



AGILITY TERMS AND CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". The Company may from time to time agree to perform various functions, including the arranging for customs brokerage services, ocean freight forwarding services, temporary storage and warehousing services, and other logistics functions deemed necessary to effectuate the delivery of the goods to the ultimate destination or consignee. Where the loss or damage occurs as a result of acts or omissions, breaches, or other liability arising from the Company's provision of non-carrier services, the Company's terms and conditions set forth below.

1. Definitions. "Company" shall mean Agility Logistics Corp. and any of its affiliates operating in the United States, as well as their respective agents and/or representatives. "Customer" shall mean the person for which the Company is rendering service, as well as its principals, agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives; "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form; "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier"; "Third Parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".

2. Company as Agent. The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the customer and other dealings with government agencies. The Company is also authorized to act on behalf of the shipper in order to effectuate the selection of Third Parties as set forth in paragraph 4. Further, as more fully set forth in paragraph 7 below, said Third Parties may limit their liability and may operate under terms and conditions further defining the rights, obligations, and defenses of those Third Parties. The Company is also authorized to agree to those terms on behalf of the Customer. As to all other services, the Company acts as an independent contractor.

3. Limitation of Actions. (a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within 90 days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer. (b) All suits against Company must be filed and properly served on Company as follows: (i) For claims arising out of ocean transportation, within one (1) year from the date of the loss; (ii) For claims arising out of air transportation, within two (2) years from the date of the loss; (iii) For claims arising out of the preparation and/or submission of an import entry(s), within seventy-five (75) days from the date of liquidation of the entry(s); (iv) For any and all other claims of any other type, within two (2) years from the date of the loss or damage. Where treaty, statute, or common law preclude the shortening of a limitations period, then the applicable limitations period shall be the shortest allowable by law.

4. No Liability For The Selection or Services of Third Parties and/or Routes. Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and Company shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a Third Party or the agent of a Third Party; all claims in connection with the Act of a Third Party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company. The Company assumes no liability as a carrier and shall not be held liable for any loss, damage, expense or delay to the goods unless the Company actually carries, physically handles the goods or assumes responsibility for the movement and transport of the goods under a separate bill of lading, air waybill or other contract of carriage, in which event the terms thereof (to the extent in conflict with the instant terms and conditions), shall govern.

5. Quotations Not Binding. Quotations as to fees, rates-of-duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon the Company unless the Company in writing specifically undertakes these services at a specified rate. Under those circumstances, the Customer hereby understands and agrees that the Company may be relying upon the rates of sub-contracting third-party service providers in offering these rates, and that those rates may be subject to space availability; or price fluctuations; and where said sub-contracting third-party service providers do not honor quoted rates, or where the agreed upon rates are otherwise not honored due to circumstances beyond the control of the Company, Company shall not be liable therefor and in no event shall be liable in excess of the amounts as specified in Paragraph 9.

6. Reliance On Information Furnished. Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, any other government agency and/or Third Parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customer's behalf. In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Company relies on the correctness of documentation or other information, whether in written or electronic format, furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

7. Declaring Higher Value To Third Parties. Third Parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charge therefor. The Customer expressly acknowledges that there is a distinction between excess valuation coverage, which increases the legal liability amount of the subject service provider beyond a released value rate, and a request for insurance (insurance is covered in paragraph 8 below). In the absence of written instructions from the Customer, and/or in instances in which the Third Party does not agree to a higher declared value, at the Company's discretion, the goods may be tendered to the Third Party subject to the terms of the Third Party's limitations of liability and/or terms and conditions of service.

8. Insurance. Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance. If the Customer does in fact request insurance, and if the appropriate premium is paid and such fact recorded on the face hereof, said insurance is placed under an open policy of insurance for the amount requested as set out on the face hereof (recovery being limited to the actual value of goods lost or damaged up to the insured value). This shall in no way serve as a declaration of value for carriage and shall not increase the liability limitations of the Company. Further, the insurance is subject to the terms, conditions and coverage (from which certain risks are excluded) of the open policy, relevant portions of which are available upon request. Claims under such policy must be reported immediately in accordance with the terms and conditions of said policy. The Company makes no warranties or representations as to coverage or entitlement to payment, and the Company shall have no liability for any action or inaction of the insurer, including but not limited to disposition of any claim under the policy; in any event, any claim relating to insurance would be subject to the limitation of liability in paragraph 9 herein.

9. Disclaimers; Limitation of Liability. (a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services and any and all warranties, whether statutory, express or implied are hereby deemed waived and specifically disclaimed; (b) subject to (d) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of Third Parties; (c) in connection with all services performed by the Company, Customer may obtain additional liability coverage up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s); (d) in the absence of additional coverage under (c) above, the Company's liability shall be limited to the following: (i) where the claim arises from the Company's warehousing, fulfillment, and/or consolidation services occurring in the Company's facilities or premises, including owned or leased property, \$50.00 per pound of goods lost or damaged; or (ii) where the claim arises from activities relating to "Customs business", \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less; and (e) in no event shall Company be liable or responsible for acts of third parties; or for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages, including any and all loss or damages arising from delay of services. The Company shall have no liability if it is prevented from or delayed in performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network including reduction in bandwidth, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or any other force majeure event. In any event, however, the Company's liability (if any) is limited in accordance with this paragraph 9. The Customer agrees that the Company shall in no event be liable for any loss, damage or expense incurred by the Customer, whether or not arising out of delay or physical damage to the goods, or other damage to goods or property belonging to Third Parties, or any other damages

including but not limited to documentary error(s), mis-delivery, loss of property, tender to unauthorized parties, or any other act or omission or other cause resulting from the negligence or other fault of the Company for any amount in excess of the limitations of liability set forth in this paragraph 9. Where the Company acts as a customs broker, it will not be liable for late filing of ISF due to the ISF importer's inability or failure to timely provide information to the Company. The Company, shall have no responsibility for those shipments that occur despite the non-filing of the ISF. The Company's Terms and Conditions of Service preclude or limit liability to \$50.00 per transaction or shipment and bar all claims for punitive, incidental and consequential damages. The Customer hereby agrees that whether or not the Company has agreed to pack, load, or otherwise package or secure goods, the Company is not liable for exposure to rain or other moisture unless the Company specifically agrees in writing to protect the goods from same, and the Customer pays additional and special compensation. The Company shall further not be liable for any loss, damage, delay, or other result caused by Customer's duty or responsibility of compliance with governmental regulation or order, but in any event any such loss, damage, delay or result would be limited in accordance with the liability limitations set forth in this paragraph 9.

10. Contract Carriage and Opting out of the Carmack Amendment

(ICC Termination Act of 1995). Where the Carmack Amendment (ICC Termination Act of 1995, and hereinafter referred to as "The Act"), might otherwise be applicable, the parties hereto; or any other intended beneficiary of the services provided by the Company, together with the Company, hereby specifically and expressly agree to opt out of the application of the Act. Said parties specifically and expressly agree to waive any and all rights and remedies under the Carmack Amendment and/or ICC Termination Act of 1995 and carriage of goods which would otherwise be subject to the Act. Specifically the aforementioned parties hereby agree that the provisions of the Act which pertain to notice of claim requirements, time for suit provisions, and limitations of liability provisions are without application. All services relating to the transportation of goods, or other services provided hereunder will subject to the liability limiting provisions of Paragraph 9 herein, as well as the other terms and conditions contained herein.

11. Advancing Money. All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to Customer; the granting of credit to Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

12. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of Customer's merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any applicable Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

13. C.O.D. or Cash Collect Shipments. Company shall use reasonable care regarding written instructions relating to "Cash/Collect or Delivery (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have liability if the bank or consignee refuses to pay for the shipment. A) Goods received with Customer's or any other person's instructions to "Collect on Delivery" ("C.O.D.") by drafts or otherwise, or to collect any specified terms in time drafts or otherwise, are accepted by Company only upon the express understanding that it will exercise reasonable care in selection of a bank, correspondent, carrier or agent to whom it will send such item for collections, and the Company will not be responsible for any act, omission, default, suspension, insolvency or want of care, negligence or fault of such bank, correspondent, carrier or agent, nor for any delay in remittance lost in exchange or during transmissions, or while in the course of collection; and in no event would any such liability exceed the amounts as set forth in paragraph 9 above. B) Company shall not be liable for the fraudulent acts of third parties, or forgery of documentation presented to Company; and in no event would any such liability exceed the amounts as set forth in paragraph 9 above. C) Company shall be entitled to rely upon the facial validity of documents presented to Company and/or upon written instructions from the Customer or Customer's agents or representatives. D) Mis-delivery shall be defined as the delivery of cargo to a person other than one authorized to receive same, and shall further encompass delivery to the proper party while failing to adhere to particular shipping instructions, including but not limited to the release against documents, payment, or bank guarantee or bank release. In no event shall the Company be liable for mis-delivery in excess of the amounts as set forth in paragraph 9, herein.

14. Costs of Collection. In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.

15. General Lien and Right To Sell Customer's Property. a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both; Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien. b) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer. c) In the event any property or collateral including goods and documents related thereto in the Company's possession, custody or control or en route is lined, sold, abandoned, auctioned, or otherwise disposed of, and in the event that any third-party claims any right or entitlement to said goods or collateral, the Customer shall indemnify and hold harmless the Company from any and all such claims. d) In exigent circumstances where the Company believes in good faith that the goods are about to deteriorate or decline in value to less than the amount of the lien provided for above, the above notice provision may be shortened to mitigate this loss, and the lien may be enforced within seven days; or otherwise to the shortest period allowable by law, whichever period is shorter. e) Further, it should be noted that the Company shall be under no obligation to store, maintain, or hold any cargo or shipment for any period of time in excess of the contemplated service. In the event the Customer fails to meet its obligations to provide logistics information including routing, pick-up information, or funds required for storage, demurrage, detention, or on-forwarding, and in the absence of prior written agreement acknowledged by the Company, at the Company's sole discretion, these goods may be subject to a determination of abandonment. In such circumstance the Company will provide written notice to the Customer of its intent to deem the cargo abandoned. In the event the Customer (or any interested party) fails to respond, in writing to the above notice, within thirty days, said cargo shall be deemed abandoned.

16. No Duty To Maintain Records For Customer. Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under applicable laws and regulations (including the U.S. Customs regulations); unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by such applicable laws and regulations, but shall have no obligation to act as a "record-keeper" or "recordkeeping agent" for Customer.

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

18. Preparation and Issuance of Bills of Lading. Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall only upon and use the cargo weight supplied by Customer.

19. No Modification or Amendment Unless Written. These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

20. Compensation of Company. The compensation of the Company for its services shall be included with and in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, promptly upon request the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

21. Severability; No Waivers. In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

22. Governing Law; Consent to Jurisdiction and Venue. These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of New York, without giving consideration to principles of conflict of law. Customer and Company irrevocably consent to the jurisdiction of the United States District Court and the State courts of New York; agree that any action relating to the services performed by Company, shall only be brought in said courts; consent to the exercise of *in personam* jurisdiction by said courts over it, and further agree that any action to enforce a judgment may be instituted in any jurisdiction.