

TERMS AND CONDITIONS OF SERVICE

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY AGREEING TO USE THE SERVICES OF COMPANY AND ITS AFFILIATED ENTITIES, CUSTOMER SIGNIFIES ITS ASSENT TO THESE TERMS AND CONDITIONS. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. THESE TERMS AND CONDITIONS OF SERVICE CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN THE COMPANY AND CUSTOMER. ALL SERVICES RENDERED BY COMPANY ON BEHALF OF, OR FOR THE BENEFIT OF CUSTOMER, SHALL BE PERFORMED IN ACCORDANCE WITH, AND BE SUBJECT TO, THESE TERMS AND CONDITIONS.

1. Definitions.

- (a) "Company" shall mean Karl Gross Logistics (USA), Inc., its subsidiaries, related companies, agents and/or representatives;
- (b) "Customer" shall mean the person for which the Company is rendering service, as well as its principals, 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;
- (c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;
- (d) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";
- (e) "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".
- (f) "Invoice". Invoice shall refer to the quote, order confirmation, invoice or other documentation issued by Company reflecting the purchase of services from Company.
- (g) "Services". Services shall mean any and all services offered or performed by Company on behalf of Customer, its agents and/or representatives, whether or not referenced in an Invoice.

2. Application. These terms and conditions shall apply to and shall govern all Invoices, agreements or other documents which memorialize an agreement to purchase Services from Company, regardless of whether the Invoice or other document references these terms and conditions. All shipments, services, sales and quotations between Company and Customer are subject to these terms and conditions.

3. Acceptance. No terms, conditions or prices for, or relating to any Services submitted by Customer shall be effective unless confirmed in writing by Company. No effect shall be given to any terms or conditions proposed in Customer's purchase order, proposal, request for quote, sales note, or any other document which add to, vary from, or conflict with the Invoice, with these

terms and conditions, or any terms and conditions contained on or referenced in any agreement between Customer and Company, including, but not limited to, a bill of lading or contract of carriage. Any such proposed terms shall be void. Customer shall be deemed to have assented to and acknowledged these terms and conditions unless Customer notifies Company in writing within three (3) working days of Customer's receipt of the Invoice that it rejects the Invoice and these terms and conditions.

4. Payment. Customer shall pay for Services and related services in accordance with the terms set forth in the Invoice, or as otherwise set forth in writing between the Customer and Company. In the event the Invoice does not contain payment terms, all Invoices are payable no later than thirty (30) days after receipt by Customer. Payment shall not be contingent upon any payment to the Customer from any third party. Customer may not set off any sums owed to Company for any reason.

5. Company as Independent Contractor. Company shall be an independent contractor with respect to the performance of all services performed on behalf of Customer and neither Company nor anyone employed by Company shall be deemed for any purpose to be the employee, agent, servant or representative of Customer in the performance of any service or part thereof in any manner dealt with hereunder.

6. Limitation of Actions.

(a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within ninety (90) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.

(b) All suits against Company must be filed and properly served on Company as follows:

(i) For claims arising out of ocean transportation, within one (1) year from the date of the loss;

(ii) For claims arising out of air transportation, within two (2) years from the date of the loss;

(iii) For 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);

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

7. No Liability For The Selection or Services of Third Parties and/or Routes. Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its

agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

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

9. Reliance On Information Furnished.

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

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company 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, incomplete, or false statement by the Customer or its agent, representative or contractor upon which the Company reasonably relied. 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.

10. Declaring Higher Value To Third Parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefor; in the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

11. Insurance. Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

12. Disclaimers; Limitation of Liability.

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

(b) Subject to (c) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of third parties;

(c) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).

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

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

(ii) where the claim arises from activities relating to "Customs business," \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less;

(iii) where the claim arises from activities performed by Company as an NVOCC, the liability as set forth in Company's tariff or applicable bill of lading, whichever is less;

(iv) in all other cases, \$50.00 per shipment or transaction,

(e) 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.

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

14. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising in any way from the transportation, storage, loading, unloading and/or delivery of the shipments and/or any action, inaction, omission, or conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims, including any claims by any Third Party for freight or other charges, duties, fines, penalties, liquidated damages or other money due arising from services provided to or on behalf of the Customer. Customer agrees to indemnify, defend and hold the Company harmless from any claim, suit, demand or action in whatever form, asserted against Company for any injury, death, property damage, environmental damage or advertising injury arising in any way from the transportation, storage, loading, unloading and/or delivery of the shipments.

15. C.O.D. or Cash Collect Shipments. Company shall use reasonable care regarding written instructions relating to "Cash/Collect" on "Deliver (C.O.D.)" shipments, bank drafts, cashier's 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.

16. Costs of Collection. In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company. If any suit is brought by Customer against Company and Company is determined not to be liable to Customer or its liability is limited in accordance with these terms and conditions, Company shall be entitled to its reasonable attorney's fees incurred in defending said

action. The foregoing sentence shall not apply in the event a Court or other tribunal determines that New York law does not apply to the services rendered by Company.

17. General Lien and Right To Sell Customer's Property.

(a) Company shall have a general and continuing lien on any and all property of Customer coming into the actual or constructive possession or control of Company or Company's third-party subcontractor, for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

(b) Company 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 ongoing storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.

(c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

18. 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, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.

19. Obtaining Binding Rulings, Filing Protests, etc. Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post-Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

20. Preparation and Issuance of Bills of Lading. Where Company prepares and/or issues a bill of lading, Company 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. Company shall rely upon and use the cargo weight supplied by Customer.

21. Modification. Company reserves the right to change, modify, add, or delete portions of these terms and conditions from time to time without further notice. Any attempt by Customer to unilaterally modify, alter or amend same shall be null and void. The headings contained in these terms and conditions are included for convenience and shall not affect the language included herein.

22. Compensation of Company. The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies

selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

23. Severability. In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

24. Force Majeure. Company shall not be liable for any delay in performance of its obligations and responsibilities under an Invoice due to causes beyond its control, and without its fault or negligence, such as but not limited to war, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood or other natural disaster, provided that said party has taken reasonable measures to notify the other promptly in writing, of delay.

25. Notice. Any notice or other communication required or permitted by these terms and conditions must be given in writing will be deemed given when received or delivered. Notice shall be given: Notice must be given to Company to Company's registered agent and/or corporate officer via overnight delivery service (such as FEDEX or DHL). If to Customer at such address, physical or electronic, as furnished in the Invoice or such other address utilized or referenced by Customer in its correspondence with Company.

26. Application of Tariff, Bills of Lading. To the extent that Company is performing Services as a non-vessel operating common carrier, the provisions of the Company's applicable tariff, if any, and the Company's bill of lading terms and conditions of service are incorporated herein. In accepting this Invoice, Customer acknowledges the receipt, and application of the tariff and/or Company bill of lading terms and conditions. Copies of the provisions of the Company's applicable tariff are obtainable from the Company or its agents upon request or, from the Company's publicly available tariff, which is published at the location reported to the appropriate government body. The tariff is also available by subscription. The Company's tariff and bill of lading terms and conditions of service are provided to the Customer by the Company in other commercial documents related to the carriage of goods by sea (which may include, but are not limited to, the Company's invoices, the shipper's letter of instructions, the credit application, powers of attorney, and other commercial documents), and at the Company's offices. Nothing herein shall be understood to replace or supersede any applicable terms as contained in Company's tariff or bill of lading. With respect to the provision of services as a non-vessel operating common carrier, in the case of inconsistency the following order shall govern: Company's tariff, Company's bill of lading terms and conditions, these terms and conditions of service.

27. Brokerage Services. To the extent that Company is performing Services in the United States as a domestic transportation broker, it is understood that Company's responsibility shall be

limited to arranging for transportation of Customer's freight as a broker of freight transportation, as that term is defined by 49 U.S.C. § 13102(2). These terms and conditions of service shall apply to the provision of brokerage services by Company unless otherwise set forth in writing between Company and Customer regarding the provision of brokerage services.

(a) Customer shall be responsible for providing Company with timely and accurate delivery instructions and description of the cargo, including weight, dimensions, any special handling requirements, for any shipment.

(b) Customer shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that any shipments constitute hazardous materials. Customer is obligated to inform Company immediately if any such shipments do constitute hazardous materials. Customer shall defend, indemnify and hold Company harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of Customer's failure to comply with applicable hazardous materials laws and regulations.

(c) Customer shall be primarily responsible for the payment of all carrier charges, including freight and accessorial charges, for the shipments.

(d) Customer shall be responsible for the accurate freight classification for all shipments.

(e) Company shall use reasonable care in its selection of third parties to perform the transportation of Customer's freight. In the performance of its brokerage duties hereunder, Company has entered into, or may enter into, agreements with entities which will perform the carriage and/or freight forwarding services for the transportation of Customer's freight. It is expressly understood that Company does not assume responsibility as a carrier or freight forwarder of cargo under said agreements and Customer expressly acknowledges that Company does not assume such responsibility as a carrier. In the event that Company performs other services relating to the transportation of Customer's freight, Company's liability shall be limited to \$50 per shipment, or the limitation as set forth in the applicable bill of lading or transport document, whichever is less. In the event Company agrees to perform other functions, separate and apart from broker services, including, but not limited to, the arranging for customs brokerage services, ocean freight forwarding services, temporary storage and warehousing services, and other logistics functions, where any loss or damage occurs as a result of acts or omissions, breaches, or other liability arising from the provision of services not related to the performance of broker services, the liability of Company shall be as set forth herein.

(f) It is understood that the insertion of Company's name on the bill of lading and/or delivery receipt shall be for the convenience of the Customer or carrier only and shall not change Company's status as a property broker or make Company liable as a carrier of the shipment.

28. Warehousing Services: The following provisions shall apply to govern warehousing services provided by Company:

(a) Definition. "Warehousing Services" shall include all services performed by Company at Company's warehouse, or in a warehouse leased or otherwise utilized by Company. These services shall include, but not be limited to, storage, on-forwarding, warehouse distribution, packing and crating.

(b) In the performance of the warehousing services, Company shall be considered as a warehouseman under applicable local law.

(c) For all property of Customer or Customer's customers entering into the possession of Company as a warehouseman, Company shall issue a warehouse receipt which shall note the description of the merchandise entering the warehouse, including, if available, quantity, type, condition and value of the merchandise. The warehouse receipt may also include the rate of storage and any other charges for services to be rendered with respect to the merchandise. In the event a warehouse receipt is not issued, these terms and conditions shall apply and Customer agrees to pay the rate for storage as set forth in the invoice for services issues by Company.

(d) All goods for storage shall be delivered at the warehouse property marked and packed for handling. Customer shall furnish, at or prior to such delivery, a manifest showing marks, brands or sizes to be kept and accounted for and the class of storage desired, otherwise the goods may be stored on bulk or assorted lots, in freezers, coolers or general storage at the discretion of Company and will be charged accordingly. Company undertakes to store and deliver goods only in the packaging in which they are originally received, unless by special arrangement and subject to charge.

(e) All goods are stored on a month to month basis unless otherwise agreed prior to commencement of the storage period. Unless otherwise agreed by the Company and Customer, a full month's storage charge will apply on all goods received between the first and fifteenth inclusive of calendar month and one half month's storage charge will apply on all goods received between the sixteenth and the last date inclusive of the month, and a full month's charge will apply to all goods in storage on the first day of the next succeeding calendar month.

(f) Except where another procedure is provided by statute, Company may, upon written notice to Customer and to any other person known by Company to claim an interest in the goods, require the removal of all or any part of the goods by the end of the next succeeding storage month. Such notice shall be given by delivery in person or by registered or certified letter addressed to the last known address of the person to be notified.

(g) In all circumstances where freight is received at the warehouse, transit shall be deemed to have ceased and the storage of said goods shall be pursuant to the terms of the warehouse receipt issued or in accordance with these terms and conditions of service.

(g) Company is specifically authorized at its sole discretion and without notice to store the subject goods with third parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; Company will request excess valuation coverage only upon specific written instructions from Customer, which must agree to pay any charge therefore. Customer expressly acknowledges that there is a distinction between excess valuation coverage, which increases the legal liability amount of the subject service provider beyond a released value rate, and a request for insurance. In the absence of written instructions from Customer, and/or in instances in which the third party does not agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

(h) **Liability.** Company's liability for loss or damage for warehouse services provided at a warehouse it operates or owns shall be limited to 50 cents per pound per item, unless otherwise provided in the warehouse receipt. Company shall in no way be liable for any loss or damage occurring in a third-party warehouse.

The responsibility of Company, in the absence of any other written provision is that of reasonable care and diligence required by law. Company shall not be responsible for loss or damage caused by acts of God, fire, insects or rodents, rust, normal wear and tear, leakage, extremes in temperature or ambient moisture, inherent vice, latent defect, loss of market due to delay or any other consequential loss or damage, wars, strikes, riots, civil commotion or any other cause beyond the control of Company. Further Company shall not be responsible for breakage of any fragile items unless packed and/or unpacked by Company. In the absence of any visible signs of damage, Company shall not be responsible for the mechanical operation of any musical instrument, electronic device of any description or of any photographic equipment. Perishables of any description, which susceptible to damage through temperature changes or other causes incidental to general storage, are accepted for general storage at Customer's risk.

29. 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 New York without giving consideration to principals of conflict of law. Customer and Company (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of New York County, New York; (b) agree that any action relating to the services performed by Company, shall only be brought in said courts; (c) consent to the exercise of in personam jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgement may be instituted in any jurisdiction.

30. Nonwaiver. Failure of either party to insist upon performance of any provision of these terms and conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the provisions hereof, shall not be construed as thereafter waiving any such provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.