

TERMS AND CONDITIONS

These Terms and Conditions are also available for review at <http://www.fritzspeciallytransport.com>

Services performed by Fritz Evans, Inc. ("FEI") for the Customer shall be subject to the following terms and conditions of service. "Customer" hereunder shall mean the person or entity for whom services are provided, and any agent, representative, or contractor thereof, including but not limited to any shipper, consignee, exporter, importer, owner, bailor, bailee, warehouseman, forwarder, broker, owner, insurer, and/or carrier, engaged separately by the Customer, as well as the Customer's heirs, executors, successors and assigns.

Sec. 1 Application and Acceptance: (a) The act of tendering goods by the Customer to FEI for services including but not limited to warehousing, packing, crating, import, export, outturn, and transport, shall constitute acceptance by the Customer of these terms and conditions of service. (b) FEI and the Customer acknowledge and agree that these terms and conditions of service are applicable to all of FEI's invoices, bills of lading, waybills, warehouse and storage agreements, pick-up and delivery receipts, and transportation agreements and contracts of carriage, and are incorporated herein. (c) The Customer acknowledges and agrees that it is responsible for providing notice and a copy of these terms and conditions to all of its agents, representatives, and contractors.

Sec. 2 No Agency: (a) Subject to any applicable law, statute, regulation, treaty, or convention and sub-section (b) below, these terms and conditions shall not be construed as creating an agency relationship between FEI and the Customer. (b) FEI shall act at all times as an independent contractor, except when providing services pursuant to a duly authorized power of attorney issued by the Customer.

Sec. 3 Services by Third Parties: (a) Unless otherwise agreed in writing between FEI and the Customer, FEI shall be entitled to subcontract the whole or any part of any service provided hereunder to third parties. (b) FEI shall exercise reasonable care in the selection of third-party subcontractors, but assumes no liability and shall not be held responsible for any damage, loss, expense or delay caused by their actions or omissions, except as provided in Section 11 below. (c) It is agreed that third-party subcontractors providing services hereunder shall be considered intended beneficiaries of these terms and conditions, but nothing herein shall be construed as limiting or relieving such third parties of liability to FEI for any damage, loss, expense or delay resulting from their acts or omissions.

Sec. 4 Quotations: All fee and rate quotations provided by FEI to the Customer are for informational purposes only and are subject to change without notice. Under no circumstance shall a quotation be binding upon FEI unless it undertakes in writing to provide services thereunder at a specific and fixed fee or rate prior to the tender and acceptance of goods.

Sec. 5 Shipment to Warehouse: (a) In the event that the Customer engages a third party to transport or deliver goods to FEI for warehousing or storage, the Customer agrees not to ship goods to FEI as the named consignee. (b) Where goods are shipped to FEI as the named consignee in violation of this sub-section (a), the Customer agrees to notify all third-party carriers, with a copy of each notice to FEI, that FEI is acting solely as a warehouseman and has no beneficial title or interest in the goods. The Customer further agrees to indemnify and hold FEI harmless from any and all claims for unpaid transportation charges, including but not limited to unpaid freight, demurrage, and detention charges, made by such third parties. (c) The Customer further agrees that, should it fail to notify a third-party carrier in accordance with sub-section (c) above, FEI shall have the right to refuse such goods and that FEI shall not be liable or held responsible for any damage, loss, expense or delay thereto, except as provided in Section 11 below.

Sec. 6 Collection and Handling: (a) Upon the Customer's request, FEI will collect, pack, store, load, and/or unload goods in accordance with the Customer's written instructions at agreed-upon rates and charges. FEI shall at all times exercise reasonable care in the handling of the Customer's goods. (b) FEI's rates and charges shall cover the ordinary labor involved in handling the Customer's goods. Additional expenses incurred by FEI for extra services other than ordinary handling, such as the collection, packing, loading/unloading, or storage of damaged, oversized, or unstable goods, shall be charged to the Customer at customary rates. (c) Unless otherwise agreed in writing between FEI and the Customer, the choice of packing materials shall be left to the sole discretion of FEI and/or its third-party subcontractors. (d) In no event shall FEI be liable or held responsible for any damage, loss, expense or delay caused (i) during packing (ii) by any defect in or failure of any packing material, except as provided in Section 11 below. (e) FEI shall also not be liable or held responsible for any damage, loss, expense or delay caused by any climatic condition of whatever nature experienced during collection, packing, storage, and/or unloading, except as provided in Section 11 below. **Sec. 7 Billing:** (a) FEI's payment terms are net 30 days, other than as set forth below. (b) FEI shall invoice Customer for services rendered at time of service, except for recurring storage charges which shall be invoiced in advance on the 1st of each month of storage. (c) Final payments for all open invoices, services, storage fees or other charges shall be due and immediately payable prior to final release of goods by FEI. (d) Customer shall be liable for interest at a rate of two percent (2%) per month on any overdue payment. (e) Customer shall be liable to FEI for all costs of collection and expenses, including but not limited to reasonable attorneys' fees. **Sec. 8 Termination of Storage:** Where no fixed period of storage exists by agreement, FEI shall be entitled to demand the removal of goods from its warehouse, as well as payment of all charges due, after the expiration of thirty (30) days from the date of notice to the Customer and any person claiming an interest in the goods. **Sec. 9 Lien:** (a) FEI shall have a lien on all goods deposited by the Customer, or on the proceeds thereof in FEI's possession, for the storage, transportation, insurance, and/or labor charges associated with such goods, as well as all costs and expenses necessary to their preservation or reasonably incurred in their sale pursuant to Article 7 of the Uniform Commercial Code or any applicable law. (b) All goods deposited by the Customer shall be subject to FEI's lien for like charges in relation to other goods. (c) Upon notifying the Customer and any person claiming an interest in the goods, this lien may be enforced by public or private sale of the goods in bloc or parcel, at any time or place and on any terms which are commercially reasonable, pursuant to Article 7 of the Uniform Commercial Code and/or any applicable law, without judicial hearing. **Sec. 10 Transfer, Release, and Delivery:** (a) Except as provided in sub-section (b) below, no goods shall be transferred, released, or delivered from FEI's storage or warehouse prior to the receipt of complete, written instructions from the Customer via mail, fax, email, overnight courier (UPS, FedEx, DHL), or similar form of written communication. (b) Where no negotiable receipt is outstanding, goods may be transferred, released, or delivered from FEI's storage or warehouse in accordance with telephone instructions, provided that the Customer has issued prior written authorization to FEI for this purpose. However, FEI shall not be liable or held responsible for any damage or loss occasioned by such transfer, release, or delivery, except as provided in Section 11 below. (c) Upon receipt of instructions from the Customer to transfer, release, or deliver goods, FEI shall be entitled to a reasonable amount of time to carry out the applicable instructions. Any estimated date or time given by FEI for transfer, release, or delivery shall be approximate in nature and not binding, unless it is agreed in writing between the Customer and FEI that time is of the essence. (d) FEI shall not be liable or held responsible for any damage, loss, expense or delay if FEI is unable to carry out the Customer's instructions due to acts of God, war, public enemies, seizure under legal process, riot or civil commotion, any other reason that is beyond FEI's control, or any other excuse provided by law. (e) The Customer agrees that, upon the transfer, release, or delivery of goods to a third party, including but not limited to any carrier or bailee engaged separately by the Customer, in accordance with the Customer's instructions, FEI shall have no further obligation, responsibility, or liability to the Customer for the goods, except as provided in Section 11 below.

Sec. 11 Limitation of Liability: (a) In consideration of the rate charged by FEI, the Customer agrees that FEI shall only be liable for its negligent acts that are the direct and proximate cause of injury to the Customer, including but not limited to any damage or loss to goods, expense, or delay. (b) Where the Customer's goods are transported by interstate motor carriage, these terms and conditions of service shall constitute the entire contract of carriage between the Customer and FEI. The Customer further agrees to waive any and all rights and remedies under Title 49, Subtitle IV, Part B of the U.S. Code, pursuant to 49 U.S.C. § 1101, and agrees that its exclusive remedy for breach of these terms and conditions of service shall be an action filed in accordance with Section 16, below. (c) FEI's liability, in any event, shall be limited to the lesser of (i) one dollar (\$1.00) per pound per article, or (ii) five hundred dollars (\$500.00) per total shipment or warehouse receipt, unless both a higher value is declared and the Customer agrees to pay a higher rate for increased valuation in writing prior to FEI's receipt of the goods. The declared value shall not exceed the actual market value of the goods at the time of tender to FEI. The Customer hereby acknowledges that it has been offered an opportunity to increase FEI's liability and that, in the absence of a declared value and an agreement to pay a higher rate for increased valuation, the Customer has elected the limitation set forth above to apply to the services provided by FEI. (d) FEI shall not be liable, in any event, for consequential, indirect, incidental, punitive, or special damages, including but not limited to lost profits or loss of market, even if FEI has been placed on notice of the possibility of such damages. (e) In the event that the limitations set forth above in sub-sections (a) through (d) violate the compulsory or restrictive limited liability provisions of any applicable law, statute, regulation, treaty, or convention, in either case based on weight, package, or monetary or shipping unit, FEI's liability shall be limited to the fullest extent allowed thereunder.

Sec. 12 Mysterious Disappearance: (a) FEI shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless the Customer establishes that such loss occurred because of FEI's failure to exercise reasonable care in storing and warehousing the goods, and (ii) are more than ten percent (10%) of the goods received by FEI. (b) The Customer agrees that any such shortage or unexplained or mysterious disappearance of goods shall not constitute a conversion in the absence of evidence that the goods were actually converted by FEI for its own use. (c) In no event shall FEI's liability for a shortage or unexplained or mysterious disappearance of goods exceed the limitations set forth above in Section 11. **Sec. 13 Insurance:** (a) The Customer hereby acknowledges that FEI is not an insurer of goods and that the Customer should maintain its own insurance on its goods for any damage, loss, expense or delay suffered while the goods are in FEI's care, custody, or control. In the event that the Customer maintains such insurance, it shall be considered as being for the benefit of both the Customer and FEI. (b) Upon written request by the Customer in sufficient time prior to the shipment or receipt of the goods, FEI shall make reasonable efforts to place insurance on the goods for the period of time that they are FEI's care, custody, or control. The request shall state the amount of insurance coverage to be placed and shall confirm the Customer's agreement to pay all fees and costs incurred by FEI in placing and/or attempting to place such insurance. However, FEI does not undertake or warrant that such insurance can or will be placed. (c) Where insurance is placed by FEI pursuant to sub-section (b) above, such insurance shall be governed by the certificate or policy issued and shall only be effective in accordance with the terms thereof. (d) In the event of a coverage dispute with any insurer or underwriter, the Customer shall have no claim or right of recourse against FEI. The Customer further agrees to indemnify and hold FEI harmless for any claims made by any insurer or underwriter in connection therewith.

Sec. 14 Notice of Claim: (a) The Customer acknowledges and agrees that it is the responsibility of the Customer, its agents, representatives, or contractors to note in writing any damage or loss to goods at the time of transfer, release, or delivery. A signed bill of lading or receipt without exception or notation as to loss or damage shall be prima facie evidence that the goods were not lost or damaged while in FEI's care, custody, or control. (b) All claims by the Customer for damage or loss to goods transported by interstate motor carriage must be submitted to FEI in writing within nine (9) months from the date of delivery or the date on which delivery should have occurred. (c) All other claims by the Customer for damage, loss, expense or delay must be submitted in writing to FEI within sixty (60) days from (i) the date of transfer, release, or delivery of the goods, (ii) the date on which transfer, release, or delivery should have occurred, or (iii) the date on which the Customer received written or oral notice from FEI of the damage, loss, expense or delay at issue, whichever occurs first.

Sec. 15 Limitation on Actions: (a) Subject to the receipt of timely notice of claim under Section 14 above, all suits, actions, or proceedings for damage or loss to goods must be filed against FEI within the following periods: (i) for goods transported by ocean carriage to or from the United States, within one (1) year from the date of delivery or the date on which delivery should have occurred; (ii) for goods transported by interstate motor carriage, within two (2) years from the date of delivery or disallowance of a timely notice of claim; (iii) for goods transported by international air carriage, within two (2) years from the date of arrival, or the date on which arrival should have occurred, or the date on which carriage should have occurred; (iv) for all other movements, storage and warehousing, within nine (9) months from (i) the date of transfer, release, or delivery of the goods, (ii) the date on which transfer, release, or delivery should have occurred, or (iii) the date on which the Customer received written or oral notice from FEI of the damage, loss, expense or delay at issue, whichever occurs first. (b) In the event that any limitation period set forth above in sub-section (a) violates the compulsory or restrictive provisions of any applicable law, statute, regulation, treaty, or convention, all suits, actions, or proceedings must be filed against FEI within the shortest allowable period set forth therein.

Sec. 16 Jurisdiction and Venue: These terms and conditions shall be governed by the laws of the State of New York without regard to its conflicts of law principles. The Customer and FEI hereby agree that any suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the County of New York, State of New York, to the exclusion of all other venues, and irrevocably submit to the jurisdiction of any court so located herein. **Sec. 17 Tender Warranty:** The Customer represents and warrants that it has lawful possession of the goods, as well as the right and authority to tender those goods to FEI. The Customer further agrees to indemnify and hold FEI harmless for any and all losses, expenses, and costs (including reasonable attorneys' fees) incurred by FEI in connection with any dispute, action, or similar legal proceeding concerning the lawful title to and/or possession of the goods. **Sec. 18 Accurate Information:** (a) The Customer agrees to provide FEI with accurate and complete information to allow FEI to comply with all laws and regulations governing the storage, handling and/or transport of the goods. The Customer further agrees to indemnify and hold FEI harmless for any and all losses, expenses, and costs (including reasonable attorneys' fees) incurred by FEI in connection with the Customer's failure to fully discharge this obligation. (b) It shall be the Customer's responsibility to ensure that all addresses, including but not limited to billing and delivery addresses, are accurately conveyed to FEI. The Customer further agrees to notify FEI immediately in writing of all changes to any such addresses.

Sec. 19 Legal Compliance: (a) The Customer hereby acknowledges that it is the responsibility and duty of the Customer to know and comply with all applicable laws, statutes, regulations, treaties, and conventions, including but not limited to U.S. Customs laws and regulations. (b) FEI shall not be liable for any action taken or any fine or penalty assessed by any government agency against the Customer on account of FEI's failure to comply with such laws, statutes, regulations, treaties, and conventions, except as provided in Section 11, above. (c) The Customer further acknowledges that it is solely the responsibility and duty of the Customer to maintain all records required by such laws, statutes, regulations, treaties, and conventions, including but not limited to Sections 508 and 509 of the Tariff Act, as amended (19 U.S.C. §§ 1508 – 1509). Unless otherwise agreed in writing between FEI and the Customer, FEI shall only keep those records that it is required to maintain by law, statute, regulation, treaty, or convention, but not as a "record-keeper" or "record-keeping agent" for the Customer. **Sec. 20 Severability:** These terms and conditions shall be severable. In the event that any provision herein is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain unaffected in full force and effect.

Sec. 21 No Modification or Waiver: (a) These terms and conditions may not be modified or amended except by written agreement between the Customer and FEI and signed by both parties. (b) FEI's failure to require the Customer's strict compliance with any provision herein shall not constitute or be deemed a waiver or estoppel to a later demand for such compliance with any other provision.