

# FEDNAV DIRECT'S TERMS AND CONDITIONS

## 1. DEFINITIONS

These Conditions govern the rights and liabilities of the Customer and the Company. In these Conditions,

- (i) "Company" means Fednav Direct,
  - a. a division of Federal Marine Terminals, Inc., with respect to Services rendered on behalf of the Customer in the USA;
  - b. a division of Fednav International Ltd., with respect to Services rendered on behalf of the Customer in Canada.
- (ii) "Customer" means any Person at whose request or on whose behalf the Company arranges for Services, including any Person acting on its behalf;
- (iii) "Person" includes an individual and any entity, body or bodies corporate;
- (iv) "Consignee" means the Person identified in a transport document, or otherwise, as the Person whom the Goods are to be delivered.
- (v) "Goods" includes the cargo and any Container not supplied by or on behalf of the Company, in respect of which the Company provides Services;
- (vi) "Dangerous Goods" includes Goods which are likely to or may pose risk to health, safety or property, whether inflammable, radio-active, explosive, corrosive, biologically or otherwise damaging, hazardous or dangerous in nature, also Goods likely to harbor or encourage vermin or other pests and any Goods classified as dangerous or hazardous by any governmental or other regulatory body or authority.
- (vii) "Third parties" includes, without limitation, the following: carriers, truckmen, forwarders, customs brokers, agents, longshoremen, warehousemen and others to whom the Goods are entrusted for carriage, storage, packing, handling or otherwise;
- (viii) "Services" means any activities of the Company in arranging the carriage, storage, packing or handling of Goods, or any other related service as provided in the quotation.

## 2. ROLE OF THE COMPANY

- A. The Company offers its Services on the basis of these Conditions which shall apply to all activities of the Company. The Company acts as the agent only of the Customer regardless the basis of the Company's remuneration.
- B. In its capacity as agent, the Company acts solely on behalf of the Customer in engaging the Services of Third Parties on the usual terms and conditions of such Third Parties, 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 such contract.
- C. Advice and information that is not in relation to Services, is provided gratuitously and without liability. Advice is for the Customer only and is not to be furnished to any other party without prior written consent.

## 3. CLAIMS AGAINST OTHERS

These Conditions shall also apply whenever any claim is made against any employee, agent or independent contractor, other than a Third Party, engaged by the Company to perform its role as agent, 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 conditions. For purposes of this Clause

the Company acts as agent for all such persons who may ratify such agency at any subsequent time.

## 4. COMPANY'S GENERAL RESPONSIBILITIES

- A. The Company shall exercise reasonable care in the discharge of its duties and responsibilities on behalf of the Customer including the selection and engagement of Third Parties to provide any Services required by the Customer.
- B. The Company shall arrange transport and any related Services within a reasonable time after receiving the Customer's instructions, subject to equipment availability.
- C. If it has reasonable grounds for departing from any of the Customer's instructions, the Company may do so without prior authorization from the Customer, but must always act with due regard to the interests of the Customer and nature and reasonable requirements of the Goods, and, as soon as possible, inform the Customer of its actions and any additional charges resulting therefrom.

## 5. CUSTOMER'S GENERAL RESPONSIBILITIES

- A. The Customer and Consignee, jointly and severally, shall be responsible for any breaches of the duties or obligations, outlined in this clause. The Company reserves the right to charge the Customer and/or Consignee, at its option, for any additional costs and expenses incurred due to Customer's and/or the Consignee's failure to adhere to the conditions hereunder.
  - (i) The Consignee shall remove and dispose of any skids and crating, blocking and packing materials.
  - (ii) The Consignee's site must be level, fully and easily accessible for cargo unloading and delivery. Any costs and/or repairs resulting from additional towing, pushing of delivery equipment or otherwise resulting from and/or required by site conditions will be for Customer's and/or Consignee's account.
  - (iii) Should the Consignee become unable or otherwise refuse to receive the Goods, the Customer shall remain fully responsible for any and all related charges including disposal costs and arrangements.
- B. The Customer acknowledges that it has sound and businesslike knowledge of all matters affecting the subject matter of these Conditions, including terms of purchase and sale of Goods, normal insurance requirements for Goods of the type being tendered for transportation or otherwise, the risk of transmitting viruses by electronic communications, the need for confidentiality, and all other matters relating to the Goods.
- C. Rates quoted by the Company are based on the weights, dimensions and handling characteristics declared by the Customer. The Customer will be responsible for any extra or special charges including, but not limited to, cancellation charges incurred as a result of any discrepancy between actual and declared weights, dimensions and handling characteristics as declared or ascertained at the time of shipment.
- D. The Company shall in no event be responsible for terminal storage charges, and any rates quoted or agreed for Services hereunder shall be exclusive of any such charges. Any such charges shall be settled directly by Customer for its own account unless otherwise agreed in writing.

# FEDNAV DIRECT'S TERMS AND CONDITIONS

## 6. CUSTOMER'S RESPONSIBILITIES FOR PACKAGED AND CONTAINERIZED GOODS

- A. Except where the Company has agreed to accept responsibility in respect of any preparation, packing, stowage, labeling or marking of the Goods the Customer warrants that all 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, including without limitation the provision of adequate lifting lugs and identification of relevant stability issues (center of gravity). The Customer will defend, hold harmless and indemnify the Company in the event of any loss, damage or injury that may result due to breach of this clause and any other provision of these Terms and Conditions.
- B. Unless the Company has agreed to arrange for or to perform the loading of a transport unit (such as a container), the Customer warrants that:
  - (i) the transport unit has been properly and competently loaded and secured;
  - (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.

## 7. SPECIAL INSTRUCTIONS, GOODS AND SERVICES

- A. The Customer must notify the Company of any special handling instructions in writing in good time and in any event no later than at the time of booking. The Company shall be at liberty to revise the quotation should the special handling instructions result in additional charges.
- B. Unless otherwise expressly agreed in writing at time of booking, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- C. The Customer shall not deliver to the Company or cause the Company to deal with or handle Goods that are unlawful or that include or contain any contraband or stowaways.
- D. Unless otherwise agreed in writing at time of booking, the Customer shall not deliver to the Company Goods which require temperature control.
- E. If the Customer is in breach of any part of the clause, he shall be liable for any and all loss, damage, death, illness or injury whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company, its agents, servants, subcontractors and all independent contractors whatsoever against all penalties, fines, claims, damages, actions, costs, fees and expenses whatsoever arising in connection therewith and the Goods may without notice be destroyed, confiscated or otherwise dealt with at the sole discretion of the Company or any other Person or Authority in whose custody they may be at the relevant time without liability therefor.

## 8. QUOTATIONS AND INVOICING

- A. Quotations are valid for 30 days from date of quotation regardless of the anticipated time of shipment indicated in the quotation. Unless otherwise provided in the quotation the Company shall be at liberty, whether before or after acceptance of quotation, to revise such quotations or

charges, upon notice, in the event of any related increase or decrease in cost beyond the Company's control, including fluctuations in exchange rates, rates of freight, carrier surcharges such as fuel surcharges and/or any charges applicable to the Goods.

- B. Except as otherwise agreed in writing, the Customer shall effect payment to the Company in advance of performance of the Services to which such payment relates.
- C. Any additional charges will be invoiced to and paid by the Customer upon completion of delivery. These costs shall include, without limitation:
  - (i) Carriers' weight minimums;
  - (ii) Utilities and Surveys (cost + 15%);
  - (iii) Escort Detention or escort cancellation (cost + 15%);
  - (iv) Demurrage or detention costs of carriers' equipment including delays at borders due to Customs clearance issues, world military actions, economic sanctions, homeland security measures or any other delays beyond the Company's control and not due to its negligence.

## 9. CUSTOMS CLEARANCE

All matters relating to Customs clearance shall remain the sole responsibility of the Customer. Any costs, fines, fees, expenses or delays incurred in relation to Customs clearance, whether resulting from faulty documentation or otherwise, shall be for the account of the Customer.

## 10. C.O.D. SHIPMENT

When 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.

## 11. INSURANCE

Unless otherwise agreed in writing, the Company shall be under no obligation to procure insurance on the Customer's behalf; and in any event, all premiums and costs in connection with insurance of the Goods shall be for the Customer's account.

## 12. NOTIFICATION OF CLAIMS

- A. The Customer on its own behalf and on behalf of the Owner of the Goods shall notify the Company in writing of any claim
  - (i) in case of loss and/or damage within 48 hours of delivery,
  - (ii) in case of delayed delivery or non-delivery (whether partial or total) within 72 hours of the date when the Goods should have been delivered,
  - (iii) in any other case within 5 days of the event giving rise to the claim.
- B. If the damage, delay or non-delivery giving rise to a claim was not discoverable by the exercise of reasonable care within the time period specified above, the Customer shall give notice immediately upon discovery.
- C. Failing timely notice from the Customer as required by this clause, the claim shall be deemed time barred and no action may be brought against the Company to enforce the claim, whether by the Customer or by any Third Party.

# FEDNAV DIRECT'S TERMS AND CONDITIONS

---

## 13. LIMITATION OF LIABILITY

- A. Except as specifically set forth herein, the Company makes no express or implied warranties in connection with its Services.
- B. Subject to (C) and (D) below, the 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 the Customer, including loss or damage to the Customer's Goods.
- C. Compensation for any claim of Goods lost or damaged, for which the Company is liable, shall not in any event exceed the following, except as provided in 13G below:
  - (i) For Goods received by the Company on behalf of the Customer in the United States, USD 500 per package, or in the case of Goods not shipped in packages, per customary freight unit, for each package or unit lost or damaged;
  - (ii) For Goods received by the Company on behalf of the Customer in Canada, CAD 4.41 per kilogram based on the total weight of the shipment, lost or damaged.
- D. In no circumstances whatsoever shall the Company, its employees, agents, servants, subcontractors or any independent contractors referred to in Clause 3 hereof, be liable for indirect or consequential loss or damage of whatsoever nature, including but not limited to, loss of profit or other economic loss, delay or deviation.
- E. There shall be deducted from any amount recoverable from the Company the amount or amounts recovered or recoverable by the Customer from Third Parties. The responsibility of a Third Party for loss or damage of whatsoever nature shall be that of the Third Party alone, in conformity with Clause 2B hereof.
- F. Notwithstanding anything to the contrary contained herein, the Company shall not be responsible for any loss or damage of whatsoever nature in excess of the liability of the actual provider of the particular service rendered.
- G. In connection with all Services performed by the Company, the 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 thereof, which request must be confirmed in writing by the Company prior to rendering Services for the covered transaction(s).

## 14. INDEMNITY

- A. The Customer shall indemnify the Company against all duties, taxes, payments, fines, fees, expenses, losses, claims and liabilities, including any liability to indemnify any other person against claims made against such other person by the Customer or by the owner of the Goods
  - (i) for which the Company may be held responsible unless caused or contributed to by any negligence or breach of duty of the Company, or
  - (ii) in excess of the liability of the Company in accordance with these Conditions,resulting from or connected with the actions of the Company related to any Services to which these Conditions apply.

## 15. SET OFF AND COUNTERCLAIM

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.

## 16. RIGHT OF DETENTION AND LIEN

All Goods (and documents relating to Goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such Goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender, Consignee or owner of the Goods to the Company. If these monies remain unpaid for 28 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, and 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 merely because the Goods have been sold.

## 17. TIME BAR

The Company shall, unless otherwise expressly agreed, be discharged of all liability under these Conditions unless claim in writing is made, as provided in Clause 12 hereof, and such claim be timely made and suit is brought within 6 months from

- a) the date of delivery of the Goods for claims, or
- b) the date when the Goods should have been delivered.
- c) suit shall not be deemed brought unless proper service of process is effected and proper jurisdiction obtained.

## 18. CONSIDERATION RECEIVED FROM THIRD PARTIES

The Company shall be entitled to be paid and retain any and all brokerages, commissions, documentation allowances, rebates, discounts or other consideration paid or allowed by Third Parties.

## 19. APPLICABLE LAW AND JURISDICTION

These Conditions and any claims or disputes arising out of or in connection with the Services provided by the Company hereunder shall be subject to the laws of the United States and to the exclusive jurisdiction of the US District Court in Chicago, Illinois, unless the Services provided by the Company hereunder are performed within Canada, in which case these Conditions and any claims or disputes arising out of or in connection therewith shall be subject to the laws of Canada and to the exclusive jurisdiction of the Federal Court of Canada in Montreal, Quebec.