

**Terms and Conditions  
of NW Forwarding, LLC  
(7/13/18)**

**1. OVERVIEW**

- 1.1** NW Forwarding, LLC (referred to as “NWF” in these Terms and Conditions) is a Property broker licensed by the Federal Motor Carrier Safety Administration (FMCSA), Docket Number MC-023899N, and as required by applicable law in Canada and, as such, it arranges for highway freight transportation with authorized motor carriage service providers. NWF also arranges for domestic air shipments with air service providers.
- 1.2** NWF also provides services as a non-vessel operating common carrier (NVOCC) licensed by the Federal Maritime Commission (FMC), Ocean Transportation Intermediary (OTI) License Number 023899N.
- 1.3** NWF also arranges for international air shipments with air service providers as a Transportation Security Administration (TSA) approved Indirect Air Carrier (IAC).
- 1.4** These Terms and Conditions apply to all shipments tendered to NWF. In tendering shipments and/or using the services of NWF, CUSTOMER acknowledges and agrees to be bound by these Terms and Conditions as of the date of the shipment.
- 1.5** As used in these Terms and Conditions, the term “CUSTOMER” means the person tendering shipments to NWF to arrange for transportation for highway, intermodal or air transportation services.
- 1.6** While NWF endeavors to provide advance notice of changes, NWF reserves the right to change these Terms and Conditions from time to time without notice. The Terms and Conditions can be accessed on NWF’s website at <https://nwforwarding.com/login>.

**2. MOTOR CARRIER HIGHWAY BROKERAGE SERVICE**

- 2.1** AS A BROKER ARRANGING FOR HIGHWAY TRANSPORTATION, NWF IS NOT LIABLE FOR ANY CLAIMS FOR LOSS, DAMAGE OR DELAY FOR SHIPMENTS TENDERED BY CUSTOMER TO NWF TO ARRANGE FOR TRANSPORTATION. Liability under 49 USC 14706 (the Carmack Amendment) or Canadian federal or provincial law applicable to motor carriers do not apply to NWF.
- 2.2** Rates for the transportation of CUSTOMER's goods will be established by email confirmation and/or through the Rate Estimate Document provided by NWF. By tendering the load to NWF,

whether or not the Rate and Load Confirmation is signed by CUSTOMER, CUSTOMER will be bound by the rate provided by NWF in such documents.

- 2.3** CUSTOMER shall be responsible for the preparation of timely and accurate Bills of Lading, delivery specifications, delivery receipts, and description of the cargo, including, but not limited to, dimensions, weight, any special handling or security requirements and all requirements relating to the transportation of hazardous materials, including any required certifications. CUSTOMER shall employ reasonable security protocols to reduce the risk of cargo theft. CUSTOMER shall indemnify, hold harmless and defend NWF as a result of any claims made due to an inaccuracy in the Bill of Lading, delivery specifications and description of the cargo, including, but not limited to, dimensions, weight, any special handling or security requirements, and employing reasonable security protocols to reduce the risk of cargo theft.

#### **Receipts and Bills of Lading**

- 2.4** If requested by CUSTOMER, NWF will endeavor to provide CUSTOMER with proof of acceptance and delivery of shipments in the form of a signed Bill of Lading or Proof of Delivery via US Mail, courier, or electronically by fax or email. NWF will not be held responsible for a CARRIER's failure to obtain any requested documentation regarding delivery. CUSTOMER's insertion of NWF's name on the bill of lading as carrier shall be for CUSTOMER's convenience only and shall not change NWF's status as a property BROKER.
- 2.5** The Terms and Conditions of any freight documentation used by NWF or carrier selected by NWF may not supplement, alter, or modify these standard Terms and Conditions.

#### **Claims, Limits of Liability, and Insurance**

- 2.6** NWF will use commercially reasonable efforts to obtain on-time performance from the motor carriers transporting CUSTOMER's shipments; however, unless otherwise agreed to by NWF in writing before the time of shipment, NWF and the motor carriers do not guarantee adherence to any particular transit schedule and will not be liable for failure to transport any shipment by any particular schedule or in time for any particular market or appointment.
- 2.7** For shipments originating in the United States, CUSTOMER must file all claims for cargo loss or damage directly with the transporting motor carrier within the time limits established by the motor carrier. Usually, but not always, a motor carrier's time limit for filing claims is within nine (9) months of the date of delivery or, if a total loss, within nine (9) months of a reasonable time for delivery.
- 2.8** In its contracts with the motor carriage service providers, NWF requires the transporting motor carrier to have in effect cargo liability insurance in the amount of \$100,000.00, HOWEVER, such policies have exceptions and exclusions to coverage which could result in

their being no cargo liability insurance coverage for one or more of CUSTOMER'S shipments. If NWF is notified by CUSTOMER with reasonable advance notice, NWF, if commercially feasible, will arrange for additional cargo insurance for the customer.

**2.9** NWF, at its own discretion, may assist CUSTOMER in the filing and/or processing of claims with the carrier. If payment of claim is made by NWF to CUSTOMER, CUSTOMER automatically assigns its rights and interest in the claim to NWF. See Section 7.29: Freight Claim Processing for further information.

**2.10** For shipments originating in the United States, CUSTOMER must file any civil action to recover for loss or damage claims against Carrier within the time limits established by the transporting motor carrier. Usually, but not always, the Carrier's time limit for filing civil actions is within two (2) years from the date the Carrier has provided notice that it has disallowed all or any part of the claim.

**2.11** Carriers have special rules and requirements that apply to shipments originating in Canada. In addition, there are Canadian laws that could also apply. These include different, usually lower, limits of liability for loss and damage to cargo and different claim filing provisions than for shipments moving entirely within the United States. For shipments originating in Canada, the following will apply:

A. The motor carrier's liability for loss, damage, or delay of shipments is a maximum of \$2.00 Canadian per pound, unless there is a declaration of value on the bill of lading evidencing or covering the shipment.

B. The time limit for providing written notice of a claim is sixty (60) days after the delivery of the shipment or, in the case of failure to make delivery, within nine (9) months after the date of shipment. The final statement of the claim must be filed within nine (9) months after the date of the shipment, together with a copy of the paid freight bill.

C. CUSTOMER must file any civil action to recover for loss or damage claims against Carrier within the time limits established by applicable law in the province of origin of a shipment. Usually, but not always, the statutory time limit for filing civil actions is two (2) years from the date of the shipment of the goods.

### **3. NORTH AMERICAN RAIL INTERMODAL BROKERAGE SERVICE**

**[Reserved for future use.]**

## **4. DOMESTIC AIR FREIGHT SERVICES**

- 4.1** The provisions in this Section 4 apply to shipments within the United States moving by air. To the extent the terms in this Section 4 conflict with the terms in other sections of these Terms and Conditions, the terms of this Section 4 shall apply.
- 4.2** NWF arranges for air transportation through contracts with North American air service providers. These contracts are supplemented by the air transportation provider's published tariffs, directories, and rules.
- 4.3** EXCEPT IN THOSE SITUATIONS WHERE IT HAS ISSUED ITS OWN AIR WAYBILL, NWF IS ACTING AS AN AGENT IN ARRANGING AIR TRANSPORTATION SERVICES AND IS NOT AN AIR CARRIER AND IS NOT LIABLE FOR DAMAGES RELATED TO SHIPMENTS BY AIR, INCLUDING, BUT NOT LIMITED TO, CARGO LOSS OR DAMAGE. ALL AIR SHIPMENTS ARRANGED FOR BY NWF ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE AIR CARRIER, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE AIR WAYBILL. AIR WAYBILLS AND AIR CARRIERS TERMS AND CONDITIONS OF SERVICE CAN PROVIDE FOR LIMITS OF LIABILITY FOR LOSS AND DAMAGE TO CARGO AS LOW AS \$0.50 PER POUND. IF NWF IS NOTIFIED BY CUSTOMER WITH REASONABLE ADVANCE NOTICE, NWF, IF COMMERCIALY FEASIBLE, WILL ARRANGE FOR ADDITIONAL CARGO INSURANCE FOR THE CUSTOMER. THE AIR WAYBILLS ALSO ESTABLISH VERY SHORT TIME LIMITS FOR FILING CLAIMS. IN THE EVENT THAT NWF HAS ISSUED ITS OWN AIR WAYBILL, NWF IS OPERATING AS AN INDIRECT AIR CARRIER AND ITS LIABILITY FOR THE SHIPMENT IS GOVERNED BY THE LIABILITY TERMS CONTAINED IN ITS AIR WAYBILL RATHER THAN THIS SECTION 4.3.
- 4.4** CUSTOMER warrants and represents that in tendering freight for shipment by air it has accurately described the items being shipped and that they are suitable for transportation by air and comply with all applicable laws, regulations, and airline rules and conditions governing transportation by air, including, but not limited to, the laws and regulations relating to the transportation of hazardous materials and dangerous goods. CUSTOMER FURTHER WARRANTS AND CERTIFIES THAT IT IS IN COMPLAINCE WITH TSA SECURITY REQUIREMENTS WHEN TENDERING SHIPMENTS DESTINED FOR TRANSPORT VIA AIR CARGO.
- 4.5** Should the CUSTOMER wish for NWF to assist in recovery for freight loss or damage from the underlying air transportation provider, the CUSTOMER must submit the claim to our freight claims department within forty-eight (48) hours of the time of the delivery or, in the case of a lost shipment, within forty-eight (48) hours of the expected delivery date.

## **5. INTERNATIONAL AIR FREIGHT SERVICES**

- 5.1** The provisions in this Section 5 apply to international shipments moving by air. To the extent the terms in this Section 5 conflict with the terms in other sections of these Terms and Conditions, the terms of this Section 5 shall apply.

**5.2** NWF arranges for air transportation through contracts with international air service providers. These contracts are supplemented by the air transportation provider's published tariffs, directories, rules and international treaties.

**5.3** EXCEPT IN THOSE SITUATIONS WHERE IT HAS ISSUED ITS OWN AIR WAYBILL, NWF IS ACTING AS AN AGENT IN ARRANGING AIR TRANSPORTATION SERVICES AND IS NOT AN AIR CARRIER AND IS NOT LIABLE FOR DAMAGES RELATED TO SHIPMENTS BY AIR, INCLUDING, BUT NOT LIMITED TO, CARGO LOSS OR DAMAGE. ALL AIR SHIPMENTS ARRANGED FOR BY NWF ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE AIR CARRIER PROVIDING SERVICES, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE AIR CARRIER'S TARIFFS, AIR WAYBILL, AND INTERNATIONAL TREATIES AND CONVENTIONS, ANY OR ALL OF WHICH PROVIDE FOR LIMITS OF LIABILITY ON THE PART OF THE AIR CARRIER. IF NWF IS NOTIFIED BY CUSTOMER WITH REASONABLE ADVANCE NOTICE, NWF, IF COMMERCIALY FEASIBLE, WILL ARRANGE FOR ADDITIONAL CARGO INSURANCE FOR THE CUSTOMER. THE AIRWAY BILLS ALSO ESTABLISH VERY SHORT TIME LIMITS FOR FILING CLAIMS. IN THE EVENT THAT NWF HAS ISSUED ITS OWN AIR WAYBILL, NWF IS OPERATING AS AN INDIRECT AIR CARRIER AND ITS LIABILITY FOR THE SHIPMENT IS GOVERNED AND LIMITED BY THE LIABILITY TERMS CONTAINED IN ITS AIR WAYBILL RATHER THAN THIS SECTION 5.3.

**5.4** CUSTOMER warrants and represents that in tendering freight for shipment by air it has accurately described the items being shipped and that they are suitable for transportation by air and comply with all applicable laws, regulations, and airline rules and conditions governing transportation by air, including, but not limited to, the laws and regulations relating to the transportation of hazardous materials and dangerous goods. CUSTOMER FURTHER WARRANTS AND CERTIFIES THAT IT IS IN COMPLIANCE WITH TSA SECURITY REQUIREMENTS WHEN TENDERING SHIPMENTS DESTINED FOR TRANSPORT VIA AIR CARGO.

**5.5** Should the CUSTOMER wish for NWF to assist in recovery for freight loss or damage from the underlying air transportation provider, the CUSTOMER must submit the claim to our freight claims department within forty-eight (48) hours of the time of the delivery or, in the case of a lost shipment, within forty-eight (48) hours of the expected delivery date.

## **6. INTERNATIONAL OCEAN SERVICES**

**6.1** FOR SHIPMENTS WHERE NWF IS PROVIDING INTERNATIONAL OCEAN TRANSPORTATION SERVICES AS A NON-VESSEL-OPERATING COMMON CARRIER (NVOCC), THE TERMS AND CONDITIONS OF THE APPLICABLE NWF TARIFF AND NVOCC BILL OF LADING SHALL APPLY RATHER THAN THESE TERMS AND CONDITIONS. Copies of the NWF Tariff and NVOCC bill of lading are available on the NWF website and in its published tariff at <http://www.dpiusa.com> or upon written request.

## **7. GENERAL TERMS FOR ALL SERVICES**

**7.1 Accord and Satisfaction.** If, in connection with any dispute between NWF and CUSTOMER arising out of or relating to the Services, CUSTOMER pays to NWF, in purported "full settlement" or "full satisfaction" (or other words of similar import) of all amounts due and owing from CUSTOMER to NWF, any amount that is less than the Invoiced Amount, any acceptance by NWF of the payment (including, but not limited to, an unequivocal acceptance) shall be deemed an acceptance under an explicit reservation of NWF's rights, and NWF's acceptance of payment shall not operate as an accord and satisfaction of any amount that NWF contends remains due and payable.

### **7.2 Disclaimer of Warranties.**

(a) **NWF MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED.**

### **7.3 Liability; No Liability for Consequential Damages.**

(a) **WITHOUT LIMITING THE EFFECT OF THE PROVISIONS OF SECTION 2.1 ABOVE OR THE OTHER PROVISIONS OF THIS SECTION 7, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE MAXIMUM LIABILITY OF NWF OF ANY KIND SHALL BE LIMITED TO THE PAYMENT BY NWF BY WAY OF DAMAGES OF A SUM NOT EXCEEDING U.S. ONE HUNDRED DOLLARS (\$100.00) OR ITS EQUIVALENT PER SHIPMENT, EVEN IF NWF AS AT FAULT OR WOULD BE OTHERWISE LIABLE. FOR THE PURPOSE OF ESTABLISHING THE AMOUNT OF NWF'S LIABILITY UNDER THIS CLAUSE, A "SHIPMENT" MEANS ALL GOODS LISTED ON ONE BILL OF LADING. THE VALUE OF THE GOODS SHALL BE ASCERTAINED BY REFERENCE TO THEIR REPLACEMENT OR REPAIR COST AT THE TIME OR PLACE OF SHIPMENT.**

(b) **NWF SHALL NOT BE LIABLE IN ANY CASE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, USE OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT NWF WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**7.4 Indemnification.** CUSTOMER shall defend, indemnify and hold NWF harmless from and against any and all demands, claims, actions, suits, liability, damages, losses, judgments, costs and expenses, including, without limitation, attorneys' fees, arising from, or in any way related to or concerning (i) any act or omission of CUSTOMER, its agents, employees, and/or representatives, (ii) any breach of these Terms and Conditions by CUSTOMER, and (iii) the enforcement of these Terms and Conditions by NWF.

**7.5 Force Majeure.** Without limiting the effect of any other term contained herein, NWF shall not be liable for damages of any kind resulting from delay or inability to deliver, or failure to deliver, caused directly or indirectly by circumstances beyond NWF's control, including, without limitation, acts of God; CUSTOMER's acts or omissions; acts of any government or any state (foreign or domestic) or political subdivision thereof; riots or civil unrest; war; accidents, fires, floods, explosions, or other catastrophes; lockouts, strikes or labor disputes or shortages; the inability to obtain fuel, power, materials, supplies, equipment, or shipping space; transportation delays; epidemics or quarantine restrictions; severe weather; compliance with, or the operation of, any applicable government legislation, regulation, directive or order of any government (foreign or domestic), or political subdivision thereof, including, without limitation, embargoes or boycotts; judgments or orders of any court of competent jurisdiction; orders or rulings of any board, agency, commission, officer or other competent governmental authority (domestic or foreign), or any political subdivision thereof; delays caused by CUSTOMER; or any other cause or causes, whether similar or dissimilar to the foregoing, beyond NWF's absolute and unconditional control or which would excuse or suspend NWF's performance under applicable law. In the event of such delay, the date of delivery of the materials described herein shall be extended by a period approximately equal to the time lost by reason of such delay. In the event of any partial failure to deliver so caused, NWF shall have the right to payment pro rata for such of the materials as it could and did in fact deliver, whether or not delivery of the same may have been delayed. This clause shall not suspend CUSTOMER'S payment obligations to NWF.

**7.6 Severability.** Any provision of these Terms and Conditions which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**7.7 Fees and Costs.** CUSTOMER agrees to pay all fees, costs and expenses, including, without limitation, attorneys' fees, costs and disbursements which NWF incurs in order to enforce these Terms and Conditions and/or to collect any sums due from CUSTOMER to NWF hereunder.

**7.8 Construction.** All headings in these Terms and Conditions are for convenience only and shall not be considered in construing the meaning of these Terms and Conditions. All references to sections include all subsections thereof.

**7.9 Notices.** All notices by either CUSTOMER or NWF required by these Terms and Conditions must be in writing and will be considered given: (a) upon delivery by hand; (b) one business day after being sent by overnight courier; or (c) three business days after being deposited in the United States mail, postage prepaid. All communications to NWF should be addressed as follows.

NW Forwarding, LLC  
20421 26<sup>th</sup> St KP S  
Lakebay, WA 98349

**7.10 Modification and Waiver.**

- (a) These Terms and Conditions shall not be modified, amended, or supplemented unless made in a writing duly executed by qualified officers of NWF and CUSTOMER (and no agreement to allow these Terms and Conditions to be modified orally shall be valid or binding). Provisions inconsistent with these Terms and Conditions contained in order confirmations or similar documents prepared by CUSTOMER shall not be valid or binding.
- (b) The failure or refusal by NWF either to insist upon the strict performance of any provision of these Terms and Conditions, and no delay or omission on the part of NWF in exercising any right, shall operate as a waiver of such right or any other right, nor shall such delay or omission be deemed a custom or practice contrary to such provision or right.

**7.11 RATES AND CHARGES**

**7.11.1 Obtaining a Rate Quote**

- (a) Once NWF has approved a CUSTOMER for credit, the CUSTOMER may obtain a rate quote by one of the following methods:
- (b) For repetitive pricing requests or bid pricing, request rates via email at [bruce@nwforwarding.com](mailto:bruce@nwforwarding.com), [hallie@nwforwarding.com](mailto:hallie@nwforwarding.com).
- (c) For spot pricing or short-term project pricing, request a rate at [bruce@nwforwarding.com](mailto:bruce@nwforwarding.com), [hallie@nwforwarding.com](mailto:hallie@nwforwarding.com).
- (d) Contact your NWF sales representative or Regional Sales Representative who will note the relevant information and forward to the NWF Pricing Department for a rate quote.
- (e) Please note that, in order to be a valid rate offer from NWF, the offer must be in writing and must be made by an authorized representative of NWF's Pricing Department.

**7.11.2 Information Needed for Rate Quote**

The following information is required in writing in order for NWF to issue a rate quote:

- (a) Name of the shipper and consignee;
- (b) Origin and destination of shipment (please provide city, state, and zip codes);
- (c) The commodity being shipped;
- (d) The equipment size and type required;
- (e) Target rate if available;
- (f) Competitive information regarding how the freight is moving if available;
- (g) Any additional services required (extended free time, lumper, driver unload, etc).
- (h) A request for cargo insurance, a request for excess value coverage for shipments originating in the United States or a request for a declaration of value for shipments

originating in Canada.

**7.11.3 Target Rate Requested. Issuance of Rate Quote**

NWF issued rate quotes to a particular customer, referred to as the “bill to” name, and differentiate rate quotes by the relevant shipment specifics, such as type of commodity, equipment size, origin/destination and other information required under Section 7.11.2: Information Needed for Rate Quote. The rate quote will not apply to other “bill to” names or shipment types.

Unless otherwise stated in writing, the quote is subject to increase upon expiration. However, if no shipments are moved under the quoted rate within 30 days, NWF reserves the right to cancel or re-quote the rate. NWF customers must specify the “bill to” name and shipment specifics at the time the request for transportation services is placed in order to be eligible for transportation under the active rate issued for that “bill to” name and shipment type.

**7.11.4 Notification of Changes to Rates and Charges**

NWF reserves the right to change rates and charges without notice unless a written agreement to the contrary has been made. It is NWF’s practice to provide customers with a minimum advance notice of five (5) days prior to an increase in rates and charges.

**7.11.5 Confidentiality of Rate Quotes**

All rate quotes that we issue are confidential. NWF customers are not permitted to disclose or make available our rate quotes to persons or entities other than its employees and agents who need to know the rate quotes to perform their transportation-related obligations. During the time that the NWF rate quote remains outstanding and in effect, neither NWF nor the CUSTOMER will disclose to persons or entities outside our respective organizations any confidential information obtained from the other party in connection with the issuance of a rate quote, including the rate levels, expected volume of traffic and origins and destinations. These confidentiality restrictions will not apply to information that is generally available to the public, which is independently developed by a party without use of the other party’s information, that was known to a party before disclosure by the other party, or that is obtained from another source without violation of any confidentiality obligations.

**7.12 NO INTERMEDIATE POINT**

Rates are from the origin to destination stated. Rates cannot be applied to or from intermediate points on the route from the stated origin to destination. Rates cannot be used in connection with stopping a shipment in transit at intermediate points for partial loading or unloading.

**7.13 RESTRICTIONS ON RATES**

Rates are valid only for the specific customer and shipment type (i.e., commodity, origin/destination and equipment size/type) quoted. CUSTOMERS are not allowed to substitute different shipment types at the quoted rate level without NWF's written authorization. In addition, the rates only cover the services described in the rate quote. Additional charges may apply for services requested/performed in addition to those services included in the initial quote. Some of these services are described in Section 7.15: Standard Accessorial Matrix of these Terms and Conditions.

**7.14 CONSEQUENCES OF MISAPPLICATION OF RATES OR MISDECLARED SHIPMENTS**

If it is determined that the commodities actually shipped via NWF are not those described in the shipping instructions, the CUSTOMER must pay the transportation rates and all per diem and other charges based upon the commodities actually shipped. Misdeclared shipments also include shipments tendered for movement under a rate quote that does not apply to that shipment and empty containers tendered for movement as loaded. In addition to all other charges that may apply to that shipment or are assessed against it, and without limiting other remedies available to it, NWF MAY ASSESS AND THE CUSTOMER WILL PAY A \$1,000 ADMINISTRATIVE CHARGE FOR EACH MISDECLARED SHIPMENT AND ANY ADDITIONAL CHARGES OR PENALTIES ASSESSED BY THE UNDERLYING TRANSPORTATION PROVIDERS IN CONNECTION WITH THE MISDECLARED SHIPMENT. Shipments of hazardous materials, restricted commodities or prohibited commodities that are not declared as such are subject to greater misdeclaration charges assessed by NWF and the underlying transportation providers. If misdeclarations continue, NWF reserves the right to cancel the CUSTOMER's rate quotes and refuse to provide service.

**7.15 STANDARD ACCESSORIAL MATRIX**

In addition to the line haul rates, the transportation services are subject to the following charges for additional services.

**[IF DESIRED, ACCESSORIAL CHARGES MAY BE INSERTED HERE]**

NWF will endeavor to provide notice when driver detention charges are incurred, but unless otherwise agreed to by NWF in a written agreement signed by an authorized NWF representative, NWF will not be required to provide notice of any other accessorial charges. Upon your written request or if agreed to in a written agreement signed by an authorized NWF representative, NWF will provide you with a periodic report showing the number of days that trailers or containers have been used by you and subject to per diem or storage charges. NWF may provide notice of these charges by facsimile, EDI, e-mail, telephone or by website posting. NWF may also agree with you to provide such notice by another method. The CUSTOMER will be responsible for the following accessorial charges to the extent incurred, whether or not NWF provides any notice of them.

**7.16 FUEL SURCHARGE – Weekly Adjustment**

Except as otherwise provided in individual contracts or pricing agreements or in connection with particular rates or charges, all pricing documents will be subject to a Fuel Surcharge based on the percentage change in the Department of Energy's Retail On-Highway Diesel Price Index. This index is updated weekly and in the event changes warrant a new index, NWF will use its best efforts to provide Shippers with a ten (10) day notice prior to application of the Fuel Surcharge. The Department of Energy Retail On-Highway Diesel Price Index can be retrieved from the Department of Energy at **202-569-6966** or accessed on the Internet at [www.eia.gov](http://www.eia.gov).

**7.17 CREDIT AND COLLECTIONS**

**7.17.1 PRE-PAID SHIPMENTS**

CUSTOMERS that (a) choose to pay in advance of their shipments, (b) are required to pay in advance because NWF has not had the opportunity to review their credit information for the establishment of open credit terms or (c) have not established credit privileges due to credit worthiness issues must submit their payment via lockbox submission or wire transfer. (Note: The amount quoted for a pre-paid delivery may not include all of the accessorials necessary for moving the load. Please see Section 7.15: Standard Accessorial Matrix for a listing of NWF's standard accessorial charges. Additional dollars may be due after the initial payment is made.)

PO BOX:

NW Forwarding, LLC  
PO Box 38  
Lakebay, WA 98349

**7.17.2 CREDIT APPLICATION**

New CUSTOMERS must obtain NWF's credit approval before NWF will arrange for transportation. A credit application may be found on NWF's website: [www.nwforwarding.com](http://www.nwforwarding.com). Completed applications should be submitted to:

NW Forwarding, LLC  
**hallie@nwforwarding.com**

- (a) A completed credit application signed by an owner (in the case of a sole proprietor or partnership) or a corporate officer (in the case of a legal corporation or limited liability corporation) of the prospective CUSTOMER.
- (b) "Bill To" information, including physical address, phone number, and contact name of the CUSTOMER.

### **7.17.3 UPDATING OF CREDIT INFORMATION**

NWF may update CUSTOMER'S credit information from time to time using available public information. In addition to public data, NWF may request that CUSTOMERS provide additional financial data to demonstrate the CUSTOMER's creditworthiness. If CUSTOMERS tender freight to NWF for transportation services, CUSTOMERS will be deemed to have consented to NWF's use of financial data about you to verify your creditworthiness.

### **7.17.4 REVOCATION OF CREDIT**

NWF reserves the right to revoke credit or to reduce a CUSTOMER's credit limit due to a change in credit worthiness, pay history or similar considerations.

### **7.17.5 PAYMENT TERMS / FINANCE CHARGE**

Unless NWF has agreed otherwise in a written agreement signed by a NWF authorized representative and subject to NWF's credit approval, payment will be due within 15 days of invoice date. If an invoice is not paid on or before the due date, such invoice may be subject to a late charge from the date payable until payment in full at 1.5% per month, or such lesser amount as may represent the maximum rate permitted by applicable law. If NWF is required to utilize the services of a collection agency or attorneys to collect any amounts due, the CUSTOMER will be responsible for reasonable collection costs, attorney fees, court costs and other reasonable expenses incurred in collecting amounts owed.

### **7.17.6 OFFSET PROHIBITED**

A customer may not withhold payment as a set off, because of a dispute or claim with NWF or its underlying transportation providers, including claims for overcharge, duplicate payment or other invoice-related disputes or claims for loss, damage or delay of freight or equipment.

### **7.17.7 CREDIT HOLD**

NWF will place an account on credit hold if satisfactory arrangements are not made on past due balances.

### **7.17.8 DISPUTE PROCEDURE FOR INVOICES**

Customers must notify NWF in writing of any dispute regarding a NWF invoice, whether regarding line haul rates, accessorial charges, fuel surcharge or other amounts, within sixty (60) days of the date of NWF's invoice. If the customer fails to timely notify NWF of the dispute, NWF's original invoice will be deemed to be final, and the customer will be deemed to have accepted such invoice in full and to have waived any and all claims or defenses to paying such invoice. Disputes must be accompanied by reasonably detailed supporting documentation to facilitate efficient resolution. NWF will work with its customers to resolve invoice disputes promptly. If NWF fails to respond to a

documented invoice dispute within sixty (60) days of the customer's notice, the dispute will automatically be deemed to be resolved in favor of the customer. As a condition precedent to collecting such a claim, customers must initiate arbitration or lawsuit for overcharges, duplicate payment, over-collection or other invoice-related dispute within eighteen (18) months of delivery or tender of delivery of the shipments involved.

#### **7.17.9 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 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, 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.

### **7.18 NO TRANSIT OR EQUIPMENT GUARANTEES**

#### **7.18.1 NWF'S MONITORING OF SHIPMENTS**

NWF monitors the progress of your shipments using our automated systems and data from the transportation providers. The data that we endeavor to collect from the transportation providers includes verification that the shipment has been picked-up, estimated arrival time, information about delays affecting the shipment and automated rail carrier car location messages. Using this information, NWF tracks the shipments and makes this information available to you through our track and trace systems available through our website at <https://tracking.magaya.com/#livetrack>. This information will not prevent or alleviate delays, but should enable you to better plan for the arrival of your shipment.

Web access to tracing information can be requested by emailing Hallie Harris at [hallie@nwforwarding.com](mailto:hallie@nwforwarding.com). Obtaining access to our track and trace systems requires that you apply for a password and user identification code and agree to maintain the confidentiality of such codes and comply with other website terms and conditions.

#### **7.18.2 NO LIABILITY FOR TRANSIT DELAYS**

NWF will use commercially reasonable efforts to obtain on-time performance from the underlying transportation providers; however, unless otherwise agreed to by us in writing before the time of shipment, NWF and the underlying transportation providers do not guarantee adherence to any particular transit schedule and will not be liable for failure to transport any shipment by any particular schedule or in time for any particular market or appointment. NWF can assist you in working to improve substandard performance by any underlying transportation provider.

Improving on-time performance may require a change in the transportation provider and may affect the rates assessed for transportation services.

### **7.18.3 NO EQUIPMENT AVAILABILITY GUARANTEES**

Unless otherwise agreed to in a writing signed by a NWF authorized representative, NWF does not guarantee equipment availability.

## **7.19 RESPONSIBILITIES OF USERS OF TRANSPORTATION SERVICE**

### **7.19.1 SHIPPING INSTRUCTIONS**

Customers must provide accurate, proper and complete shipping instructions in a form acceptable to us and accurately identify the commodities being shipped. To prevent errors and delays, these instructions must be provided in writing, such as through an EDI tender, web tender or e-mail transmission, to the NWF office arranging for the transportation. Your NWF customer service representative can provide you with information regarding our shipping instruction requirements. NWF and the underlying transportation providers will rely on the information that you provide and its accuracy and completeness. All shipping instructions should include the following information:

- (a) Name of the Customer (i.e., the entity to be invoiced);
- (b) Telephone number of Customer's office providing the shipping instructions;
- (c) Commodity description (and STCC code if available); Please see Section 7.20.1: Need for Specific Commodity Descriptions for more information on the specificity required in commodity descriptions.
- (d) Container identification number (e.g., EMHU 480001);
- (e) Lading weight (weights should be exact, not estimates);
- (f) Name, address and contact numbers (telephone and facsimile) of the origin location;
- (g) Name, address and contact numbers (telephone and facsimile) of the destination location;
- (h) Any special routing or handling instructions if such special routing and handling has been pre-approved; and
- (i) Seal number on the equipment (if available).
- (j) Origin and Destination terminal
- (k) Beneficial Owner

## **7.19.2 CANCELLATION, CORRECTIONS AND OTHER CHANGES TO ORIGINAL SHIPPING INFORMATION**

### **7.19.2.1 General**

Cancellations, corrections or other changes to previously submitted shipping instructions must be submitted in writing to NWF at PO Box 38, Lakebay, WA 98349. You should also call your customer service representative by telephone to notify them of the need to change or correct the shipping instructions.

The e-mail, web tender or EDI cancellation must clearly indicate the intention to either cancel the shipment or correct the original instructions. Sending a new set of shipping instructions without notifying us that it is a correction or change to an existing order will result in a duplicate shipment because NWF will believe the revised shipping instructions to be a new order. Corrections must specify the original and corrected shipping instructions. NWF reserves the right to assess an administration and handling charge for each correction or cancellation.

### **7.19.2.2 Cancellations**

Customers may cancel a shipment any time before the motor carrier is dispatched for pick-up. Customers should submit the cancellation request sufficiently in advance to allow NWF to notify the motor carrier of the cancellation before the driver is dispatched to the origin location. Your NWF customer service representative can help you determine the amount of advance notice needed to cancel a shipment. If the cancellation request is not timely submitted, NWF will nevertheless use commercially reasonable efforts to accommodate the cancellation request. Additional charges may apply per NWF's Standard Accessorial Matrix.

### **7.19.2.3 Corrections to Shipping Information other than Origin, Destination or Notify Party**

Corrections to data included in previously submitted shipping instructions other than changes to the origin or destination information can be made at any time before the shipment is delivered to its final destination. Please see Section 7.19.2.1: General above for more information about correcting shipping instructions. Additional charges may apply per NWF's Standard Accessorial Matrix.

### **7.19.2.4 Corrections to Origin**

A request to change the origin must be received sufficiently in advance to allow NWF to inform the motor carrier before dispatch to the original origin. Your NWF customer service representative can help you determine the amount of advance notice needed to correct the origin of a shipment. After the carrier has arrived at the origin point, additional charges may apply per NWF's Standard Accessorial Matrix.

#### **7.19.2.5 Expenses Associated with Changed or Cancelled Instructions and Limitation on NWF's Liability**

In any event, NWF will not be liable if its attempts to cancel a shipment or implement corrections are unsuccessful. Additional charges may apply per NWF's Standard Accessorial Matrix.

### **7.20 COMMODITY DESCRIPTIONS**

#### **7.20.1 Need for Specific Commodity Descriptions**

Customers must provide detailed and accurate descriptions of commodities due to the heightened focus on transportation security. Descriptions such as "FAK (Freight All Kinds)," "SLAC (Shippers Load and Count)," chemicals, household goods, sporting goods and consolidated cargo are no longer acceptable. Those descriptions are too vague and do not specifically describe a commodity. Customers should avoid use of vague catch-all phrases and industry jargon. An example of an improved description may be "golf clubs" and "golf balls" instead of "sporting goods"; or "television sets" instead of "electronics." Failing to provide accurate and detailed descriptions may result in delays at the origin pick-up or rail point. Additional charges may apply per NWF's Standard Accessorial Matrix.

#### **7.20.2 No Liability for Mis-declared or Mis-described Freight**

In any case where NWF or the underlying transportation provider reasonably determine you have mis-declared or mis-described freight, neither we nor the underlying transportation providers will have any liability for any loss or damage to that freight that in any way results, directly or indirectly, from such mis-declaration or mis-description or that could have been avoided had such freight been accurately and completely declared or described in accordance with these Terms and Conditions. Such shipments will also be subject to the provisions of Section 7.14: Consequences of Misapplication of Rates or Misdeclared Shipments and other provisions of these Terms and Conditions.

### **7.21 CROSS BORDER SHIPMENTS**

Special rules and requirements apply to shipments that must cross the borders between the United States and Canada. Additional time should be allowed for NWF and its transportation providers to process shipping information on cross-border shipments. The rail transportation providers assess additional charges for shipments that do not comply with Customs requirements or that must be set-off from the train in transit due to inspection, paperwork or other Customs-related issues. It is your responsibility to become aware of and comply with applicable customs and import, export and transportation laws, rules, practices and regulations of the governmental authorities of the countries involved in a shipment; to complete all required documentation; and to apply and pay for all licenses, permits or authorities required by governmental authorities to conduct the business and

transportation contemplated by you.

By tendering freight to NWF, customers will be conclusively presumed to agree to cooperate and to require the beneficial cargo owners, consignors and consignees to cooperate reasonably with each other, NWF and the underlying transportation providers in defending against claims or proceedings by governmental authorities alleging violations of customs, import, export, border crossing, transportation or related laws or regulations or breach of customs bond conditions. Such cooperation will include investigating the allegations; searching for and providing relevant shipping, customs and other documents; obtaining signatures for applicable customs and other documents; providing sworn affidavits relating to the movement of cargo and equipment and similar matters; and, if required, providing witnesses to testify at legal proceedings.

For intermodal shipments, NWF and the underlying rail transportation provider will hold shipments at the origin ramp or at intermediate ramps or may prevent the shipment from entering the terminal gate if customs information and other documentation are not provided at the time that the container or trailer arrives at the origin terminal. The customer will be responsible for all origin storage charges, equipment per diem use charges and other costs until complete and accurate documentation is received. You must meet any established deadlines for such documentation in order to meet the train cut-off time and be transported in accordance with the anticipated schedule. Your NWF customer service representative is available to provide information about documentation requirements, the responsibilities of the various entities involved in the transportation and applicable deadlines for shipment documentation.

There will be delays if the Customs agency in Canada or the United States decides to inspect a shipment. The customer is responsible for all drayage, loading and unloading charges; customs brokerage costs; filing costs; and other costs associated with the government inspections or documentation requirements with respect to cross-border shipments.

For more information, you should review the applicable Intermodal Circulars and contact your NWF customer service representative.

## **7.22        HAZARDOUS SHIPMENTS**

### **7.22.1    Applicability of Federal Regulations**

All shipments of hazardous materials and hazardous substances are subject to, and you must comply with, United States Department of Transportation (“DOT”) regulations, 49 CFR Parts 100 to 185, the Canadian *Transportation of Dangerous Goods Act, 1992*, the Consolidated Transportation of Dangerous Goods Regulations and to any further restrictions found in the Bureau of Explosives’ Tariff No. BOE-6000 series as in effect on the date of shipment. The BOE-6000 Series can be ordered through the following website:

[www.boepublications.com/6000U.html](http://www.boepublications.com/6000U.html)

### **7.22.2    Shipping Information for Hazardous Materials**

In tendering a shipment of hazardous materials to NWF, customers must do all the following:

- (a) Provide accurate and complete shipping information for the hazardous materials as required by law, including a shipper's certificate addressing the following:
  - i. Proper shipping name of the hazardous material as listed in 49 CFR §172.101 (Hazardous Materials Table), or any successor regulation, and any technical chemical name (if applicable);
  - ii. The primary hazard class to which the commodity is assigned and any subsidiary risk;
  - iii. The UN/NA number assigned to the material;
  - iv. The packing group code assigned (if applicable);
  - v. Reportable Quantity (if applicable);
  - vi. Emergency response telephone number as required by 49 CFR 172.602. This number must be manned 24 hours a day by a person who is knowledgeable about the materials being shipped and has comprehensive emergency response information or can immediately access a person who has this information. The emergency response information that must be available through such telephone number must include:
    - 1. Proper shipping name of the material;
    - 2. Immediate hazards to health;
    - 3. Risk of fire or explosion;
    - 4. Immediate precautions to take in case of an incident;
    - 5. Methods of handling fires;
    - 6. Methods for handling spills or leaks; and
    - 7. Preliminary first-aid information.
  - vii. Emergency response information such as a materials data info sheet or emergency response guidebook; and
  - viii. Whether the commodity is a marine pollutant (if applicable).
- (b) Certify that the materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation in accordance with DOT regulations.
- (c) Affix to the trailer or container the proper placards identifying the type of hazardous material in the trailer or container.
- (d) All placards must be placed on the container or/trailer such that they are completely visible, when viewing container from the side of the intermodal car.
- (e) Must comply with AAR Intermodal Loading Guide.
- (f) For shipments originating or destined to Canada, CUSTOMER will comply with all Canadian regulatory requirements as may be applicable including, but not limited to, all safety requirements, packaging, safety mark and security requirements applicable under the Transportation of Dangerous Goods Act and the Consolidated Transportation of Dangerous Goods Regulations including the provision of all required shipping

documentation.

Please note that a notation on a bill of lading is not sufficient to comply with the foregoing requirements.

NWF is not responsible for reviewing any shipping instructions provided by you, for classifying commodities to a hazardous materials class or for verifying whether the commodity is subject to any hazardous materials regulation or is properly classified. Information regarding hazardous materials can be obtained through the website of the Department of Transportation. If you have questions regarding NWF's processes for hazardous materials shipments, you may contact your customer service representative.

### **7.22.3 Consequences of Failure to Comply with Procedures**

Failure to disclose to NWF the presence of hazardous materials or to comply strictly with the requirements for transporting hazardous materials will relieve NWF and its transportation providers of any liability for loss or damage directly or indirectly caused to or by the hazardous materials. The customer will be responsible for and will defend, indemnify and hold harmless NWF and the underlying transportation providers for any liabilities, costs and expenses arising out of your failure to properly declare the presence of hazardous materials or to comply strictly with the requirements for transporting hazardous materials. Furthermore, any hazardous materials found to have been mis-declared may be warehoused at your risk and expense or destroyed without compensation. In addition to all other charges that may apply to that shipment, the customer will be responsible for any penalties or charges assessed by the underlying transportation provider arising out of your failure to comply with hazardous materials requirements. For instance, Union Pacific Railroad Company may assess a charge of \$3,000 for any shipment of hazardous materials that is not declared as containing hazardous materials. See UPRR - MITA Item (530)

### **7.22.4 Surcharge for Hazardous Materials Shipments**

NWF assesses a surcharge on shipments of hazardous materials. The surcharge as of the date of these Terms and Conditions is \$230 per intermodal shipment containing hazardous materials and \$300 per highway shipment containing hazardous materials for shipments originating and destined to locations within the continental United States. This surcharge is applied to each shipment governed by the Department of Transportation's hazardous materials regulations, 49 CFR Parts 100 to 185. All intermodal equipment types and sizes are subject to the surcharge. The per shipment hazardous materials surcharge will be assessed in addition to all applicable freight charges and will appear as a separate line item in invoices sent to customers.

Shipments originating or destined outside the continental United States are subject to a Hazardous Materials Surcharge dependent on specific commodities and weight, provided on an individual shipment basis.

## **7.23 FOOD SHIPMENTS; REFRIGERATED AND TEMPERATURE CONTROLLED SHIPMENTS**

- 7.23.1** CUSTOMERS tendering shipments of food subject to the provisions of the Food Safety Modernization Act (FSMA) must specify to NWF, in writing, all necessary sanitary requirements for the carrier's vehicle and transportation equipment, including any specific design requirements and cleaning procedures to ensure that the vehicle is in appropriate sanitary condition for the transportation of the food, e.g., that will prevent the food from becoming filthy, putrid, decomposed or otherwise unfit for food, or being rendered injurious to health from any source during the transportation operation and otherwise comply with the provisions of 21 CFR § 1.900-1.934, as may be amended from time to time, and also must comply with the applicable Canadian laws and regulations.
- 7.23.2** Upon a customer's prior written request, NWF will arrange for transportation of shipments requiring protection from heat or cold at a special rate for such transportation services. Such services are subject to the limitations of liability and may be considered restricted shipments as established by the underlying transportation provider. NWF will not be liable for the performance, condition, inspection, refueling or return of the temperature-controlled equipment or for commodities shipped using temperature-controlled equipment or devices (such as thermal blankets or cargo quilts) in any event, whether or not the shipping instructions or bill of lading note that the shipment requires protection from heat or cold. Shipper assumes all liability for damage and spoilage due to incorrect thermostat setting, or malfunction of any temperature controlled devices, units, recorders, or gauges on the Trailer(s), this includes but is not limited to refrigerant and fuel.

## **7.24**      **LOADING REQUIREMENTS**

### **7.24.1**    **Acceptance of Container Not a Waiver**

The transportation providers have the right to reject any shipment that does not comply with these requirements. Acceptance of a sealed container for transportation does not constitute a waiver of your liability or of NWF's or the underlying transportation provider's right to seek indemnity from you for noncompliance with your loading obligations or to exercise other rights and remedies. Nor does it cause NWF or the underlying transportation provider to be responsible for any loss or liability related to such shipment. The presence during loading or participation by an employee or agent of any transportation provider will not in any way change or lessen your responsibility to properly and adequately package, load, unload, secure, block and brace the freight within the container or trailer.

### **7.24.2**    **Consequences of Improper Loading**

Loads that shift in transit because they were not properly prepared for shipment will be reloaded, re-secured or adjusted in the equipment or transloaded into other equipment, at the CUSTOMER'S expense. NWF will work with the underlying transportation provider and the CUSTOMER in an effort to minimize the expense and delay due to such adjustment or trans loading of the freight, and upon your request, will facilitate communications with the underlying transportation providers

to provide the customer (and its consignor) with information and guidance so that it will be able to properly prepare future shipments. If a load shift occurs during transportation and it is determined that improper or insufficient loading, blocking and bracing proximately caused the load shift, NWF and the underlying transportation providers may hold the CUSTOMER liable for all expenses and charges arising from the load shift, including the repair of damaged equipment, loss or damage to freight, fines, penalties and adjustment and transload services. If a transportation provider is cited and fined for noncompliance with highway weight laws, that transportation provider will have the right to recover incurred costs from the parties that caused the container or trailer to be overloaded or improperly loaded.

## **7.25 SHIPPER'S RESPONSIBILITY TO COUNT AND SEAL THE TRAILER OR CONTAINER**

### **7.25.1 Shipper Load and Count**

All loads are considered shipper load and count and consignee unload unless arrangements are made at the time of the request for pricing or before the freight is tendered for shipment. The consignor is responsible for specialized stamp or form as a delivery receipt for a shipment will not invalidate any other form of delivery receipt obtained by the underlying transportation provider. Furthermore, a consignor's or consignee's failure to record the seal number of a shipment will not render NWF or the underlying transportation provider liable for shortage in that shipment.

### **7.25.2 Sealed Shipments**

Ordinarily, the underlying transportation providers will not accept liability for shortages unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider. The underlying transportation providers will require that shortage claims be supported by seal records and actual loading and unloading records. Even in connection with shipments for which the driver performed the freight count, if the seal was intact upon delivery, any shortage claim is likely to be declined unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider.

By tendering the shipment to NWF for transportation, you agree that the transportation provider may break the seal on a trailer or container if it determines that it is reasonably necessary to do so to inspect, reposition, or protect the cargo or the transportation equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations.

The consignee may not refuse delivery of a shipment solely because the seal on the container or trailer is broken. Any refusal to accept delivery will be subject to the provisions of Section 7.29.4.2: Consequences of Failing to Accept Freight.

## **7.26        INSPECTION OF EQUIPMENT**

All empty equipment provided for loading should be inspected prior to loading to ensure that it is in suitable condition to protect and preserve the freight during transit. This inspection, at a minimum, should include closing the doors and inspecting for any light that would indicate that the unit structure is compromised. Customers should promptly notify NWF of any rejected equipment. If an investigation reveals that defects in equipment could reasonably have been discovered prior to loading, any claim for loss or damage will be declined.

## **7.27        USE OF EQUIPMENT**

If NWF arranges for containers or trailers to be dropped at a location for your convenience and left unattended by the motor transportation provider, you will be responsible for any loss or damage to the equipment occurring during or as a result of the possession or use of the equipment by you or your consignees or consignor or their agents or employees.

Equipment use is subject to the Uniform Intermodal Interchange agreement (UIIA). [www.uiia.org](http://www.uiia.org). In the case of an unloading pool, it is your responsibility to report any owner responsible damage as stated in UIIA section E. within 6 days of the receipt of the equipment. Any unreported damage after the 6th day will be your responsibility.

## **7.28        LIABILITIES**

### **7.28.1    NON-LIABILITY FOR FREIGHT LOSS, DAMAGE OR DELAY**

#### **7.28.1.1    NWF 's Non-Liability**

Without limiting the effect of the provisions of Section 2.1 above, unless NWF has expressly agreed otherwise in a written agreement signed by a NWF authorized representative, NWF is not liable for any freight loss or damage caused by the services of the underlying transportation provider or arising out of the negligence or intentional misconduct of the underlying transportation provider. The negligence or intentional misconduct of the transportation provider will not be imputed to NWF.

#### **7.28.1.2    Underlying Transportation Provider Liability**

Rail and intermodal circulars, motor carrier tariffs or service guides, and air bills and air carrier terms and conditions typically establish limits of liability for loss, damage or delay to cargo. The underlying transportation providers will be liable for loss or damage to freight to the extent provided under the terms of and subject to the procedures set forth in these Terms and Conditions, the applicable motor carrier tariff or service guide, the applicable Intermodal Circular or the contract between NWF and the transportation provider, or if not covered in these Terms and Conditions, the applicable Intermodal Circular, the applicable motor carrier tariff or service guide or a NWF contract, under federal transportation law.

The limitations of liability established by the U.S. and Canadian rail transportation providers in effect as of the date of these Terms and Conditions are subject to change without notice. If you would like information regarding the Intermodal Circulars of the major rail transportation providers, you can review their Intermodal Circulars. Customers may also contact your customer service representative or freight claims representative.

### **7.28.2 Defenses to Liability for Freight Loss or Damage**

Without limiting the effect of the provisions of Sections 2.1 and 7.28.1.1: NWF's Non-Liability above Neither NWF nor the underlying transportation providers will be liable for the following: (1) damage to freight or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the freight; (2) inherent vice or defect in the freight transported, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, deterioration of perishable products, or damages caused by heat or cold; (3) force majeure events as described in Section 7.5; (4) an act, omission or default of any customer, shipper, consignor, consignee, beneficial owner or other third party logistics provider; (5) shipments stopped and held in transit at your request; or (6) loss or damage of freight that violates any federal, state or local law, ordinance or regulation or that has been loaded in a container or trailer so that the combined weight of the chassis, container or trailer and the freight exceed 65,000 pounds.

### **7.28.3 NWF'S NON-LIABILITY FOR PERSONAL INJURY OR PROPERTY DAMAGE**

NWF is not liable for any injury (including death) to persons or damage to property, including loading docks, facilities or other property, that arises out of the negligence, willful misconduct or other acts or omissions of the transportation providers or others in the course of the transportation services that we arrange at your request.

## **7.29 FREIGHT CLAIM PROCESSING**

### **7.29.1 NWF'S ASSISTANCE WITH FREIGHT CLAIMS PROCESSING**

NWF will use commercially reasonable efforts to assist and cooperate with the CUSTOMER to investigate and process any freight loss or damage claims against the underlying transportation providers and any claim for damage to the CUSTOMER'S property occurring in the course of the transportation services rendered to such customer. NWF will encourage the underlying transportation providers to pay, settle or disallow all claims within 120 days of filing and to provide an explanation for any declined claim. If the claim is not processed and disposed of within 120 days after receipt, NWF will provide the CUSTOMER with status updates upon request. NWF reserves the right to assess an administrative charge for NWF's assistance to the customer in handling freight claims.

### **7.29.2 NOTIFICATION OF DAMAGES**

If a shipment arrives with visible or obvious damage or loss of cargo, the customer must make a note accordingly on any transportation document, including a bill of lading, provided by the delivery carrier for signature and NWF promptly (in no event later than the time limit established in the applicable Intermodal Circular) in writing advising NWF of the nature and extent of the loss or damage. Prompt notification is required to enable NWF to comply with its underlying agreements with the transportation providers, to allow the removal of damaged trailers and containers from further use until repairs can be made, and to permit NWF and the transportation providers to inspect the shipment. The transportation providers may consider you to have waived and released the claim if there is a failure to provide this prompt notification. The customer will (or will cause its consignee to) preserve and make available to NWF's or the transportation provider's inspectors all damaged cargo, all cargo received in good condition and all packaging, blocking, bracing and security devices to assist the inspectors in determining the cause of the damage or loss. Failure to inspect damaged cargo for whatever reason will not change the burden of proof or your obligation to mitigate damages nor will it be considered an admission of liability by NWF or the transportation provider. For claims please email Hallie Harris, hallie@nwforwarding.com or contact your customer service representative.

### **7.29.3 TIME LIMITS ON FREIGHT CLAIMS AGAINST MOTOR AND RAIL TRANSPORTATION PROVIDERS**

Generally, the transportation providers require that freight claims be submitted to them in writing no later than nine months after the date of delivery or in the case of a lost shipment, nine months after the expected delivery date. Generally, motor transportation providers require that you initiate lawsuits on freight claims within two years after any portion of the claim is disallowed. Through the Intermodal Circulars, the rail transportation providers impose different time limits for initiating lawsuits on a freight claim, ranging from six months after disallowance to eighteen months after delivery. Generally, for rail carriage in Canada there is a four (4) month deadline for notice of loss to be given in printed or electronic form. The transportation providers will not pay freight claims that do not meet these time limits.

Should the CUSTOMER wish for NWF to assist in recovery for freight loss or damage from the underlying transportation provider, the CUSTOMER must submit the claim to our freight claims department within sixty (60) days of date of delivery or in the case of a lost shipment, within sixty (60) days of the expected delivery date for shipments originating in the UNITED STATES OR within thirty (30) days within the date of delivery or within thirty (30) days of the expected date of delivery for shipments originating in CANADA. The claim should include the information set forth below in Section 7.29.5: Claim Filing. If the freight claim is not timely filed, the underlying transportation providers may consider your failure to timely file the claim as a release by you the underlying transportation providers from responsibility to pay that freight claim, and your claim may be declined. CUSTOMERS may proceed by filing the written claim directly with the applicable transportation provider, but NWF has no responsibility for the timeliness of the filing or the payment or processing of that claim.

NWF has these time limits due to the deadlines imposed on us by the underlying transportation providers discussed above. NWF's time limits are intended to allow us time to resubmit your claims with the underlying transportation provider within the deadlines imposed by the Intermodal Circulars or our agreements with the transportation providers.

#### **7.29.4 MITIGATION OF LOSS/UNCLAIMED OR REFUSED FREIGHT**

##### **7.29.4.1 Duty to Mitigate**

It is important to remember that according to general claims practice; it is the consignee's obligation to mitigate any losses. Therefore, the consignee should accept damaged freight, and if the consignee is unable to salvage the freight, the freight should be made available to the underlying transportation provider for salvage. If the consignee is unable or unwilling to assist in mitigating the loss, NWF will notify the CUSTOMER of the refusal and follow the CUSTOMER'S direction regarding the freight, including shipping it to a location designated by the CUSTOMER for further handling. Costs associated with complying with the CUSTOMER'S direction will be billed to the CUSTOMER.

##### **7.29.4.2 Consequences of Failing to Accept Freight**

If for any reason whatsoever, the consignee refuses the freight or the customer refuses to give timely direction about the disposal of freight rejected by the consignee, NWF may, without further notice or demand, place the freight in storage at the risk and expense of the freight and the CUSTOMER. Such stored freight will be subject to a lien in favor of NWF for any charges. By tendering freight to us to arrange for transportation, you will be conclusively presumed to have granted such a lien to NWF. NWF may exercise the foregoing rights at any time after 48 hours have elapsed since notification of the arrival and availability of the freight at destination or of the consignee's rejection of the freight.

Alternatively, NWF or the underlying transportation provider may sell the freight to the highest bidder in a public or private sale. Before such a sale of nonperishable freight is made, NWF will first give written notice to the CUSTOMER that the freight has been refused or unclaimed and that it will be subject to sale if disposition is not arranged for within three (3) business days. Further failure or refusal to claim or dispose of the freight within this time period will constitute a waiver by you of all right, title and interest in and to the freight and all rights, claims, notices and defenses with respect to the freight to the maximum extent permitted by applicable law.

If the receiver of perishable freight fails or refuses to accept it promptly, NWF may, in a public or private sale, sell the freight to the best advantage to prevent deterioration. Where the procedures provided for in the two preceding paragraphs are not possible, NWF may sell the freight as authorized by law.



NWF will be entitled to recover from the CUSTOMER, and/or from the proceeds of a sale or disposal of the freight, all costs incurred as a result of the customer's or the consignee's failure to accept delivery of the freight or to provide direction about disposal of rejected freight, including all storage fees, equipment use charges and costs of disposal.

#### **7.29.4.3 Salvage Obligation**

Customers are required to use all reasonable and good faith efforts to mitigate its damages from any freight loss or damage. These efforts will include salvaging the goods in a commercially reasonable manner and repackaging and relabeling the freight. If you prevent or refuse to sell or allow the sale of damaged freight, NWF may deduct our reasonable estimate of the salvage value of the damaged freight from the amount of the claim against the transportation provider and us. In that case, you will be bound by the reasonable salvage deduction determined by NWF.

Furthermore, NWF may recover from the CUSTOMER and/or from the proceeds of a sale of the freight (or deduct from the claim) all costs incurred as a result of the customer's or the consignee's rejection and the customer's failure to provide direction or to sell or permit the sale of the freight, including all storage fees and costs of disposal. Notwithstanding the foregoing, if the freight is offered to us for salvage, we are entitled to, but are not required to, undertake salvage efforts. If NWF, in our discretion, determines that we will not undertake salvage efforts, we in no way waive our right to assert our claim that you failed to mitigate damages by customer's failure to take efforts to salvage the freight.

#### **7.29.5 CLAIM FILING**

Freight Claims should be submitted to the address below or emailed to Hallie Harris, hallie@nwforwarding.com

NW Forwarding, LLC  
**PO Box 38**  
**Lakebay, WA 98349**

When submitting a claim, the following items must be included. Failure to provide all of the following Information within the time limit set forth in Section 7.29.3: Time Limits on Freight Claims against Motor and Rail Transportation Providers may be considered a waiver and release of the claim by the transportation provider:

- (a) A demand for payment of a specified dollar amount determined in accordance with these Terms and Conditions. This demand should include documentation to verify the amount of the demand such as certified copies of repair invoices or actual product costs. If the freight has not been invoiced to the consignee or the invoice does not show the price or value, or the freight has not been sold but transferred at bookkeeping values only or has been shipped on consignment or approval or is

- otherwise involved in an inventory or stock to stock transfer, the demand should include documentation and certification of the actual value of the freight;
- (b) Information to identify the shipment such as unit number, date of shipment, origin and destination of the shipment, shipper's, consignee's and notify party's names, and bill of lading number;
  - (c) Legible copies of shipping instructions, the delivery receipt and other shipping documents;
  - (d) Applicable salvage allowance;
  - (e) Legible copies of the loading and unloading tally denoting contents and quantities of each of the cartons, crates, boxes, pallets or shipping units involved in the shipment and seal record (particularly for shortage claims);
  - (f) Supporting documentation detailing the nature of the damage or loss (such as photographs supporting the method of bracing, or actual damage to equipment), proof-of delivery, reports, and receiving records. Note that photographs should show the loaded container (with the equipment number visible) at the time the damage or loss was noted, as well as the condition of the equipment that is believed to have caused the damage or loss and the damaged goods themselves. Photos only of damaged goods after they have been unloaded from the container do not indicate how the goods were damaged.
  - (g) Origin records or certification as to the condition and quantity of freight at the time received from the destination transportation provider;
  - (h) Shipper import declaration (if applicable); and
  - (i) Evidence that the shipment was properly loaded, blocked, braced and secured for the selected mode of transportation.

Since documents, photographs and other information sent by facsimile are often illegible or may not be available in an electronic format suitable for e-mail, NWF recommends that you send freight claims by mail, expedited delivery (such as FedEx) or personal delivery. Providing legible and complete documentation will expedite the processing of the claim.

## **8. ADDITIONAL LEGAL TERMS**

### **8.1 Applicable Law; Choice of Venue; Service of Process.**

- (a) These Terms and Conditions, their interpretation, and the performance hereunder as to all matters, including, without limitation, its interpretation, construction, effect and remedies, shall in all

respects be governed by the substantive laws of the State of Washington, United States of America, without regard to its conflicts of law rules.

- (b) The venue for all disputes arising in connection with these Terms and Conditions shall be brought exclusively in the State Courts of Washington or the United States District Court for Washington, United States of America, including the taking of depositions. CUSTOMER consents to the personal and subject matter jurisdiction of such courts and waives any defense with respect to any such action based upon forum non conveniens or lack of personal or subject matter jurisdiction.

