



## Air Freight Terms and Conditions

**1. AGREEMENT:** By tendering a shipment to Watchpoint Logistics, Inc. ("Watchpoint Logistics"), Shipper agrees to all of the terms and conditions set forth below and to any rates (including fees, charges, and surcharges). This Agreement supersedes and negates any claimed, alleged, or asserted oral or written contract, promise, representation, or understanding between the parties except with respect to any written agreement that expressly references and supersedes this Agreement which other agreement is signed by an authorized representative of both parties after the effective date of this Agreement. If the cargo is tendered pursuant to any bill of lading or air waybill or any other shipping document, this Agreement will govern in the event of a dispute between this Agreement and such document except to the extent otherwise mandated by compulsorily applicable law. This Agreement may be modified only by written amendment signed by both Shipper and an officer of Watchpoint Logistics. Shipper hereby acknowledges and agrees that Watchpoint Logistics, as a freight forwarder or property broker, may subcontract with underlying service providers in order to arrange for transportation under this Agreement. Shipper consents to all such instances of subcontracting. Any subcontractor used by Watchpoint Logistics to perform any services under this Agreement including, but not limited to, any carriage covered by a bill of lading, air waybill or similar document, will be entitled to all limitations and exclusions to and from liability and all other protections to which Watchpoint Logistics is entitled pursuant to this Agreement. Shipper acknowledges and agrees that when Watchpoint Logistics arranges for all-ground transportation by motor carrier, Watchpoint Logistics shall be deemed to be operating as a property broker and not a freight forwarder.

**2. SHIPPER'S RESPONSIBILITIES:** Shipper shall comply with all federal, state, local, and foreign laws applicable to the shipment, including but not limited to all customs, import, export, and re-export laws of any country to, from, through, or over which the shipment may be carried. Shipper shall furnish such information and complete and attach to the air waybill or other shipping documents such documents as are necessary to comply with such laws. Shipper shall ensure that each package is accurately and completely described on the shipping document, is properly marked and addressed, is packaged adequately to protect the enclosed goods to ensure safe transportation with ordinary care in handling, and, except as noted in writing, is in good order and condition. If Shipper wishes to tender cargo requiring special care or handling, including, but not limited to, shipments requiring temperature control, Shipper must give written notice of Watchpoint Logistics of such requirements and must obtain the written acknowledgment of Watchpoint Logistics to comply with such instructions prior to physical tender of the shipment. Watchpoint Logistics shall have no obligation to comply with any special handling instructions unless acknowledged in writing prior to pick-up of the shipment. With respect to shipments requiring temperature control, Shipper shall provide Watchpoint Logistics with appropriate temperature ranges and shall ensure that the shipment is at the appropriate temperature at the time of tender. Watchpoint Logistics' sole obligation with respect to requests for temperature-controlled service shall be to arrange for transportation in cargo holds or containers that are set within appropriate temperature ranges. In no event shall Watchpoint Logistics have any responsibility with respect to packaging of the shipment itself, including but not limited to, any obligation to open any packaging or otherwise ensuring that the internal contents or temperatures of any package tendered by Shipper remain within appropriate ranges. Nor will Watchpoint Logistics have any responsibility to remove or replace any cold packs or other devices included in shipment packaging for the purpose of maintaining approved temperature ranges. Shipper hereby acknowledges that Watchpoint Logistics may reject, abandon and/or release any item consigned by Shipper to Watchpoint Logistics that Watchpoint Logistics has declared to be unacceptable or which Shipper has undervalued for customs purposes or misdescribed on the shipping documents, whether intentionally or otherwise, without incurring any liability whatsoever to Shipper. Shipper agrees to save and defend, indemnify and hold Watchpoint Logistics harmless from all claims, damages, fines, losses and expenses arising from a failure to comply with this Section.

**3. DANGEROUS GOODS:** All packages containing hazardous materials/dangerous goods shall be limited to the materials and quantities authorized for air transportation under the U.S. Department of Transportation hazardous materials transportation regulations (49 C.F.R. Parts 171, 172, and 173), the current edition of the International Air Transport Association (IATA) Dangerous Goods Regulations (together "Regulations") and any other rules and regulations applicable to such shipments. Shipper and its agents shall comply with the Regulations regardless of the routing or the mode by which the shipment is transported. Each shipment requiring a Shipper's Declaration for Dangerous Goods under the Regulations shall be accompanied by properly executed documents in conformance with the requirements of the Regulations. If a shipment contains hazardous materials/dangerous goods, the contents shall be – and Shipper hereby certifies they are – fully and accurately described on the air waybill or other shipping document by proper shipping name and are classified, packaged, marked and labeled, and in proper condition for carriage by air (or, if tendered for other mode of transportation, then for carriage by such other mode) according to the Regulations and any other applicable



national governmental regulations. Shipper hereby declares that all of the applicable air transport requirements have been met.

**4. TERM AND LOCATIONS OF ACCEPTANCE:** This Agreement is intended to cover a series of shipments and shall apply each time Shipper tenders or arranges for a tender, and Watchpoint Logistics accepts, a shipment, beginning on the earlier of the date Shipper first tenders cargo to Watchpoint Logistics or the date set forth at the end of the Agreement and continuing until either party terminates it at any time for any reason by giving the other party thirty (30) days' written notice. This Agreement shall not, however, require Shipper to tender, or Watchpoint Logistics to accept, any particular shipment or any minimum number of shipments. Watchpoint Logistics is hereby authorized and instructed to accept shipments tendered by Shipper, or at Shipper's request, at any location of Shipper, of Shipper's divisions, subsidiaries, parent companies, affiliates, or other entities controlling, controlled by, or under common control with Shipper, of Shipper's designated representative, or of third-party premises designated by Shipper.

**5. CARGO SECURITY AND CONSENT TO INSPECT:** Shipper acknowledges that Watchpoint Logistics, like all indirect air carriers, is required by the federal Transportation Security Administration ("TSA") to maintain an air cargo security program. If Shipper is acting as an agent, authorized representative, broker, carrier, or other freight intermediary for any other person or entity, Shipper shall disclose that fact to Watchpoint Logistics and shall assist Watchpoint Logistics in complying with the TSA requirements by enabling Watchpoint Logistics to obtain any necessary documents from, or otherwise qualify, such other person or entity. As required by TSA regulations (49 C.F.R. § 1548.9(b)), Shipper hereby consents to an inspection of all cargo including all screening of cargo from this date forward.

**6. LIMITATIONS ON LIABILITY, U.S. DOMESTIC SHIPMENTS.** Subject to Section 10 (Maximum Liability):

(a) Air Shipments. In consideration of the service level and/or rates offered for any shipments tendered for transit by air, other than international transportation by air with respect to which Watchpoint Logistics has issued an air waybill in Watchpoint Logistics' own name which services are governed by Section 7 below, and without regard to whether such shipment actually moves, in whole or in part, by air, rail, or motor carrier, Shipper agrees that Watchpoint Logistics shall only be liable for damage, loss or delay resulting from its negligence or fault and that its liability is limited to least of the following:

- (i) The value of the goods actually damaged, lost, or delayed;
- (ii) U.S. \$0.50 per pound (where no value is declared) multiplied times number of pounds that are actually damaged, lost, or
- (iii) delayed, but not less than U.S. \$50.00 per shipment; or
- (iv) In the case of a declared value, the declared value of the goods actually damaged, lost, or delayed.

(b) Ocean Shipments. In consideration of the service level and/or rates offered for any shipments tendered for transport by ocean or water, in whole or in part, without regard to whether such shipment actually moves by ocean, rail or motor carrier, Shipper agrees that Watchpoint Logistics shall only be liable for damage, loss, or delay resulting from its negligence or fault and that its liability is limited to the least of the following:

- (i) The value of the goods actually damaged, lost, or delayed;
- (ii) U.S. \$500.00 per package (A "package" shall constitute the entire intermodal shipping container or trailer where the shipment is tendered as a complete container or is transported under a rate for the exclusive use of a container). Where the shipment is tendered as less than an intermodal shipping container or trailer in volume and weight and is consolidated with other shipments into an intermodal shipping container or trailer, Watchpoint Logistics' maximum liability shall be U.S. \$500.00 for the entire container, or;
- (iii) In the case of a declared value, the declared value of the goods actually damaged, lost, or delayed.

To the extent not inconsistent with this provision, all other requirements and terms of the Carriage of Goods by Sea Act ("COGSA") shall apply to the liability of Watchpoint Logistics for Ocean Shipments hereunder.

(c) Truck Shipments. For any shipments transported by motor carrier, Shipper agrees that Watchpoint Logistics shall only be liable for damage, loss, or delay resulting from its negligence or fault and that its liability is limited to least of the following:

- (i) The value of the goods actually damaged, lost, or delayed;
- (ii) U.S. \$0.50 per pound (where no value is declared) multiplied times number of pounds that are actually damaged, lost, or delayed, but not less than U.S. \$50.00 per shipment; or
- (iii) In the case of a declared value, the declared value of the goods actually damaged, lost, or delayed.

**7. LIMITATION ON LIABILITY, INTERNATIONAL SHIPMENTS BY AIR.** Subject to Section 10 (Maximum Liability):

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Convention, if applicable, shall govern the shipment – where the "Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, done at Montreal, May 28, 1999, except that such term shall mean the



Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Warsaw on October 12, 1929 ("Warsaw Version") in the case of shipments to which the Warsaw Version is applicable, or the Warsaw Version, as amended by the Hague Protocol in 1955 ("Hague Version") in the case of shipments to which the Hague Version is applicable, or the Hague Version as amended by Protocol No. 4 of Montreal, 1975 ("Montreal Version") in the case of shipments to which the Montreal Version is applicable, including subsequent amendments and addendums. Where the Convention applies, Watchpoint Logistics' liability for all proven loss, damage, or delay to cargo is limited to 19 Special Drawing Rights per kilogram, unless a higher value is declared in advance by Shipper and a supplementary charge is paid to Watchpoint Logistics.

**8. WHEN SHIPPER TENDERS AN INTERNATIONAL SHIPMENT.** (a) By tendering or entering a shipping document, Shipper authorizes Watchpoint Logistics to prepare and sign on Shipper's behalf an international shipping document and to otherwise arrange for services of third parties on the usual terms and conditions on which the third parties offer services, and (b) Watchpoint Logistics hereby reserves the option to act as agent of the carrier, instead of as a forwarder, in which event the direct carrier's tariffs shall apply to the Shipment.

**9. DECLARATION OF VALUE. WHEN SHIPPER DECLARES A VALUE, ADDITIONAL CHARGES SHALL APPLY.** For shipments having declared value over the applicable limitation, Watchpoint Logistics shall be given advance notice prior to pick up. In the event Shipper declares a lesser value than the actual value of the merchandise in the shipment, Watchpoint Logistics' liability shall be limited to the applicable percentage of value declared and not the entire amount declared on the airway bill, ocean bill of lading or other shipping document.

**10. MAXIMUM LIABILITY.** Liability for aggregate losses at any one time at any one place is limited to U.S. \$100,000.00.

**11. LIABILITIES NOT ASSUMED:**

(a) WATCHPOINT LOGISTICS SHALL NOT BE LIABLE for Shipper's acts or omissions, including, but not limited to, improper packing, securing, marking or addressing; loss or damage to materials not acceptable for transport or prohibited items; loss, damage or delay caused by events Watchpoint Logistics cannot control, including, but not limited to, electrical or magnetic injury, erasure, acts of God; public authorities acting with actual or apparent authority; strikes; labor disputes; weather; mechanical failures; aircraft failures; unavailability, in whole or in part, of fuel; civil commotions; acts or omissions of customs or quarantine officials; the nature of the freight or any defects thereof; public enemies; hazards incident to a state of war; acts of terrorism; and by acts, defaults, or omissions of Shipper or consignee for failure to observe the terms and conditions of the contract of carriage contained in this shipping document.

(b) WATCHPOINT LOGISTICS SHALL NOT BE LIABLE for consequences of failure to pick-up, transport, or deliver any shipment by a specific date or a specific time, regardless of the cause of such delay.

(c) WATCHPOINT LOGISTICS SHALL NOT BE LIABLE IN ANY EVENT FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, INCOME, UTILITY, INTEREST, OR LOSS OF MARKET, WHETHER OR NOT WATCHPOINT LOGISTICS HAD KNOWLEDGE THAT SUCH DAMAGE MIGHT BE INCURRED.

(d) WATCHPOINT LOGISTICS SHALL NOT BE LIABLE in any event for damage to electronic or photographic images or recordings in any form.

**12. CLAIMS:** The following provisions apply to all claims for loss, damage, delay, or shortage:

(a) Air Shipments. Shipper shall give Watchpoint Logistics notice for any damage, shortage or loss in writing within 10 days after delivery of the shipment or, for delay within 17 days of the day of tender.

(b) Ocean Shipments. Shipper shall give Watchpoint Logistics written notice of any claim for damage, shortage or loss in writing within 10 days after the delivery of the shipment to consignee. In the event that Shipper, or any party other than Watchpoint Logistics, arranges for the shipment to be picked up at the port, notice of claim shall be given within three days from the date such carrier, warehouseman or other persons takes possession of the shipment at the port.

(c) Truck Shipments. Shipper shall give Watchpoint Logistics notice for any damage, shortage, or loss in writing within 30 days after delivery of the shipment or, for delay, within 45 days of the day of tender.

(d) Notice of Claim. The notice of claim shall include complete consignor and consignee information, the air waybill, bill of lading or shipment reference number, the date of the shipment, the number of the pieces, and the shipment weight.

Failure to provide Watchpoint Logistics with notice in the manner and within the time limits set forth herein shall result in the claim being denied.

Watchpoint Logistics is not obligated to act on the claim until all transportation charges have been met. The claim amount may not be deducted from these charges or from any outstanding balance owed Watchpoint Logistics without the prior written approval of Watchpoint Logistics. All original shipping containers, packages and contents shall be made available for Watchpoint Logistics' inspection and retained until the claim is resolved. Except as otherwise provided herein, the



receipt of the shipment by the consignee without written notice of damage on the waybill or delivery receipt shall be construed as prima facie evidence that the shipment was delivered in good condition.

For claims involving concealed damage not discovered at the time of delivery, Shipper or consignee shall notify Watchpoint Logistics as promptly as possible after the discovery of the damage, and in any event, not less than 7 days after the date of delivery. Shipper's failure to provide such notice shall result in a presumption that the loss or damage so noted occurred subsequent to delivery which presumption may only be overcome by clear and convincing evidence to the contrary. Under no circumstances shall Watchpoint Logistics be liable for loss or damage to external shipping containers used in the transportation of the shipment. Failure of Shipper to comply with the notice provisions specified herein shall be an absolute bar to any lawsuit filed against Watchpoint Logistics.

**13. MATERIAL NOT ACCEPTABLE FOR TRANSPORT:** Unless otherwise expressly provided in a separate written agreement signed by both Shipper and an officer of Watchpoint Logistics, and subject to any conditions or restrictions contained therein, the following articles shall not be accepted for carriage: any shipment prohibited by law; blood, urine, bodily fluids, and other diagnostic specimens; firearms; fireworks; alcoholic beverages; tobacco products; plants and plant materials; fragile items; perishables (including meat, fish, and poultry); pharmaceuticals; live animals; animal remains; shipments requiring special licenses for their transportation; original works of art; antiques; bonds; collectible stamps; coins of any kind; currency; currency equivalents; furs; fur clothing; gems or stones (cut or uncut); industrial diamonds; gold or silver jewelry; pearls; precious metals; negotiable securities; time sensitive written material (such as: contract bids; proposals; when the declared value exceeds U.S. \$0.50 per pound); household goods and/or personal effects; one-of-a-kind articles or models, Prototypes; and anything with an unusual or extraordinary value. Watchpoint Logistics shall not be liable for any loss, damage, delay, liabilities, or penalties resulting from the transportation of any of the foregoing articles, however described or misdescribed in the shipping documents. Watchpoint Logistics reserves the right to reject any shipment for any reason, including but not limited to safety or security concerns. The value of shipments involving documents, records and data records, without limitation as to the type, including but not limited to electronic or paper hard copy, shall be limited to the value of the actual media upon which it is contained. As such, electronic records will be considered of no greater value than the lesser of the cost to repair, cost to replace, actual value, released value or declared value of the tape, disc or other media being transported. Further, no costs, expenses, or claims of any nature will be assumed or accepted which is associated with the replication, duplication or recreation of lost data. In the case of paper documents, the value shall be limited to the value of the paper without reference to any legal rights or obligations evidenced thereby. The foregoing shall apply regardless of declarations made or documentation on any shipment paperwork.

**14. COLLECT ON DELIVERY (C.O.D.):** C.O.D. service is provided only if Shipper has an account with Watchpoint Logistics and only under the following conditions:

- (a) Shipper shall identify the shipment as a C.O.D. shipment by entering the amount to be collected in the "C.O.D. Amount" Box on the front of the shipping document;
- (b) Shipper shall specify the type of payment that shall be obtained (for example, cash, check, money order, or cashier's check) in the "Special Instructions" Box on the front of the shipping document;
- (c) Watchpoint Logistics shall not guarantee or verify that a check, money order, cashier's check, or other such financial instrument is valid or negotiable; all payments are collected at Shipper's risk; and
- (d) each shipping container shall be clearly marked C.O.D. and the amount to be collected shall be marked on the side of the container containing the address label. Unless inserted otherwise on the face of this shipping document, the C.O.D. amount of the shipment shall be deemed to be the declared value for carriage amount. This declared value for carriage amount in excess of the limits set forth in Section 6 of this Contract shall be subject to an excess valuation charge.

**15. SUBSTITUTION OF ROUTING, MODE, CARRIER, OR EQUIPMENT:** Shipper hereby authorizes Watchpoint Logistics to choose or select any shipment routing, alternative carrier, alternative mode of transport, or equipment (regardless of what may be shown on the face of the shipping documents) for any reason in order to attempt to meet the service level Shipper has requested, including any express motor carrier or other company to transport this shipment, and Watchpoint Logistics' obligation is limited to delivery of Shipper's shipment to any such company. Transportation by air of any shipment is subject to availability of equipment and the space therein.

**16. ICC TERMINATION ACT WAIVER:** Shipper and Watchpoint Logistics expressly waive all rights and remedies under 49 U.S.C. Subtitle IV, Part B to the extent such rights and remedies conflict with the provisions of this Agreement as permitted by 49 U.S.C. §14101(b)(1).

**17. PRICING AND ACTUAL/DIMENSIONAL WEIGHT:** Rates and charges for the carriage of the shipment by Watchpoint Logistics shall be as established by separate agreement orally or in writing by the parties prior to shipment and shall be



based on actual or dimensional weight, whichever is greater. Dimensional weight is calculated by dividing the cubic inches (Length X Width X Height) by 194 for domestic shipments or by 166 for international shipments.

**18. LIABILITY FOR CHARGES AND CLAIMS:** Shipper, the consignee, and the third party, if applicable shall be liable, jointly and severally,

(a) for all unpaid charges on account of a shipment pursuant to this contract, including, but not limited to, transportation charges and possible surcharges; customs and duty assessments, including fees related to Watchpoint Logistics' prepayment of same; governmental penalties and fines; taxes; any costs Watchpoint Logistics may incur in returning the shipment to Shipper or warehousing the shipment pending disposition; and the cost of collection of all such charges, including court costs and attorneys' fees; and

(b) to pay or indemnify Watchpoint Logistics for all claims, fines, penalties, damages, costs, or other sums that may be incurred by Watchpoint Logistics arising out of or in connection with Shipper's (including Shipper's agents' or employees') negligence, gross negligence, willful misconduct, other culpable acts or omissions, and any breach or violation of this Agreement. All invoices not paid within 30 days of invoice date shall be subject to an interest charge of one and one-half percent (1.5%) per month or eighteen percent (18%) per year.

**19. LIEN RIGHTS:** Watchpoint Logistics shall have a general lien on any and all documents and shipments of Shipper under Watchpoint Logistics' actual or constructive possession or control for monies owed to Watchpoint Logistics with regard to the shipment on which the lien is claimed, prior shipment(s), or both. In the event Watchpoint Logistics exercises its lien, it shall notify Shipper of the exact amount of monies due and owing by Shipper. Watchpoint Logistics shall also notify Shipper of all storage and continuing charges accruing on shipments subject to Watchpoint Logistics' lien. Watchpoint Logistics shall release its lien upon receipt of payment by Shipper of the total amount due. In the event Shipper does not satisfy Watchpoint Logistics' lien within fifteen (15) calendar days of Watchpoint Logistics' exercise of the lien, Watchpoint Logistics shall have the right, but not the obligation, to sell such shipment(s) at public or private sale or auction without further notice to Shipper.

**20. PRIVACY ACT NOTICE:** If Shipper is an individual seeking to tender cargo for air transportation, Shipper shall advise Watchpoint Logistics of that fact, and Watchpoint Logistics shall, if required by law, provide Shipper with a Privacy Act Notice.

**21. GENERAL PROVISIONS.** In the event any portion of this Agreement is found to be void under applicable laws, all other provisions of this Agreement shall remain in effect. The failure or delay on the part of either party to exercise any right that is not subject to an express time limitation shall not operate or be construed to operate as a waiver of that right.

**22. TIME FOR SUIT:** Watchpoint Logistics shall be discharged of all liability unless suit is brought in the proper forum within one year after the delivery of the goods or the day that the goods should have been delivered. In the event that a one-year time period shall be found contrary to any convention or law that is compulsorily applicable, the period prescribed by such convention or law shall apply. Should Watchpoint Logistics successfully defend itself for any legal actions brought by any party with an interest in this shipment, Watchpoint Logistics shall be entitled to reasonable attorney fees and costs.

**23. APPLICABLE LAW AND CHOICE OF FORUM.** These conditions and any act or contract to which they apply shall be governed by the applicable law of the United States and of the State of California, without regard to the choice-of-law rules of California or any other State. SHIPPER AND WATCHPOINT LOGISTICS AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN STATUTES, REGULATIONS, OR COMMON LAW, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING SAN FRANCISCO, CALIFORNIA. SHIPPER AND WATCHPOINT LOGISTICS HEREBY CONSENT TO THE PERSONAL AND SUBJECT MATTER JURISDICTION OF SUCH COURTS.

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