

## Overland Express Company Standard Terms and Conditions of Service

The term “Company” referenced in these Terms and Conditions refers to Overland Express Company. The Terms and Conditions herein shall apply when Overland Express Company performs services by transporting cargo on equipment owned by or leased to Overland Express Company under **MC-148105**. Overland Distribution Inc. is a licensed freight forwarder, and Overland Distribution Inc. also provides warehousing services. When Overland Distribution Inc. stores goods at its facility, issues a warehouse receipt, or otherwise acts as a warehouseman, Overland Distribution Inc.’s liability shall be that of a warehouseman, and Overland Distribution Inc.’s Warehouse Terms and Conditions shall apply. Overland Distribution Inc.’s Freight Forwarder Terms and Conditions shall apply when Overland Distribution Inc. provides freight forwarding services under its freight forwarding authority, **MC-12506**. When cargo is brokered by Overland Logistics LLC under **MC-866753**, Overland Logistics LLC’s Terms and Conditions shall apply.

Overland Distribution, Inc., Overland Express Company, and Overland Logistics, LLC, are Texas business organizations, each of which (i) is solely responsible for its own debts and obligations, (ii) is not responsible for the debts and obligations of any other entity unless expressly agreed in writing, and (iii) is separate and distinct from, and not to be confused with, any other entity bearing a similar name or logo. Shipper agrees that Company shall not be liable, and Shipper will not attempt to hold Company liable, for the conduct of Company’s affiliates or third parties. Similarly, Company’s affiliates shall not be liable for Company’s conduct, and Shipper agrees that Company and its affiliates are not engaged in a partnership, joint venture, joint enterprise, or similar venture.

The term “Shipper” means the person(s) or entity(ies) desiring to have the goods transported, sending the goods, or otherwise liable as a shipper under law. This definition includes the exporter, importer, sender, receiver, owner, consignor, consignee, forwarder, broker, transferor, or transferee of the shipments, or any other agents or representatives of Shipper. It is the responsibility of all such parties to provide notice and copies of these Terms and Conditions to each other. The term “Consignee” shall mean the person or party to whom the freight is to be delivered.

Company reserves the right to modify, amend, and supplement these Terms and Conditions (also known and referred to as Rules Tariff, Rules Circular, Rules, Tariff, and similar references) from time to time without notice.

### A. General Terms

1. Application. Each provision of these terms and conditions shall apply to each transportation agreement entered into between Company and Company’s customers and Shipper, regardless of the origin or destination, including interstate or intrastate shipments, unless expressly waived in a signed, written agreement. The terms and conditions herein shall apply to shipments exempt from economic regulation as well as shipments subject to the jurisdiction of the FMCSA. **IN NO EVENT SHALL COMPANY’S LIABILITY FOR CARGO LOSS OR DAMAGE EXCEED THE LESSER OF THOSE SET OUT IN THESE TERMS AND CONDITIONS OR THE MAXIMUM SET FORTH IN ANY THROUGH BILL OF LADING OR OTHERWISE AGREED TO BETWEEN THE SHIPPER AND THE PARTY WHICH RETAINS COMPANY’S SERVICES.** If there is any discrepancy or conflict between these terms and conditions and any terms contained in the bill of lading (including those executed by Company’s personnel and contractors), Shipper’s terms and conditions, or any other document, the terms and conditions herein shall control, unless changes have been made by obtaining written approval by an officer of Company prior to Company performing the transportation.

2. Bills of Lading. The terms and conditions of Company’s Bill of Lading will apply notwithstanding the use by Shipper of any other bill of lading or shipping document. **DRIVERS ARE NOT AUTHORIZED TO BIND COMPANY TO NON-CONFORMING BILLS OF LADING AND EXECUTE BILLS OF LADING WITH ALTERNATIVE TERMS AND CONDITIONS AS RECEIPTS FOR THE SHIPMENT ONLY.** Consignee’s receipt and/or signature of the Bill of Lading without notation of damages shall be dispositive evidence that the cargo was delivered in good condition.

### B. Shipments

3. Compliance with Laws and Regulations. Shipper shall ensure that Company has all the information and documentation necessary to comply with the laws and regulations of any country in, through, or which the shipment will be transported.

4. Special Permits. When permits are required for the transportation of over-size and/or overweight loads, the Shipper of the freight shall procure and furnish such permits, or shall request, in writing, Company to secure them and costs will be billed to Shipper.

5. Steamship Line and Third-Party Equipment. Use of steamship line or third-party equipment (chassis, container, flat racks, ISO tanks, etc.) will be subject to the steamship line or third party’s equipment interchange agreement, including allowances for free time, per diem charges, chassis splits, maintenance and repair, and all other charges incurred. Shipper will be billed for all charges plus an additional administrative charge. Shipper shall pay all valid charges without delay.

6. Chassis Splits. When container chassis is not located at the same location as the container to be transported, chassis split charges may be assessed.

7. Shipper Load and Count. All shipments will be loaded by the consignor and unloaded by Consignee. Where the driver was either not present or was not allowed to observe the loading or unloading, omission of shipper load and count (or "SLC" notation) on the bills of lading shall not result in a presumption of Company's liability for shortage or damage.

8. Packing and Packaging - Shortage. Company will not be responsible for shortage on shipments which are banded, strapped, netted, shrink-wrapped or otherwise secured to bins, pallets, platforms or skids. Company will only be responsible for the number of bins, pallets, platforms or skids on such shipments to the extent that such units can be reasonably counted. Company will not be liable for damaged goods not clearly marked fragile or glass. Company shall not be liable for shortage or damage to sealed shipments.

9. Crated or Sealed Shipments. Company will not be responsible for packing, sealing, or crating a shipment or securing the goods within the crate. Company will not be liable for damages of any kind caused by improper packing, sealing, or crating of shipments by Shipper or another third-party or improper securement of the goods within a crate by Shipper or another third-party. SHIPPER SHALL INDEMNIFY, DEFEND, AND HOLD COMPANY HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DEMANDS, OR CAUSES OF ACTION WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, ALL COSTS, EXPENSES, AND ATTORNEYS' FEES) ARISING OUT OF OR IN ANY WAY RELATED TO THE IMPROPER PACKING, SEALING, OR CRATING OF A SHIPMENT BY SHIPPER OR A THIRD-PARTY OR THE IMPROPER SECUREMENT OF THE GOODS WITHIN A CRATE. THIS INDEMNIFICATION, DEFENSE, AND HOLD HARMLESS OBLIGATION SHALL APPLY WHETHER DUE TO THE SOLE OR CONCURRENT FAULT OF SHIPPER OR A THIRD PARTY.

10. Shipments Subject to re-weight/re-measurement. Shipper shall provide weight and measurement for all shipments. Advance written notification of overweight or overdimensional shipments is required. If the weight or measurements of the goods as delivered are different from Shipper's representations, or if pick-up or delivery time or location is changed by Shipper, Company will not be responsible for fines, permit fees, or penalties assessed by any agency. Any fines or expenses resulting from overweight shipments arising from Shipper's failure to provide accurate weight and measurements, in addition to any permit fees, will be included in the invoice and charges to be paid for the shipment. Additionally, Company's rates, charges, and fees are subject to change and will be included in the invoice and charges to be paid to Company. Shipper shall at all times have sole responsibility to ensure shipments comply with the terms of the International Convention for the Safety of Life at Sea ("SOLAS"), as applicable.

11. Loading/Unloading. Shipper and Consignee shall be responsible for loading and unloading all shipments at Shipper's and Consignee's facilities. Rates do not include loading or unloading by Company personnel.

12. Attempted Pickup and Delivery. When Company is requested to dispatch a vehicle to a point designated by the Shipper, and the vehicle is furnished but not used, an attempted pickup charge and fuel surcharge will be assessed. If a shipment is rejected in whole or in part by Consignee, Shipper will be responsible for all freight charges as though the shipment had been accepted by Consignee. In addition, the rejected shipment may be returned to the point of origin or other location designated by Shipper, and Shipper will be responsible for freight charges for return transportation, in addition to any resulting storage charges or other expenses arising out of such rejection.

13. Reconsignment or Diversion. Shipments re-consigned or diverted while in transit may be subject to additional charges in accordance with Company's rates.

14. Stop-Offs. Stop-off charges may be assessed when Company is required to pick up from multiple origins or deliver to multiple destination locations.

15. Loss and Damage - Salvage. If goods are rejected, including overage, Company will have the right to sell or dispose such goods. This also applies to property transported by Company which is damaged or alleged to be damaged and is, as a consequence, not delivered or is rejected or refused upon tender to the owner, Consignee, or person entitled to receive such property. In any event, salvage value of the cargo shall be deducted from claims for loss or damage to cargo.

16. Disposition of Overage. Consignee shall accept overages in fulfillment of its duty to mitigate damages. Overages will be returned to Consignee or Shipper by Company upon request in return for payment of Company's applicable freight charges. In the event Shipper, consignor and Consignee decline to accept overages and mitigate damages, Company will treat any overage as salvage and after notice will sell same in accordance with the bill of lading contract and the terms herein. Company will not be liable for any difference between the sales price of overage and the destination market value where the Shipper and Consignee decline to mitigate damages.

17. Hazardous Materials. Shipper will comply with all U.S. Department of Transportation requirements governing hazardous materials. Shipper must provide a legible bill of lading and Shipper's certificate with proper Hazmat information on the Bill of Lading and affix any required placards before the shipment is tendered. Failure to comply with these requirements will relieve Company of any and all liability for loss or damage directly or indirectly caused to or by the hazardous materials. Shipper shall be liable for all costs and expense, including but not limited to clean-up, storage, and hourly rates of Company staff, for incidents arising from leakage, release, or exposure from hazardous materials. Shipments of hazardous materials will be subject to an additional charge.

18. Substituted Service. Company reserves the right to refer shipments to, and Shipper consents to the use of, Company's affiliated brokerage entity and affiliated motor carrier entity to provide all or part of given movements. Shipper will not hold Company liable for the actions of the separate freight brokerage entity nor for the actions of any affiliated or third party motor carrier. In the event of any claim or loss, Shipper must look solely to the independent motor carrier and its insurance providers. Services provided by Company's affiliates are subject to their Terms & Conditions, which are available upon request.

19. Limitation of Liability of Third Party Service. Company will in no event be held liable for any claim, loss, damage, expense, or delay to the goods for any reason whatsoever when such goods are in custody, possession, or control of third parties selected by Company to forward, enter and clear, transport, or render other services with respect to the goods.

20. Sale of Perishable Goods. Perishable goods or live animals to be exported, imported, or which are cleared through customs for which no instructions of disposition are furnished by Shipper may be sold or otherwise disposed of without notice to Shipper, owner or Consignee of the goods, and payment or tender of the net proceeds of any sale after deduction of charges will be equivalent to delivery. In the event that any shipment is refused or remains unclaimed at destination or any trans-shipping point in the course of transit or is returned for any reason Shipper must pay Company for all charges and expenses in connection therewith. No provision herein obligates Company to forward, enter or clear the goods, or arrange for their disposal.

21. Shipper's Duty to Furnish Information.

- a. On an import, at a reasonable time prior to entry of the goods to U.S. Customs, Shipper shall furnish to Company invoices in proper form together with other documents necessary or useful in the preparation of the U.S. Customs entry, and such further information as may be sufficient to establish the dutiable value, classification and admissibility of the goods pursuant to U.S. law, or regulation or ruling. If Shipper fails to timely furnish all of such information or documents, as may be required to complete U.S. Customs entry. Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, Shipper shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by Company as Principal, it being understood that Company entered into such undertaking at the request and on behalf of Shipper and Shipper shall INDEMNIFY and DEFEND Company for the consequences of any breach of the terms of the bond.
- b. On an export, at a reasonable time prior to the exportation of the shipment, Shipper shall furnish to Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods.
- c. On an export or import, Company will not in any way be liable for increased duty, penalty, fine, or expense unless caused by the gross negligence or other fault of Company, in which event its liability to Shipper will be limited in accordance with, and as further described in Company's Terms and Conditions in effect on the date of service. Shipper shall be bound by and warrant the accuracy of all invoices, documents and information furnished to Company by Shipper or its agent for export, entry or other purposes and shipper agrees to INDEMNIFY and DEFEND Company against any increased duty, penalty, liquidated damage, fine or expense, including attorney's fees, resulting from any act, inaccuracy or omission or any failure to make timely presentation, even if not due to any negligence or fault of shipper.
- d. The following notice is required to be given pursuant to 19 CFR part 111.29(b)(1): If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to "U.S. Customs Service" which shall be delivered to Customs by the broker.

All customs penalties, storage charges, or related expenses incurred as a result of an action by a governmental agency, or failure by the Shipper, Consignee or consignor to provide proper documentation or to obtain a required license or permit will be borne by Shipper and Shipper shall DEFEND and INDEMNIFY Company for such penalties, storage charges, and related expenses.

### C. **Limitation of Liability**

22. Limitation of Liability per Shipment. Company's rates are based on a limited liability for loss or damage to cargo. All shipments are released to a maximum value and maximum liability of \$100,000 per shipment. In no event shall liability be greater than the actual value of lost or damaged articles less salvage. Company's liability for cargo loss or damage will not exceed \$100,000 per shipment ("Release Value") unless Shipper requests an increase in legal liability by a.) Submitting a written request for a higher Release Value, b.) Paying an additional charge based on the increased Release Value, and c.) Obtaining written confirmation of the higher Release Value from an Officer of Company. DRIVERS ARE NOT AUTHORIZED TO AGREE TO HIGHER RELEASED VALUE.

UNDER NO CIRCUMSTANCES SHALL COMPANY'S LIABILITY FOR LOSS OR DAMAGE TO GOODS EXCEED THE GREATER OF 1) THE AMOUNT AVAILABLE TO COVER THE LOSS OR DAMAGE UNDER COMPANY'S INSURANCE, WHICH IS SUBJECT TO THE POLICY CONDITIONS, THEN EXISTING COVERAGE LIMITS, AND AMOUNT REMAINING UNDER THE POLICY FOR COVERAGE, OR 2) \$500 PER SHIPMENT; UNLESS SHIPPER 1) SUBMITS A WRITTEN REQUEST FOR COMPANY TO BE LIABLE IN EXCESS OF COMPANY'S INSURANCE COVERAGE, 2) PAYS AN ADDITIONAL CHARGE, AS APPLICABLE, BASED ON THE INCREASED LIABILITY, AND 3) RECEIVES WRITTEN CONFIRMATION

FROM AN OFFICER OF COMPANY OF ACCEPTANCE OF LIABILITY ABOVE INSURANCE COVERAGE. THIS LIMITATION OF LIABILITY SHALL NOT ALTER OR AFFECT COMPANY'S RELEASE VALUE AND THE PROCEDURES CONTAINED HEREIN TO INCREASE COMPANY'S RELEASE VALUE.

23. Inadvertence Clause. If a Shipper declares or fails to declare a value exceeding \$100,000 per truckload, without obtaining written approval from Company, the shipment will not be accepted, but if the shipment is inadvertently accepted, it will be considered as being released to a maximum value of \$100,000 per shipment, and the shipment will move subject to such limitation of liability. DRIVERS ARE NOT AUTHORIZED TO AGREE TO A HIGHER RELEASE VALUE.

24. No Liability for Special or Consequential Damages. COMPANY WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS, OR BUSINESS OPPORTUNITY, ATTORNEY FEES OR PUNITIVE AND EXEMPLARY DAMAGES) INCURRED OR SUFFERED BY THE SHIPPER AS A RESULT OF SHORTAGE, DAMAGE OR DELAY, EVEN IF COMPANY IS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. COMPANY WILL NOT BE LIABLE FOR PENALTIES OR CHARGES CLAIMED BY SHIPPER, SHIPPER'S CUSTOMER, OTHER PARTIES SHIPPER HAS CONTRACTED WITH, OR THIRD PARTIES.

25. Liability of Company. COMPANY WILL NOT BE LIABLE TO THE OWNER OF PROPERTY FOR LOSS, DAMAGE, OR DELAY CAUSED BY (1) an act of default of the Shipper, owner or Consignee; (2) any act of any third party motor carrier; (3) any act of any affiliated or unaffiliated freight broker; and (4) freezing or spoiling of any perishable goods or property or for natural shrinkage.

26. Concealed Damage. COMPANY IS NOT RESPONSIBLE FOR HIDDEN OR CONCEALED DAMAGE.

27. Commodity Limitations. Company does not hold out to transport copper, money, jewelry, manufactured tobacco products, ammunition, objects d'art, currency, documents, items of unusual value, or rare metals.

28. Reasonable Dispatch. Notwithstanding the fact that an estimated delivery date may be provided or that a specific delivery date and time may be requested, Company is not bound to transport a shipment by a particular schedule or in time for a particular market but is responsible to transport a shipment with reasonable dispatch.

29. Force Majeure. Company will not be liable for failure to perform any obligation resulting from circumstances beyond its control, including but not limited to any mechanical breakdown, act of God, riot, war, terrorist act, civil disturbance, fire, explosion, flood, strike, lock-out, labor disturbance, or any other cause outside of the reasonable control of Company.

30. Liability for Equipment and Cargo after delivery. Shipper shall ensure that any containers, chassis, or other equipment tendered to Shipper, consignor, Consignee or delivery point and remaining at the Shipper's facility, consignor's facility, Consignee's facility, or delivery point after delivery (for unloading or loading) shall be secured and handled in a manner to prevent theft, loss, or other damage. Company will not be responsible for stolen, lost, or damaged goods, containers, chassis, or other equipment after such items have been delivered and are not in the physical possession of Company; Shipper will be fully liable for theft, loss and damage to all goods, containers, chassis, and other equipment after such items have been delivered. Shipper will reimburse Company for any costs Company pays or incurs with regard to theft, loss, or other damage to goods, containers, chassis, or other equipment occurring after Company delivers the shipment, including, but not limited to property loss or damage and per diem.

31. No liability for SOLAS. In no event shall Company be liable for fines, penalties, costs, expenses or other damages resulting from Shipper's failure to comply with the terms of SOLAS.

32. Liability for replacement services and other costs. With respect to any damages arising from delayed or defective transportation of the shipment (other than liability for loss or damage to cargo, which is set forth herein) including, but not limited to, the cost of replacement services, Company's liability shall be limited to Company's freight charges for the shipment at issue.

33. Cargo Drop Liability. Shipper shall ensure that any cargo, containers, chassis, or other equipment tendered to Shipper or the delivery point and remaining at the Shipper's facilities or the delivery point after delivery (for unloading or loading) shall be secured and handled in a manner to prevent theft, loss, or other damage. Company will not be responsible for stolen, lost, or damaged cargo, containers, chassis, or other equipment after such items have been delivered and are not in the physical possession of Company; Shipper will be fully liable for theft, loss and damage to all cargo, containers, chassis, and other equipment after such items have been delivered. Shipper will reimburse Company for any costs Company pays or incurs with regard to theft, loss, or other damage to cargo, containers, chassis, or other equipment occurring after Company delivers the shipment, including, but not limited to property loss or damage and per diem.

#### **D. Additional Terms**

34. Cargo Claims. Claims for loss, damage, or delay to cargo shall be filed according to 49 C.F.R. § 370 and Company's Bill of Lading. All cargo claims filed with Company are waived if not filed in writing within 9 months from the date of delivery or a reasonable time at which delivery should have been accomplished. Written notice of any patent damage to cargo shall be provided to Company immediately, and not later than 3 days after delivery. Written notice of latent damage shall be provided to Company upon discovery, and, in any event, not later than 15 days after delivery. All cargo claims are waived if a civil suit is not filed within 2 years from the date the Company gives a person written notice that Company has denied any part of the claim specified in the notice. All other claims must be brought within 2 years from the date the claim accrues. ALL CLAIMS FOR WHICH PROPER AND TIMELY NOTICE IS NOT GIVEN ARE DEEMED AUTOMATICALLY WAIVED.

35. Disposition of Contested Cargo Claims. Unless the parties agree to voluntary alternative dispute resolution, disputed claims will be subject to 49 U.S.C. § 14706 (the Carmack Amendment) subject to any applicable released evaluation. Claimant waives any right to set-off or offset of contested and unliquidated cargo claims against freight charges otherwise due to Company as a precondition of service. Claimants agree to forfeiture of any contested claim asserted by it as a set-off after notice and demand for freight charges.

36. No Responsibility for Governmental Requirements. It is Shipper's responsibility to know and comply with all the classification, valuation, marking and other Custom's requirements, laws, regulations and ruling enforced by the U.S. and any country having jurisdiction over a shipment, the laws and regulations of any applicable governmental agency, including but not limited to the U.S. Food and Drug Administration, and all other requirements, laws and regulations of any applicable country or governmental agency. Company will not be responsible for action taken or fines, liquidated damages or penalties assessed by any governmental agency against the shipment because of the failure of Shipper to comply with any such laws, rulings, requirements or regulations of any country or governmental agency or with notification issued to Shipper by any such agency.

37. Advancing Charges. Company may advance for collection from Shipper, owner, or Consignee any lawful charges that may be associated with the transportation of the freight. Charges paid by Company will be billed to the Shipper or Consignee at actual cost plus a handling fee.

38. Payment of Charges and Collection. Payment will be due within 30 days of invoice. If charges are to be paid by a third party other than the Shipper or Consignee and such third party fails to pay the charges within 30 days of invoice, the Shipper and Consignee shall be liable for the charges. Nonrecourse provisions, prepaid designations, collect designations, and related terms on bills of lading shall not be given effect; Company shall be entitled, at all times, to seek payment from the Shipper, Consignee, and customer. Amounts not received within 30 days of invoice date are subject to 1.5% interest per month or the maximum amount allowed by law, whichever is less, beginning on the 31<sup>st</sup> day after payment was due. In the event Company finds it necessary to retain the services of legal counsel to collect any outstanding indebtedness, Shipper or Consignee shall pay all attorney fees, collection service fees, court filing fees and related expenses to collect such outstanding debt.

39. Payment without offset. Shipper, consignor and/or Consignee must pay all freight charges when due without offset for any cause. All claims for loss or damage shall be governed by these terms and conditions and neither Shipper, consignor nor Consignee shall deprive Company of proper cargo insurance adjustment by unilateral deduction of claims from payment of freight charges due. In the event that Shipper or its agents "short pay" freight charges or deduct charges from freight bills without Company's authorization to do so in writing, prior to the deduction, Shipper and its agents waive their right to any contested cargo claim that is set-off against freight charges.

40. Third Party Billing & Freight Charge Liability. Company does not employ property brokers or other intermediaries as its agents for the collection of freight charges. A shipment in which charges are to be paid by a party other than the Shipper, consignor or Consignee will be accepted provided recourse to the Shipper, consignor, and consignee is preserved, regardless of any other representation on the Bill of Lading or other shipping document (including, but not limited to, Section 7 and/or prepaid designations). The Shipper, consignor and Consignee guarantee to pay the charges if the third party fails to do so in the time allotted under the applicable credit regulations.

41. Mexican Shipments. Company assumes no liability for cargo loss, shortage, or damage to shipments while in the United Mexican States ("Mexico"). Shippers are advised that liability for cargo loss in Mexico differs from U.S. law (49 U.S.C. 14706) and the special arrangements with the Mexican carrier participating in any trans-border movement is not the Company's responsibility. Clear bills of lading showing safe and damage-free delivery between the U.S./Mexican borders at the pickup or delivery points in the U.S. will be evidence of Company's proper discharge of its cargo responsibility. In the event it is determined that Company is liable for loss, damage or delay occurring in Mexico, Company's maximum liability will be the rate affixed under the laws of Mexico for domestic shipments within that country.

42. Lien on Goods. Shipper hereby grants Company a lien on the goods tendered to Company by Shipper or consignor (including proceeds of such goods tendered to the Company), which shall survive delivery, to secure payment of all charges owed by Shipper to Company, including, but not limited to, freight, demurrage, detention, damages, loss, charges, expenses, collection costs, and any other

sums (including costs, customs fees, attorney fees, and other fees for recovery of the sums) chargeable to Company or Shipper in connection with such goods or the transportation of such goods, regardless of whether the charges relate to goods that are presently in the possession of Company or goods that are not presently in the possession of Company, including both prior and subsequent shipments. Company shall have the right to sell the goods by public auction or private sale in order to enforce the lien, upon giving the notice required by the Texas UCC then in effect at the time. If on sale of the goods, the proceeds are insufficient to cover the amount owed, Company shall be entitled to recover the balance from Shipper. Shipper agrees that any sale by Company shall be commercially reasonable, and Shipper waives all claims that a sale of goods is not commercially reasonable. Shipper further agrees to execute any other document necessary for Company to perfect its lien.

43. Venue and Jurisdiction. This agreement shall be construed to have been entered in Harris County, Texas and performable in Harris County, Texas. All parties consent to the jurisdiction of Texas and to venue in Harris County or Montgomery County, Texas. It is expressly acknowledged and agreed that any suit related to Company's services or these terms and conditions shall be filed in the appropriate state or federal court in Harris County or Montgomery County, Texas.

44. Entire Agreement. These terms and conditions and Company's Bill of Lading constitute the entire contract between Company and Shipper and only an officer of Company has authority to alter, modify or waive any provision herein, excepting that the rate stated may be modified by Company to conform to the services Company provides.

45. Waiver. To the extent that terms and conditions herein are inconsistent with the Carmack Amendment, 49 U.S.C. 14706 or Part (b), Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the parties expressly waive such rights and remedies that they may have under such laws.