

ASIA CONTRACT OF CARRIAGE OF GOODS

1. In this Contract of Carriage ("Contract"), the following words shall be defined as:
- (a) "Carrier" means Expeditors International of Washington, Inc., its subsidiaries ("Expeditors"), and the agents designated by Expeditors to transport the Goods. Nothing herein shall restrict Carrier's right to reject all or any portion of shipment tendered by Shipper to Expeditors for transportation and "Carrier" shall not be deemed as a common carrier for purposes herein.
- (b) "Shipper" includes consignor, consignee, owner and receiver of the Goods, the holder of this Contract, or any person or entity acting as an agent for said Shipper; and
- (c) "Goods" mean the cargo as described on the face of this Contract.
2. Shipper agrees that the shipment tendered to Expeditors shall be subject to all terms and conditions of this Contract, together with the additional terms set forth on Expeditors' invoices, and, if applicable, in the Application for Credit executed by Shipper. The terms and conditions of this Contract may not be changed, waived or otherwise modified by either party without the express written consent of the other. This Contract is non negotiable, does not convey title to the Goods tendered hereunder, and has been prepared by Shipper or by Expeditors as the attorney-in-fact or authorized agent for Shipper. Shipper acknowledges and agrees that this Contract is non-negotiable as stated herein.
3. Shipper agrees that it has reviewed and is aware of Expeditors' Service Conditions for Transportation Services ("Service Conditions"), notice of which is hereby acknowledged by Shipper and both parties agree that are hereby expressly incorporated in, and made a part of, this Contract. Shipper confirms that Expeditors has also offered to make available to Shipper a copy of the Service Conditions either from Expeditors' principal place of business; or, at Expeditors' website at www.expeditors.com.
4. This Contract shall constitute the written contract between Shipper and Expeditors, and this document supercedes and replaces any other written or oral agreement, promise, representation and/or understanding between the parties with respect to the shipment tendered hereunder.
5. In addition to those packaging requirements set forth in the Service Conditions, Shipper represents and warrants that each package in this shipment is: (a) properly and completely described on this Contract; (b) properly marked and addressed, including correct postal code of the consignor and consignee; (c) properly and adequately packaged to protect the contents in the normal course of transportation; and (d) except as may be noted on the face of this Contract, is in good order and condition. Further, Shipper acknowledges and agrees that Expeditors shall have no obligation to accept shipments for transport that, in Expeditors' discretion, are not adequately packaged, but Expeditors' acceptance of a shipment for transportation shall not mean that the shipment is in fact adequately packaged. Expeditors shall not be liable for any loss or damage to shipments which derive from inadequate packaging.
6. Unless otherwise agreed to in writing, Expeditors will not accept cash on delivery ("COD") shipments. To the extent Expeditors agrees to accept any COD shipment, Shipper hereby waives any claim against Expeditors, its agent(s) and/or any other party with which Expeditors sub-contracts for accepting any check or other form of payment, which may be subsequently dishonored or is not negotiable.
7. Shipper shall be responsible for and guarantees payment of any and all fees, costs and charges due in accordance with this Contract, the Service Conditions, applicable laws (including national laws implementing any applicable Conventions), and government regulations, orders and requirements.
8. Shipper agrees to pay each invoice according to its terms. In the event that Shipper fails to keep the account current, all amounts owed by Shipper shall immediately become due and payable. Shipper shall also become indebted to Expeditors for cost of collection, including reasonable attorney fees, plus one and one-half percent (1.5%) interest per month or interest at the maximum rate allowed by law of the country in which the subsidiary or branch of Expeditors that accepts shipment for carriage is based, compounded daily and calculated from the due date of the invoice. Further, Expeditors shall have and Shipper hereby grants a continuous, unrestricted, general and particular lien, pledge and security interest on any and all property (including Goods and documents relating thereto), in the care, custody or control of Expeditors or any company under contract with Expeditors, whether in transit or otherwise, for all existing and future indebtedness of Shipper to Expeditors, including claims for charges, expenses or advances incurred by Expeditors in connection with any shipments or transactions of Shipper. This lien, pledge, and security interest shall be in addition to any other rights Expeditors has or may acquire under other agreements and/or applicable law and shall survive delivery or release of any property. If any charges due Expeditors from Shipper remain outstanding for thirty (30) days or longer, Expeditors may sell or otherwise dispose of the contents of any such shipment, with or without notice, as Expeditors may elect in its sole discretion, at public auction or private sale. Shipper hereby waives any other provision of law to the contrary. The proceeds from such sale shall be applied to settle the outstanding freight charges, contribution to general average, demurrage, expenses for the storage and sale of the cargo, and any other amounts due to Expeditors. Shipper shall be liable for any deficiency from such sale.
9. Shipper agrees that Expeditors may, in its discretion, accomplish carriage of the shipment in the following ways: (a) substitute alternative carriers and/or other means of transportation; (b) select the shipment routing; or (c) deviate from the origin and destination points shown on the face of this Contract. Expeditors has no duty to notify Shipper of such substitutions, selections or deviations, nor shall substitutions, selections or deviations constitute a breach of this Contract.
10. Rates and charges for all shipments will be based on actual or dimensional weight, whichever is greater. Shipper shall provide weight and measurements for its shipments. Shipments are subject to re-weight and re measurement by Expeditors in its sole discretion.
11. Quotations as to fees, freight charges or other charges given by Expeditors to Shipper are for informational purposes only and are not binding upon Expeditors. In addition, if the weight or measurement of the goods as delivered is different from Shipper's representations, or if pick-up or delivery time, or location of pickup and/or delivery, changes, then Expeditors' charges and fees are subject to change in Expeditors' sole and absolute discretion.
12. Shipper hereby represents and warrants to Expeditors that all of the information provided to Expeditors with respect to the shipment is true, accurate and correct. Expeditors shall neither be obligated to inquire into the correctness or sufficiency of information provided by Shipper on any document, nor liable to Shipper for loss or expense due to Shipper's failure to comply with this provision. Shipper represents and warrants to Expeditors that Shipper shall comply with all applicable laws and government regulations including but not limited to the U.S. Foreign Corrupt Practices Act the U.S. Export Administration Regulations, the U.S. Anti-Boycott regulations, and the various U.S. economic sanctions programs administered by the U.S. Treasury Office of Foreign Assets Control. Shipper shall also comply with all such applicable laws and government regulations of any country to, from, through or over which the cargo may be carried, including those relating to the packing, carriage, or delivery of the cargo. Expeditors is not liable to Shipper for loss or expense due to Shipper's failure to comply with this provision. Pursuant to the foregoing, Shipper shall furnish such information and attach documents to this contract of carriage as may be necessary to comply with such laws and regulations. Shipper hereby represents and warrants to Expeditors that all of the information provided to Expeditors with respect to the shipment and Goods is true, accurate and correct. Expeditors shall neither be obligated to inquire into the correctness or sufficiency of information provided by Shipper on any document, nor liable to Shipper for loss or expense due to Shipper's failure to comply with this provision. To the extent of any breach of this representation and warranty, Shipper shall indemnify, hold harmless and defend Expeditors from and against any claims, lawsuits, damages, or other exposure arising from such breach from the conduct of Shipper or any of its officers, directors, employees, agents, owners, shareholders or other persons working for or with Shipper under this Contract.
13. Shipments will be held by Expeditors without charge for 24 hours after: (a) arrival; (b) tender of delivery at destination; or (c) notification of arrival. After that time, Expeditors will handle the shipment and apply any applicable storage charges any applicable storage charges pursuant to the procedures as set forth in the Service Conditions.
14. Shipper hereby waives any claims against or liability by Expeditors for any determination by Expeditors, in its sole discretion, that pursuant to applicable law, regulation, governmental order or other similar requirement, Expeditors may not, or should not, transport a shipment.
15. Expeditors reserves the right in its sole and absolute discretion without having to assign any reason whatsoever in deciding not to accept any shipment for transportation. Refer to the Service Conditions for a listing of unacceptable articles for carriage.
16. EXPEDITORS SHALL NOT BE LIABLE FOR ANY DELAY, LOSS, DAMAGE, MISDELIVERY OR NON DELIVERY CAUSED BY:
- (a) THE ACT, DEFAULT OR OMISSION OF SHIPPER OR ANY OTHER PARTY CLAIMING AN INTEREST IN THE SHIPMENT.
- (b) THE NATURE OF THE SHIPMENT, DEFECT OR INHERENT VICE OF THE PRODUCT.
- (c) FAILURE OF SHIPPER TO OBSERVE ANY TERM CONTAINED IN THIS DOCUMENT, INCLUDING BUT NOT LIMITED TO IMPROPER OR INSUFFICIENT PACKAGING, SECURING, ADDRESSING OR MARKING OF ANY SHIPMENT OR THE SHIPPER'S FAILURE TO FOLLOW ANY TERM RELATED TO SHIPMENTS THAT ARE NOT ACCEPTABLE FOR TRANSPORT.
- (d) ACTS OF GOD OR FORCE MAJEURE, WEATHER CONDITIONS, MECHANICAL DELAY OF AIRCRAFT OR OTHER EQUIPMENT FAILURES, ENVIRONMENTAL OR DANGEROUS GOODS INCIDENT, PERILS OF THE AIR, PUBLIC ENEMIES, PUBLIC AUTHORITIES ACTING WITH ACTUAL OR APPARENT AUTHORITY, ACTS OR OMISSIONS OF CUSTOM OFFICIALS, AUTHORITY OF LAW, QUARANTINE, STOPPAGES, RIOTS, STRIKES, CIVIL COMMOTIONS OR HAZARDS INCIDENT TO A STATE OF WAR.
- (e) ACTS OR OMISSIONS OF ANY PERSON OTHER THAN EXPEDITORS, INCLUDING DELIVERY INSTRUCTIONS FROM SHIPPER THAT WERE COMPLIED WITH BY EXPEDITORS.
- (f) COMPLIANCE WITH LAWS, GOVERNMENTAL REGULATIONS, ORDERS OR REQUIREMENTS, OR ANY CAUSE BEYOND EXPEDITORS CONTROL.
17. EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (C) AND (D) BELOW, SHIPPER IS HEREBY NOTIFIED AND AGREES THAT EXPEDITORS' LIABILITY, IF ANY, FOR ANY LOSS OR DAMAGE TO GOODS SHIPPED HEREUNDER SHALL BE LIMITED TO A RELEASE VALUE OF ONE DOLLAR (US\$1.00) PER KILOGRAMME, MAXIMUM FIFTY DOLLARS (US\$50.00) PER LOT OR THE ACTUAL VALUE OF EACH PIECE OF ANY CARGO LOST OR DAMAGED, WHICHEVER IS LESS, UNLESS SHIPPER SPECIFIES A HIGHER AMOUNT IN THE DECLARED VALUE BOX ON THE FACE OF THIS CONTRACT, FOR WHICH AN EXCESS VALUE FEE OF US\$.50 PER US\$100.00 OF DECLARED VALUE WILL BE ASSESSED AND PAID BY SHIPPER. THE VALUE PER KILOGRAMME FOR CLAIMS SETTLEMENT PURPOSES SHALL BE DETERMINED BY DIVIDING THE SHIPPER'S DECLARED VALUE FOR CARRIAGE BY THE ACTUAL WEIGHT OF THE SHIPMENT AND SHALL BE APPLIED TO THE ACTUAL WEIGHT OF GOODS LOST OR DAMAGED. SHIPPER AND EXPEDITORS AGREE THAT THE ABOVE RELEASE VALUE SHALL APPLY TO ALL GOODS TENDERED TO EXPEDITORS HEREUNDER REGARDLESS OF THE VALUE OF THE CARGO.
- (A) EXPEDITORS SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR INCOME OR THOSE RESULTING FROM DELAY, MISDELIVERY OR NONDELIVERY, REGARDLESS OF WHETHER OR NOT EXPEDITORS HAD KNOWLEDGE THAT SUCH DAMAGES MIGHT BE INCURRED; AND EXPEDITORS SHALL NOT BE LIABLE FOR DAMAGE INCURRED AS THE RESULT OF DELAY OR ERROR IN ANY STATEMENT OF TIMES OF ARRIVAL OR DEPARTURE.
- (b) No Expeditors employee, agent or representative, other than an officer of Expeditors, may waive or alter any of the limitations set forth herein.
- (c) If any shipment hereunder involves international air transportation otherwise subject to the terms and conditions of the Warsaw Convention, as amended, then the liability, if any, of Expeditors, its agents and contractors, including any motor carriers used to transport said shipment incidental to any movement by air carrier, in whole or in part, shall be limited in accordance with the terms and conditions of the Warsaw Convention for all purposes. In the absence of the Warsaw Convention terms and conditions, then Expeditors liability, if any, shall be governed by the terms of this Article 17 herein, or alternatively, the limit of liability specified in the bill of lading or waybill issued in connection with any transportation by the motor carriers, whichever is less.
- (d) Otherwise, in all other instances the limitation of liability expressed herein shall apply to a shipment.
18. Shipper agrees that Expeditors is authorized to and may tender the shipment to any carrier and/or utilize other modes of transportation. This provision shall serve as shipper's letter of instructions for such other modes of transportation and any applicable limitations of liability, and Expeditors further reserves the option to act as agent of a carrier instead of as a forwarder, in which event the direct carrier's tariff shall apply to the shipment.
19. Shipper and Expeditors mutually agree that this Contract, and the agreements referred to and incorporated herein, relate to any shipments, whether intrastate, interstate and/or international in scope and nature, and that this Contract shall govern the contractual relationship between the parties, including all rights, duties and obligations hereunder.
- (a) Shipper agrees that Expeditors shall only be liable to Shipper for any loss or damage to any Goods tendered to Expeditors hereunder to the extent of Expeditors' or its agents' own negligence, and Shipper shall have the burden of proof as to any such negligence.
- (b) Notwithstanding any other provision in this Contract, and except as may be otherwise required under the Warsaw Convention, if applicable, if the governing law of the country from which any shipment originates from or is destined for shall provide for a statutory limitation of liability which is less than that provided for in this Contract, then that law shall govern to determine the actual amount of liability of Expeditors for such loss or damage.
- (c) All claims for any loss or damage to Goods must be submitted in accordance with the section entitled "Claims Procedure" contained within the Service Conditions. Expeditors must be notified in writing of any claim for loss or damage to the Goods or any part thereof no later than 14 days after the date of delivery. Except in the case of concealed loss or damage, for which no exception is taken on the Contract, Expeditors must be notified verbally of any claim within 48 hours of delivery. A formal claim for loss or damage must be received by Expeditors in writing no later than 60 days after the date of delivery.
20. Shipper hereby agrees and warrants that any shipment tendered hereunder will not be classified as a hazardous material or dangerous goods shipment, as set forth in the "Dangerous Goods" section of the Service Conditions. If this representation and warranty is incorrect in any respect (whether intentional or not), Shipper shall be fully responsible to defend, indemnify and hold harmless Expeditors, and any other third-party contracting with Expeditors, from and against any liability attributable to such materials in any respect whatsoever.
21. Shipper warrants that they and their respective employees, agents and subcontractors, as the case may be, shall be liable, jointly and severally, to pay and to indemnify, hold harmless and defend Expeditors from and against any and all claims, penalties, damages, costs, including those related to any personal injury, death, and/or property damage, and/or any other sums which may relate in any manner, that are incurred and/or are required to be paid by Expeditors, resulting from, either directly or indirectly, any violation of the terms and conditions of this Contract, the Service Conditions and/or any governmental regulations, or as a result of any default by Shipper with respect to the shipment transported pursuant to this Contract.
22. This Contract, together with any and all documents incorporated herein, shall be binding upon Shipper as well as any carriers retained by Shipper by whom transportation of the shipment is undertaken between the origin and destination, including any re-consignment or return of the shipment, and shall, likewise, apply to any other person, firm, corporation or organization performing pickup, delivery and/or other ground services in connection with the shipment.
23. Any dispute, controversy or claim arising out of, relating to, or in connection with this Contract or the breach, termination or validity hereof shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which are deemed to be incorporated by reference into this Article 23. This Agreement shall be governed by and construed according to the laws of Washington State, USA.
- (a) Without prejudice to this Article, the law of the arbitration shall be the Singapore International Arbitration Act Cap. 143A.
- (b) Subject to sub-paragraph (d), each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so. Thereafter, the two arbitrators already appointed shall forthwith appoint the third arbitrator. The third arbitrator will be chairman of the tribunal. Where one party (the party in default) refuses to appoint its arbitrator or fails to do so within the time specified, the other party, having duly appointed its arbitrator, may give notice in writing to the party in default that it proposes to appoint its arbitrator to act as sole arbitrator. If the party in default does not within 7 days of that notice being given: (i) make the required appointment; and (ii) notify the other party that it has done so, the other party may appoint its arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been appointed by agreement.
- (c) The arbitration shall be conducted in English.
- (d) If a dispute arises under this Contract which appears to raise common issues of law or fact with a dispute under any agreement in relation to the Goods to which Expeditors is party, then Expeditors may, at its election, require that the disputes will be consolidated and heard concurrently with the tribunal first appointed being appointed as the tribunal for the consolidated proceedings.
24. Should any part of this Contract, for any reason, be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Contract had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Contract without including any such part(s) or portion(s) that may for any reason be hereafter declared invalid.
25. Notwithstanding any course of dealing, neither failure nor delay on Expeditors' part to exercise any right, power or privilege hereunder shall operate as a waiver thereof, nor shall Expeditors' single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or Expeditors' exercise of any other right, power or privilege. Any waiver by Expeditors of any of the provisions of this Contract must be set forth in a written document and signed by an authorized representative of Expeditors.
26. This Contract has been drawn up in the English language at the express request of the parties hereto.
- 本合同已擬訂在英語上的明確要求下雙方。Les parties aux présentes ont expressément requis que la présente convention soit rédigée en langue anglaise. El presente contrato ha sido preparado en idioma Ingles a petición expresa de las partes en el mismo.