

CUSTOMER TERMS AND CONDITIONS

Please read these Customer Terms and Conditions (the “Terms”) carefully. By engaging MegaCorp Logistics, LLC (“MEGACORP”) to provide freight brokerage services, Customer agrees to be bound by the terms and conditions below.

These Terms, as well as the terms and conditions of any MEGACORP-generated rate quote/confirmation and contract terms, if any, apply to the provision or arrangement, as applicable, of any transportation brokerage services (“Services”) herein. These Terms set forth the rights and obligations of MEGACORP and Customer (defined below), except as otherwise set forth herein. By utilizing MEGACORP for Services, Customer expressly accepts these Terms and warrants that acceptance of these Terms has been authorized by a representative of Customer as of the date the Services were first provided to Customer by MEGACORP. MEGACORP may change these Terms at any time without notice to Customer. The changed Terms are effective immediately.

1) DEFINING PARTIES

- A. **MEGACORP (as defined above):** MEGACORP is a Broker and will be referenced as a Broker when any determination of relationship is needed between MEGACORP and Customer. MEGACORP is not a motor carrier as defined by 49 U.S.C. § 13102(14) and makes no representations hereunder that it is a motor carrier. MEGACORP will provide consultation on transportation, freight quoting, financial settlement, auditing, tracking, customer service, and issue resolution.
- B. **Customer:** “Customer” means the person or entity at whose request, for whose benefit, or on whose behalf MEGACORP provides any Services, including any third-party logistics provider, shipper, consignor, consignee, beneficial cargo owner, or any other party or its agent acting on behalf of such person or entity with interest in the shipment.

2) DEFINITIONS

- A. **Broker:** “Broker” means a person or entity, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. “Broker” shall be used interchangeably with “MEGACORP” throughout these Terms herein.
- B. **Carrier:** “Carrier” means any motor carrier, including its drivers and independent owner operators, any rail carrier or rail transportation service provider, any intermodal equipment provider, any ocean or air carrier (including non-vessel operating common carriers and indirect air carriers), any warehouse operator, or other person or entity that provides transportation, storage, handling or related services to the Goods at the request of MEGACORP.
- C. **Claims:** “Claims” mean any and all liabilities, claims, losses, suits, actions, costs, fines, penalties, expenses (including reasonable attorney’s, paralegal’s and expert witness’ fees, and other costs of defense, investigation and settlement), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, environmental damage, or any combination thereof, suffered or claimed to have been suffered by any person or entity, as well as the costs of

enforcing indemnification obligations and costs of containment, cleanup and remediation of spills, releases or other environmental contamination.

3) BILLS OF LADING

- A. Customer may prepare the bill of lading (“BOL”) or other shipping documents required for carriage, considering the services being sought, and the pickup or destination requested. The BOL or other shipping document is non-negotiable, and Customer certifies and represents that the information inserted on the face of the BOL or other shipping document is complete and accurate. The listing of MEGACORP as carrier on the BOL is for Customer’s convenience only and does not change MEGACORP’s status as a property broker.
- B. In the event Customer fails to timely and properly complete the appropriate documents, Customer hereby instructs MEGACORP, where permitted by law, and MEGACORP may at its option but without obligation, complete, correct, or replace the documents for Customer at Customer’s sole expense. If a substitute form of BOL or shipping document is needed to complete delivery of a shipment for any reason and MEGACORP completes that document, the terms of the completed document will govern and MEGACORP will be exonerated from all liability for undertaking such actions on behalf of Customer, specifically including liability for negligence by MEGACORP. All BOLs or other shipping document(s) are non-negotiable, have been prepared by Customer or by MEGACORP on behalf of Customer in accordance with Customer’s instructions and approved by Customer, and are conclusively deemed to be prepared by Customer. Customer is required to provide the BOL to the Carrier designated by MEGACORP. Failure to provide the proper BOL or other shipping document to the designated Carrier will relieve MEGACORP of all responsibility and/or liability for such shipment. MEGACORP has no obligation to make any payments or honor any rate quotes in any of the following instances: (i) unauthorized alteration or use of the BOL, (ii) tendering of shipments to any carrier other than the Carrier designated by MEGACORP, or (iii) use of any BOL not authorized or issued by MEGACORP.
- C. These Terms will supersede any conflicting provision contained on the BOL or other shipping document regarding MEGACORP.

4) CREDIT, BILLING AND PAYMENT TERMS

- A. **Credit Application.** All Customers must obtain credit approval from MEGACORP before MEGACORP will arrange for transportation. The following information must be submitted to our Credit Department:
 - 1. A completed Customer Profile Form (credit application) signed by an owner or an authorized officer of the prospective Customer.
 - 2. “Billing Information”, including Customer’s physical address, a billing address (if different), the primary accounts payable and/or accounting department’s phone number, e-mail address(es), and the name of the person(s) MEGACORP is to contact for payment status and general billing issues.
 - 3. Customer’s valid Federal Tax ID, DUNS number, business type, date of incorporation, the owner’s and/or President’s name, and any applicable freight forwarder number, MC number, DOT number, or NVOCC number.
 - 4. NET Terms must be selected and are subject to approval by MEGACORP. If Customer does not select the terms, it is understood that the payment terms default to NET 30.

5. Invoice method default is via email to the designated accounts payable email address provided on Customer Profile Form. If "Fax" is selected, Customer must provide an email address capable of receiving copies of all invoices and statements. Invoices billed to Customer are as valid as an invoice sent via fax, and the failure of MEGACORP to send an invoice via fax does not excuse Customer from paying the invoice on time or within the designated NET terms. Postal invoicing is only available for Customers located within the lower forty-eight (48) United States. International Customers will be invoiced via email with an attachment containing the invoice only, regardless of Customer selection on Customer Profile Form.
- B. **Third Party Billing.** IN THE EVENT CUSTOMER USES THIRD PARTY PAYMENT SERVICES, CUSTOMER ULTIMATELY REMAINS RESPONSIBLE FOR TIMELY PAYMENT OF INVOICES REGARDLESS OF ANY AGREEMENTS CUSTOMER MAKES WITH THE THIRD-PARTY PAYMENT COMPANY. PAYMENT MUST BE MADE CONSISTENT WITH THESE TERMS. NONPAYMENT OF INVOICES MAY BE CAUSE FOR SUSPENSION OF CREDIT AND OTHER PENALTIES.
- C. **Updating Credit Information.** MEGACORP may update Customer's credit information from time to time using available public information or sourced credit information provided by one of the many independent credit reporting agencies. In addition to public data, MEGACORP may request that Customer provides additional financial data to demonstrate Customer's creditworthiness. If Customer appoints MEGACORP to arrange for the transportation of Goods, Customer consents to MEGACORP's use of financial data about Customer to verify its creditworthiness.
- D. **Credit Hold.** MEGACORP, in its sole discretion, may place Customer's account on credit hold if any invoice goes past due. If Customer has not made timely arrangements to pay its past due balance to the satisfaction of MEGACORP, then MEGACORP, in its sole discretion, may elect to cancel any pending shipments until such time that payment for an outstanding balance has been received by MEGACORP.
- E. **Credit Limit.** MEGACORP does not guarantee a line of credit will be extended to Customer. MEGACORP, in its sole and absolute discretion, reserves the right to refuse, increase, or decrease a line of credit to Customer at any time and for any reason. Customer agrees MEGACORP has no requirement to disclose the reasoning behind a refusal or reduction of credit and Customer accepts all conditions of prepayment, if required, as described in this subsection 4(K).
- F. **Involuntary Revocation of Credit.** MEGACORP, at its sole discretion, reserves the right to revoke credit or reduce a Customer's credit limit without notice and withdraw any previously extended credit limit if Customer's creditworthiness has changed, its payment history begins trending negatively, or any other reasonable cause.
- G. **Rates.** In some cases, MEGACORP may have submitted an initial rate offer or quotation to Customer prior to shipment. The initial rate offer and subsequent shipping, billing and other documents specifically incorporate by reference these Terms. Finance charges may apply and will come due at the time of assessment. Customer will be responsible for any additional charges assessed by MEGACORP due to deviation from the agreed credit terms including, but not limited to, weight, pallet count, product commodity, appointment date and times, consignment and other accessorial charges. If MEGACORP accepts and provides Services to Customer before reaching an agreement with Customer on pricing, Customer agrees to pay MEGACORP the last pricing quoted by MEGACORP to Customer for that load or, in the event that no pricing has been provided by MEGACORP, Customer agrees to pay for MEGACORP's Services based on MEGACORP's current market rates. All rates and quotes are subject to change at any time based upon transportation cost, fuel, and other applicable accessorial charges. Customer is liable for all charges payable

on account of such Customer's shipment. MEGACORP invoices will be accepted via email with invoice and proof of delivery in exchange for payment. Any special requirements pertaining to a shipment must be addressed by Customer in writing to MEGACORP prior to shipment. Customer must notify MEGACORP at the time Customer receives the invoice of any discrepancies that may result in short pay. MEGACORP reserves the right to bill any other party with an interest in the Goods if the bills remain unpaid past the due date. Customer is responsible for all costs, including without limitation forklift service, tow truck service, storage or recover/release fee, or crane service related to any loads Customer has requested MEGACORP arrange for transport. Customer shall provide all border crossing documentation prior to crossing. MEGACORP is not responsible for any delays related to border or customs agents. Such delays will result in accessorial charges. Unless arranged or agreed upon, in writing, prior to shipment, MEGACORP is not bound to arrange transport of a shipment by a particular schedule or in time for a particular market, unless agreed by MEGACORP in writing. All Carriers will transport Goods with reasonable dispatch. Customer shall pay lumper fees with a provided receipt.

- H. **Dispute of Invoice(s).** Customer must notify MEGACORP in writing of any dispute regarding an invoice, or any portion thereof, within five (5) business days of invoice date. If Customer fails to timely notify MEGACORP of the dispute, Customer has accepted such invoice in full and waived any and all claims or defenses to paying such invoice. Disputes must be accompanied by reasonably detailed supporting documentation to facilitate efficient resolution. MEGACORP will cooperate with Customer to resolve invoice disputes promptly, but does not guarantee resolution in favor of Customer. MEGACORP reserves the right to deny any dispute if MEGACORP reasonably believes Customer lacks evidence or supporting documentation. Customer shall accept any determination by MEGACORP to be final and shall promptly pay the full sum of the invoice should the dispute be denied.
- I. **Detention:** The first two (2) hours at the shipper or receiver are free. Any additional hours will require a detention payment of \$50.00/hour. MEGACORP reserves the right to amend or adjust charges and re-invoice Customer because of the following or similar circumstances:
1. If Customer provided incorrect information, thus resulting in an inaccurate initial price quote;
 2. If Customer required additional services; or
 3. If Customer altered the pickup, transportation, and delivery functions from those contemplated by the Bill of Lading ("BOL").
- J. **Payment.** Payment terms and credit limits are subject to credit approval, which will be determined at MEGACORP's sole discretion. All payments must specify an exact amount in currency accepted by MEGACORP to be legally sufficient. All invoices shall be paid to MEGACORP by the due date stated on the invoice. Customer agrees to pay a service charge of the lesser of (i) 1.5% per month or (ii) the maximum legal rate on all overdue balances. Customer is responsible for any court costs or reasonable attorney's fees incurred by MEGACORP in the collection of invoices billed to Customer. Customer guarantees payment for all Services rendered by MEGACORP on Customer's behalf. Customer and consignee, holder, or assignee on any BOL shall be jointly and severally liable for all unpaid fees for Services provided under these Terms. When MEGACORP is instructed to collect charges from any person or entity other than Customer, Customer shall remain liable for the charges and interest if MEGACORP is not paid.
- K. **Prepayment.** Customers will be required to pay in advance if (1) MEGACORP has not had the opportunity to review Customer's credit information for the establishment of open credit terms, or (2) Customer has not established credit privileges due to creditworthiness issues. Such Customers must submit payment via lockbox submission, approved credit card, Automated Clearing House (ACH), or wire transfer. The amount quoted for a prepaid

shipment may not include all accessorial or related charges necessary for transportation of the load. In the event of additional charges being incurred, Customer shall immediately pay the difference outstanding, or shall authorize MEGACORP to charge Customer for the difference, via stored or available payment method. If Customer elects to prepay via credit card, Customer assumes all liability for any service and/or processing fees. Customer agrees that MEGACORP is authorized to use such credit card to charge Customer for services rendered, and that Customer will not dispute any sum charged to the credit card, unless charged in error. If Customer elects to pay with a debit card, Customer agrees to be solely responsible for any overdraft or other financial institution charges that may result due to insufficient funds or chargeback.

5) INSURANCE COVERAGE

- A. MEGACORP insurance policies are contingent based on MEGACORP's contracted Carrier's insurance. These contingent policies cover Goods in transit within the Continental United States and Canada. MEGACORP does not provide any insurance coverage for shipments within the country of Mexico. Neither MEGACORP nor any Carrier will have any liability for loss, damage or delay of Goods or shipments occurring in Mexico.
- B. MEGACORP requires all Carriers to demonstrate \$100,000.00 in cargo coverage. Any additional insurance or All Risk coverage Customer requires must be agreed in writing and approved by MEGACORP on a per load basis for an additional cost to Customer prior to dispatch. MEGACORP is not liable if Customer, for any reason whatsoever, fails to recover a loss in whole or in part from the insurer under any applicable policy, even in the event the premium charged by the insurer may be different from MEGACORP's charge to Customer. Any coverage on the Goods will be subject to the terms and conditions of the specific policy or policies procured. Customer acknowledges and agrees that MEGACORP's role is limited to facilitating placement of coverage with entities licensed to sell insurance and that MEGACORP is not in the business of selling insurance or insuring risk.
- C. Customer is responsible for maintaining property insurance covering the Goods, both for the Goods and in transit, including loading and unloading.
- D. **MEGACORP requires all Carriers to demonstrate:**
 - 1. Automotive or Fleet Liability Insurance in amounts not less than: Bodily Injury/Property Damage \$1,000,000.00 per person; \$1,000,000.00 per occurrence.
 - 2. Motor Truck Cargo Insurance in an amount not less than \$100,000.00 per truckload in order to compensate shipper, consignee or the beneficial owner of the shipment for any loss or damage thereto.
- E. **Duty of Care.** MEGACORP is in the business of arranging for transportation by motor carrier or transportation intermediaries and is neither trained, licensed, nor otherwise qualified to assess, analyze, or predict the likelihood of a motor carrier's safe operations. MEGACORP reasonably relies upon the Federal and State Governments to only allow safe motor carriers to operate on the public roads and is under no duty to investigate individual motor carrier operations. It is MEGACORP's practice to obtain a Certificate of Insurance for each motor carrier and to only retain motor carriers demonstrating a minimum of \$1,000,000 public liability insurance and \$100,000 cargo insurance. However, MEGACORP has no duty to obtain, review or read motor carriers' insurance policies, nor does it have any duty to discover policy limitations, exclusions or endorsements not specified on the Certificate of Insurance. MEGACORP has no duty to discover the value of Customers' Goods or arrange for Carriers with "adequate insurance coverage" unless

specifically requested in writing to do so by Customer prior to shipment and on a shipment-by-shipment basis.

6) RESTRICTED & PROHIBITED COMMODITIES

- A. Customer will not request and MEGACORP will have no responsibility to arrange, the transport of any prohibited commodity identified in this section 6. Customer will defend, indemnify, and hold MEGACORP harmless against any Claims resulting from MEGACORP refusing to arrange transport of any prohibited commodity.
- B. **Intermodal / Rail.**
1. **Prohibited.** Any commodity that is prohibited by the rail carriers for transportation is also prohibited for intermodal transportation arranged by MEGACORP. Prohibited commodities include hazardous materials, hazardous wastes, garbage, explosives, metal coils, batteries, scrap metal or parts and sodium compounds or other commodities that would reasonably be expected to contaminate or otherwise render the trailer or container unsuitable for future shipments.
 2. **Restricted.** Any commodity that is classified as "restricted" by the rail carriers is also considered "restricted" for intermodal transportation arranged by MEGACORP and subject to special procedures to be eligible for transportation. Restricted commodities include bulk commodities, rolled paper, household goods, metal banding, dense metal items, rubber shavings, tire fabric, over-dimension loads, currency, postage stamps and mail. Other commodities such as freight that could be considered to pose a safety or health issue, is easily perishable, is of extraordinary value, or needs temperature protective services may also be subject to limitations or special requirements. Before tendering any such freight for transportation, Customer must make prior arrangements with MEGACORP. If Customer is unsure as to whether a commodity has special requirements for shipment, please contact the sales or pricing representative on the Customer account or a representative of the MEGACORP Carrier Setup team at carriersetup@megacorplogistics.com.
- C. **Over the Road.**
1. **Prohibited.** The following commodities are strictly prohibited and Customer has the sole burden to ensure that no shipments contain:
 - a. Luxury Goods (including but not limited to, currency, negotiable instruments, or securities of any kind);
 - b. Petroleum Products;
 - c. Class 1: Explosives (United States Department of Transportation: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6);
 - d. Bullion or precious metal objects;
 - e. Precious Stones or Precious Jewelry;
 - f. Cash or Securities;
 - g. Valuable works of art and/or antiquities;
 - h. Livestock / Animals other than crickets;
 - i. Live plants;
 - j. Jewelry (except costume jewelry);
 - k. Explosives;
 - l. Personal Effects or household goods;
 - m. Human Remains, dead bodies and human specimens, or specimens of any kind;
 - n. Class 7: Radioactive Material;

2. **Restricted.** The following commodities are restricted, and Customer agrees that it: (i) will self-insure these commodities with primary coverage, and (ii) holds MEGACORP harmless from any Claims resulting from arranging transportation of a restricted commodity, unless caused by MEGACORP's sole negligence.
 - a. Aircrafts, helicopters, aviation equipment, aerospace equipment;
 - b. Eggs;
 - c. Tobacco products;
 - d. Fireworks and Flammable gases;
- D. **Consequences for Tendering Restricted or Prohibited Commodities.** Failure to disclose to MEGACORP the presence of restricted or prohibited commodities or to comply strictly with the requirements for transporting restricted or prohibited commodities will relieve MEGACORP of any liability for loss or damage directly or indirectly caused to or by the restricted or prohibited commodities. Customer will be responsible for and will defend, indemnify and hold harmless MEGACORP for any liabilities, costs and expenses arising out of Customer's (a) tendering any prohibited commodity for transportation, (b) failure to properly declare any restricted commodity or (c) failure to comply strictly with the requirements for transporting restricted commodities. In addition to the special rate applicable to any restricted commodity and all other charges that apply to that shipment and costs to repair, restore and decontaminate any container or chassis used to transport any restricted or prohibited commodity, Customer will be responsible for any penalties or charges assessed by the underlying Carrier or any government body.

7) CONTROL

- A. MEGACORP shall arrange for the handling and transportation of Customer's goods by Service Providers (as defined in Section 9 below), however all Service Providers are separately licensed and insured independent contractors and MEGACORP exercises no control over Service Providers' equipment, facilities, personnel, subcontractors, or agents, nor over the route, schedule or way Service Provider performs transportation services. Likewise, MEGACORP does not physically accept, supervise, or control the Goods or how they are packaged, loaded or transported.

8) CLAIMS FOR DAMAGE OR LOSS

- A. **Cargo Claims.** MEGACORP is not responsible for Claims for loss or damage to the Goods, absent negligence. Customer understands MEGACORP's Claims Department only facilitates Cargo Claims for loads that have shipped via a contracted Carrier.
- B. In order for MEGACORP to facilitate the filing of a Customer Cargo Claim, Customer must adhere to the following:
1. MEGACORP must be advised and notified within nine (9) months of delivery of the Goods, except Claims for failure to make delivery must be filed within nine (9) months after the scheduled delivery date.
 2. Once notification of Cargo Claim is received, all paperwork must be submitted to MEGACORP within thirty (30) days or facilitation of the Cargo Claim will be closed.
 - a. Any oral Notice of Loss must be followed by written Notice of Loss and submission of all necessary supporting documents.
 - b. Where Cargo Claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, MEGACORP will not

be liable, and such claims will not be facilitated through MEGACORP.

- c. After nine (9) months from delivery, MEGACORP will no longer be responsible for facilitating the claims process and Customer must file directly with the Carrier and their insurance company should Customer intend to file a claim.
 - d. Customer agrees that any suit brought against MEGACORP must be commenced within two (2) years from the completion date of the Services. In the event of delay or non-delivery, the scheduled delivery date will be the day on which services were completed for purposes of computing the two-year time limit.
3. A claim filed within the appropriate time limits must:
 - a. Contain facts sufficient to identify the Goods or shipment(s) of property;
 - b. Assert liability for alleged loss, damage, or Service Provider-caused delay;
 - c. Demand payment of a specified or determinable amount of money;
 - d. Complete MEGACORP's standard Claims Presentation Form, and, if applicable, inspection reports, photos, affidavits, etc.
 4. All claims must specify an exact U.S. Dollar amount to be legally sufficient.
 - a. Failure to include a claim amount invalidates the claim.
 - b. Claims must reflect the actual or replacement cost of the specified Goods damaged or lost; not retail value.
- C. **No Right to Offset.** Customer shall have no right to and agrees not to withhold payment from MEGACORP for transportation of Goods based on any pending Cargo Claims or perceived deficiency in the Services. Customer agrees that MEGACORP has no obligation to consider Cargo Claims or to assist Customer in the filing of such Cargo Claims against Carriers or warehousemen on behalf of Customer if Customer has not paid MEGACORP's invoices in full for the shipments in which the Claim arose. When Customer is filing for partial shipment damage, loss, or rejection, freight charges for services rendered are still due to MEGACORP within terms. All other loads MEGACORP has arranged for Customer are considered unrelated and must be processed under regular pay terms. MEGACORP reserves the right to bill any other party that has a vested interest in the Goods if the bills are not paid. Once payment for resolution is accepted, Customer agrees to release MEGACORP from any further Claim and will effectively foreclose any later attempts to recover additional damage or loss from MEGACORP. Customer's recourse for loss or damage claims to its Goods is solely against the Carrier that handled the shipment and Carrier's liability is subject to Applicable Laws and may be further limited by the Carrier Rules.
- D. **Damage.** Damage of a visible or obvious nature must be documented on delivery. The absence of any notation of damage, broken shrink wrap or lack of seals on the BOL, airway bill or other shipping document creates a presumption that the shipment was delivered in good condition and the burden of proof will be on Customer to prove otherwise. However, a broken seal or other "inconsequential failure" by a Carrier to meet the shipper's temperature-control or other specifications, will not create a "per se presumption of adulteration." Only a failure to comply with SFT Rule requirements that causes food to be "actually unsafe" will render the food adulterated and is a prohibited act under the Federal Food, Drug, and Cosmetic Act (FDCA). Inspection by FDA or other qualified inspectors can be used to demonstrate that food is safe, unadulterated, and fit for consumption. Whenever damage is discovered, Customer agrees to have an immediate inspection made at that point and the nature and extent of the alleged damage thoroughly

documented. If a shipment or a portion thereof is discovered to be in damaged condition at the time of delivery, the consignee must make a notation of the damage on the delivery receipt before accepting delivery. Failure to make a notation on the delivery receipt is prima facie evidence of the shipment's good condition at the time of delivery, which can only be overcome by clear and convincing evidence to the contrary. All claimed and damaged Goods must be available for inspection for MEGACORP to facilitate the claims process.

1. **Consequential Damages.** Consequential damages resulting from storage fees or delay such as interruption of an assembly line, cost of an extra unloading crew, air freight for a replacement shipment, loss of future sales or profits, per diem, demurrage, storage, etc. are usually considered "special damages" and are not recoverable against the Carrier or MEGACORP unless given notice at the time of shipment that a failure to make timely delivery will result in specified damages.
 2. **Duty to Mitigate.** According to generally accepted claims practices, Customer is obligated to mitigate its damages for loss or damage to Goods and is not entitled to abandon the Goods to MEGACORP or the Carrier. If Customer does not elect to salvage the Goods, any Claim for Goods loss or damage shall be reduced by a reasonable salvage allowance and by reasonable storage or other costs incurred while waiting for disposition instructions.
 3. **MEGACORP is not responsible to Customer or others for delay or deterioration of Goods.** MEGACORP is also not responsible for deterioration of Goods arising from breakdown or malfunction of refrigeration equipment, or changes in temperature, even if the rates quoted are for temperature-controlled equipment or for temperature sensitive Goods. Customer, Consignor or Consignee is responsible for any loss or damage to equipment (trailer, chassis, container) while in their possession or proximately caused by Customer, Consignor or Consignee's acts or omissions, including but not limited to improper packaging, loading, bracing, securing or positioning of the Goods. Payment for such loss or damage will be the greater of the replacement cost or actual cash value at the time the equipment is damaged or lost. Customer, Consignor or Consignee shall indemnify MEGACORP and hold MEGACORP harmless from and against any third-party claims resulting from such losses.
- E. **Concealed Damage or Loss.** Notwithstanding the provision of Section V(B), Customer must provide proof that shipment was in good order and condition at the time of delivery to the originating Carrier and it was in damaged condition at the time of tender by the delivering Carrier to the consignee. Claims of loss or damage to contents of a shipment that were not discoverable at the time of delivery ("Concealed Damage Claims"), must be reported within five (5) days of delivery. There will be a presumption that the Goods were not damaged in transit whenever a consignee fails to report concealed damage within fifteen (15) days of delivery without exception.
- F. **Miscellaneous.** Customer agrees that MEGACORP shall have a lien in the amount of any unpaid invoices on any insurance proceeds issuing due to loss, damage, or delay to Customer's Goods. MEGACORP shall have no liability in the event of loss or damage to the materially mis-declared or mis-described Goods regardless of MEGACORP's actual negligence.

9) CUSTOMER REPRESENTATIONS & WARRANTIES

- A. Customer authorizes MEGACORP to request quotes or offers of service and arrange for motor carriers, brokers, forwarders, customs brokers, shipping agents, warehousemen and others ("Service Providers") as required to receive, transport, store, assemble, consolidate, break-bulk and deliver the Goods. MEGACORP may utilize any available Service Provider. Customer warrants the accuracy of shipment descriptions, weights, dimensions, written vehicle sanitary or temperature requirements, invoices, documents and other information furnished to MEGACORP by Customer or its agent for export, entry or other purposes and Customer agrees to indemnify and hold harmless MEGACORP against any increased rates, charges, duty, penalty, fine or expense including attorneys' fees, resulting from inaccurate, incomplete statements, omissions or any failure to make timely presentation, even if not due to any negligence of Customer.
- B. It shall be the sole responsibility of Customer to know and comply with the marking requirements of the U.S. Customs Service, the regulations of the U.S. Food and Drug Administration and all other requirements, including regulations of Federal, state and/or local agencies pertaining to the Goods. It is understood and agreed that Customer bears all responsibilities of the "Shipper" and/or "Loader" under the Food and Drug Administration's Sanitary Food Transportation regulations and must provide specific written requirements as to vehicle sanitary requirements and/or temperature requirements to MEGACORP prior to shipment and to Carrier at the time of physical tender. Any commodity description and temperature instructions on the BOL must match precisely with markings on the packages and prior description or instructions provided to MEGACORP.
- C. Customer represents and warrants to MEGACORP that for each and every shipment tendered to MEGACORP, it will be in compliance with all applicable laws, rules, and regulations ("Laws") including applicable Laws relating to customs, import and export required by any country to, from, through or over which the Goods may be transported. Customer agrees to furnish such information and complete and attach to the BOL such documents as are necessary to comply with such Laws. Any individual or entity acting on behalf of Customer in scheduling shipments or undertaking any other performance hereunder warrants and represents that he, she, or it has the right to act on behalf of and legally bind Customer. MEGACORP assumes no liability for any loss or expense due to the failure of Customer to comply with this paragraph and Customer shall indemnify and hold MEGACORP harmless for any claims or damages resulting from violation of this paragraph, including attorney's fees and costs. Customer is exclusively responsible for assessing vehicle cleanliness and/or trailer temperature, prior shipments, cleaning history or any other shipment requirements at pick-up. MEGACORP shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to Customer by any such agency.

10) INJURY TO PERSONS OR PROPERTY

- A. MEGACORP shall not be liable to Customer or any other entity for injury to persons or property unless such injury is solely attributable to MEGACORP's negligent acts or omissions. To the extent that Customer causes or contributes to such injury it shall defend, indemnify and hold MEGACORP harmless from any claims, suits, causes of action, including reasonable attorney's fees and costs. Additionally, MEGACORP shall be entitled to reasonable attorney's fees and costs for enforcement of these terms.

11) TRANSPORTATION STIPULATIONS

- A. **Authority of Law.** Broker will be excused in cases where there is an intervention of lawful authority on the shipment. Broker will not be held responsible in cases where the Department of Transportation or other governmental authority has delayed shipment or broken a seal for inspection.
- B. **Force Majeure.** MEGACORP and the Carrier shall not be liable for delay or failure to perform any obligation resulting from circumstances beyond their control, including but not limited to any fire, explosion, act of God (including floods, hurricanes, tornadoes, earthquakes, severe weather conditions and natural disasters), strike, lockout or labor shortage or disturbance, war, terrorism, embargo, pandemic, endemic, quarantine, riot, civil disobedience, hijacking or robbery, congestion, derailment or service issues affecting the Carriers; closing or disruptions affecting highways, rail networks, ports, air traffic or other transportation systems; the acts of any Government Authority or customs inspection requirements, acts or omissions of Customer, or inherent vice of the Goods, or any other cause outside of the reasonable control of MEGACORP or the Carrier. If a party intends to invoke this provision, that party shall provide prompt notice to the other party as soon as possible after the occurrence of the event giving rise to the Claim.
- C. **Loading, Packing, and Securing.** It is Customer's responsibility to block and brace their loads to prevent shifting while in transit. Neither MEGACORP nor the Carrier will be liable for the following: 1) Damage to Goods or equipment due to packaging, loading, unloading, blocking, bracing or securing of the Goods. 2) Customer will provide all tie-down devices, dunnage, and special tools required to secure the load. 3) Customer certifies that the shipment is sufficiently packaged to withstand normal rigors of truck transportation. 4) Any article susceptible to damage by ordinary handling must be adequately protected, packaged and marked in such a way as to alert the Carrier of the possibility of damage from ordinary handling. 5) Damage to Goods or equipment to the extent due to inherent vice or defect in the Goods 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. 6) Damage to Goods or equipment due to force majeure events as described in these Terms. 7) Damage to Goods or equipment to the extent due to an act, omission or default of Customer, including the consignor, the consignee, the beneficial owner of the Goods or other third-party logistics provider. 8) Shipments stopped and held in transit at Customer's request. 9) Loss or damage of Goods that violate any applicable law or regulation, have not been accurately described, or that have been loaded in a trailer so that the combined weight exceeds applicable weight limits. Customer is solely responsible for properly identifying and credentialing the commercial vehicle and the Carrier upon its arrival to the loading site. Customer and/or its shipper is responsible to ensure that all Carrier information including, but not limited to commercial driver's license(s), VIN number(s), and license plate information will be thoroughly checked, documented, and verified as the MEGACORP appointed Carrier. Customer will indemnify and hold MEGACORP harmless from any fine, Claim or cause of action arising from breach of this warranty. Customer will defend, indemnify and hold MEGACORP harmless from any Claim for loss, damage or delay to Goods arising from Customer loading a trailer not verified as belonging to MEGACORP's appointed carrier.
- D. **Shipper Load and Count.** Shipper-provided and applied Cargo Security Seals may be used at time of loading of Full Truck Load shipments only. When Cargo Security Seals are applied by Shipper, "Shipper Load and Count" will control all claims or issues. Less-Than-Truckload ("LTL") shipments are not required to have a Security Seal or Continuous Security Seal Record due to the inherent nature of LTL shipments. Where shipments are sealed by the shipper before tendering to the Carrier, the Carrier has no liability for improper loading or shipper negligence. Customers will load, count and seal the Goods to ensure their integrity throughout the trip. The Carrier is not liable for shortages or damage

caused by Customer's improper loading. Inadvertent omission of shipper load and count type notation shall not result in a presumption of Carrier liability for shortage or damage where the driver was either not present or not allowed to observe the loading or unloading. Where Customer loads the cargo, MEGACORP and the Carrier are not responsible for damages caused by non-receipt by the Carrier of any part of the Goods by the date shown on the BOL. Failure of the Goods to correspond with the description contained in the BOL/Proof of Delivery, or for damages caused by improper loading provided that a "shipper load and count" notation is contained on the BOL, or an intact seal is notated on the BOL at the time of delivery. These conditions shall apply to, but not be limited to, all over the road, drayage, LTL, intermodal, and airport/terminal pickups.

- E. **Temperature Controlled Loads.** Customer must properly precool (if required) and package the Goods before the scheduled loading time to ensure loading can be accomplished without unnecessary delay and to have Goods at correct temperature for loading. Unreasonable delays at shipping point may be chargeable as detention fees. Customer must notify MEGACORP and the Carrier of temperature for shipment within sufficient time in order to properly precool and regulate temperature prior to the Carrier's arrival at shipper. It is Customer's responsibility to ensure the trailer is at proper temperature to load product. If the consignee wants to reject part of a shipment that is "non-conforming" per its contract of sale with the vendor, it has an obligation to notify the seller-Customer and come to an agreement as to what to do with the goods, where to send them, and who will pay for any freight charges. The consignee must make a separate new contract of carriage with the Carrier for the return shipment, including where the Goods are to be delivered and who should pay for the freight charges and the Carrier should issue a new BOL for the return shipment. If Customer rejects a shipment because it is "non-conforming" (and not because it was damaged in transit) the Carrier will normally issue an "on-hand notice" and request instructions as to what should be done with the Goods. If no instructions are received, the Carrier may have the right to sell them and apply the proceeds to its freight and/or storage charges, with the balance of the proceeds (if any) for the account of the owner.
- F. **Consequences for Failure to Accept Goods.** If for any reason whatsoever, the Consignee refuses the Goods or Customer refuses to give timely direction about the disposal of Goods rejected by the Consignee, MEGACORP may, without further notice or demand, place the Goods in storage at the risk and expense of Customer. Such stored Goods will be subject to a lien in favor of MEGACORP for any charges. By appointing MEGACORP to arrange for transportation of Goods, Customer will be conclusively presumed to have granted such a lien to MEGACORP. MEGACORP may exercise the foregoing rights at any time after forty-eight (48) hours have elapsed since notification of the arrival and availability of the Goods at destination or of the Consignee's rejection of the freight. Alternatively, MEGACORP or the underlying Carrier may sell the Goods to the highest bidder in a public or private sale. Before such a sale of nonperishable Goods is made, MEGACORP will first give written notice to Customer that the Goods have been refused or unclaimed and that it will be subject to sale if disposition is not arranged within three (3) business days. Further failure or refusal to claim or dispose of the Goods within this period will constitute a waiver by Customer of all right, title and interest in and to the Goods and all rights, claims, notices and defenses with respect to the Goods to the maximum extent permitted by applicable law. If the receiver of perishable Goods fails or refuses to accept it promptly, MEGACORP or the underlying Carrier 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, MEGACORP may sell the Goods as authorized by law. MEGACORP will be entitled to recover from Customer, and/or from the proceeds of a sale or disposal of the Goods, all costs incurred

as a result of Customer's or the Consignee's failure to accept delivery of the Goods or to provide direction about disposal of rejected Goods, including all storage fees, equipment use charges and costs of disposal.

G. **Obligation to Salvage Goods.** Customer is required to use all reasonable and good faith efforts to mitigate its damages from any loss or damage. These efforts will include salvaging the Goods in a commercially reasonable manner, including repackaging and relabeling. If Customer prevents or refuses to sell or allow the sale of damaged Goods, MEGACORP may deduct a reasonable estimate of the salvage value of the damaged Goods from the amount of the Claim. In that case, Customer will be bound by the reasonable salvage deduction determined by MEGACORP. MEGACORP may recover from Customer and/or from the proceeds of a sale of the Goods (or deduct from the Claim) all costs incurred as a result of Customer's or the Consignee's rejection and Customer's failure to provide direction or to sell or permit the sale of the Goods, including all storage fees and costs of disposal. Notwithstanding the foregoing, if the Goods are offered to MEGACORP for salvage, MEGACORP is entitled to, but is not required, to undertake salvage efforts. If MEGACORP, in its sole discretion, determines it will not undertake salvage efforts, MEGACORP in no way waives its right to assert its Claim that Customer failed to mitigate damages by Customer's failure to take efforts to salvage the Goods.

H. **Less-Than-Truckload (LTL).**

1. **Parties.** Customer is a party responsible for Goods it wishes to have transported. MEGACORP is a freight broker only. MEGACORP is not, and does not, act as a motor carrier. MEGACORP arranges with Carriers on behalf of Customer for the purpose of transporting Customer's Goods.
2. **LTL Quoted Rate:** All shipments are rated, quoted and booked based on information provided by Customer. Factors in this calculation include, but are not limited to:
 - a. The gross weight of the shipment including all packaging materials and pallets.
 - b. The commodity being shipped resulting in an NMFC code and freight class.
 - c. The dimensions per shipping unit and volume of space needed.
 - d. The number of shipping units.
 - e. **Assessorial Services:** assessorial services are services provided by the Carrier in addition to the basic transportation of the Goods. Freight is quoted from dock to dock therefore any assessorial services are extra charges. This includes, but is not limited to: lift gates, commercial, residential, or inside deliveries, appointments, temperature control, location updates and other services outside of normal shipping of Goods.
3. **LTL Billing:**
 - a. **Initial Billing:** The estimated/initial cost for each shipment is billed and charged to Customer's open account at the time of dispatch. Customer understands that this initial billing is based on the information provided by Customer and that this billing is done in good faith by MEGACORP with the assumption that Customer provided true and accurate information reflecting the actual description of the Goods and services to be provided.
 - b. **Adjustments:** The Carrier reserves the right to verify a shipment's weight, dimensions, class and any assessorial services provided. When a Carrier discovers these items are incorrectly described on the freight receipt, a freight inspector will document the differences

and a "Billing Adjustment" will be issued. Should this occur, Customer agrees to pay for all adjustments (if any) and adjustments will be automatically charged to Customer's open account with MEGACORP. Billing adjustments will also incur a rebilling and reprocessing fee.

- c. **Bill of Lading:** Customer is required to use the bill of lading supplied and issued by MEGACORP. Failure to do so may result in delivery delays of the Goods and extra charges due to loss of discounts and reprocessing fees.
 - d. **Disputes:** If rates are adjusted by the Carrier, MEGACORP has ten (10) business days to dispute and appeal the adjustments. MEGACORP then can provide proof to reverse these adjustments.
 - e. **Cancellation of Services:** Customer may cancel a shipment at any time. Within twenty-four (24) hours a fee of up to 10% may be charged to compensate Carrier.
 - f. Additional cargo insurance can be arranged and purchased by written request of Customer and approval by MEGACORP.
 - g. LTL freight liability can range anywhere from ten (\$0.10) cents to twenty (\$20.00) dollars, or more, per pound depending on class of commodity.
 - h. **Detention:** Only the first thirty (30) minutes at the shipper or receiver are free. Any additional hours will require a detention payment of \$50.00/hour.
- I. **Drayage.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by MEGACORP to Customer are for informational purposes only and are subject to change without notice. Customer will be renting space in container(s) subject to charges for the duration container(s) is (are) used. All charges must be paid by Customer in advance unless MEGACORP agrees in writing to extend credit to Customer.
- 1.
 - a. **Per Diem, Detention, and/or Demurrage:**
 - i. MEGACORP will invoice for per diem, detention, and demurrage charges upon receipt from steamship line, rail yard or airline.
 - ii. Per diem, detention, and/or demurrage invoices may be submitted separately to Customer and are due upon receipt of invoice by Customer. Penalty charges may apply where invoices are not paid within seven (7) days of receipt. These charges shall be the sole responsibility of Customer. For empty trailers and/or containers dropped off at origin for loading, free time shall be as set forth in the underlying Carrier's tariff or governing publication. MEGACORP shall be entitled to charge for all additional time at cost plus 20%.
 - iii. MEGACORP reserves up to six (6) months after shipment is completed to invoice for per diem, detention, and/or demurrage. Processing fees from Carriers may apply.
 - iv. Customer is responsible for payment on invoices for any additional charges incurred from freight forwarder, steamship, rail yard and/or airline.

- v. **Detention:** Only the first thirty (30) minutes at the shipper or receiver are free. Any additional hours will require a detention payment of \$50.00/hour.
 - b. Customer is responsible for all additional service charges incurred during transit, unless otherwise agreed upon in writing by MEGACORP. Charges will reflect MEGACORP's market rates.
- J. **Export/Import.** For international shipments, Customer authorizes MEGACORP to use a freight forwarder. Customer agrees to sign a Power of Attorney required by freight forwarder, and by doing so, Customer also agrees to any terms and conditions held by freight forwarder. MEGACORP will liaise on the part of Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export and/or security documentation on behalf of Customer and other dealings with Government Agencies, or for arranging transportation services or other logistics services. MEGACORP does not assume responsibility or liability for any action(s) and/or inaction(s) of such third parties, 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 freight forwarder. Unless requested to do so in writing and confirmed by MEGACORP in writing, MEGACORP is under no obligation to procure insurance on Customer's behalf once in possession of freight forwarder. Once freight forwarder is in possession of container, all liability will be passed onto the freight forwarder. MEGACORP may assist in facilitating any claim Customer provides through the freight forwarder directly, but MEGACORP will not be held responsible for damage, loss, or delay of Goods while in possession of the freight forwarder. Customer represents and warrants that it will comply with all laws and regulations applicable to Customer and/or any shipment or transaction hereunder, including without limitation, Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act and the Money Laundering Control Act, etc. Demurrage charges will be based on fees designated by the steamship or airline for the use of their shipping containers. All demurrage charges must be paid in full by Customer. Detention and Per Diem charges will be charged if container(s) and/or Goods must be stored at the terminal or remains in possession of the steamship or airline beyond the set amount of free time. Customer will be held responsible for any additional charges incurred from freight forwarder, steamship, and/or airline.
- K. **Intermodal.** Intermodal services provided by MEGACORP are subject to the Rail Carrier's Circulars, Rules, Tariffs and other terms and conditions, including but not limited to limitations of liability and filing procedures for cargo claims, indemnification, packaging and securing. Customer acknowledges and agrees that the Consignor is primarily responsible for proper loading and securement of all intermodal shipments in accordance with the Intermodal Loading Guide as issued by the Association of American Railroads (AAR), and that Customer shall indemnify MEGACORP and all other parties to the bill of lading contracts for any and all claims arising from and including, but not limited to, failure to properly classify, load, secure, and/or identify shipments.
- L. **Miscellaneous.** For all shipments moving intermodally or over the road, any designation or identification of MEGACORP as "Carrier" in any bill of lading or other documentation will not change or alter MEGACORP's relationship with Customer, MEGACORP's obligations to Customer, or the nature or character of MEGACORP's role in arranging for motor carrier services as a Broker. Customer warrants that it is either the owner or the authorized agent of the owner of the Goods for which Services are requested and that it has the authority to, and does, accept these Terms for itself and where applicable, as agent for and on behalf of the owner and any other person involved in the transportation, including but not limited to any consignor or consignee, logistics providers, freight forwarders, or insurers, and these Terms will be binding on such persons or entities.

Customer will obtain all necessary permits and authorizations necessary to ship the Goods, including but not necessarily limited to, export and import licenses and permits, and agrees to comply with all applicable laws, including, but not necessarily limited to, any prohibitions on selling to any person on a U.S. or Canadian export control list. If rates are negotiated between MEGACORP and Customer and not otherwise confirmed in writing, such rates will be considered "written," and will be binding upon MEGACORP's invoicing to Customer. Nothing shall require the Carrier to pick-up or deliver Goods at any point at which, on account of conditions of alleys, streets, roads, driveways, or local ordinances, it is impracticable or unsafe to operate motor vehicles.

- M. MEGACORP SHALL HAVE A LIEN ON ANY GOODS SHIPPED UNDER THESE TERMS FOR FAILURE TO PAY FEES ON CURRENT AND PRIOR SHIPMENTS, REGARDLESS OF CREDIT ARRANGEMENTS, OWED BY CUSTOMER, CONSIGNEE, HOLDER, OR ASSIGNEE ON ANY BOL. CUSTOMER AGREES THAT MEGACORP'S LIEN CONTINUES IN EFFECT AFTER THE GOODS ARE DELIVERED AND UNTIL ALL CHARGES ARE PAID. Customer agrees to sign any notice of a security interest whether in the form of a UCC-1 or other form requested by MEGACORP. Customer appoints MEGACORP as its attorney-in-fact to sign any such notice on Customer's behalf in the event Customer fails to sign it immediately upon MEGACORP's request.

12) INDEMNIFICATION

- A. Except for Claims for loss or damage to Goods, which are governed by these Terms, Customer will defend, indemnify and hold MEGACORP and its employees harmless from and against any and all Claims caused by and/or arising from: (1) the acts, omissions or intentional misconduct of Customer; (2) Customer's or its employees' or agents' violation of applicable laws or regulations; (3) Customer's or its employees' or agents' failure to comply with these Terms; (4) Customer's or its employees' or agents' failure to comply with obligations imposed by the underlying Carrier; or (5) MEGACORP's compliance with or reliance on Customer's instructions.
- B. Customer shall hold MEGACORP harmless from and shall defend and indemnify MEGACORP against any loss, damage, claim, or suit arising from any breach of Customer's warranties as set forth herein. Customer agrees and understands that MEGACORP's liability will be limited as provided herein, and that MEGACORP will not be liable for loss, damage, missed delivery, or delay of any shipment caused by or arising from the acts, omissions, negligence or willful misconduct of Carriers, customs brokers, forwarders and their agents to whom the Goods may be entrusted.

13) CONFIDENTIALITY & BACK SOLICITATION

- A. Customer acknowledges and agrees that the names, routes and pricing of the Carriers and other service providers utilized by Broker are confidential information and are in the nature of a trade secret. Customer shall not directly contact or solicit rates, bids or service from any underlying Carrier or service provider where a) the availability of Carrier or service provider to perform such services first became known to Customer as a result of Broker's efforts, or b) where Customer's traffic was first tendered to the underlying Carrier or Service Provider by Broker. If Customer breaches this provision and "back-solicits" Broker's underlying Carriers and/or service providers, and/or tenders traffic to such Carriers or service providers, Broker is then entitled, for a period of eighteen (18) months after the involved traffic first begins to move, to payment from Customer of 20% of the gross transportation charges for all such traffic, as liquidated damages. Termination of the

relationship between Broker and Customer shall not affect the enforceability and applicability of the foregoing provisions of this clause for a period of two (2) years after termination.

14) TERM OF AGREEMENT AND TERMINATION

- A. This Agreement shall remain in effect until canceled by either party upon thirty (30) days written notice to the other party. If Customer terminates this Agreement, Customer agrees to pay MEGACORP's fees for all Services and expenses incurred up to the point of termination forthwith upon issuance of MEGACORP's invoice. MEGACORP has the right to immediately terminate this Agreement upon breach of the Agreement by Customer for failure to pay MEGACORP's fees.
- B. Customer understands that these Terms are subject to change. Customer is bound by the most current Terms which are posted on MEGACORP's website at www.MegaCorpLogistics.com/terms. Customer agrees that the posted Terms on MEGACORP's website on the date of a shipment will apply to that shipment and govern the parties' obligations.
- C. This Agreement supersedes all prior agreements and understandings between the parties and may not be changed or terminated orally, and no attempted change, termination or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto.

15) SEVERABILITY

If any term, provision, covenant or condition of these Terms, or any application thereof, should be held by a Court of competent jurisdiction to be invalid, void or unenforceable, Customer agrees that such portion or provision shall be deemed severable and all provisions, covenants, and conditions of these Terms, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby. The representations and obligations of Customer will survive termination of these Terms for any reason.

16) LIMITATION OF ACTIONS

- A. Any action herein against MEGACORP whether founded in contract or tort, is waived unless commenced within two (2) years of the date of the conduct giving rise to the Claim occurred.
- B. IN NO EVENT, UNDER ANY CIRCUMSTANCES, WILL MEGACORP BE LIABLE TO ANY CUSTOMER, SUPPLIER, CONSIGNOR, CONSIGNEE, BENEFICIAL OWNER, THIRD PARTY LOGISTICS PROVIDER OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING ATTORNEY'S FEES, OR DAMAGES FOR LOSS OF PROFITS, LOST SAVINGS, LOSSES DUE TO FLUCTUATIONS IN THE GOODS'S MARKET VALUE, USE OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT MEGACORP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- C. THE SERVICES ARE PROVIDED "AS IS", AND MEGACORP DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS RELATING TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO

ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE SERVICES PROVIDED HEREUNDER.

17) NON-WAIVER; REMEDIES

- A. Delay or failure of MEGACORP to insist upon performance of any of these Terms, or to exercise any right or privilege herein, or the waiver of any breach of any of these Terms, will not be construed as waiving any such terms, conditions, provisions, rights, or privileges, but the same will continue and remain in full force and effect as if no forbearance or waiver or delay had occurred. Consent or approval by MEGACORP to any act requiring consent or approval will not be deemed to waive or render unnecessary consent or approval of any subsequent similar act. Customer hereby waives any and all rights and remedies provided for by Part B of Subtitle IV to Title 49 of the U.S. Code to the extent such rights and remedies conflict with the provisions of these Terms. MEGACORP's rights and remedies under these Terms will be cumulative, and its pursuit of any such right or remedy will not preclude it from pursuing any other available right or remedy.

18) NO WARRANTIES OR PERFORMANCE GUARANTEES.

- A. In no event shall MEGACORP be liable for any special, incidental, consequential or punitive damages, including without limitation, damages due to delay, loss of profits, rental or income, travel, labor or expense, interest, costs or attorney fees, whether or not MEGACORP or the Carrier had knowledge that such damages might be incurred. MEGACORP shall attempt to secure on-time, scheduled performance from Carriers regarding the movement of Customer's Goods, however MEGACORP makes no warranties, express or implied, and expressly disclaims any and all warranties. MEGACORP is not bound to arrange for transport of property in any particular vehicle, stack train, aircraft or for any particular market or markets, other than according to reasonable dispatch. Reasonable dispatch shall be dictated, among other things, by the nature of the transportation, safe and legal transportation operating requirements, and multiple shipper, receiver and Customer requirements and parameters. Further, MEGACORP does not warrant that shipments in transit will remain in continuous transit. Customer understands and acknowledges that, from time to time, shipments may be delayed while in transit. MEGACORP shall not be liable for suspension of service or operations or cargo loss or damage that result from the Shipper/Customer's Acts, Improper Packaging, Inherent Vice, Acts of Public Authority, Acts of God, Acts of War, terrorism, insurrection, strikes, derailment, any Force Majeure or any other cause beyond its control. The service standards for Carriers are not guaranteed, nor shall they be construed as such by any MEGACORP Customer, Consignor, or Consignee. MEGACORP will not be responsible for any charges levied by anyone for failure to perform any service as to the timeliness of pick-up or delivery, whether implied by an effort to accommodate Customer, Consignor and Consignee or not. Such fees may include, but are not limited to, a failure to make or meet appointment times or a failure to notify of a change in schedule.

19) DISCLAIMERS

- A. CUSTOMER USES THIS WEBSITE AND THE HERO CONNECT WEB PORTAL AT ITS OWN RISK. ALL INFORMATION AND CONTENT ON THIS WEBSITE AND THE HERO CONNECT WEB PORTAL IS PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.
- B. IN NO EVENT WILL MEGACORP, ITS SUBSIDIARIES, AFFILIATED COMPANIES, JOINT PARTNERS, LICENSORS, OR LICENSEES BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES FOR ANY USE OF THIS WEBSITE, OR ANY OTHER HYPERLINKED SITE INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES, LOST PROFITS, LOSS OF PROSPECTIVE ECONOMIC ADVANTAGE, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR OTHER DATA OR OTHERWISE ARISING OUT OF THE USE, MISUSE OF OR INABILITY TO USE THIS WEBSITE, THE HERO CONNECT WEB PORTAL, OR THE INFORMATION, SOFTWARE, SERVICES OR CONTENT THEREOF, EVEN IF MEGACORP, ITS SUBSIDIARIES, AFFILIATED COMPANIES, JOINT PARTNERS, LICENSORS, OR LICENSEES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY A THIRD PARTY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THIS WEBSITE AND THE HERO CONNECT WEB PORTAL. IN NO EVENT WILL THE MAXIMUM AGGREGATE LIABILITY OF MEGACORP, ITS SUBSIDIARIES, AFFILIATED COMPANIES, JOINT PARTNERS, LICENSORS, OR LICENSEES, ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS, OR ANY USE OF THE WEBSITE, THE MEGACORP VISION WEB PORTAL OR ANY OTHER HYPERLINKED SITE, EXCEED FIFTY U.S. DOLLARS (\$50), UNLESS CAUSED BY MEGACORP'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

20) GOVERNING LAW AND FORUM

- A. These Terms will be deemed to have been drawn in accordance with general principles of federal transportation law, jurisdiction, and venue, as well as the statutes and laws of the state of North Carolina and in the event of any disagreement or dispute, the laws of North Carolina will apply, without regard to its choice or conflict of law rules, and suit must be brought exclusively in the state or federal courts nearest to New Hanover County, North Carolina as each Party specifically submits to the exclusive personal jurisdiction of such courts for disputes involving these Terms or the Services. Customer waives all objections to venue and jurisdiction, including forum non conveniens. THE PARTIES VOLUNTARILY AGREE TO WAIVE TRIAL BY JURY. BY DOING BUSINESS WITH MEGACORP, CUSTOMER IS SUBJECT TO MEGACORP'S TERMS CONTAINED HEREIN.