



These terms and conditions of service are a legally binding contract between “Company” and “Customer.” If Company provides services and issues a document that contains terms and conditions that govern such services, then those other terms and conditions 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 Company receives 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) “Service Providers” includes third-party ocean carriers, OTIs, lighterage companies, air carriers, motor carriers, cartage and drayage companies, property brokers, freight forwarders, customs brokers, ISF filers, warehouses, or other logistics, transportation, and transportation-related service providers that Company may arrange to perform any transportation, logistics, handling, storage, and other services as to Customer’s goods.

**2. Company as agent.** Company acts as the “agent” of Customer to perform 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 Customer and other dealings with government agencies, or to arrange transportation services, both domestically and internationally, or other logistics services in any capacity other than as a carrier.

**3. Notice of Claim and Time-Bar**

(a) Unless subject to a longer time under a compulsorily applicable law, Customer must provide Company with written notice of any claim against Company within 30 days of the event giving rise to the claim. As a further condition to Company’s processing of such a claim, Customer must first pay all charges as to all services related to the claim. Customer understands and agrees that the consequence of failing to provide a timely written notice of claim is that Customer’s action against Company will be time-barred.

(b) Conditioned on a timely written notice of claim, in any event, Company shall be discharged from all liability to Customer as to any claim unless Customer files an action in the mandatory venue under section 23 within nine months from the date of loss or seventy five days from the date of liquidation of the U.S. Customs & Border Protection entry. Customer understands and agrees that the consequence of failing to timely file such an action is that Customer’s action against Company will be time-barred.

**4. No Liability For The Selection or Services or Service Providers.** Except as to Persons the Customer selects or instructs to perform services, Company shall use reasonable care in its selection of Service Providers, or in selecting the means, route, and procedure for the handling, transportation, clearance, and delivery of Customer’s shipments. Statements



by the Company that it has selected a Service Provider is neither a warranty nor a representation that such Service Provider will provide the services. Company has no liability and assumes no liability as to any acts or omissions of any Service Provider. Company has no liability and assumes no liability for any delay or loss that occurs while a shipment is in the custody or control of a Service Provider or any of its agents. Customer understands and agrees that it shall bring all claims arising out of the acts or omissions of a Service Providers or Service Providers against that Person or Persons, or their agents—Customer understands and agrees that Company is not the agent of any Service Provider, and no Service Provider is the agent of Company. As to Customer’s claims against a Service Provider, Company shall provide reasonable assistance to Customer, which agrees to be liable for any charges or costs Company pays or incurs in assisting Customer.

**5. Quotations.** Customer understands and agrees that Company’s quotations to Customer as to fees, rates of duty, freight charges, insurance premiums, or other charges are subject to change without notice. If Customer accepts Company’s quotation and the Customer fails to tender the goods to the carrier by the agreed to cut off date and time, Customer shall pay Company the full freight charges. Company reserves the right to correct invoices and issue additional invoices for Services and costs, including demurrage, storage, and per diem.

**6. Reliance On Information Furnished.**

(a) Customer understands and agrees that it is required to review all documents and declarations prepared or filed with U.S. Customs & Border Protection, any other government agency, or any third parties, and will immediately notify Company in writing of any errors, discrepancies, incorrect statements, or omissions on any declaration or submission Company has prepared or filed on behalf of Customer.

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation, delivery orders, or other required data, Company relies on the accuracy of all information and documentation Customer provides to Company, whether written or electronic. Customer shall use reasonable care to ensure the accuracy of all such information and documentation, and Customer shall indemnify, defend, and hold Company harmless from and against any claims, losses, damages, liabilities, fines, penalties, duties, taxes, or any other expenses Company pays or incurs, including any court costs, interest, expert fees and other litigation costs, and reasonable attorneys’ fees, arising out of or in any way connected with or caused by, in whole or in part, Customer’s failure to disclose information or any incorrect, incomplete, or false statement by Customer or its agent, representative, or contractor on which Company reasonably relied. Customer understands and agrees that it has an affirmative and non-delegable duty to disclose all information required to import, export, or enter its goods.

(c) Customer understands and agrees that it is required to provide verified weights from calibrated, certified equipment of all goods that Customer intends to ship by ocean carrier. Customer understands and agrees that Company will rely on the accuracy of such weights and will counter-sign or endorse documents for that purpose, as agent of Customer, to provide the certified weight for ocean carriage. Customer shall indemnify, defend, and hold Company harmless from and against any claims, losses, damages, liabilities, fines, penalties, duties, taxes, or any other expenses Company pays or incurs, including any court costs, interest, expert fees and other litigation costs, and reasonable attorneys’ fees, arising out of or in any way connected with or caused by, in whole or in part, Customer’s incorrect or incomplete statements as to the weight of any goods.



(d) Customer understands and agrees that it is required to state in writing to Company before Customer's tender of hazardous materials and that Customer shall comply with all domestic and international hazardous materials laws and regulations.

**7. Declaring Higher Value To Service Providers.** Customer understands and agrees that Service Providers that perform services as to Customer's goods may contractually limit their liability for loss of or damage to those goods. Customer understands and agrees that it has the opportunity to declare a higher value for its goods by requesting excess valuation coverage, and that Company will request such excess valuation coverage from a Service Provider only upon specific written instructions from Customer, which must agree to pay any corresponding excess-valuation charges. Customer expressly acknowledges that there is a difference between excess valuation coverage, which increases the legal liability amount of a Service Provider beyond limited-liability amount, and Customer's purchase of first-party cargo insurance on the goods.

**8. Insurance.** Customer understands and agrees that Company is not an insurance company. Unless Customer sends a written request to Company to arrange insurance and Company confirms that request to Customer in writing, Company has no obligation to arrange first-party cargo insurance on the goods on Customer's behalf. Customer understands and agrees that such insurance would be at Customer's expense. Customer understands and agrees that cargo claims are independent of freight charges, and not a basis for set-off or refusal to pay Company's invoices.

**9. Disclaimers; Limitation of Liability.**

(a) Except as these terms and conditions expressly state, Company makes no express or implied warranties as to its services.

(b) As to any service Company performs or arranges, Customer understands and agrees that Company limits its liability to Customer to \$50 per shipment, transaction, or customs entry. Warehouse services are limited to \$.50 per pound unless a higher value is declared, not to exceed \$5000, under paragraph 12 of the Company's warehouse receipt.

(c) Customer understands and agrees that in no event shall Company be liable for the acts of third parties or for consequential, indirect, incidental, or punitive damages, even if it has notice of the possibility of such damages.

(d) As to domestic transportation, Customer understands and agrees Company shall not be liable for a motor carrier's failure to maintain required insurance coverage or for the accuracy of any documentation a motor carrier provides to Company or Customer evidencing such insurance coverage.

(e) As to warehousing, Company's Services are subject to Company's warehouse receipt and warehouse tariff rates, which are incorporated by reference.

**10. Advancing Money.** Customer must prepay all charges unless Company agrees in writing to extend credit to Customer. Company's granting of credit to Customer as to one transaction shall not be a waiver of this section by Company as to any other transaction. Company's agreement to extend credit is subject to the terms of Company's credit contract and application, which is incorporated by reference herein.

**11. Indemnity and Defense.** Customer shall indemnify, defend, and hold Company harmless from and against any claims, losses, damages, liabilities, fines, penalties, duties, taxes, or any other expenses Company pays or incurs, including any court costs, interest,



expert fees and other litigation costs, and reasonable attorneys' fees, arising out of or in any way connected with or caused by, in whole or in part, the importation or exportation of Customer's merchandise or any act or omission of Customer, including as to the inaccuracy of entry, export, or security data Customer or its agent or representative supply that violates any federal, state, or other laws or regulations. If Company is a named party to any claim, suit, or proceeding, then Company shall provide written notice of the same to Customer by e-mail or First-Class mail at the addresses Company has for Customer.

**12. C.O.D. or Cash Collect Shipments.** Company shall use reasonable care as to 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 Customer understands and agrees that Company shall have no liability if a bank or consignee refuses to pay for a shipment.

**13. Costs of Collection.** In any dispute involving monies Customer owes to Company, it shall be entitled to recover all costs Company has paid or incurred to collect any indebtedness, including reasonable attorneys' fees and annual interest at 18 percent or at the highest rate allowable under law. Customer understands and agrees that Company may debit Customer's ACH accounts to pay past due invoices.

**14. General Lien and Right To Sell 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 Customer owes to Company, whether as to a shipment on which Company then claims a lien, prior shipments, or both. Company's lien shall survive delivery of the property to a third-party or public warehouse.

(b) Company shall provide written notice to Customer of Company's intent to exercise a 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 the liened property of Company's rights and of its exercise of a lien.

(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, then an acceptable bond in favor of Company equal to 110 percent of the value of the total amount due, guaranteeing payment of the monies dues, plus all accrued and to-be-accrued storage charges, Customer consents to Company's use of any trademarks or intellectual property and Company's right to sell such property at public or private sale or auction. Company shall remit any net proceeds after payment of Customer's indebtedness to Customer.

**15. No Duty To Maintain Records For Customer.** Customer acknowledges that under sections 508 and 509 of the Tariff Act, Customer has the duty and is solely liable for maintaining all records required under customs or other laws and regulations of the United States. Unless Company and Customer otherwise agree in a writing both sign, Company shall only keep such records that laws or regulations require Company to keep, but not in any event as a "recordkeeper" or "recordkeeping agent" for Customer.

**16. Obtaining Binding Rulings, Filing Protests, etc.** Unless Customer sends a written request to Company and it confirms that request to Customer in writing, Company has no obligation to undertake any pre- or post-customs release action, including obtaining binding rulings, advising of liquidations, filing of petitions or protests.



**17. No Duty To Provide Licensing Authority.** Unless Customer sends a written request to Company and it confirms that request to Customer in writing, Company has no obligation to determine licensing authority or to obtain any license or authority to the export from or import into the United States.

**18. Preparation and Issuance of Bills of Lading.** If Company prepares or issues a bill of lading, then Company shall be under no obligation to specify the number of pieces, packages, or cartons. Unless Customer specifically requests otherwise in writing and pays for such service, Company shall use the cargo weight Customer supplies to Company.

**19. Notices and No Changes to Terms and Conditions of Service.** All notices required under these terms and conditions of service and Customer shall give written notice to Company's CEO or President by certified first-class mail, postage prepaid to Company's principal place of business. Customer understands and agrees that only Company's CEO or President has the right to change these terms and conditions of service, which he or she may do by posting notice on Company's website at <https://albawheelsup.com/resources/forms/>

**20. Compensation of Company.** Customer's compensation of Company for its services is in addition to the rates and charges of all Service Providers and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue Company may receive from any Service Provider, insurer, or other Person as to any shipment. For ocean exports, upon request, Company shall provide an itemization for all charges and copies of each back-up document for those charges. If Company were to assign a collection agency or to sue Customer as to any unpaid amount, then in addition to the recovery of that amount, Company shall be entitled to interest and all costs of collection, including commissions or fees of collections agencies, reasonable attorneys' fees, or both.

**21. Force Majeure.** Company shall have no liability to Customer as to any claims, losses, damages, liabilities, fines, penalties, duties, taxes, or any other expenses, or as to any delays, misdeliveries, non-deliveries, or nonperformance, in whole or in part, as to any of Company's services or those of a Service Provider that are caused by or result from any event or circumstance beyond the reasonable control of Company or any Service Provider, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; network or Internet failure by reason of a computer virus; any disruption of electrical power; any failure or partial failure of communications system or network and actions by federal, state, municipal, or any other government or agency, including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state, or local government bodies; epidemics; pandemics; quarantines; fires; explosions; natural disasters; sudden actions of the elements, such as floods, earthquakes, hurricanes or tornadoes; severe cold or hot weather or snow or other extreme or severe weather conditions; riots; sabotage; vandalism beyond that which a party could reasonably prevent; terrorism; war; riots; fire; explosion; embargoes; blockades; insurrection; strike; labor slow-down or disruptions, regardless of whether the event or circumstance was foreseeable.

**22. Severability.** If any provision of these terms and conditions of service shall for any reason be held to be invalid or unenforceable, then the remainder of the terms and conditions of service shall be unaffected and remain in effect.



**23. Mandatory Law, Venue, and Jurisdiction.** All claims or disputes arising out of or in any way related to Company's or any Service Provider's services, or to these terms and conditions of service, shall be determined under the laws of the State of New York, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal courts in Kings County or the state courts in Queen County, New York, to the exclusion of all other courts. Customer and Company agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.