ShipNorthAmerica Network

STANDARD TRADING CONDITIONS

1. Definitions "Company" means ShipNorthAmerica Network Inc.

   "Conditions" means the terms and conditions set out in these Standard Trading Conditions.

   "Dangerous Goods" means dangerous goods as statutorily defined in the applicable Canadian Federal (Transportation of Dangerous Goods Act) or Provincial (Dangerous Goods Transportation Act) legislation or Regulations and means hazardous materials as defined in applicable US legislation (Hazardous Materials Transportation Act).

   "Goods" means all tangible items, products, supplies and equipment including packaging and containers provided by the Shipper for transportation.

   "Instructions" means a statement of the Shipper's specific requirements.

   "Owner" means the owner of the Goods for whom the services are provided. "Parties" means the Company and the Shipper unless otherwise specified.

   "Shipper" means any party at whose request or on whose behalf the Company provides any broker services.

2. Company' s Role and Responsibilities

   The Company is a third-party logistics (3PL) service provider that makes the arrangements for transportation of Shipper's Goods through the enlistment of licensed and insured carriers pursuant to these Standard Trading Conditions. The Company acts as a broker in providing such services and does not assume responsibility for the shipment.

   a. The Company's responsibility under these Standard Trading Conditions is limited to arranging for, but not actually performing, transportation of Shipper's or Owner's Goods. The Parties may, upon written mutual agreement, include additional service terms. In the case of a conflict between any of these Conditions and any term of a tariff agreement between the Company and Shipper, the tariff agreement shall have precedence to the extent necessary to resolve such conflict.
   b. Shipper is not restricted from tendering Goods to other brokers, or directly to motor carriers. The Company is not restricted from arranging transportation for other parties.
   c. The Company shall perform its duties with reasonable care.
   d. The Company shall carry out its duties with due dispatch and within a reasonable time but is not responsible for the departure or arrival dates or times of Goods.
   e. The Company shall take reasonable steps to carry out Shipper's Instructions accepted by the Company.
   f. If, notwithstanding that the Company has advised the Shipper that believes it is in the Shipper's best interests to depart from any Instructions, the Shipper elects to proceed with such Instructions, the Company shall not incur any additional liability as a consequence.

g. If, after a shipment has been accepted by the Company, events or circumstances come to the attention of the Company, which in the opinion of the Company shall make it difficult for the Company to fulfill its duties, the Company shall take reasonable steps to inform the Shipper and seek further Instructions.

3. Shipper’s Role and Responsibilities

a. The Shipper is deemed by the Company to be competent and to have reasonable knowledge of matters affecting the conduct of its business, including terms of sale and purchase, and all other matters relating thereto.

b. The Shipper shall give to the Company sufficient and executable Instructions. The Company will make reasonable effort to promptly advise the Shipper if it is unable or unwilling to accept the Instructions and does not assume any liability for non-performance related to such Instructions which are not accepted by the Company.

c. The Shipper warrants that it is either the Owner or the authorized agent of the Owner of the Goods and that it is accepting these Standard Trading Conditions for itself and where applicable, as agent for and on behalf of the Owner.

d. The Shipper warrants that the description and particulars of any Goods furnished by or on behalf of the Owner are complete and accurate.

e. When Instructions are accepted by the Company to collect freight, duties, charges, or other expenses from the consignee or any other person, the Shipper shall remain responsible for these amounts if they are not paid by such consignee or other person immediately when due.

f. At the time of requesting services and prior to acceptance by the Company, the Shipper shall warn the Company if any Goods are liable to taint or affect other Goods, or is likely to harbour or encourage vermin or other pests. Notwithstanding such knowledge or acceptance by Company or carrier, the Shipper shall indemnify the Company against any liability, loss, damage, costs, or expenses incurred by the Company as a consequence of the Shipper’s failure to do so in a timely manner.

g. The Shipper warrants that the Goods have been properly and sufficiently prepared, packed, stowed, labeled, and/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.

h. Where the Goods are carried in or on any transport unit, the Shipper warrants that the transport unit has been properly and competently loaded, that the Goods are suitable for carriage in or on the transport unit, and that the transport unit is in a suitable condition to carry the Goods.

4. Proof of Delivery

If required, the Company will provide Shipper with proof of acceptance and delivery in the form of a signed bill of lading or proof of delivery, as specified by Shipper. Shipper’s insertion of the Company’s name on the Bill of Lading shall be for Shipper convenience only and shall not change the Company’s status as a Goods broker. The terms and conditions of any freight documentation used by the Shipper, the Company, or carrier selected by the Company, may not supplement, alter, or modify the Company’s status as a Goods broker.

5. Quoting, Billing, and Payment

The Company will invoice Shipper for its services in accordance with the rates, charges, and provisions set forth in spot quotes provided to and accepted by the Shipper, or in tariff agreements mutually agreed to between the Parties.

a. Spot quotations for single shipments remain valid only for the term specified on the quote after which they are subject to withdrawal or revision by Company.

b. Other quotations for ongoing services, including tariff agreements with the Shipper, remain valid for the term specified on the document.

c. Unless otherwise provided in the quotation or tariff, the Company may, after acceptance, revise quotations or charges (upon notice) in the event of changes beyond the Company's reasonable control, including changes in exchange rates, rates of freight, carrier surcharges, or any charges applicable to the Goods.

d. Generally, the Company will invoice the Shipper prior to billing from carriers and other third parties involved in the shipment. Where additional party charges have been applied, the Company will review the charges and, where legitimate, issue an adjusted invoice to the Shipper. The Company will not invoice the Shipper for any additional charges incurred because of error or omission on the part of the Company.

e. The Shipper agrees to pay the Company's invoice within terms of invoice date without deduction or setoff.

f. Payment of the freight charges to the Company shall relieve Shipper, consignee, or other responsible party of any liability to the carrier for non-payment of such freight charges, and the Company hereby covenants and agrees to indemnify the Shipper, consignee, or other responsible party against such liability.

6. Specified Conditions of Carriage

The Shipper understands and agrees that the carrier assigned by the Company has the authority to execute a bill of lading in respect of the transportation of the Shipper's Goods, and that the carriage of the Goods will be in accordance with the terms of the bill of lading. The essential terms of the bill of lading will be in accordance with the following:

a. Where a shipment of Goods has been accepted by a carrier or its agent, such carrier is liable for any loss or damage to such Goods in its or its agent's custody or control to the extent provided in these Standard Trading Conditions.

b. In the case of a shipment handled by two or more carriers, the originating carrier and the delivering carrier, in addition to any other liability under these Conditions, are, if the Goods being transported are lost or damaged while in the custody of any other carrier to whom this Goods are or have been delivered, jointly and severally liable with that other carrier for that loss or damage.

c. The originating carrier or the delivering carrier, as the case may be, is entitled to recover from any other carrier to whom the Goods are or have been delivered, the amount of the loss or damage that the originating carrier or delivering carrier, as the case may be, may be required to pay under these Conditions resulting from loss or damage to the Goods while in the custody or control of such other carrier.

d. Nothing in paragraph b) or c) deprives a Shipper or consignee of any remedies or right of action that the Shipper or consignee may have against any carrier.

e. The carrier is not liable for:

   - loss or damage to any of the Goods described in the bill of lading because of an Act of God, public enemies, riots, strikes, or a defect or inherent vice in the Goods being transported; or

   - loss or damage resulting from the act or default of the Shipper, the Owner of the Goods, or the consignee, the authority of law, quarantine or differences in weights of grain, seed, or other commodities caused by natural shrinkage.

f. The carrier is not bound to transport the Goods referred to in the bill of lading by any particular vehicle or in time for any particular market or otherwise than with due dispatch unless by agreement specifically endorsed on the bill of lading and signed by the parties to it.

g. In case of physical necessity, the carrier has the right to forward the Goods by any conveyance or route between the point of shipment and point of destination, but the liability of the carrier remains the same as though the entire carriage were by highway.

h. If Goods are stopped and held in transit at the request of a party entitled to make such request, the Goods are held at the risk of that party.

i. Subject to paragraph (j), the amount of any loss or damage for which the carrier is liable, whether or not such loss or damage results from negligence, is to be computed on the basis of the value of the Goods at the place and time of shipment (including the freight and other related charges if paid) unless a lower value has been represented in writing by the Shipper or has been agreed on between the parties to the bill of lading, or is determined by the classification or tariff on which the rates is based, in any of which events such lower value is the amount that governs the computation of the maximum liability of the carrier.

j. The amount of any loss or damage computed under paragraph i) must not exceed $2 per pound ($4.41 per kilogram), computed on the total weight of the lost or damaged shipment, unless a higher value is declared on the face of the bill of lading by the Shipper.

k. The carrier is not liable for loss or damage, to any of the Goods transported under the bill of lading unless notice of the loss or damage, setting out particulars of the origin, destination, and date of shipment of the Goods and the estimated amount claimed in respect of such loss or damage is given in writing to the originating carrier (or the delivering carrier) within 60 days after the delivery of the Goods, or, in the case of failure to make delivery, within nine months after the date of shipment of the Goods.

l. The final statement of Shipper’s claims must be filed within nine months after the date of shipment, together with a copy of the paid freight bill.

m. A carrier is not bound to carry any documents, or any articles of extraordinary value unless by special agreement to do so. If such Goods are carried without a special agreement and the nature of the Goods are not (disclosed) on the bill of lading, the carrier is not liable for any loss or damage in excess of the maximum liability stipulated in paragraph (j).

n. If required by the carrier, the freight and all other lawful charges accruing on the Goods must be paid before delivery, and if on inspection it is ascertained that the Goods shipped are not as described in the bill of lading, the freight charges must be paid on the Goods actually shipped, with any additional charges lawfully payable on the Goods.

o. Should the Shipper fail to indicate on the bill of lading that a shipment is to be transported prepaid, or should the Shipper fail to indicate the basis on which the shipment is to be transported, the carrier is entitled to transport the shipment on a freight-collect basis.

p. Every person, whether as principal or agent, shipping explosives or Dangerous Goods without previous full disclosure to the carrier or its agent of the nature of such goods is liable for all loss or damage caused by those explosives or dangerous goods and such goods may be warehoused at the Shipper’s risk and expense.

q. If, through no fault of the carrier, the Goods cannot be delivered, the carrier after having given notice to the Company, Shipper, and consignee that delivery has not been made, and after requesting disposal instructions, may, pending receipt of such disposal instructions, store the Goods in the warehouse of the carrier subject to a reasonable charge for storage, or, after notifying the Shipper of the carrier’s intention, may cause the Goods to be removed to and stored in a public or licensed warehouse at the expense of the Shipper without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

r. If notice has been given by the carrier under paragraph (q) and no disposal instructions have been received within 10 days after the date of that notice, the carrier may return to the Shipper at the Shipper’s expense all undelivered shipments with respect to which the notice has been given.

s. Subject to paragraph t), any alteration, addition, or deletion to the bill of lading must be signed or initialed by the Shipper or the Shipper’s agent and the originating carrier or that carrier’s agent, and unless so acknowledged is without effect, and the bill of lading is enforceable according to its original wording.

t. It is the responsibility of the Shipper to show correct shipping weights of the shipment on the bill of lading if completed by the Shipper and, notwithstanding paragraph (s), failure to do so renders the bill of lading subject to correction in this respect by the carrier.

7. Set off and Counter Claim

The Shipper 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.

8. Additional Insurance

    a. If, in the opinion of the Shipper, more or additional insurance over and above that normally maintained by the carrier and Company, is required or desirable in respect of protecting against loss of the Goods, the Shipper must give the Company written instructions separate from the bill of lading to arrange this insurance on the Goods within a reasonable time before pickup for transport.
    b. The Company may carry out these instructions by purchasing an insurance policy on behalf of the Shipper declaring the value of the Goods. The Company is not liable if the Shipper fails to recover a loss in whole or in part from the insurer under the policy, even though the premium charges by the insurer are different from the Company's charges to the Shipper.
    c. If the coverage available under the insurance policy is not satisfactory to the Shipper, the Company will recommend the Shipper consult an insurance broker. After making this recommendation, the Company has no further duty regarding insurance, and no liability for loss or damage to the Goods during transport or storage that could have been covered by the insurance, whether such loss or damage has been caused or contributed to by the Company's negligence or breach of these Conditions.

9. Surety Bond

The Company shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of $75,000 and furnish Shipper with proof upon request.

10. Dangerous Goods

Shipper and the Company shall comply with all applicable laws and regulations relating to the transportation of Dangerous Goods in Canada or hazardous materials in USA as defined in *49 CFR §172.800* and *§173 et seq*. to the extent that any shipments constitute hazardous materials.

    a. The Shipper agrees not to tender any Goods for transportation that is of a dangerous, flammable, radioactive, hazardous, or damaging nature without giving full particulars to the Company. The Shipper agrees to mark the Goods and the outside of any packaging or containers to comply with applicable laws and regulations regarding transportation. If the shipment originates in Canada, the Shipper warrants that all aspects comply with federal and provincial government transportation of dangerous goods legislation.
    b. If it fails to comply with provisions in 10 a) above, the Shipper shall indemnify the Company against all loss, damage, or expense arising from the shipment.
    c. If the Company believes the Goods may become hazardous while in its possession, it may be destroyed or rendered harmless without liability on the part of the Company.

11. Limitation of Liability

The Company shall have no liability for loss or damage to the Goods occurring while the

Goods are in the custody or control of a carrier or other third party, except to the extent caused by the Company's breach in the selection or instruction of such carrier, it being understood that the Company acts solely as a broker and does not assume the role of a carrier.

Unless and to the extent prohibited by law, Company's liability, whether under contract or tort (including negligence) or otherwise, for any loss, claim or damages arising out of or in connection with the performance or non-performance by the Company of the services provided under these Conditions shall be limited to the lessor of:

(a) The total fees paid by the Shipper to the Company in respect of the shipment giving rise to the claim; and
(b) $10,000.00 (Cdn) per occurrence.

In no event shall the Company be liable for any indirect, special, consequential or punitive damages, including but not limited to loss of profits, loss of market, loss of opportunity or loss of use even if the Company has been advised of the possibility of such loss or damage.

12. Indemnification for Third Party Claims

The Company and Shipper shall defend, indemnify and hold each other harmless against any third party claims, actions or damages, including, but not limited to, cargo loss or damage and payment of rates and/or accessorial charges to carriers, arising out of their respective resulting from their respective breach of these Standard Trading Conditions, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Provided that any obligation to indemnify shall not extent to claims, actions or damages attributable to the breach or negligence of the other party. The obligation to defend shall include all costs of defense as they accrue.

13. Severance/Survival

In the event that any portion of these Standard Trading Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of these Conditions shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of these Standard Trading Conditions for any reason.

14. Right of Detention and Lien

All goods and documents relating to the Goods shall be subject to a particular and general lien and general right of detention or monies owing either in respect of such Goods, or for any particular or general balance of other monies owed to the Company, whether then due or not, by the Shipper, consignee, or Owner of the Goods. If these monies remain unpaid for 30 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the Goods may be sold by private contract or otherwise at the sole discretion of the Company, with the cost of the sale at the expense of the Owner, and with the net proceeds applied on account of the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the Goods nor, will the Customer be relieved from the liability other than to the extent of the net proceeds realized from the sale, merely because the Goods has been sold.

15. Independent Contractor

It is understood between the Company and Shipper that the Company is not an agent for the carrier or Shipper and shall always remain an independent contractor. Shipper does not exercise or retain any control or supervision over the Company, its operations, employees, or carriers.

16. Non – Waiver

Failure of either party to insist upon performance of any of these Standard Trading Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the Standard Trading Conditions, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights, or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. Force Majeure

Neither party shall be liable to the other for failure to perform any of its obligations under these Standard Trading Conditions during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the Shipper or the Company, provided that the party so prevented uses good faith commercially reasonable efforts to perform under these Standard Trading Conditions and provided further, that such party provide reasonable notice to the other party of such inability to perform.

18. Choice of Law and Venue

All questions concerning the construction, interpretation, validity, and enforceability of these Standard Trading Conditions, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

19. Notices

Any notice required to be given by the Shipper to the Company under these Conditions shall be given in writing and delivered to the Company at 1925A Barton Street East, Hamilton, Ontario L8H 2Y7 or sent by email during regular business hours to claims@shipnorthamerica.com. Company may change such address or email coordinates upon notice to the Shipper.