



## **General Terms and Conditions of Service**

Except to the extent superseded by a tariff or other contract as specified in paragraph 2 below, the following Terms and Conditions of Service shall apply to all services performed by Three Way Logistics, Inc. (hereinafter "Three Way") and shall constitute a binding contract between Three Way and the Customers, Shippers, Bailors, Third Parties and Consignees to or for whom Three Way provides services.

### **1. Definitions.**

(a) "Three Way" means Three Way Logistics, Inc., its employees, directors, officers, shareholders, agents, representatives, assigns, affiliated companies, related entities, including, but not limited to, any subcontractors Three Way hires to fulfill any of the obligations it owes under its contracts with the customer.

(b) "Customer" means the person or firm on whose behalf Three Way has been hired to perform services, as well as its agents and/or representatives and any principal on whose behalf it is acting.

(c) "Shipper" means the person tendering goods to Three Way for transport or storage and the person for whose account goods are being transported or stored, and any and all agents and/or representatives of the Shipper, including, but not limited to, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, and consignees.

(d) "Bailor" means both the owner of the goods and the person entitled to delivery of the Goods, even if not the owner, and shall be presumed to include the importer of the goods when imported Goods are tendered to the Warehouseman for storage, and their agents and representatives.

(e) "Third Party" means the person identified as such on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document as the party responsible for payment of Three Way's charges.

(f) "Consignee" means the person named as the "consignee" on any shipper's instructions, receipt, truck tag, bill of lading or other document, the owner of the Goods, and all other persons lawfully entitled to possession of the Goods upon delivery.

(g) "Goods" means articles of every kind or description, including their packaging, containers, or other shipping units or materials, tendered to Three Way for handling, packing, securing, transportation, storage and/or delivery as identified on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Three Way.

### **2. Contractual Agreement/Amendment of These Terms and Conditions.**

These Terms and Conditions of Service and Three Way's tariffs, which are incorporated into these Terms and Conditions by this reference, constitute a binding contract. These Terms and Conditions of Service and the tariffs incorporated therein supersede and negate any claimed, any

claimed, alleged, or asserted oral contract, promise, representation or understanding between the parties with respect to the services to be performed by Three Way.

If and to the extent there is any conflict between these terms and conditions and the provisions of Three Way's tariffs or a bill of lading, warehouse receipt or agreement, rigging contract, exhibit or trade show agreement, air charter agreement or other specially negotiated written contract entered into by Three Way with respect to a particular shipment or service provided, the terms of the Three Way tariffs or the other contract shall govern.

These Terms and Conditions of Service are subject to amendment by Three Way. Amendments to these Terms and Conditions of Service shall be published on Three Way's web site and provided in writing to Three Way's customers. Your continued use of Three Way's services upon publication and notice to you of the amended Terms and Conditions shall constitute acceptance of the amended Terms and Conditions of Service.

### **3. Responsibilities of Three Way.**

(a) If Three Way has issued a bill of lading, Three Way shall be liable as a carrier at common law for the loss of or damage to the Goods between the point of origin and the point of destination described in the bill of lading.

(b) If Three Way has issued a warehouse receipt, Three Way shall not be liable as a carrier, but instead shall be liable only as a warehouseman for its failure to exercise such care in regard to the Goods as a reasonably careful man would exercise under like circumstances, and shall not be liable for damages which could not have been avoided by the exercise of such care, during the time that it is holding the goods as a warehouseman.

(c) If Three Way is acting only as a freight forwarder and has not issued a bill of lading, or if it has entered into a rigging contract, exhibit or trade show services agreement, air charter agreement, or other service contract, Three Way shall not be liable as a carrier, but instead shall be liable only for its failure to exercise such care in regard to the services to be performed as a reasonably careful man would exercise under like circumstances, and shall not be liable for damages which could not have been avoided by the exercise of such care.

(d) Three Way shall not be liable for ordinary wear and tear which is caused by the handling of the Goods or for loss, damage, or delay which is caused by an Act of God, the public enemy, acts or omissions of government officials, authority of law, acts or default by you or any person or party controlled by you, the inherent nature or vice of the Goods, riot, strike or other labor unrest, quarantines, civil commotions, compliance or non-compliance with any special delivery instructions unless provided in writing, or any act beyond Three Way's reasonable control.

(e) In cases involving carriage, unless arranged and agreed upon in writing prior to receipt of the Goods, Three Way is not bound to transport the Goods by any particular schedule or route or in time for any particular market, but is responsible for transporting or arranging for the transport of the Goods from origin to destination with reasonable dispatch. If it has issued a bill of lading for the carriage, Three Way may use another carrier to transport the Goods, if necessary or convenient.

(f) If Three Way arranges for the carriage of goods or other services, but does not issue a bill of lading, it is required only to use reasonable care in the selection of the third party, but shall not be liable for the action or inaction of the third party or for the loss of, damage to, or delay in delivery of Goods while in the custody of the third party.

(g) Third parties to whom Goods are entrusted often limit their liability to an amount which is less than the value of the Goods, subject to a declaration of a value for an amount which is higher than

the limitation specified, which requires payment of higher fees. Customer acknowledges and agrees that Three Way is not required to and shall not declare a value for the Goods except upon receipt of written instructions to declare a particular value from the Customer and an agreement to pay the higher fees charged for such a declaration.

#### **4. Customer/Shipper/Bailor/ThirdParty/Consignee Warranties.**

Customer, Shipper, Bailor, Third Party and Consignee warrant and represent as follows:

(a) Customer, Shipper, Bailor, Third Party and Consignee, and each of them, is authorized to enter into this agreement, including without limitation the terms set forth herein which limit Three Way's liability, on behalf of the Customer, Shipper, Bailor, Third Party and Consignee and all other persons with an interest in the Goods;

(b) The amount and description of any Goods tendered to Three Way for handling, transportation, storage and/or delivery as set forth on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Three Way is accurate;

(c) The Goods tendered for handling, transport, storage and/or delivery are not "unacceptable Goods" as described in paragraph 5 below;

(d) The Goods have been properly packed, marked and secured to ensure safe handling, transportation, storage and/or delivery with ordinary care;

(e) Any shipping container or unit not provided by Three Way is physically suitable, sound and structurally adequate to contain and support the Goods;

(f) The Goods have been packed in compliance with any applicable governmental laws or regulations that pertain to their transport, storage and/or delivery.

Customer, Shipper, Bailor, Third Party and Consignee jointly and severally agree to indemnify Three Way and hold it harmless from any claims that may arise as a consequence of any breach of the foregoing representations and warranties, including, without limitation, claims for personal injury and property damage.

#### **5. Unacceptable Goods.**

The following Goods are unacceptable Goods and shall not be accepted for handling, transport, storage and/or delivery by Three Way:

(a) Gold, platinum or other precious metals or any products thereof, jewelry and furs or items trimmed with fur;

(b) Paper money, coins, marketable securities, traveler's checks, stamps and bank cards or credit cards which are valid or in usable condition;

(c) Precious and semi-precious gems, including diamonds, rubies, emeralds, sapphires, opals, pearls (including cultured pearls), and ornaments and accessories made therefrom or incorporating such articles, jewelry;

(d) Animals;

(e) Goods which are required to be maintained in a frozen state;

(f) Human remains and ashes;

(g) Dangerous or hazardous articles, including, without limitation, explosives, gases, flammable liquids, combustible solids, oxidants, poisons, substances which easily disseminate viruses, radioactive substances, corrosive substances, and other harmful materials, unless properly described and designated as such in writing prior to tender to Three Way;

(h) Any shipment with a declared value in excess of \$50,000.00, unless an officer of Three Way agrees to special terms and conditions with the Customer/Shipper/Third Party/Consignee in a separate writing; and

(i) "Contraband" Goods as that term is defined in 49 U.S.C. § 80302, Goods which are prohibited from importation into the United States, smuggled Goods, or Goods which may be transported only under license or permit, but for which the required license or permit has not been obtained.

#### **6. Right to Inspect.**

Three Way and any person or firm to whom Goods are entrusted are entitled, but shall have no obligation, to open any closed container or shipping unit to inspect the contents thereof to ascertain whether the description, amount, and/or value of the Goods described in any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Three Way is accurate, and that Goods have been properly packed and marked.

#### **7. Freight Storage and Other Charges.**

(a) Quotations as to fees, freight charges, storage charges, insurance premiums or other charges given by Three Way are for informational purposes only and are subject to change without notice; no quotation shall be binding unless and until Three Way agrees in writing to undertake the handling, transportation, storage or delivery of the Goods at the specified rate or amount and payment arrangements have been agreed upon.

(b) The Customer, Shipper, Bailor, and Third Party, jointly and severally, and the Consignee in the event of a freight collect shipment, agree to pay all freight, storage and other charges payable for shipment of the Goods described on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Three Way.

(c) Customer, Shipper, Bailor, Third Party and Consignee are solely responsible for compliance with U.S. and foreign Customs laws and regulations and with any other governmental laws, rules or regulations which may affect the Goods. Neither the seizure nor the detention of the Goods by any governmental agency for failure to comply with any such laws, rules or regulations shall affect the liability of Customer, Shipper, Bailor Third Party and Consignee for the freight, storage and other charges owed to Three Way.

**(d) Three Way shall have a general and continuing lien on all Goods and documents delivered to Three Way by the Customer, Shipper, Bailor, Third Party or Consignee for all charges which are payable to Three Way by the Customer, Shipper, Bailor, Third Party or Consignee, regardless of whether the charges relate to (i) Goods presently in the possession of Three Way or (ii) Goods which are not presently in the possession of Three Way, including both prior and subsequent shipments. Three Way may exercise its right under this lien by selling the Goods in accordance with governing law.**

(e) If the transaction involves a freight collect shipment, Customer, Shipper, Bailor, Third Party and Consignee acknowledge and agree that Three Way may decline to make delivery of the shipment unless and until all freight and other charges have been paid.

(f) Customer, Shipper, Bailor, Third Party and Consignee acknowledge and agree that the freight, storage and other charges collected or determined to be due at the time of receipt by Three Way have been established based upon their representations concerning the Goods to be transported and/or stored, and that additional charges may be due if the representations are later determined to be inaccurate.

(g) Three Way may file a suit for recovery of freight, storage or other charges owed, including amounts which may be due under the indemnity provisions of these or any other applicable terms and conditions, in a jurisdiction where the Goods were accepted for handling, transport, storage and/or delivery, or in a jurisdiction where a Customer/Shipper/Third Party/Consignee defendant resides or maintains its principal office, at Three Way's option.

(h) In the event that it becomes necessary to retain an attorney to collect freight, storage or other charges owed under these Terms and Conditions or to recover an amount which is owed under paragraphs 4 or 10, Three Way shall be entitled to recover its attorneys' fees and costs in addition to the transportation, storage and/or other charges or amounts owed, plus interest at the rate of 18% per annum.

#### **8. Refused Goods/Inability to Deliver Goods.**

(a) If the Customer, Shipper, Bailor, Third Party or Consignee instructs Three Way to deliver the Goods to a particular location which is not regularly attended, the Three Way shall not be liable for loss of or damage to the Goods after the Goods are delivered to the location specified.

(b) If the Consignee refuses the shipment or Three Way is unable to deliver the shipment, and if the Goods are not claimed within forty-eight (48) hours after notice of arrival is given to the Consignee, Three Way will hold the shipment as a Bailee, and not as a carrier. Three Way will promptly attempt to provide notice, by telephonic or electronic means, to the shipper or to the notify party, if one has been identified on a bill of lading. Storage charges shall commence no later than the next day following the attempted notification. Three Way may store the Goods at any location that provides reasonable protection against loss or damage.

(c) If Three Way does not receive instructions regarding the disposition of the Goods within 48 hours of the notice, Three Way shall attempt to provide a second telephonic, electronic notice or other type of notice to the shipper. If disposition instructions are not received within ten days after issuance of the second notice, Three Way shall be entitled to offer the Goods for sale at public auction, or in any other manner permitted by law. Three Way shall apply the proceeds of sale to the freight and other charges owed, and will pay the balance, if any, to the owner of the Goods upon claim and proof of ownership. Customer, Shipper, Bailor, Third Party and Consignee shall remain liable for any balance owed.

#### **9. Declared Value/Limitations on Three Way's Liability.**

(a) **Unless a greater value is declared in accordance with subparagraph (b) below, Customer, Shipper, Bailor, Third Party and Consignee agree that the value of the Goods tendered to Three Way in a single shipment is the actual value of the goods or fifty cents (\$.50) per pound calculated on an "average declared value" basis, whichever is less, but in no event greater than \$50,000.00 for any single shipment, in the absence of a written agreement signed by an officer of Three Way, and that Three Way's liability shall be limited to this amount in the event that the Goods, or any part thereof, are lost, damaged or delayed. The "average declared value" of the**

shipment shall be determined by first dividing the total declared value of the shipment by the total weight of the shipment. This figure, multiplied by the weight of the piece(s) adversely affected, shall then establish the amount of Three Way's liability.

(b) In cases where Three has issued a bill of lading or warehouse receipt, and in some other cases (not rigging contracts or air charter agreements), the Customer/Shipper/Third Party/Bailor/Consignee may have the option of declaring a greater value and increasing Three Way's liability, up to the actual value of the Goods, by paying a higher rate for the transport or storage of the Goods; this option may be exercised by inserting the declared value, up to \$50,000.00, on the face of the bill of lading or, in the case of a warehouse receipt, by declaring the value in writing by no later than the close of business on the day the Goods are delivered to Three Way, and paying the higher rate for such declared value that is specified in Three Way's rates; a value in excess of \$50,000.00 may be declared only by a special written agreement with Three Way which has been executed by an officer of Three Way.

**NOTICE: INSURANCE MAY BE AVAILABLE TO COVER YOUR GOODS--PLEASE CONTACT US FOR FURTHER INFORMATION**

(c) Three Way shall not be liable for any loss, damage or delay caused by an act of God, the public enemy, acts or omissions of government officials, authority of law, acts or default of the Shipper, Third Party or Consignee, the inherent nature or vice of the Goods, riot, strike or other labor unrest, quarantines, civil commotions, compliance or non-compliance with any special delivery instructions, or any act beyond Three Way's control.

(d) Under no circumstances shall Three Way be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been put on notice of the possibility of such damages.

#### **10. Indemnification.**

Customer, Shipper, Bailor, Third Party and Consignee agree to indemnify, defend, and hold Three Way harmless from any liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorneys' fees, which Three Way may incur, suffer or be required to pay by reason of a claim, suit or proceeding which arises from the violation by any of them of any law or regulation of any state or nation regarding the handling, transport, storage, import, export or delivery of Goods, or from a claim by any third party for freight, duties, fines, penalties, liquidated damages or other amounts owed for the Goods.

#### **11. Arbitration.**

To the extent permitted by law, Customer, Shipper, Third Party and Consignee agree that, in the event that any dispute arises concerning the rights and/or responsibilities of the parties with respect to this agreement, the dispute shall be submitted to arbitration before the Transportation ADR Panel, Inc., and pursuant to the rules of that organization, which are published at [http://www.translaw.org/adr\\_rules.cfm](http://www.translaw.org/adr_rules.cfm). The initiation of an arbitration proceeding shall be considered a "suit" for the purposes of paragraph 13 of this Agreement. Notwithstanding the foregoing, Three Way may initiate a lawsuit to obtain pre-judgment attachment remedies; however, except for the attachment portion of the proceeding, any such action shall be stayed pending submission of the underlying dispute to Arbitration unless the parties elect to proceed without Arbitration.

#### **12. Costs of Collection.**

In any dispute involving monies owed, Three Way shall be entitled to recover all costs of collection, including reasonable attorney's fees and interest at the rate of 18% per annum. Three Way may file a suit for recovery of amounts owed in the County of Santa Clara, State of California, United States of America, or in the United States District Court for the Northern District of California, or in any court which has jurisdiction over the place of residence of the defendant(s), at its option.

**13. Conditions for Filing Suit Against Three Way Logistics.**

(a) Three Way shall be relieved of all liability unless the claimant delivers proper written notice of claim to Three Way as follows:

(i) If the loss or damage is not covered by the Carmack Amendment or any other law which prescribes a longer period, the notice of claim must be delivered to Three Way Logistics--

(A) Within 30 days of date upon which the loss or damage occurred or the date upon which the claimant is notified by Three Way of loss or damage to the Goods; or

(B) If the date of loss or damage is not known or if Three Way does not provide notice of the loss or damage, within 30 days after delivery of the Goods or the date upon which the Goods reasonably should have been delivered;

(ii) If the loss or damage is covered by the Carmack Amendment (49 U.S.C. § 14706), the notice of claim must be delivered to Three Way within 9 months after the delivery of the goods or the date upon which the Goods reasonably should have been delivered;

(iii) Within such other minimum time as may be prescribed or permitted by law, if greater than the time periods specified above.

The notice provided must include a description of the transaction(s) involved which is sufficient to enable Three Way to identify the transaction(s) from its records, a description of the events which give rise to the claim, including the dates the events occurred, and a description of the nature and amount of the loss or damage claimed. The Goods and all packaging shall be maintained for Three Way's inspection for at least thirty (30) days after the date the written notice of claim is sent to the Three Way.

(b) Three Way shall be relieved of all liability unless suit is filed in a proper forum and venue and a copy of the suit is properly served on Three Way within the following time limits:

(i) If the loss occurred in the course of motor carriage which is subject to the Carmack Amendment (49 U.S.C. § 14706), within two (2) years and one day after the date of issuance of a written denial of the claim, or part thereof, by Three Way; or

(ii) For all other claims, within one (1) year from the date of loss or damage or, if the date of loss or damage is not known, the date upon which the goods or arrived or should have arrived at the point of destination.

(c) Any suit against Three Way for loss or damage arising out of the handling, transport, storage or delivery of goods must be filed in the County of Santa Clara, State of California, United States of America, or in the United States District Court for the Northern District of California.

**14. Modification of These Terms and Conditions.**

Except as specified in paragraph 2 above, these Terms and Conditions may only be modified, altered or amended in a writing signed by an officer of Three Way.

**15. Severability**

In the event any paragraph and/or portion of these Terms and Conditions is found to be invalid or unenforceable, the remaining portions of these Terms and Conditions shall remain in force and effect.

**16. Governing Law.**

These Terms and Conditions of Service and the relationship of the parties shall be governed by federal law or treaties of the United States, or by the laws of the State of California in the event that federal law does not apply.