

**GULF WINDS INTERNATIONAL, INC.,
MOTOR CARRIER TERMS AND CONDITIONS**

The following Terms and Conditions Shall Govern all Motor Carrier Services Provided by Gulf Winds International, Inc. to Shipper/Customers or other Customers, unless such services are subject to an executed written agreement between the parties and the terms and conditions of that agreement differ from those set forth herein. These terms and conditions apply on all Interstate and Intrastate Commerce. These Terms and Conditions, together with the Rate Quote provided by Gulf Winds International, Inc. to Shipper/Customer with respect to any particular transport, shipment, load, or service provided by Gulf Winds International Inc. to Shipper/Customer shall together constitute the rate, classification, rules and practices upon which any rate applicable to a shipment is based, pursuant to 49 U.S.C. §14706.

WHEREAS, GULF WINDS INTERNATIONAL, INC. (hereinafter referred to as "CARRIER") is a Motor Carrier authorized by the Federal Motor Carrier Safety Administration (FMCSA) or by appropriate Federal or State agencies to transport freight.

WHEREAS, SHIPPER or CUSTOMER (hereinafter referred to as "SHIPPER/CUSTOMER), to satisfy some of its transportation needs, desires and/ has elected to utilize the services of CARRIER to transport freight.

1. RATES, CHARGES, AND PAYMENT TERMS.

- a. Rates and charges for shipments transported by Gulf Winds International, Inc. shall be as agreed to between the parties hereto in writing and as contained in the Rate Quote provided by Carrier to Shipper/Customer prior to the time of transport of any shipment or cargo. Changes to the rate agreement pertaining to specific loads may be made as needed and confirmed in writing. All rate agreements and shipment orders shall be sent by electronic mail to orders@gwii.com sufficiently in advance of the shipment to allow processing of the order and arrangement for the transportation services. Issuance of an order for services and rendering of service by Carrier shall constitute and acceptance of Carrier's rates, terms and conditions.
- b. Unless specifically indicated in the Rate Quote or other writing approved by Carrier, price does not include charges for detention time, per diem, or additional stops. Any changes in actual dimensions, description, or weight will result in revisions to the quoted price. Any additional services which may be requested by the customer will be provided at additional cost. Fuel Surcharge is adjusted weekly based on the Department of Energy's (DOE) Gulf Fuel Price Index. The DOE's Gulf Fuel Price Index is updated every Monday and Carrier's FSC is adjusted accordingly every Tuesday and will apply for that week ending the following Monday.
- c. Shipper/Customer shall pay Carrier, within 30 days of the shipment date shown on the invoice, the amounts calculated in accordance with the rates and charges, including any written supplements thereto, and as otherwise set forth in this

Agreement. No offsets may be taken against invoiced charges. Carrier shall apply Shipper/Customer's payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Shipper/Customer must pay each invoice in full and may not withhold any sums due under one invoice for claims or disputed arising under another invoice or transportation services pertaining thereto.

2. **FREIGHT DOCUMENTATION.** These Terms and Conditions shall prevail over those appearing on any Bill of Lading or any other form(s) used by the Parties for the delivery of freight, to the extent there are any differences or inconsistencies. Additional form(s) used by the Parties shall be used for the purpose of documenting the pick-up and delivery of freight. Shipper/Customer shall supply freight documentation to electronic mail to orders@gwii.com. Unless specifically agreed to by the Parties, any joint movement involving another transportation entity to or from a point outside the U.S. shall not be considered as moving on a "through" bill of lading.
3. **REFUSAL OF SHIPMENT.** If the consignee refuses the cargo tendered by Carrier or if Carrier is unable to deliver the lading because of fault or mistake of Shipper/Customer or the consignee, or if Shipper/Customer advises and instructs Carrier to stop movement of the lading and to hold it in transit, Carrier's liability thereafter immediately shall be that of a warehouseman. The procedures which Carrier agrees to and will take as a warehouseman involve the use of ordinary care to keep the lading in a safe or suitable place or to store the lading properly. Carrier shall (a) attempt to give Shipper/Customer notice as soon as possible if the foregoing occurs, (b) place the lading in public storage, if available, unless Carrier receives contrary disposition instructions from Shipper/Customer within twenty-four (24) hours, and (c) if disposition instructions are not given by Shipper/Customer within ten (10) days of Carrier's initial notification to Shipper/Customer, Carrier may offer the lading for public sale. In the case of perishable lading, Carrier may dispose of the lading at a time and in a manner Carrier deems appropriate. Shipper/Customer will be responsible for storage costs and reasonable costs Carrier incurs in acting as a warehouseman. To the extent any sale or disposal revenues exceed the storage costs and the costs Carrier incurs as a warehouseman, Carrier shall remit the balance to Shipper/Customer. If Shipper/Customer gives Carrier timely disposition instructions, Carrier shall use any commercially reasonable steps to abide with such instructions. Shipper/Customer will pay Carrier's costs and any additional transportation costs Carrier incurs in doing so.
4. **CARGO LIABILITY.**
 - a. Carrier shall be liable to Shipper/Customer for loss or damage to lading occurring while it is in Carrier's possession, except (1) to the extent such loss or damage is caused by an act of God or a public enemy, a public authority, an act of Shipper/Customer, or the inherent vice or nature of the lading Carrier's

possession of lading under this Agreement shall begin when Carrier has executed the freight documentation form for such lading and picked up the shipment or taken physical possession of a loaded trailer and shall terminate upon the lading being tendered for delivery to Shipper/Customer's consignee or in the case of spotted or dropped shipments, when the loaded trailer is placed in the consignee's premises for its unloading convenience, (subject to the provisions of paragraph 9).

- b. Claims for loss or damage to lading must be filed in writing by Shipper/Customer within nine (9) months from date of delivery, or scheduled date of delivery for lost lading, or in the absence of a scheduled delivery date, the filing period shall begin after a reasonable time has elapsed for delivery, and a civil suit or arbitration proceeding shall be commenced by Shipper/Customer within two (2) years from the date Carrier gives Shipper/Customer written notice Carrier is disallowing the claim or any part of it. Claims will be filed and resolved in accordance with federal regulations codified at 49 C.F.R. Part 370.
- c. The measure of damages for loss of or physical damage to the cargo shall be determined in accordance with provisions of 49 U.S.C. 14706, subject to the limitations of liability stated herein.
- d. In no event shall Carrier be liable to Shipper/Customer or anyone else for special, incidental, or consequential (including, without limitation, lost profits or business opportunity.) damages that relate to loss, damage or delay to a shipment, unless Shipper/Customer has informed Carrier in written or electronic form, prior to or when tendering a shipment or series of shipments to Carrier, of the potential nature and type of such damages, and Carrier specifically agrees in written or electronic form to accept responsibility for such damages.
- e. In no event shall Carrier be liable to Shipper/Customer or anyone else for punitive or exemplary damages that relate to loss, damage or delay to a shipment.
- f. In no event shall be liable to Shipper/Customer or anyone else for loss, damage or delay caused by (1) an act of default of the shipper, owner or consignee; (2) freezing or spoilage of any perishable goods or property or natural shrinkage.

5. LIMITATION OF LIABILITY. Unless otherwise agreed in writing, all shipments are subject to a maximum cargo liability of \$2.50 per pound per article or \$100,000 per truckload shipment, whichever is less. Shipper/Customer may obtain rates for shipments with higher released value by accepting and agreeing to payment of excess liability charge, which are available upon request. Otherwise, all shipments are

deemed released and the Carrier's maximum liability is limited to a maximum value not exceeding \$100,000, unless the Shipper/Customer declares a lesser value on the bill of lading or other shipping documentation, in which case Carrier's liability shall not exceed said lesser value declared by Shipper/Customer. However, it shall be Shipper/Customer's responsibility to properly obtain the Carrier's prior signed consent and to pay appropriate excess valuation charges, which are available upon request, to compensate Carrier for such increased cargo risk; otherwise, the Carrier's liability shall remain at less than \$100,000. All defenses of Carrier shall ensure also to the benefit of Carrier's employees, agents, servants and independent contractors performing any of Carrier's obligations under any contract of carriage or acting as bailee of the goods or cargo, whether sued in contract or tort, for purposes of extending COGSA's or any other limitation of liability benefits, or for any other purpose allowed by law.

6. **SEALED SHIPMENT.** If Shipper/Customer loads and seals the lading in or on the trailer and Carrier does not have the opportunity to count the lading being loaded and the seal is intact upon delivery, Carrier shall be absolved from any liability for shortages or any damage to the lading except when proximately caused by independent action of Carrier. Such absolution of liability will also occur if (i) the seal is broken at the direction and under the supervision of an agent of a body politic, or (ii) trailers are preloaded and the adequacy of loading or count of such trailer is not practical by a representative of Carrier. Carrier agrees that if a seal is broken and an inspection made by an agent of a body politic, its operator or other representative will take all reasonable steps to secure the count, safety, and integrity of the lading. These steps will include requesting that the body politic reseal the trailer and/or make appropriate notation on the freight documentation form. Carrier may break the seal on a trailer if, upon Carrier's determination or that of its operator or other representative, it becomes reasonably necessary to do so to inspect, reposition, or protect the lading or Carrier's equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations.
7. **SALVAGE.** Shipper/Customer shall have a duty to mitigate all damages. Shipper/Customer will have the right reasonably to determine to repair, repackage, salvage, or scrap damaged lading. If Shipper/Customer elects to salvage lading, Shipper/Customer shall notify Carrier to return the lading to Shipper/Customer or allow Carrier to dispose of the lading. If salvage is sought, at least two independent bids shall be obtained, and the highest bid accepted. Any monies received in salvage, whether accomplished by Carrier or Shipper/Customer, will be credited, if applicable, against any amount Carrier may otherwise be responsible for in terms of the damages. Shipper/Customer may condition salvage upon the removal of all identifying marks or labels or the lading being permanently marked as "*damaged*" or with a similar notation. If Carrier is retained by Shipper/Customer to return the damaged lading for repair, salvage, or scrapping, Shipper/Customer agrees to pay Carrier freight charges otherwise provided in this Agreement, or at a negotiated rate to be reduced to writing, without prejudice to recovery of such freight charges as damages. Damaged lading will not be

scrapped unless repair and/or salvage is not feasible. If Carrier salvages the lading, Carrier may bill a reasonable charge for doing so against salvage receipts.

8. INDEMNIFICATION.

- a. Shipper/Customer shall defend, indemnify, and hold Carrier and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Shipper/Customer, its employees, or agents, or (ii) Shipper/Customer's or its employees' or agents' violation of applicable laws or regulations.
- b. In no event shall either Party be liable to the other under this Section to the extent damages are incidental, consequential, special, punitive, or exemplary. Any indemnified party under this Section shall promptly tender the defense of any claim to the indemnifying Party. Carrier's liability for cargo damage shall be governed by Section 10 above.

- 9. LEGAL RESTRAINT.** In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the running of all periods of time mentioned herein and the performance of all obligations required herein shall be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. Carrier shall be permitted an extension period equal to the period of suspension to complete shipments adversely affected by the suspension. No liability shall be incurred by either Party for damages resulting from such suspensions.

- 10. HAZARDOUS MATERIALS.** SHIPPER/CUSTOMER and CARRIER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and §397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER/CUSTOMER is obligated to inform CARRIER immediately if any such shipments constitute hazardous materials. **SHIPPER/CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD CARRIER HARMLESS FROM ANY PENALTIES OR LIABILITY OF ANY KIND, INCLUDING REASONABLE ATTORNEY FEES, ARISING OUT OF**

SHIPPER/CUSTOMER'S FAILURE TO COMPLY WITH APPLICABLE HAZARDOUS MATERIALS LAWS AND REGULATIONS.

11. **HOMELAND SECURITY.** As applicable to each, respectively, CARRIER and SHIPPER/CUSTOMER shall comply with state and federal Homeland Security related laws and regulations.
12. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of and these Terms and Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, such portion or provision shall be severable and that the remaining provisions of the TERMS shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of these Terms and Conditions for any reason.
13. **NONWAIVER.** Failure of CARRIER to insist upon performance of any of the terms, conditions or provisions of these Terms and Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of these Terms and Conditions, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.
14. **ENTIRE AGREEMENT.** These Terms and Conditions, the Rate Quote and Order forms promulgated by CARRIER constitutes the entire agreement between the Parties hereto. No documents issued or promulgated by SHIPPER/CUSTOMER or other entity shall be binding upon CARRIER except on CARRIER'S express written agreement or acquiescence, UNLESS such documents further limit CARRIER' liability.
15. **AMENDMENTS.** No amendment or modification of these Terms and Conditions shall be binding unless in writing and signed by the Parties.
16. **WAIVER.** No waiver of any right, power, or privilege hereunder shall be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.
17. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
18. **GOVERNING LAW.** The provisions of these Terms and Conditions will have precedence over any federal or state provisions governing the transportation services provided hereunder. Carrier and Shipper/Customer agree that pursuant to 49 U.S.C. § 14101(b)(1) they expressly waive any and all rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated there under, including Part B of Subtitle IV Interstate Transportation, 49

U.S.C. § 13101, et seq., (the "Acts") that are inconsistent with the provisions of this Agreement.

- 19. DISPUTE RESOLUTION.** Unless otherwise specified herein (for example, the specific exception for Cargo Liability claims covered by Section 10), whenever any party intends to assert any breach of these terms and conditions, the complaining party shall provide a thirty day written notice that will clearly state the claimed violation or failure and specify the requested remedy sought. Thereafter, should Carrier and Shipper/Customer not be able to resolve the issue(s) then all parties will commit, within thirty days of the written notice, to have representatives with full authority to resolve the issue, attend a full day mediation in Houston, Texas by a qualified mediator, to resolve any dispute as a condition precedent, before any party may proceed with the filing an action in a court of law. The cost of the mediator will initially be borne equally with recovery of the cost of the mediator to possibly be recovered by agreement.
- 20. FORUM SELECTION.** This Agreement shall be subject to and governed by the applicable federal laws or the applicable laws of the State of Texas, irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The Parties agree that any and all disputes under this Agreement shall be filed in the appropriate state and federal courts located within Houston, Harris County, Texas.