

GENERAL TERMS AND CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between Swan & Hercules Global Logistics (USA), LLC ("SHGL") and the "Customer," and are in addition to any other documents, contracts, agreements, or bills issued by SHGL pertaining to services provided (collectively, an "Individual Contract").

In tendering shipment(s) for international air transportation, Customer agrees to be bound by these Terms and Conditions of Contract of Carriage; and indicates its understanding that the SHGL waybill, bill of lading or other shipping document utilized is non-negotiable. No agent or employee of the parties may alter these Terms and Conditions, unless in writing and signed by both parties.

To the extent any terms and conditions of an Individual Contract conflict with any of the terms and conditions set forth herein, the terms and conditions of the Individual Contract shall govern.

1) Definitions.

- 1.1) "SHGL" means **Swan & Hercules Global Logistics (USA), LLC**, its subsidiaries, related companies, agents and/or representatives;
- 1.2) "SHGL" is a company that is licensed as and operates as a Freight Forwarder and Indirect Air Carrier (IAC).
- 1.3) "Domestic Territory" shall mean transportation within the United States or to or from Puerto Rico and/or other United States Territories.
- 1.4) "International Territory" shall mean transportation to or from the United States and countries outside the United States, Puerto Rico or any United States Territory. It shall also mean transportation between countries that do not involve the United States, Puerto Rico or a United States Territory.
- 1.5) "Customer" shall mean the party for which SHGL is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. **It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives.**
- 1.6) "Shipper" shall mean the person or entity tendering the freight to SHGL.
- 1.7) "Consignee" shall mean the person or entity to which the documentation instructs SHGL to deliver the cargo to.
- 1.8) "Bill to Party" shall mean the person or entity to which the documentation instructs SHGL to issue the invoice for services to.
- 1.9) "Parties" as used in these Terms and Conditions shall include Customer, Shipper Consignee, Bill to Party and SHGL.
- 1.10) "Third Parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling, and/or delivery, and/or storage or otherwise".
- 1.11) "Documentation" shall mean all information received directly or indirectly from Parties, whether in paper or electronic form;

- 1.12) "Warsaw Convention" means, (a) the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, 12 October 1929, or (b) that Convention as amended at The Hague, 28 September 1955, or (c) that Convention as amended at The Hague 28 September 1955 and by Montreal Protocol No. 1, 2, or 4 (1975), whichever may be applicable.
- 1.13) "Montreal Convention" means the Convention for Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999.

2) Customer's Warranty. Customer warrants that all cargo and packages tendered to SHGL will be properly and completely described on the Air Waybill, Ocean Bill of Lading or other transportation documentation, is properly marked and addressed, is packaged properly and adequately to protect the contents in the normal course of transportation, and except as noted on the Bill of Lading, is in good order and condition. The Shipper shall comply with all applicable laws and government regulations, including anticorruption laws such as, but not limited to, the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.S. Export Administration Regulations ("EAR"), the U.S. Anti-Boycott regulations, and the various U.S. economic sanctions programs administered by the U.S. Treasury Office of Foreign Assets Control ("OFAC"). The Shipper shall also comply with all applicable laws and government regulations of any country to, from, through or over which the cargo may be carried, including those relating to the packing, carriage, or delivery of the cargo. Pursuant to the foregoing, Shipper shall furnish such information and attach documents to the applicable transportation documentation as may be necessary to comply with such laws and regulations. SHGL is not liable to the Shipper for loss or expense due to the Shipper's failure to comply with this agreement. Shipper shall indemnify and hold SHGL harmless against any and all claims, losses, or damages arising from the conduct of Shipper or any of its officers, directors, employees, agents, owners, shareholders or other persons working for or with Shipper under this agreement that constitutes a violation of the representations and warranties contained herein.

3) Disclaimers; Limitation of Liability.

- 3.1) Except as specifically set forth herein, SHGL makes no express or implied warranties in connection with its services.
- 3.2) Any exclusion or limitation of liability applicable to SHGL shall apply to SHGL's agents, employees, representatives and to any person whose aircraft or equipment is used by SHGL for carriage and such person's agents, employees and representatives.
- 3.3) SHGL will accept to provide transportation services of used product but under no circumstances will SHGL be liable for any concealed loss or damage, electrical or mechanical derangement, rust, oxidation, discoloration, or cosmetic damage of any kind to the used product shipped.
- 3.4) In connection with all services performed by SHGL, 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 therefore, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).
- 3.5) In the absence of additional coverage under (3.4) above, SHGL's liability shall be limited to the following:
- 3.5.1) Where the claim arises from activities relating to Domestic Transportation, SHGL's liability will be the lesser of; (A) \$0.50 per pound per piece lost or damaged with a minimum of \$50.00 per shipment; (B) the replacement value of an item of like kind and quality; (C) Customer's cost of the article or articles lost or damaged; or (D) repair cost in the event that a claimed item can be repaired. If a claimed item cannot be

repaired, Customer shall provide, at its own expense, a third party assessment and/or technician report which details the extent of the damage and why an item is unable to be repaired. In the event that a higher value is declared and the excess value charge paid, SHGL's liability shall be measured by repair cost if the claimed item can be repaired; and in no event shall SHGL's liability be greater than the declared amount.

In any case of loss of, damage to, or delay to a shipment, the weight to be used in determining SHGL's limit of liability shall be the weight that is used to determine the charge for carriage of such shipment. In any case of loss of, damage to, or delay to part of the cargo, the weight to be taken into account in determining SHGL's limit of liability shall be only the weight of the package or packages concerned.

3.5.2) Where the claim arises from activities related to International Transportation and neither the Warsaw Convention nor the Montreal Convention applies, SHGL's liability will be the lesser of; (A) USD \$20.00 per kg for cargo lost, damaged or delayed; (B) the replacement value of an item of like kind and quality; (C) Customer's cost of the article or articles lost or damaged; or (D) repair cost in the event that a claimed item can be repaired. If a claimed item cannot be repaired, Customer shall provide, at its own expense, a third party assessment and/or technician report which details the extent of the damage and why an item is unable to be repaired. In the event that a higher value is declared and the excess value charge paid, SHGL's liability shall be measured by repair cost if the claimed item can be repaired; and in no event shall SHGL's liability be greater than the declared amount.

3.5.3) 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.

3.5.4) Where the claim arises from activities relating to LTL Truck Brokerage, customer acknowledges their understanding that LTL shipments moved by common carrier are brokered shipments on which SHGL accepts no cargo liability, and all reports correspondence, claim filing and settlement issues are to be pursued with the carrier whom the shipment has been brokered, and are subject to the terms and conditions of that carrier.

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

4) Liabilities Not Assumed.

4.1) SHGL shall not, under any circumstances, be liable for punitive or exemplary damages, or for consequential or indirect damages, including without limitation, damages arising from loss of profit, income, interest, utility, or loss of market share, whether or not SHGL had knowledge that such damages might be incurred.

4.2) SHGL shall not be liable for loss, damage, delay or monetary losses of any type caused by: Acts of God; acts of public authorities acting with actual or apparent authority; strikes or labor disputes; weather; mechanical failures; aircraft failures; civil commotions or riots; acts or omissions of customs or quarantine officials; the nature of the freight or any defects thereof; acts of public enemies; hazards incident to a state of war; acts of terrorism; or acts, defaults, or omissions of Customer, the shipper or the consignee, including but not limited to improper packing, incorrect marking or incomplete or inaccurate shipping instructions, or failure to observe these Terms and Conditions.

4.3) SHGL shall not be liable for loss or damage to exterior packaging or outside shipping containers.

- 4.4) SHGL will not accept for transportation any shipment or commodity prohibited by law. In addition, the following items are not acceptable for carriage and will not be accepted by Company: original works of art; bonds; coins of any kind, currency and currency equivalents; furs and fur clothing; gems and stones (cut or uncut); industrial diamonds; gold or silver jewelry (other than costume jewelry); pearls; precious metals; negotiable securities; time sensitive written materials (such as contract bids and proposals); software licenses; electronic data (i.e., data stored on computers, discs, credit cards, etc.); household goods and personal effects; one-of-a-kind articles, models or prototypes; original prints and lithographs; fresh fruits; fresh vegetables; live animals; live plants; human remains of any kind; nuclear fuels; and such other articles as provided in SHGL's governing tariffs. Except as otherwise provided in these Terms and Conditions, no employee or agent of Company has any authority to accept such articles for transportation or to waive the limitations contained herein
- 4.5) Should SHGL inadvertently accept for transportation (A) any article(s) as defined in Section (4.4) herein or (B) articles with a purported declared value for which Customer has not secured SHGL's prior approval as required in section (3.4) above, SHGL's liability for loss or damage thereto shall be limited.

5) Claims Process.

- 5.1) All claims for loss, damage or delay must reported, within the time limits specified in (5.4) to:
- Swan & Hercules Global Logistics
4980 East Beverly Road
Phoenix, Arizona 85207 USA
- 5.2) No claims will be considered until all transportation charges have been paid. Claims may not be deducted from transportation charges and no claims may be deducted from any other charges owed to SHGL. SHGL reserves the right to deduct claim payments from open Customer balances. When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.
- 5.3) At time of delivery the consignee must note on the delivery receipt any exceptions to the good order and condition of the shipment that would indicate a discrepancy (shortage in the shipment, damage to the package(s), or possible damage to the contents). The consignee may not inspect the contents of the package(s) until the consignee signs for the shipment on the delivery receipt. NOTE: Such notations as "subject to inspection" and "subject to count" are not exceptions. Failure to note exceptions at time of delivery on the delivery receipt is prima facie evidence of delivery in good order and condition.
- 5.4) Unless subject to a specific statute or international convention, all claims against SHGL for a potential or actual loss, must be made in writing and received by SHGL, within The timeframes specified as follows:
- 5.4.1) Of visible damage to exterior packaging or partial loss of the cargo, immediately after discovery of the damage or shortage and at the latest within fourteen (14) days from receipt of the cargo;
- 5.4.2) Of Concealed loss or damage discovered by the consignee, after a clear receipt has been given to SHGL, must be reported immediately upon discovery to SHGL in writing within twelve (12) calendar days from the date of SHGL's delivery;
- 5.4.3) Of non-delivery of the cargo, within one hundred and twenty (120) days from the date of the issue of the air waybill, or if an air waybill has not been issued, within one hundred twenty (120) days from the date of the receipt of the cargo for transportation

by SHGL;

5.4.4) Of claims arising out of the preparation and/or submission of an import entry(s), within seventy five (75) days from the date of liquidation of the entry(s);

5.4.5) For overcharge claims, within one hundred eighty (180) days after the date of acceptance of the shipment by SHGL.

5.4.6) For any and all other claims of any other type, within two (2) years from the date of the loss or damage.

5.5) SHGL reserves the right to make inspection of the shipment and container(s) reported as Damaged within fourteen (14) calendar days after receipt of such notice. All merchandise must be retained in the original shipping container, in the same condition it was in when damage was discovered, until inspected by SHGL.

6) Company as agent. The Company acts as the "agent" of the 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 documentation on behalf of the Customer and other dealings with Government Agencies: as to all other services, Company acts as an independent contractor. Nothing herein shall be construed to create a partnership or joint venture of any kind between Customer and SHGL.

7) Quotations Not Binding. Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by SHGL to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon SHGL unless SHGL agrees in writing 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 SHGL and the Customer.

8) Reliance On Information Furnished.

8.1) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the Customs Service, other Government Agency and/or third parties, and will immediately advise SHGL of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customers behalf;

8.2) In preparing and submitting customs entries, export declarations, applications, documentation and/or export data to the United States and/or a third party, SHGL relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer;

8.3) Customer shall use reasonable care to insure the correctness of all such information and shall indemnify and hold SHGL harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect or false statement by the Customer upon which SHGL reasonably relied;

8.4) The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

9) Security, Compliance, Inspection. The TSA requires that SHGL refuse to offer air transportation of any cargo where the shipper/customer does not consent to screening of the cargo. The TSA considers all cargo tendered for air transportation subject to screening/search by the forwarder, air carrier or the TSA. SHGL, the air carriers and the TSA may conduct screening of cargo from the date of the applicable shipping document. SHGL shall not be liable for loss, damage or delay due to opening of cargo, resulting physical inspection or repackaging arising out of any such screening. This consent shall remain in effect for all cargo tendered to SHGL. 49 USC §114 authorizes the collection of certain

information pertaining to Customer. The information provided will be used to qualify Customer as a possible "known shipper". Providing this information is voluntary; however, failure to provide the information will prevent qualifying as a known shipper. This information will be disclosed to TSA personnel and contractors or other agents including IACs in the maintenance and operation of the known shipper program. TSA may share the information with airport operators, foreign air carriers, IACs, law enforcement agencies and others in accordance with 5 USC § 552a. For additional details, see the system of records notice for the Transportation Security Threat Assessment System (DHS/TSA 002) published in the Federal Register. Any fraudulent or intentionally false statement or certificate may be subject to both civil and criminal penalties under 49 CFR Parts 1540 and 1548 and 18 USC § 1001, in addition to those penalties that may arise as a result of violations.

- 10) **Insurance.** Unless requested to do so in writing and confirmed to Customer in writing, SHGL 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.
- 11) **Advancing Money.** All charges must be paid by Customer in advance unless SHGL agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by SHGL.
- 12) **Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold SHGL harmless from any claims and/or liability arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold SHGL harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which SHGL may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against SHGL, it shall give notice in writing to the Customer by mail at its address on file with SHGL.
- 13) **C.O.D. or Cash Collect Shipments.** SHGL shall use reasonable care regarding written instructions from Customer relating to "Cash/Collect" on "Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall have no liability if the bank or consignee refuses to pay for the shipment. SHGL will not accept C.O.D. or Cash Collect shipments that involve collection in any country outside the US, Puerto Rico or any US Territory.
- 14) **Costs of Collection.** In any dispute involving monies owed to SHGL, SHGL shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 18% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by SHGL.
- 15) **General Lien and Right to Sell Customer's Property.**
 - 15.1) The Customer, Shipper and Consignee shall be jointly and severally liable for the payment of all charges and advances owed to SHGL.
 - 15.2) SHGL shall have a general and continuing lien on any and all property of Customer coming into SHGL's actual or constructive possession or control for monies owed to SHGL with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;
 - 15.3) SHGL shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of SHGL's rights and/or the exercise of such lien.

- 15.4) Unless, within thirty (30) 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 SHGL, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, SHGL 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.
- 16) No Duty to Maintain Records for Customer.** Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, SHGL shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "record keeper" or "recordkeeping agent" for Customer.
- 17) Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by Customer in writing and agreed to by Company in writing, SHGL shall be under no obligation to undertake any pre- or post Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.
- 18) Preparation and Issuance of Bills of Lading.** Where SHGL prepares and/or issues a bill of lading, SHGL shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, SHGL shall rely upon and use the container count and cargo weight supplied by Customer.
- 19) No Modification or Amendment Unless Written.** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and SHGL; any attempt to unilaterally modify, alter or amend same shall be null and void.
- 20) Compensation of Company.** The compensation of SHGL for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the SHGL to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by SHGL from carriers, insurers and others in connection with the shipment. In any referral for collection or action against the Customer for monies due SHGL, upon recovery by SHGL, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.
- 21) Severability.** In the event any paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.
- 22) Governing Law; Consent to Jurisdiction and Venue.** These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Arizona without giving consideration to principals of conflict of law. Customer and SHGL:
- 22.1) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Arizona;
- 22.2) agree that any action relating to the services performed by SHGL, shall only be brought in said courts;
- 22.3) consent to the exercise of *in personam* jurisdiction by said courts over it; and
- 22.4) further agree that any action to enforce a judgment may be instituted in any jurisdiction.