

Customer understands and agrees that these Terms and Conditions are a legally binding contract between the Company and the Customer. Customer understands and agrees that these Terms and Conditions shall apply to all services that Company performs for Customer, unless the Company renders services and issues a document containing other terms and conditions governing those services, in which case the terms and conditions set forth in such other document shall govern those services.

1. Definitions.

- (a) "Company" means Alba Wheels Up International, Inc., its subsidiaries, related companies, agents, or representatives;
- (b) "Customer" means the Person for which Company is rendering service, as well as its agents or representatives, includes, without limitation, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It Customer's responsibility to provide notice and copies of these Terms and Conditions to all such agents or representatives;
- (c) "Documentation" means all information received directly or indirectly from Customer, whether in paper or electronic form;
- (d) "Ocean Transportation Intermediaries" ("OTIs") includes an ocean freight forwarder and a non-vessel-operating carrier;
- (e) "Person" means any natural person, firm, partnership, joint venture, corporation, or any other legal entity.
- (f) "Third parties" includes, without limitation, the following: carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen, ISF filers and others to which the goods are entrusted for transportation, cartage, handling, delivery, storage, or otherwise.

2. Company as agent. Company acts as the agent of 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 and security documentation on behalf of the Customer and other dealings with government agencies; as to all other services, Company acts as an independent contractor.

3. Limitation of Actions.

(a) Unless subject to a specific statute or international convention, all claims against Company for a potential or actual loss must be made in writing and received by Company within 45 days of the event giving rise to claim; the failure to give Company timely notice shall be a complete defense to any suit or action commenced by Customer.

(b) All suits against Company, whether in contract, tort, indemnity, or otherwise must be filed as follows:

- (i) For claims arising out of ocean transportation, within 1 year from the date of the loss;
- (ii) For claims arising out of air transportation, within 2 years from the date of the loss;
- (iii) For claims arising out of the preparation or submission of an import entry(s), within 45 days from the date of liquidation of the entry(s); and
- (iv) For all other claims of any other type, within 1 year from the date of the loss or damage.

4. No Liability For The Selection or Services of Third Parties or Routes. Unless services are performed by Persons engaged pursuant to express written instructions from 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 Company that a particular Person has been selected to render services with respect to the goods shall not be construed to mean that Company warrants or represents that such Person will render such services nor does Company assume responsibility or liability for any actions(s) or inaction(s) of such third parties or their agents, and Company shall not be liable for any delay or loss of any kind that 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 or its agents; in connection with any such claim, Company shall reasonably cooperate with Customer, which shall be liable for any costs incurred by Company.

5. Quotations Not Binding. Quotations as to fees, rates of duty, freight charges, insurance premiums, or other charges given by Company to Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon Company unless Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between Company and Customer.

6. Reliance On Information Furnished.

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs and Border Protection, other government agency, or third parties, and Customer shall immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customer's behalf;

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation, or other required data, Company relies on the accuracy of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the accuracy of all such information and shall indemnify and hold Company harmless from any claims asserted or liability or losses suffered by reason of Customer's failure to disclose information, or any incorrect, incomplete, or false statement by the Customer upon which the Company relied. Customer agrees that it has an affirmative non-delegable duty to disclose all information required to import, export, or enter the goods.

(c) Customer acknowledges that it is required to exercise reasonable care under the Customs Modernization Act.

(d) Customer acknowledges that it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to steamship lines and represents that Company is entitled to rely on the accuracy of such weights and to counter-sign or endorse it as agent of Customer in order to provide the certified weight to the steamship lines. The Customer agrees that it shall indemnify and hold the Company harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable statements of the weight provided by the Customer or its agent or contractor on which the Company relies.

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 Customer, which must agree to pay any charges therefor; in the absence of written instructions or the refusal of the third party to agree to a higher declared value the goods will be tendered to the third party, subject to the standard trading terms of the third party, including, without limitation, the third party's limitation of liability.

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.

9. Disclaimers; Limitation of Liability.

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

(b) In connection with all services performed by 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 Company prior to rendering services for the covered transaction(s).

(c) In the absence of additional coverage under (b) above, Company's liability shall be limited to the following:

(i) where the claim arises from activities other than those relating to customs business, \$50.00 per shipment or transaction, 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;

(d) In no event shall Company be liable or responsible for consequential, indirect, incidental, or punitive damages even if it has been put on notice of the possibility of such damages.

(e) The Customer agrees that U.S. Customs and Border Protection, not the Company, determines the classification, rate of duty, and regulations applicable to the Customer's merchandise.

10. Advancing Money. All charges must be paid by Customer in advance unless 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 Company.

11. Indemnification/Hold Harmless. Customer agrees to indemnify, defend, and hold Company harmless from any claims or liability, fines, penalties, or attorneys' fees arising from the importation or exportation of Customer's merchandise or any conduct of Customer, including, without limitation, the inaccuracy of entry, export, or security data supplied by Customer that violates any federal, state, or other laws, and Customer further agrees to indemnify and hold Company harmless against all liability, loss, damages, costs, claims, penalties, fines, or expenses, including, without limitation, reasonable attorneys' fees that Company may hereafter incur or be required to pay by reason of such claims; in the event that any claim, suit, or proceeding is brought against Company, it shall give notice in writing to Customer by mail at its address on file with Company.

12. C.O.D. or Cash-Collect Shipments. Company shall use reasonable care regarding written instructions relating to "Cash/Collect on Deliver (C.O.D.)" shipments, bank drafts, cashier's or certified checks, letters of credit, and other similar payment documents, or instructions regarding collection of monies, but Company shall not have liability if the bank or consignee refuses to pay for the shipment.

13. Costs of Collection. In any dispute involving monies owed to Company, it shall be entitled to all costs of collection, including reasonable attorneys' fees, and also including, without limitation, contingency 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.¹

14. General Lien, Right to Possession and Sale of Customer's Property.

(a) Company shall have a general and continuing lien on all property of Customer in Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed or a prior shipment(s), or both. The lien shall survive delivery of the merchandise to a third-party or public warehouse.

(b) Company shall provide written notice to Customer of Company's intent to exercise such lien, the exact amount of monies due, as well as any ongoing storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and of the exercise of such lien, where applicable.

(c) 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, Customer assigns the right of delivery, possession and title in Customer's merchandise to Company. 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.

15. No Duty To Maintain Records For Customer. Customer acknowledges that under sections 508 and 509 of the Tariff Act, as amended, 19 U.S.C. sections 1508 and 1509, Customer has the duty and is solely liable for maintaining all records required under the customs or other laws and regulations of the United States; unless otherwise agreed to in writing, Company shall only keep such records that it is required to maintain by statute(s) or regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer under CBP regulations.

16. 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, without limitation, obtaining binding rulings, advising of liquidations, of the filing of petition(s), or protests.

17. Preparation and Issuance of Bills of Lading. Where Company prepares or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages, or cartons., Company shall rely upon and use the cargo weight supplied by Customer.

18. No Modification or Amendment Unless Written. These Terms and Conditions may only be modified or amended in writing signed by both Customer and Company; any attempt to unilaterally modify or amend the same shall be null and void.

19. Compensation of Company. The compensation of Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by Company to transport and handle the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by Company from carriers, insurers, and others in connection with the shipment. On ocean exports, upon request, Company shall provide an itemization of all charges assessed and a copy of each pertinent document relating to these charges. In the event that Company were to pursue Customer for monies it owes to Company, Customer shall pay the expenses of collection or litigation, including reasonable attorneys' fees.

20. Severability. If any provision of these Terms and Conditions shall for any reason be held to be invalid or unenforceable, then the remainder of these Terms and Conditions shall be unaffected thereby, and remain in full force and effect. A waiver of any right by the Company will not constitute a waiver of such right on any subsequent occasion.

21. Governing Law; Consent to Jurisdiction and Venue. These Terms and Conditions and the parties' relationship shall be construed according to the laws of the State of New York without giving consideration to its principles of conflict of laws. Customer and Company:

(a) Irrevocably consent to the jurisdiction of the federal or state courts in New York County, New York, to the exclusion of all other courts

(b) Agree that any action relating to these Terms and Conditions or the services performed by Company shall only be brought in the aforementioned courts, to the exclusion of all other courts;

(c) Consent to the exercise of *in personam* jurisdiction by aforementioned courts and thereby waive any jurisdictional, venue, or inconvenient forum objections to such courts; and

¹ AUTHORIZATION TO DEDUCT COMPANY'S INVOICE CHARGES FROM CUSTOMER'S BANK ACCOUNT: Customer has established a bank account for the payment of customs duties, taxes, and Company's service fees. If Customer does not dispute Company's fees and charges in writing within seven days of the date of Company's invoice, then Customer shall thereby authorize Company to debit Customer's account using the automated clearing house debit system in an amount equal to Company's invoice.

(d) Agree that any action to enforce a judgment may be instituted in any jurisdiction.