the location of the Goods. In such cases, the Customer, shall in addition to all other amounts owing to the Company, be liable for all Storage and other charges related to delivery of the Goods to the changed location and all charges associated with Storing the Goods at the changed location and any and all liability on the part of the Company for the safe keeping of such Goods shall cease. Where in the opinion of the Company the nature or the condition of the Goods is such that they cannot be moved, the Customer shall be liable to the Company for the costs associated with the disposal or destruction of the Goods.

2.8 Load/Unload Count. If a checker is not furnished by the Customer or transportation company delivering the Goods to the Warehouse Facility, the Company's load or unload count shall be conclusively deemed to be correct.

2.9 Access and Inspection. The Customer may, subject to the Company's security and insurance regulations and other reasonable limitations, have access to the Goods during standard business hours of the Warehouse Facility, prior to shipment or transfer of the Goods from the Warehouse Facility, provided at least forty-eight (48) hours written notice is given in advance to the Company and provided the Customer or its authorized representative is accompanied by an employee or authorized representative of the Company, whose time shall be an additional charge to the Customer.

2.10 Additional Limitation of Liability as Warehouseman.

- (a) The responsibility of the Company is the reasonable care and diligence required by the laws of the province of Canada where the Goods are Stored, provided that all Goods are Stored at the Customer's risk of loss, damage or delay in delivery, unless the Customer establishes such loss, damage or delay occurred because of the Company's failure to exercise the care required by the laws of the province of Canada where the Goods are Stored. The Company's liability for breach of such duty or arising out of it acting as Warehouseman is limited as stated in Sections 1 and 2.
- (b) The quality, condition, contents, and value of the Goods are not known to the Company except as declared by the Customer and described on the face of the Receipt.
- (c) The Goods covered by the Receipt are not insured by the Company.
- (d) Without limiting the generality of the foregoing, it is specifically declared that all Goods are Stored at the Customer's risk of loss, damage or delay in the delivery caused by or through a Force Majeure Event; inaccuracies, obliteration or absence of marks, numbers, address or description; depreciation or perishing by a lapse of time; changes in temperature, interruption or loss of power; contact with or odors from other Articles; inherent defects; lack of any special care or precaution; injury to other Articles insufficiently protected or arising from the nature of the Goods; loss in weight; insufficient cooperage, boxing, crating or packing; ordinary wear and tear in handling; leakage; concealed damage or any cause beyond the control of the Company; or failure to detect any of the foregoing. All Storage and other applicable charges must be paid on the Goods Stored for any additional time, loss or damage caused by any of the above.
- (e) Except as specifically set forth herein, the Company makes no express or implied warranties in connection with its services.
- (f) Compensation for any claim for which the Company is liable shall be strictly limited to the lesser of:
 - (i) the monetary amount of the value of the damaged or lost Goods;
 - (ii) one hundred (100) times the monthly Storage rate on the lesser of any one package or one Stored unit with the contents; or
 - (iii) in cases where the Company's charges are calculated for any service other than Storage services, maximum \$50.00 per Stored unit,unless the Customer specifically requests a higher limit in writing and declares an excess value, in which case the Company may, at its sole option, accept liability and assess an additional charge to the monthly Storage or other applicable rate.
- (g) Where loss, damage or destruction occurs to the Goods, for which the Company is not liable, the Customer 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, damage or destruction to the Goods.

- (h) The Company shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.
- (i) The Company shall not be liable for loss of the Goods due to inventory shortage or unexplained or mysterious disappearance of the Goods unless the Customer establishes such loss occurred because of the Company's failure to exercise the care required of the Company under this Subsection 2.10.
- (j) The Company shall not be responsible for delays in loading or unloading railway cars, trailers or other containers, nor for demurrage charges or other time penalties arising from any delay at the Warehouse Facility, which cannot reasonably be avoided by the Company in the normal course of its business.
- (k) The provisions of this Subsection 2.10 apply in addition to any defences, limits or exclusions of liability stipulated in Subsection 1.8.
- (l) All exclusions or limitations of liability apply whether the claim against the Company is based upon a claim in warranty, statute, contract, tort (including negligence and strict liability), bailment, or any other cause of action.

SECTION 3 - ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN THE COMPANY ACTS AS FREIGHT FORWARDER

3.1 Role of the Company as Freight Forwarder. Sections 1 and 3 shall constitute the contract between the Customer and the Company acting as Freight Forwarder. The Company offers its services on the basis of these Terms and Conditions that apply to all activities of the Company in arranging on behalf of the Customer the transportation of the Goods or providing related services, such as, but not limited to, warehousing and any other kind of logistics services. The Company may provide its services as either principal or agent. The Company acts as agent of the Customer, except where it issues a Contract of Carriage evidencing its obligation for the delivery of the Goods. For clarity, if the Company issues a Contract of Carriage that shows the Company is the actual Carrier, then Sections 1 and 4 apply, instead of Sections 1 and 3, as further set forth in Subsection 3.2.

Advice given by the Company to the Customer is for the Customer only and is not to be furnished to any other party without the Company's prior written consent. Gratuitous advice and information that is not related to Instructions accepted by the Company is provided without liability of any kind, including for negligence or gross negligence.

3.2 Non-Applicability of Section 3 if the Company Acts as the Actual Carrier. The Company may in respect of all or any part or parts of any contract for the movement of the Goods, sign a Contract of Carriage that shows the Company is the actual Carrier. Where this occurs, Sections 1 and 4 apply, and not this Section 3, to that part of the transportation of the Goods, and only that part of the transportation of the Goods, covered by the Contract of Carriage signed by the Company as the Carrier. Prior to and after that part of the transportation of the Goods covered by the Contract of Carriage signed by the Company as the Carrier, Sections 1 and 3 shall constitute the contract between the Company and the Customer.

3.3 Company's General Conditions as Freight Forwarder.

- (a) The Company is not responsible for departure or arrival dates of the Goods.
- (b) If delivery of the Goods or any part thereof is not taken by the Customer or the consignee at the time and place when and where the Company is entitled to call upon such person to take delivery thereof, the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of the Goods or that part thereof so Stored shall wholly cease and the cost of such Storage if paid for or payable by the Company or any party with whom the Company deals, shall immediately upon demand be paid by the Customer to the Company.
- (c) The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):
 - (i) on twenty-one (21) days' notice in writing to the Customer, or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be thought by the Company to have any interest in the Goods, any Goods which have been held by the Company for ninety (90) days and which cannot be delivered as instructed; and
 - (ii) without prior notice, the Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably

be expected to cause loss or damage to Third Parties, other Articles, or to contravene any Applicable Laws or regulations.

In acting under Subsections 3.3(c)(i) and 3.3(c)(ii), the Company shall give appropriate credit to the Customer for any balance arising out of the proceeds of sale of the Goods after deduction of the Company's costs of sale.

- (d) Except insofar as may be required to comply with the Customer's Instructions, the Company shall not be obliged to arrange for the Goods to be carried, Stored or handled separately from other Articles.
- (e) Despite the acceptance by the Company of Instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for all such freight duties, charges or other expenses in the event they are not paid, no matter what the reason is for such non-payment.

3.4 Role as Agent. When acting as an agent, the Company acts solely on behalf of the Customer in engaging the services of Third Parties on the usual terms and conditions on which the Third Parties offer such services for the carriage, Storage, packing or handling of any Goods, or for any other service in relation to them, thereby establishing a direct contract between the Customer and the provider of such services capable of being enforced by the Customer as principal, whether or not the Customer is identified in the contract. The Company shall on written demand by the Customer provide evidence of any contracts made on its behalf.

3.5 Services Requiring Special Arrangements. The Customer must give Instructions in writing to the Company a reasonable time before the tender of the Goods for Storage or transport where it requests the Company to:

- (a) arrange for the departure or arrival of the Goods before specific dates;
- (b) arrange for the Goods to be carried, Stored, or handled separately from other Articles;
- (c) arrange for the transport of the Goods that may taint or affect other Articles, or may harbour or encourage vermin or pests;
- (d) make a declaration of value or special interest in delivery to any Carrier or terminal;
- (e) direct Carriers or delivery agents to hold the Goods until payment of any amount or until surrender of a document; or
- (f) arrange for the transport of the Goods of unusual high value, luxury goods, currency, negotiable instruments or securities of any kind, precious metals or stones, antiques or art, human remains, livestock or plants, or any other comparable cargos.

Where for any reason the Company does not accept such Instructions, the Company shall so advise the Customer within a reasonable time by any means of communication used in the ordinary course of business. If it continues to use the Company's services for the contemplated transport after receiving such advice, the Customer assumes all risks connected with the non-performance of such Instructions, whether caused or contributed to by the Company's negligence or not.

3.6 Company's General Responsibilities.

- (a) Unless services are performed by persons or firms engaged pursuant to express Instructions from the Customer, the Company shall exercise reasonable care in the discharge of its obligations including the selection and instruction of Third Parties that provide any services engaged on behalf of the Customer.
- (b) The Company shall arrange transport and any related services within a reasonable time after receiving the Customer's Instructions.
- (c) If it has reasonable grounds for departing from any of the Customer's Instructions, the Company can do so without prior authorization from the Customer, but must act with due regard to the interests of the Customer, and as soon as reasonably possible, inform the Customer of its actions and any additional charges resulting therefrom.
- (d) Advice by the Company that a particular person or firm has been selected to render services with respect to the Goods, shall not be construed to mean that the Company warrants or represents that such person or firm shall render such services nor does the Company assume responsibility or liability for any actions or inaction(s) of such Third Parties 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.
- (e) All claims in connection with the act of a Third Party shall be brought solely against such Third Party or its agents or both, and in connection with any such claim, the Customer shall be liable for any charges or costs incurred by the Company.

3.7 Customer's Responsibility for Packaged and Containerized Goods.

- (a) Except where the Company has accepted Instructions to carry out the preparation, packing, stowage, labeling or marking of the Goods, or where the Customer has requested and the Company has agreed to make such arrangements with a Third Party on behalf of the Customer, the Customer warrants that all Goods have been properly and sufficiently prepared, packed, stowed, labeled or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods. Without limiting the foregoing the Customer is responsible for timely communication of and warrants the accuracy of the verified gross mass ("VGM") of the package(s) and or the Transport Unit and the identity of the duly authorized person so verifying. The Customer shall maintain documentation evidencing measurement of VGM as required by Applicable Law.
- (b) Unless the Company has accepted Instructions to perform the loading of a Transport Unit by its employees, the Customer warrants that:
 - (i) the Transport Unit has been properly and competently loaded;
 - (ii) the Goods are suitable for carriage in or on the Transport Unit; and
 - (iii) the Transport Unit is in a suitable condition to carry the Goods loaded therein (save to such extent as the Company has approved the suitability of the Transport Unit).

3.8 Compensation of Company.

- (a) The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all Third Parties 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 Third Parties, insurers and others in connection with the services provided by the Company.
- (b) The Company shall be entitled to be paid and retain all brokerages paid by Carriers, commissions, documentation allowances, profits on foreign exchange and other remunerations paid by Third Parties as is customary in the trade.

3.9 Quotations and Invoicing.

- (a) The Company does not assume a role as principal by providing a fixed price quotation, or by rendering an invoice where the difference between the amounts payable to Third Parties retained to carry out the Customer's Instructions and the fixed price represents the Company's gross profit for its services. A Customer agrees that the Company is an agent as provided in Subsection 3.1 where the Customer:
 - (i) accepts a fixed price quotation, or
 - (ii) does not within thirty (30) days after receipt of the invoice object to the Company charging a fixed price for its services.
- (b) The Company shall be entitled to be paid and retain all brokerages paid by Carriers, commissions, documentation allowances, profits on foreign exchange and other remunerations paid by Third Parties as is customary in the trade.

3.10 Charges Collect Shipments. When the Goods are accepted or dealt with upon Instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for the same if they are not paid by such consignee or other person immediately when due.

3.11 Changed Circumstances/Failure to Take Delivery. If events or circumstances, including a Customer's failure to take delivery, occur that affect performance of the Customer's mandate, the Company shall take reasonable steps to obtain the Customer's further Instructions. If for whatever reason it does not receive timely Instructions, the Company may:

- (a) store the Goods at the sole risk and expense of the Customer;
- (b) sell the Goods immediately and without further notice, and hold any net proceeds for the account of the Customer; or
- (c) authorize any Third Party to abandon carriage and make the Goods or any part of them available to the Customer at a place that is reasonable in the circumstances.

3.12 Additional Limitation of Liability as Freight Forwarder.

- (a) Except as specifically set forth herein, the Company makes no express or implied warranties in connection with its services.

- (b) Compensation for any claim for which the Company is liable shall not in any event exceed:
- (i) two (2) Special Drawing Right (“SDR”) per kilogram of the gross weight of the Goods damaged or lost;
 - (ii) 666.67 SDR per enumerated package of the Goods that are the subject of the claim;
or
 - (iii) 10,000 SDR per transaction;
- whichever is less, provided however that where a higher limitation of liability is mandatorily applicable by law then that higher limitation of liability shall apply.
- (c) Without prejudice to any other conditions herein or other defences available to the Company, in no circumstances whatsoever shall the Company be liable to the Customer for consequential or indirect loss, including losses arising from delay or loss of market.
- (d) Upon the Customer’s written request, the Company may accept liability in excess of these limits provided the Customer pays the Company’s additional charges for such increased liability. The Customer can obtain details of these charges from the Company. For greater certainty, should the Customer and the Goods be subject to both Sections 2 and 3, while the Goods are Stored with the Company’s Warehouse Facility: (a) the liability of the Company in connection with such Storage shall be limited to the liability set out in Subsection 2.10 and shall not constitute a conflict or inconsistency between Sections 2 and 3; and (b) the Customer shall be barred from seeking compensation from the Company in respect thereof under these Terms and Conditions or from relying on any limitation of liability contained herein.
- (e) The provisions of this Subsection 3.12 apply in addition to any defences, limits or exclusions of liability stipulated in Subsection 1.8.
- (f) All exclusions or limitations of liability apply whether the claim against the Company is based upon a claim in warranty, statute, contract, tort (including negligence and strict liability), bailment, or any other cause of action.

3.13 C.O.D. or Cash Collect Shipments.

- (a) The Company shall use reasonable care regarding written Instructions relation to “Cash/Collect on delivery” (“C.O.D.”) shipments, bank drafts, and cashier’s or certified cheques, letter(s) of credit and other similar payment documents or Instructions regarding collection of monies, but shall have no liability if the bank or consignee refuses to pay for the shipment. All charges must be paid by the Customer in advance unless the Company agrees in writing to authorize and extend credit to the Customer; however, 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.
- (b) When the Goods are accepted or dealt with upon Instructions to collect their cost, freight, duties, charges or other expenses from a consignee or any other person, the Company shall transfer sums owed and sums collected on behalf of the Customer to the Customer, net of any amounts owing to the Company or Third Parties in respect of the Goods delivered, or general balance or other monies owing, and the Customer shall remain responsible to the

Company or any Third Parties if the Company or any Third Parties are not paid by such consignee or other person immediately when due.

3.14 Solicitation of Carriers by Customer. The Customer shall not solicit Carrier services from any Carrier of the Company where:

- (a) the availability of such Carrier service first became known to the Customer as a result of the Company's efforts; or
- (b) where the traffic of the Customer was first tendered to such Carrier by the Company.

If the Customer breaches this Subsection 3.14 and "back-solicits" the Company's Carriers, or obtains Carrier services from such a Carrier, the Company is then entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from the Customer of 20% of the transportation revenue paid to such Carriers within the scope of these Terms and Conditions, as liquidated damages. Termination of any document incorporating these Terms and Conditions shall not affect the enforceability and applicability of the foregoing provisions of this Subsection 3.14 for a period of fifteen (15) months after termination.

SECTION 4 - ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN THE COMPANY ACTS AS CARRIER

- 4.1 Role of the Company as Carrier.** Sections 1 and 4 shall constitute the contract between the Customer and the Company acting as the Carrier for the Goods.
- 4.2 The Only Situations Where the Company Shall be Considered to be the Carrier of the Goods.** The Company shall only be held, considered or deemed to be the Carrier of the Goods in those situations where the Company issues a Contract of Carriage indicating it is the actual Carrier of the Goods. For greater clarity, the Company shall not be held, considered or deemed to be the Carrier of the Goods in any situations where the Company signs the Contract of Carriage on behalf of another party as Carrier.
- 4.3 Delay.** The Company is not bound to transport the Goods by any particular vehicle or in time for any particular market, unless by agreement specifically endorsed on the Contract of Carriage and signed by the parties thereto.
- 4.4 Stoppage in Transit.** Where the Goods are stopped and held in transit at the request of the party entitled to do so, the Goods are held at the risk of that party.
- 4.5 Freight Charges.**
- (a) Unless otherwise agreed, the freight and all other lawful charges accruing on the Goods shall be paid at the latest before delivery and, if upon inspection, it is ascertained that the Articles shipped are not the Goods described in the Contract of Carriage, the freight charges must be paid upon the Articles actually shipped with any additional charges lawfully payable thereon.
 - (b) Freight and all other lawful charges shall be considered completely earned on receipt of the Goods by the Company and shall be paid and non-returnable in any event, the Good(s) or conveyance lost or not lost.
 - (c) All freight and all other lawful charges shall be paid without any set-off, counter-claim, deduction or stay of execution.
 - (d) Payment of freight and other charges to a freight forwarder, broker or anyone other than the Company or its authorized agent, shall not be deemed payment to the Company and shall be made at the Customer's or the consignee's sole risk.
- 4.6 Additional Limitation of Liability as Carrier.**
- (a) Subject to the defences, limits or exclusions of liability stipulated in Section 1 and this Subsection 4.6, the responsibility of the Company is to show reasonable care in relation to its acting as a Carrier.
 - (b) The quality, condition, contents and value of the Goods Stored are not known to the Company except as declared and described by the Customer to the Company.
 - (c) The Company is not responsible for packing containers and equipment used to protect the Goods in the normal rigors of transportation. The Company is not responsible for damage to the Goods caused by condensation or build up of moisture within any packing containers.

- (d) Subject to Subsections 4.6(e) and 4.6(f), the amount of any loss or damage for which the Company is liable, whether or not the loss or damage results from negligence, gross negligence or willful misconduct of the Company, shall be computed on the basis of:
 - (i) the value of the Goods at the time of shipment including the freight and other costs if paid; or
 - (ii) where a value lower than that referred to in Subsection 4.6(d)(i) has been represented in writing by the Customer or has been agreed upon, such lower value shall be the maximum liability.
- (e) The amount of any loss or damage computed in accordance with Subsections 4.6(d)(i) and 4.6(d)(ii) must not exceed \$4.41 per kilogram of the total weight of the Goods, in the case of a total loss, or the weight of the damaged or lost portion of the Goods in the case of a partial loss, unless the Customer has declared a higher value on the front of the Contract of Carriage. This maximum liability applies whether or not the loss or damage results from negligence, gross negligence or willful misconduct of the Company.
- (f) The Company shall under no circumstances whatsoever and howsoever arising, including where the Company was negligence, gross negligence or willful misconduct of the Company, be liable for any direct, indirect or consequential loss, including any loss of profit, business losses or loss of reputation.
- (g) The Customer acknowledges that it has been afforded an opportunity to make a declaration of value of the Goods in excess of the limits described in Subsections 4.6(d) and 4.6(e) and to pay applicable excess charges but has declined to do so and does not wish and declines to do so in the future in relation to any transportation services provided.
- (h) Customer agrees to indemnify and save harmless the Company for any claim that the Customer or a Third Party may make against the Company which is in excess of the amounts stated in Subsections 4.6(d) and 4.6(e) as well as any claims that are excluded or limited by virtue of Subsection 1.8.
- (i) The provisions of this Subsection 4.6 apply in addition to any defences, limits or exclusions of liability stipulated in Subsection 1.8.

4.7 Goods of High Value. The Company is not bound to carry any Goods of unusual high value, luxury goods, currency, negotiable instruments or securities of any kind, precious metals or stones, antiques or art, human remains, livestock or plants, or any other comparable cargos unless by a special agreement to do so. If such Goods are carried without a special agreement and the nature of the Goods is not disclosed to the Company, the Company shall not be liable for any loss or damage in excess of the maximum liability stipulated in Subsection 4.6.

4.8 Undelivered Goods. Where, through no fault of the Company, the Goods cannot be delivered, the Company shall immediately give notice to the Customer and consignee that delivery has not been made, and shall request disposal Instructions. Pending receipt of such disposal Instructions:

- (a) the Goods may be Stored in the Warehouse Facility, subject to a reasonable charge for Storage and Section 2; or

- (b) provided that the Company has notified the Customer of its intention, the Goods may be removed to, and Stored in a public or licensed warehouse at the expense of the Customer without liability on the part of the Company and subject to the lien for all freight and other lawful charges provided for in Subsection 1.5, the Company shall keep all C.O.D. monies separate from the other revenues and funds of its business in a separate trust fund or account.

4.9 Return of Goods. Where notice has been given by the Company and no disposal Instructions have been received within ten (10) days from the date of such notice, the Company may return to the Customer, at the Customer's expense, all undelivered Goods for which such notice has been given.

4.10 C.O.D. or Cash Collect Shipments.

- (a) The Company shall use reasonable care regarding written Instructions relation to C.O.D. shipments, bank drafts, and cashier's or certified cheques, letter(s) of credit and other similar payment documents or Instructions regarding collection of monies, but shall have no liability if the bank or consignee refuses to pay for the shipment. All charges must be paid by the Customer in advance unless the Company agrees in writing to authorize and extend credit to the Customer; however, 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.
- (b) When the Goods are accepted or dealt with upon Instructions to collect their cost, freight, duties, charges or other expenses from a consignee or any other person, the Company shall transfer sums owed and sums collected on behalf of the Customer to the Customer, net of any amounts owing to the Company or Third Parties in respect of the Goods delivered, or general balance or other monies owing, and the Customer shall remain responsible to the Company or any Third Parties if the Company or any Third Parties are not paid by such consignee or other person immediately when due.

4.11 Alterations. Any alteration, or addition or erasure in the Contract of Carriage shall be signed or initialed by the Customer and the Company, and unless so acknowledged shall be without effect.

4.12 Weights. It shall be the responsibility of the Customer to show correct shipping weights of the Goods on the Contract of Carriage. Where the actual weight of the Goods does not match the weight shown on the Contract of Carriage, the weight shown thereon is subject to correction by the Company.