



OTC Logistics LLC

Standard Terms and Conditions of Service

These terms and conditions of service constitute a legally binding contract between OTC Logistics LLC and the "Customer." In the event OTC Logistics renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services to the extent inconsistent with the terms and conditions set forth herein.

These Standard Terms and Conditions of Service are subject to change by OTC Logistics from time to time upon posting on OTC Logistics's website. The most current and controlling version of the Standard Terms and Conditions of Service are published at www.otclogistics.com.

In tendering a shipment to OTC Logistics or otherwise engaging the services of OTC Logistics in any other fashion, the "Customer" agrees that these Standard Terms and Conditions of Service apply to that shipment or those services and supersede any alleged or asserted oral agreement, promise, representation, or understanding between the "Parties."

1. Definitions

- a. "OTC Logistics" shall mean OTC Logistics LLC, its subsidiaries, related companies, agents, and/or representatives.
- b. "Customer" shall mean the person or company for which OTC Logistics is rendering service, as well as its principals, agents, and/or representatives, including but not limited to, shippers, importers, exporters, carriers, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, manufacturers, distributors, senders, consignors, transferors, transferees of the shipment, etc. It is the responsibility of the Customer to provide notice and copy(s) of these Terms and Conditions of Service to all such agents or representatives.
- c. "Parties" shall mean OTC Logistics and Customer, as defined herein.

2. OTC Logistics as Agent and Property Broker

- a. OTC Logistics acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the filing of export and security documentation on behalf of the Customer and other dealings with government agencies, or for arranging for transportation services, or other logistics services in any capacity other than as a carrier.
- b. Unless otherwise stated explicitly in writing by OTC Logistics, all ground transportation arranged by OTC Logistics is undertaken in OTC Logistics's role as property broker. OTC Logistics will arrange for the transportation of property in exchange for payment by using a motor carrier that to OTC Logistics's knowledge is authorized by the FMCSA. OTC Logistics does not assume responsibility for the property and will not take legal possession of it.

3. Limitation of Actions

- a. Unless subject to a specific statute or international convention, all claims against OTC Logistics for a potential or actual loss, must be made in writing and received by OTC



Logistics within 30 days of the event giving rise to claim; the failure to give OTC Logistics timely notice shall be a complete defense to any suit or action commenced by Customer.

- b. All suits against OTC Logistics must be filed and properly served on OTC Logistics in accordance with the terms and conditions of the carrier's bill of lading or transport document, or the following, whichever is shorter. Suits must be filed within 1 year from the date of the loss or damage. For claims arising out of the preparation and/or submission of an import entry(s), suit must be brought within 75 days from the date of liquidation of the entry(s). For any and all other claims of any other type, suit must be brought within 1 year from the date of the loss or damage.
- c. Any claims against OTC Logistics arising from OTC Logistics's administrative services, including any billing disputes, must be filed and properly served upon OTC Logistics within 6 months from the date of any billing disputed. It is OTC Logistics's goal to promptly resolve any disputes with its customers, and prompt notification is necessary to facilitate a resolution of any such dispute.

4. No Liability for the Selection or Services of Third Parties and/or Routes

OTC Logistics is authorized to select and engage carriers, truckmen, lightermen, forwarders, customs brokers, agents, warehousemen and others, as required, to transport shipment, and/or handle and deliver the goods, all of whom shall be considered the agents of the Customer, and the goods may be entrusted to such agencies subject to all conditions as to limitations of liability for loss, damage, expense, or delay and to all rules, regulations, requirements, and conditions, whether printed, written, or stamped, appearing in bills of lading, receipts, or tariffs issued by such carriers, truckmen, lightermen, forwarders, customs brokers, agents, warehousemen, and others. Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, OTC Logistics shall use reasonable care in its selection of third parties, or in selecting the means and procedure to be followed in the handling, transportation, clearance, and delivery of the shipment; advice by OTC Logistics that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that OTC Logistics warrants or represents that such person or firm will render such services nor does OTC Logistics assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any damage, expense, delay, or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, OTC Logistics shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by OTC Logistics.

5. Quotations Not Binding

Quotations as to fees, rates of duty, freight charges, insurance premiums, or other charges given by OTC Logistics to the Customer are for informational purposes only and are subject



to change without notice; no quotation shall be binding upon OTC Logistics unless OTC Logistics, in writing, specifically agrees to undertake the handling or transportation of the shipment at a specific rate and payment arrangements are agreed to between OTC Logistics and the Customer. All quotations are subject to change or cancellation by OTC Logistics at any time if OTC Logistics discovers that the shipment violates any court order, contractual obligation, government agency regulation, or law.

6. Duty to Furnish Information; Reliance on Information Furnished

- a.** Customer acknowledges that it has a duty to timely furnish to OTC Logistics any and all necessary and/or relevant information needed by OTC Logistics so that OTC Logistics can accurately complete any quoted services or offer transportation guidance to Customer. Customer further acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other government agencies, and/or third parties, and will immediately advise OTC Logistics of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customer's behalf.
- b.** In preparing and submitting customs entries, export declarations, applications, security filings, documentation, and/or other required data, OTC Logistics relies on the correctness of all documentation, whether in written or electronic format, and information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold OTC Logistics harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative, or contractor upon which OTC Logistics reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export, or enter the goods.
- c.** Customer acknowledges that it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to steamship lines and represents that OTC Logistics is entitled to rely on the accuracy of such weights and to counter-sign or endorse it as agent of Customer in order to provide the certified weight to the steamship lines. The Customer agrees that it shall indemnify and hold OTC Logistics harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable statements of the weight provided by the Customer or its agent or contractor on which OTC Logistics relies.
- d.** Any and all fines or penalties levied against OTC Logistics due to misdeclarations on manifest information provided to carriers, U.S. Customs, or any other government authority, due to Customer's submission of inaccurate or incomplete information to OTC Logistics, will be the responsibility of Customer regardless of the original source of such misdeclaration or whether the misdeclaration was intentional or unintentional.

7. Pre-packaged Cargo



To the extent that Customer is providing packaged, marked, and/or addressed cargo, Customer warrants that each package and/or shipment is properly marked and addressed, packaged properly and adequately to protect the contents in the normal course of transportation, and except as noted in writing to OTC Logistics, is in good order and condition. Customer shall hold OTC Logistics harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to properly package, mark and/or address cargo or to notify OTC Logistics of any preexisting damage or impairment of the property.

8. Declaring Higher Valuation

Inasmuch as truckers, carriers, warehousemen, and other third parties to whom goods are entrusted usually limit their liability for loss or damage unless a higher value is declared and a charge based on such higher value is agreed to by said third party, OTC Logistics must receive specific written instructions from the Customer to pay such higher charge based on valuation and the third party must accept such higher declared value; otherwise, the valuation place by the Customer on the goods shall be considered solely for export or customs purposes and the goods will be delivered / tendered to the third party subject to the terms of the third party's limitations of liability and/or these Terms and Conditions of Service.

9. Insurance

OTC Logistics will make reasonable efforts to effect marine, theft, and other insurance upon the goods only after specific written instructions have been received by OTC Logistics in sufficient time prior to the shipment from the point of origin, and at the same time states specifically the kind and amount of insurance to be placed. OTC Logistics does not undertake or warrant that such insurance can or will be placed. Unless the Customer has its own open marine policy and instructs OTC Logistics to effect insurance under such policy, insurance is to be effected with one or more insurance companies or other underwriters to be selected by OTC Logistics. Any insurance placed shall be governed by the certificate or policy issued and will only be effective when accepted by such insurance companies or other underwriters. Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only and OTC Logistics shall not be under any responsibility of liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to OTC Logistics by the Customer, or that the shipment was insured under a policy in the name of OTC Logistics. Insurance premiums and the charge of OTC Logistics for arranging the same shall be at the Customer's expense. If for any reason the goods are held in warehouse, or elsewhere, the same will not be covered under any insurance, unless OTC Logistics receives written instructions from the Customer. Unless specifically agreed in writing, OTC Logistics assumes no responsibility to effect insurance on any shipment which it does not handle.



10. Disclaimers; Limitations of Liability

- a. Except as specifically set forth herein, OTC Logistics makes no express or implied warranties in connection with its services.
- b. In connection with all services performed by OTC Logistics, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by OTC Logistics prior to rendering services for the covered transaction(s).
- c. In the absence of additional coverage under (b) above, OTC Logistics shall only be liable for any loss, damage, expense, or delay to the goods resulting from the negligence or other fault of OTC Logistics, and such liability shall be limited to an amount equal to the lesser of fifty dollars (\$50.00) per entry or shipment or the fee(s) charged for the services, whichever is less.
- d. In no event shall OTC Logistics be liable or responsible for consequential, indirect, incidental, statutory, special, or punitive damages, even if it has been put on notice of the possibility of such damages, or for the acts of third parties.
- e. Unless the service to be performed by OTC Logistics on behalf of the Customer is delayed by reason of negligence of OTC Logistics, OTC Logistics shall not be responsible for any loss, damage, or expense incurred by the Customer because of such delay. In the event OTC Logistics is found liable under this subsection, its liability is limited in accordance with the provisions herein at subsection (c). Due to the inherent nature of the transportation business, OTC Logistics does not guarantee pick up, transportation, or delivery by a stipulated time.

11. Advancing Money

All charges must be paid by Customer in advance unless OTC Logistics agrees in writing to extend credit to Customer; the granting of credit to Customer in connection with a particular transaction shall not be considered a waiver of this provision by OTC Logistics. OTC Logistics shall be under no obligation to advance freight charges, customs duties, or taxes on any shipment, nor shall advance by OTC Logistics be construed as a waiver of this provision.

12. Indemnification / Hold Harmless

- a. The Customer agrees to indemnify, defend, and hold OTC Logistics harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the transport, importation or exportation of Customer's merchandise, and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold OTC Logistics harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorneys' fees, which OTC Logistics may hereafter incur, suffer or be required



to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against OTC Logistics, it shall give notice in writing to the Customer by email or mail at its address on file with OTC Logistics. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to OTC Logistics to pay all charges or other money due promptly on demand.

- b.** Customer further agrees to indemnify, defend, and hold harmless OTC Logistics against any and all claims, losses, damages, costs, or expenses asserted against OTC Logistics, its employees, agents or any other person for any injury (including sickness, disease or death) or claim or injury to property arising out of or in connection with the performance of these terms and conditions.

13. C.O.D. or Cash Collect Shipments

OTC Logistics shall use reasonable care regarding written instructions relating to "Cash/Collect on Delivery (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have liability if the bank, correspondent, carrier, agent, or consignee refuses to pay for the shipment or for any act, omission, default, suspension, insolvency or want of care, negligence, or fault of such bank, correspondent, carrier, agent, or consignee, nor for any delay in remittance lost in exchange, or loss during transmission, or while in the course of collection.

14. Costs of Collection

In any dispute involving monies owed to OTC Logistics, OTC Logistics shall be entitled to all costs of collection, including reasonable attorneys' fees and interest at 1.5% per month or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by OTC Logistics. Customer is liable to OTC Logistics for any damages and costs incurred by OTC Logistics arising from checks or drafts given to OTC Logistics, OTC Logistics's representatives or affiliates, for which either OTC Logistics or OTC Logistics's representative or affiliate is unable to collect funds.

15. Compensation of OTC Logistics

The compensation of OTC Logistics for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by OTC Logistics to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by OTC Logistics from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, OTC Logistics shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due to OTC Logistics, the Customer shall pay the expenses of collection and/or litigation, including reasonable



attorneys' fees.

16. General Lien and Right to Sell Customer's Property

- a. OTC Logistics shall have a continuing lien on any and all property and documents relating to Customer and coming into OTC Logistics's actual or constructive possession, custody or control or enroute, which lien shall survive delivery, for all charges, expenses or advances owed to OTC Logistics with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both. Customs duties, transportation charges, and related payments advanced by OTC Logistics shall be deemed paid in trust on behalf of the Customer and treated as pass through payments made on behalf of the Customer for which OTC Logistics is acting as a mere conduit.
- b. OTC Logistics shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of OTC Logistics's rights and/or the exercise of such lien.
- c. Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of OTC Logistics, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, OTC Logistics shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

17. No Duty to Maintain Records for Customer

Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other laws and regulations of the United States; unless otherwise agreed to in writing, OTC Logistics shall only keep such records that it is required to maintain by statute(s) and/or regulation(s), but not as a "recordkeeper" or "recordkeeping agent" for Customer.

18. Obtaining Binding Rulings, Filing Protests, etc.

Unless requested by Customer in writing and agreed to by OTC Logistics in writing, OTC Logistics shall be under no obligation to undertake any pre- or post-Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

19. No Duty to Provide Licensing Authority

OTC Logistics shall not be responsible for determining licensing authority or obtaining any license or other authority pertaining to the export from or import into the United States.

20. Preparation and Issuance of Bills of Lading and Air Waybills



Where OTC Logistics prepares and/or issues a bill of lading or air waybill, OTC Logistics shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc., unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. OTC Logistics shall rely upon and use the cargo weight supplied by Customer.

21. No Responsibility for Governmental Requirements

It is the responsibility of the Customer to know and comply with the requirements of the U.S. Customs and Border Protection and all other government agencies, including adhering to any and all regulations and directives of Federal, state and/or local agencies pertaining to the merchandise, shipment or transportation, and/or parties to the shipment. OTC Logistics shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment or parties involved in the shipment because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency.

22. No Modification or Amendment Unless Written

These Terms and Conditions of Service may only be modified, altered or amended by Customer in writing signed by both Customer and OTC Logistics. OTC Logistics may modify, alter, or amend these Terms and Conditions of Service at its sole discretion, but only the version in place at the time of a shipment shall control for that shipment.

23. Use of OTC Logistics Logo / Trademark

Customer shall not use OTC Logistics's name, logo, trademarks or trade names in publicity releases, promotional material, customer lists, advertising, marketing or business-generating efforts, whether written or oral, without obtaining OTC Logistics's prior written consent, which consent shall be given at OTC Logistics's sole discretion.

24. Force Majeure

OTC Logistics shall not be liable for losses, damages, delays, wrongful or missed deliveries, or partial or full nonperformance, resulting from an occurrence beyond its control, including without limitation, war or terrorist activities; epidemic; riots, rebellion, civil commotion; acts of God; acts of lawful and/or government authorities (including but not limited to embargoes or denial or cancellation of any license or shipment); criminal acts; strikes, lockouts, or other labor disputes; incidents or deteriorations to means of transportation; defects, nature or inherent vice of the goods; or acts, breaches of contract or omissions by Customer, shipper, consignee, or anyone else who may have an interest in the shipment.

25. Severability



In the event any paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect. OTC Logistics's decision to waive any provision herein, either by conduct or otherwise, fully or partially, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

26. Governing Law; Consent to Jurisdiction and Venue

These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Texas without giving consideration to principles of conflict of law. Customer and OTC Logistics:

- a. irrevocably consent to the jurisdiction of the United States District Court and the State courts of Texas;
- b. agree that any action relating to the services performed by OTC Logistics shall only be brought in said courts;
- c. consent to the exercise of in person jurisdiction by said courts over it, and
- d. further agree that any action to enforce a judgment may be instituted in any jurisdiction.