



## **Terms & Conditions of Service**

Revised July 2018



## **Terms and Conditions of Service**

1. **DEFINITIONS:** In these Terms and Conditions of Service, "BTX" means Bacarella Transportation Services, Inc. d/b/a BTX Global Logistics, Inc., its respective affiliates, employees, agents and independent contractors, and any subcontract carriers contracted by BTX to assist with transportation services. "Cartage" means the portion of surface carriage occurring before or after the transport of a Shipment aboard an aircraft. "Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Warsaw on October 12, 1929, as amended, by the Hague Protocol in 1955, the Montreal Protocol 1, 2 or 4 or the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal in 1999, whichever may be applicable to the international carriage of a Shipment. "Customer" means the party from whom the Shipment is received, the party who requested the Shipment be transported by BTX, any party having an interest in the Shipment, and any party who acts as an agent for any of the foregoing. "Shipment" means all pieces which are tendered to and are accepted by BTX on a single waybill between origin and destination points specified on the face of the waybill. "Special Drawing Right" (SDR) is a Special Drawing Right as defined by the International Monetary Fund.
  
2. **AGREEMENT TO TERMS:**
  - a. In tendering a Shipment for carriage, Customer agrees that these Terms and Conditions constitute a binding contract, and further agrees that no agent, servant or employee of the parties may alter, modify or waive them except as set forth herein. Customer understands and agrees that carriage may be subject to the Convention, where applicable. In the event any Shipment is tendered to BTX on a straight bill of lading or any other shipping document, Customer agrees that these Terms and Conditions supersede any rules, regulations or contractual terms contained on the shipping document(s) upon which the Shipment was tendered. BTX, in the event it issues a waybill or bill of lading, such waybill or bill of lading shall be a non-negotiable document and all BTX's services are rendered per these Terms and Conditions only, as they may be amended from time to time at BTX's discretion, unless superseded by the Convention or other compulsory law. These Terms and Conditions are maintained and published at [www.btxglobal.com/our-company/terms-conditions](http://www.btxglobal.com/our-company/terms-conditions) and are otherwise available on request.
  - b. BTX may utilize different modes of transportation to assist Customer, and acts as Customer's agent unless it issues a waybill or bill of lading. Depending on the mode of service, BTX operates: i) as a domestic and international air freight forwarder, providing services as a Transportation Security Administration (TSA) licensed Indirect Air Carrier; ii) as a duly Federal Motor Carrier Safety Administration (FMCSA) licensed Property Broker (MC461607/DOT2230954); iii) as a duly FMCSA licensed Freight Forwarder (FF4688 & FF9079); and iv) as a duly Federal Maritime Commission-licensed Ocean Transportation Intermediary (003805). Ocean transportation services are subject to the terms of BTX's Combined Transport Bill of Lading.
  - c. These Terms and Conditions do not apply to Customer's use of BTX's LTL Reseller Program.
  
3. **COMPLETION OF WAYBILL, DOCUMENTS AND PACKAGING:** Customer certifies and represents to BTX that the information inserted on the waybill or otherwise communicated to BTX personnel for Shipments is complete and accurate in all respects, including verified Shipment weight and correct piece counts where Shipments are palletized/containerized. Customer warrants that it is fully authorized to engage BTX for its services and that each package in the Shipment is properly and completely described on the shipping document(s), is properly marked and addressed, is packaged adequately to protect the enclosed goods to ensure safe transportation with ordinary care handling



and in compliance with all applicable laws and regulations, and except as noted, is in good order and condition. Any Shipment in which delivery is made in exchange for a clear delivery receipt shall be prima facie evidence of having received ordinary care in handling.

4. **RATES; RE-WEIGH/RE-MEASUREMENT:** Rates and charges for a Shipment will be based on actual or dimensional weight, whichever is greater. Dimensional weight criteria may differ depending on how a Shipment is transported. Customer shall provide weight and measurements for Shipments. Shipments are subject to re-weigh and re-measurement by BTX. If the weights or measurements of the Shipment as delivered are different from Customer's representations, or if pick-up or delivery time or location is changed by Customer, BTX's rates, charges and fees are subject to change.
5. **DECLARING HIGHER EXCESS VALUE:** BTX's customary and standard rates for carriage are "release rates" subject to the limitations of liability set forth below. To provide Customer the most competitive rates, BTX relies on maintaining the limits of liability contained herein. If you do not declare excess value on a Shipment, you are agreeing to the release rate limits of liability. Customer may opt to increase BTX's liability by declaring an excess value on the waybill, in the box marked DECLARED VALUE, up to a maximum of \$25,000.00. **The charge for declared value coverage is \$0.50 per \$100.00 in value.** Please contact BTX for further information or if you have any questions about how liability is allocated in our business. **You may declare a value in excess of \$25,000.00 ONLY when pre-approved in writing by BTX.**
6. **LIMITATION ON LIABILITY**
  - a. **AIR AND COMBINED AIR/GROUND SERVICE:** For all U.S. domestic Shipments, Shipments to or from Puerto Rico and/or U.S. Territories, and Shipments to or from Canada and Mexico, BTX's liability for any loss or damage to a Shipment is limited to the lesser of Customer's actual damages or fifty U.S. cents (\$0.50) per pound per piece affected, but shall not exceed the Shipment's repair cost, depreciated value or replacement cost. BTX's liability will in no event exceed the actual invoice value of the specific goods adversely affected. Customer may increase BTX's liability for damage by declaring an "excess" value on a Shipment. **Declared values will be subject to an excess value charge of \$0.50 per \$100.00 of value declared.**
  - b. **ALL-GROUND U.S. DOMESTIC TRANSPORTATION:** i) In the event BTX acts pursuant to its Property Broker authority, and as Customer's agent only, BTX will use reasonable care in the selection of authorized motor carriers on Customer's behalf. In such instance, Customer agrees to accept and be bound by the authorized carrier's terms and conditions and/or applicable tariffs and BTX will have no liability for cargo loss, damage or shortage except to the extent such claims are caused by BTX's negligent act or omissions, in which case BTX's liability will be no greater than the amount paid by Customer for the Shipment at issue. ii) In the event BTX acts pursuant to its Freight Forwarder authority, BTX's liability for loss, damage, or delay with respect to any All-Ground Transportation Shipment, including storage in-transit, and other handling, for any loss, damage, or delay to the Shipment shall be that of a "carrier" pursuant to the Carmack Amendment as currently codified at 49 U.S.C. § 14706 (as amended from time to time). Except as otherwise set forth herein, Customer (and if Customer is not the actual shipper, for and on behalf of the shipper) expressly waives all rights and remedies it may have as to BTX and its subcontractor motor carriers under 49 U.S.C. Subtitle IV, Part B (excluding §§ 13703, 13706, 14101 and 14103) to the full extent permitted by 49 U.S.C. § 14101(b)(1), each as amended from time to time, and unless a higher value is declared on the front of BTX's waybill and the additional applicable charges are paid to BTX, BTX's liability for loss, damage or delay to any Shipment shall be



limited to the lesser of Customer's actual damages or fifty U.S. dollars (\$50.00) per Shipment or fifty U.S. cents (\$0.50) per pound per piece affected, but shall not exceed the Shipment's repair cost, depreciated value or replacement cost. iii) In the event, whether upon request of Customer or in BTX's discretion, as agent for Customer, any portion of the underlying transportation is performed by a rail carrier ("Rail Carrier"), Customer acknowledges and agrees that the Rail Carrier services, including, but not limited to, charges, liability (including limitations) for loss or damage to cargo, and terms and conditions of services are governed by tariffs, circulars or similar documents maintained by the Rail Carrier or other third party logistics provider arranging such Rail Carrier services (the "Rail Conditions"). Customer acknowledges and agrees that BTX shall not be deemed as a shipper or beneficial cargo owner for purposes of application of the Rail Conditions. Customer shall be solely responsible for proper packing of any and all shipments. Furthermore, with respect to cargo to be tendered to a Rail Carrier, where applicable Customer will be solely responsible for blocking and bracing all such cargo in accordance with the Rail Conditions, as well as in accordance with industry standards (including, but not limited to, those imposed by the American Association of Railroads via Circular 43, Rules Governing the Loading, Blocking and Bracing of Freight in Closed Trailers and Containers for TOFC/COFC Service), and shall further be responsible for compliance with any and all obligations or charges imposed by the Rail Carrier with respect to tender of cargo for rail and/or intermodal transportation, including but not limited to any and all charges for accessorial services imposed by Rail Carriers whether or not included in the initial rates agreed upon by the parties. **Declared values will be subject to an excess value charge of \$0.50 per \$100.00 of value declared.**

- c. **CANADIAN GROUND SHIPMENTS:** When loss or damage occurs to Shipments that are: i) inter- or intra-provincial; or ii) exporting from Canada but where the loss or damage is determined to have occurred while in Canada, BTX's liability is limited to the lesser of Customer's actual damages or CDN \$2.00 per pound per piece affected, but shall not exceed the Shipment's repair cost, depreciated value or replacement cost. **Declared values will be subject to an excess value charge of \$0.50 per \$100.00 of value declared.** For Shipments exporting from Canada, to the extent it cannot be determined that the loss or damage occurred within Canada then such loss or damage shall be deemed to have occurred within the United States and thus subject to the limits herein specified.
- d. **INTERNATIONAL AIR SHIPMENTS:** BTX's liability for cargo loss, damage or delay during air transport is limited to the amounts set forth in the Convention or other applicable international treaty, law, statute or regulation. If a Shipment is not governed by the Convention or any other international treaties, laws, other government statutes or regulation, orders, or other requirements, BTX's liability for cargo loss, damage or delay during air transport shall be 19 SDRs (calculated on the date of loss) per kilogram or the actual value of the loss, whichever is less. If BTX arranges Cartage in connection with such a Shipment, unless governed by any compulsory law, BTX's liability for cargo loss, damage or delay occurring during such Cartage shall be as set forth in subparagraph (a), above.

7. **LIMITATION OF LIABILITY (FOR ALL SHIPMENTS):** Subject to the limitations of liability herein, BTX or any of its authorized agents and subcontractors shall be liable for any cargo loss, damage or delay for any air transportation, ground transportation (including over the entire route), and any other handling only to the extent caused by their respective negligence or willful misconduct. BTX shall not be liable for any loss, damage, non-delivery or delay caused by the act, default or omission of Customer or the consignee, the nature of the Shipment or any defect, characteristic, or inherent vice thereof, any act of God, perils of the air, public enemies, public authorities acting with



actual or apparent authority of law, acts or omissions of Customs or quarantine officials, riots, strikes, civil commotions, hazards incident to a state of war, terrorism, weather conditions, delay of aircraft or other vehicles used in providing transportation services or acts or omissions of any carrier or any other entity or person to whom a Shipment is tendered by BTX (where BTX shall be deemed as acting as Customer's agent) for transportation beyond that provided for and agreed to by BTX in the BTX waybill, regardless of whether Customer requested or had knowledge of such third party delivery arrangement. BTX SHALL NOT BE LIABLE IN ANY EVENT FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, INCOME, INTEREST, UTILITY, OR LOSS OF MARKET, WHETHER OR NOT BTX HAD KNOWLEDGE THAT SUCH DAMAGE MIGHT BE INCURRED.

- 8. RESTRICTED ITEMS:** Unless otherwise expressly provided in a separate written agreement, and subject to any conditions or restrictions contained therein, the following articles will not be accepted for carriage: a) any Shipment prohibited by law; b) original works of art, antiques, bonds, coins of any kind, currency, currency equivalents, furs, fur clothing, gems or stones (cut or uncut), industrial diamonds, jewelry (other than costume jewelry), pearls, precious metals, securities (negotiable), stamp collections, time sensitive written material (e.g., bids, contract proposals, etc.), when the declared value exceeds \$0.50 per pound; c) household goods and/or personal effects, one-of-a-kind articles or models, prototypes, valuable rugs (i.e., Oriental rugs, Persian rugs) and prints or lithographs when the total declared value of the Shipment exceeds \$500.00 or when the declared value exceeds \$0.50 per pound, per piece; d) improperly packed items; e) bulk products; f) live animals and plants; g) cigarettes and tobacco products; h) fresh foods or perishables; i) pharmaceuticals; computer chips and similar memory devices; j) cell phones, computers (including laptops), laser and laser equipment and plasma/LCD/DLP televisions, where the value exceeds \$50,000.00 per shipment; k) glass and glassware, including but not limited to, plate glass, signs incorporating glass, furniture with glass components, windows, artwork constituted of, or incorporating glass, lighting fixtures made of or incorporating glass, crystal, china or other similar fragile items; and l) such other articles as BTX may designate from time to time. BTX shall not be liable for any loss, damage, delay, liabilities or penalties resulting from the transportation of any of the foregoing articles, however described or misdescribed in the waybill or other shipping document(s), and no employee or agent of BTX has any authority to accept for transportation such articles or to waive the limitations herein contained.
- 9. SERVICES NOT GUARANTEED:** BTX undertakes to complete carriage with reasonable dispatch and does not guarantee pick up, transportation or delivery by a stipulated date or a stipulated time, nor shall BTX be liable for the consequences of failure to do so. BTX may substitute alternate carriers including motor carriers and ocean carriers, and may without notice but with due regard to the interests of Customer substitute other means of transportation, subject to these Terms and Conditions.
- 10. CLAIMS PROCEDURES:** All claims against BTX must be timely made in writing, sufficiently describing the factual details of the claim and including a bona fide replacement cost estimate. No claim will be processed by BTX until all transportation charges have been paid in full. Receipt of a Shipment without written notification of loss or damage on the delivery receipt will be prima facie evidence that the Shipment was delivered in good condition and in accordance with the terms of this contract. Such notations as "subject to inspection" and/or "subject to recount," or similar, are not valid exceptions. In the event of a claim the Shipment, its container(s) and its packing material



must be made available to BTX for reasonable inspection at the delivery location. **Under no circumstances will BTX be liable for loss and/or damage to external shipping containers of any kind.** Written notice as required herein must be sent to **BTX Global Logistics, 12 Commerce Drive, Shelton, CT 06484**

- a. **For domestic and international air Shipments**, written notice of claim must be made to BTX within: (i) 14 days from the date of delivery; (ii) 21 days from the date of delivery in the case of delay; and (iii) 120 days in the case of non-delivery of the Shipment, calculated from the date the Shipment was accepted by BTX.
- b. **All-Ground Transportation**, except with respect to Shipments that are exempt per 49 USC 13506(a)(8) and 13531, which shall be considered air Shipments, written notice of claim must be received by BTX within 9 months and 1 day of the date of delivery.
- c. **Limitations on actions:** Unless subject to a specific statute or international convention, BTX will not be liable in any action brought to enforce a claim unless the applicable claims procedures have been complied with and unless such action is brought: (i) in the case of domestic Shipments, within 2 years after the date written notice is given to the claimant that BTX has disallowed the claim in whole or in part; and (ii) in the case of international Shipments, within 2 years from either the date of arrival of the Shipment at destination or from the date the Shipment ought to have been delivered. The failure to give BTX timely notice of a claim in accordance with these Terms and Conditions shall be a complete defense to any suit or action commenced by Customer.
- d. "Concealed damage" means damage and/or loss discovered by the consignee after delivery when no notification of loss or damage has been made on the delivery receipt by the consignee upon actual receipt of the Shipment. If claims for concealed damage are not timely made, a presumption shall exist that such damage occurred subsequent to delivery, and the claim will be declined. All claims for concealed damage must be reported to BTX within 48 hours of the time of delivery and a written claim must be made within 14 days of the time of delivery.
- e. **Overcharges:** Claims for overcharges must be made in writing within 1 year following the date BTX accepted the Shipment.

11. **LIABILITY FOR THE SELECTION OF THIRD PARTIES:** BTX shall use reasonable care in its selection of third parties and advice by BTX that a particular person or firm has been selected to render services with respect to the goods shall not be construed to mean that BTX warrants or represents that such person or firm will render such services nor does BTX assume responsibility or liability for any actions(s) of such third parties and/or its agents, and shall not be liable for any 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 or omission of a third party shall be brought solely against such third party and/or its agent.
12. **RECORDKEEPING:** Customer acknowledges that it has the sole responsibility for maintaining records required of it by law or for use in its business and BTX has no obligations related thereto. BTX shall only be required to keep those records required of it by applicable law or regulation and shall have no liability to Customer if BTX is determined by a competent authority not to have complied such laws or regulations.
13. **INSURANCE:** Unless requested to do so in writing and confirmed by Customer in writing, BTX is under no obligation to procure insurance on Customer's behalf. Insurance coverage shall be based on BTX's open insurance policy in effect on the date of the Shipment. "All Risk" insurance is available at a cost of \$0.75 per \$100 of insured value. Failure to properly complete the INSURANCE section on the BTX waybill shall void any coverage. Customer shall report the full invoice value of the Shipment only. In all cases,



Customer shall pay all premiums and costs in connection with procuring insurance and any cargo insurance policy issued shall be construed as a contract directly between insurer and Customer.

14. **QUOTATIONS NOT BINDING:** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by BTX to the Customer are for informational purposes only and are subject to change without notice. No quotation shall be binding upon BTX unless an authorized representative of BTX in writing agrees to undertake the handling or transportation of the Shipment at a specific rate amount set forth in the quotation and payment arrangements are agreed to between BTX and the Customer prior to the Shipment being tendered to BTX.
15. **INDEMNIFICATION/HOLD HARMLESS:** During and after Customer's use of BTX's services, the Customer agrees to indemnify, defend, and hold BTX harmless from any claims, allegations, demands, fines, penalties, costs and/or liabilities arising from the domestic transportation, or importation or exportation of Customer's merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws and regulations or these Terms and Conditions. Customer further agrees to indemnify, defend, and hold BTX harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which BTX may hereafter incur, suffer or be required to pay by reason of such claims. Customer further shall hold BTX and its agents harmless for loss/damage/delay or any monetary losses which are a result of auxiliary services including but not limited to local cartage, crating, uncrating, packing and unpacking which are requested by the Customer and/or shipper and arranged by BTX as a customer service. Such limitation of liability will extend to the selection by BTX of the providers of the auxiliary services. Under no circumstances will BTX's liability for any monetary loss which is a result of any auxiliary services performed by BTX or its agent(s) be greater than the liability contained in these Terms and Conditions.
16. **CARGO SECURITY REQUIREMENTS:** Shipments are subject to all cargo security requirements imposed by all applicable federal and/or state agencies, including but not limited to the Transportation Security Administration in connection with 49 C.F.R. Part 1548. Per 49 CFR 1548.9(b) Customer hereby consents to screening of its Shipments which may include physical search or inspection of such cargo. BTX shall have the right to refuse any article, the transportation of which is prohibited by applicable law, orders or regulations, or the transportation of which, in BTX's judgment, would be unsafe. If such Shipment should be accepted or transported, BTX reserves the right to remove it and, if necessary, to abandon it. Where circumstances permit, such Shipment will be stored at Customer's expense pending receipt of disposition instructions from Customer.
17. **PACKAGING:** Customer must ensure all Shipments are prepared and packaged to ensure safe transportation with ordinary care in handling. BTX shall have no liability for loss or damage to improperly packed Shipments. Fragile items or Shipments subject to damage by ordinary care handling must be adequately marked and labeled and their status notified in writing to BTX Shipments subject to damage as a result of any atmospheric condition that might be encountered during air transport must be adequately protected, packed and marked accordingly. Use of used or re-used packaging shall be noted by Customer on the waybill or other shipping documents.
18. **SHIPMENTS ACCEPTABLE ON SPECIAL CONDITIONS:**
  - a. Shipments with declared value in excess of \$25,000.00
  - b. Shipments containing pieces each in excess of 250 pounds



- c. Shipments with floor bearing weight in excess of 100 pounds per square foot or dimensions greater than 60 inches length by 60 inches width by 60 inches in height only where the floor bearing weight can be reduced to less than 100 pounds per square foot by palletization or other similar device. In such circumstance, the pallet or other device shall be included in the gross or chargeable weight of the Shipment, as applicable.
  - d. Shipments requiring any special devices for safe handling, which will only be handled when Customer makes advance arrangements with BTX and where BTX has accepted such arrangements
  - e. Unboxed and/or unwrapped freight will be only accepted for transport on the condition that BTX will have no liability, whatsoever, for loss or damage occurring to such Shipment at any point between acceptance and delivery.
  - f. Perishable Shipments are only acceptable with advance arrangements and where Customer has provided, and BTX has accepted, any special instructions or arrangements.
- 19. SHIPMENTS SUBJECT TO POSSIBLE DELAY:** Through no fault of BTX, the following may delay a Shipment:
- a. Any shipment with a length of more than 85 inches or a height greater than 59 inches or where the dimensions are otherwise too large for the available aircraft;
  - b. Shipments that require additional packing to remedy improper packing by Customer or where a Shipment is improperly labeled, marked or has insufficient or improper documentation;
  - c. Shipments tendered to BTX too late to meet departure "cutoff" times or other critical timing requirements that are known to Customer;
  - d. Shipments requiring export licenses or special export documentation, such as consular or notary services;
  - e. Hazardous materials; and
  - f. Shipments not in compliance with mandatory cargo security requirements.
- 20. RESTRICTION ON CERTAIN OVERSIZE SHIPMENTS:** Subject to advance arrangements and availability of space, BTX will accept pieces more than 121 inches in length and/or more than 88 inches in width. Certain oversize shipments may be subject to delay. For such Shipments:
- a. Transportation will only be provided if on a pallet(s);
  - b. Each pallet will have a minimum chargeable weight of 4500 pounds;
  - c. Maximum pallet dimensions will be 125 inches in length, 88 inches in width and 58 inches in height; and
  - d. Charges will be based on weight or number of pallets required, whichever is higher.
- 21. RIGHT TO REJECT OR RE-ROUTE:** BTX reserves the right to reject any Shipment for any reason whatsoever, including but not limited to safety or security concerns. It is agreed that no time is fixed for the completion of carriage hereunder and that BTX may, without notice, substitute aircraft or alternate carriers, including surface and/or ocean carriers. BTX assumes no obligation to forward the goods by any specified carrier or over any particular route or routes or to make connection at any point according to any particular schedule, and BTX is hereby authorized to select, or deviate from, the route or routes of shipment, notwithstanding that the same may be stated on the face of the waybill and/or other shipping document(s).
- 22. HAZARDOUS MATERIALS:**
- a. Customer shall limit all packages containing hazardous materials/dangerous goods to the materials and quantities authorized for transportation under the all applicable laws and regulations, including but not limited to the U.S. Department of



Transportation hazardous materials transportation regulations (49 C.F.R. Parts 171, 172, and 173, as amended), the current edition of the International Air Transport Association Dangerous Goods Regulations and the International Civil Aviation Organization "Technical Instructions for the Safe Transport of Dangerous Goods by Air (together "HM/DG Regulations)". Customer shall ensure that each Shipment requiring a Shipper's Declaration of Dangerous Goods under the IATA Dangerous Goods Regulations is accompanied by properly executed Declaration documents in conformity with the requirements of such HM/DG Regulations. Customer shall also ensure, and Customer hereby certifies, that, before tendering any Shipment containing hazardous materials/dangerous goods to BTX, that the contents of the consignment are fully and accurately described on the shipping papers by proper shipping name; are not prohibited for transport by air by the HM/DG Regulations; and are properly classified, packaged, marked, and labeled, and in proper condition for carriage as required by the HM/DG Regulations. Customer hereby declares that all of the applicable transport requirements have been met, and agrees to a charge of \$95.00/UN or ID number. This paragraph shall apply regardless of the routing or transportation mode by which the Shipment is transported. BTX reserves the right to reject, for any reason, any Shipment containing any known or suspected dangerous goods.

- b. BTX is not licensed to transport the following hazardous materials, nor can it transport any hazardous material in bulk or container having a capacity equal to or greater than 13,428 liters or with a gross weight equal to or greater than 1000 kilograms:

Class 1 Explosives	Divisions 1.1, 1.2, 1.3, 1.4 and 1.5
Class 2 Gases	Division 2.3
Class 4 Flammable Solids	Divisions 4.2 and 4.3
Class 6 Toxic and Infectious Substances	Divisions 6.1 and 6.2
Class 7 Radioactive Material	Level I, II and III

- 23. **STORAGE:** If the consignee refuses any of the cargo tendered by BTX or if BTX is unable to deliver any the cargo because of fault or mistake of Customer or the consignee, or if Customer advises and instructs BTX to stop movement of the cargo and to hold it in transit, BTX's liability thereafter immediately shall be that of a warehouseman. The procedures that BTX agrees to and shall take as a warehouseman involve the use of ordinary care to keep the cargo in a safe or suitable place or to store the cargo properly. BTX shall (a) attempt to give Customer notice as soon as possible if the foregoing occurs, (b) place the cargo in storage, if available, unless BTX receives contrary disposition instructions from Customer within twenty-four (24) hours, and (c) if disposition instructions are not given by Customer within thirty (30) days of BTX's initial notification to Customer, BTX may offer the cargo for public or private sale, return the Shipment to Customer at Customer's sole risk and expense, or place the cargo into a public warehouse to the account of Customer and in such case BTX shall have no further liability or obligation with respect to the Shipment. Customer shall be responsible for storage costs and reasonable costs BTX incurs in acting as a warehouseman. If Customer gives BTX timely disposition instructions, BTX shall use any commercially reasonable steps to abide with such instructions in accordance with this contract. Customer shall pay BTX's costs and any additional transportation costs that BTX incurs in doing so. CUSTOMER SHALL REMAIN JOINTLY AND SEVERALLY LIABLE TO BTX FOR ANY DEFICIENCY SHOULD THE PROCEEDS OF ANY SALE BE INSUFFICIENT TO OFFSET ALL CHARGES DUE BTX WITH RESPECT TO THE GOODS. EXCESS PROCEEDS FROM A SALE WILL BE USED TO SATISFY ANY OUTSTANDING LIEN OR OBLIGATION DUE BTX FIRST, WITH ANY



BALANCE THEREAFTER PAID TO CUSTOMER. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD BTX HARMLESS AGAINST ALL LOSS AND EXPENSE, INCLUDING ATTORNEY'S FEES, OF WHATEVER NATURE BROUGHT BY ANY OTHER OTHER PERSON HAVING AN INTEREST IN THE GOODS SOLD UNDER THIS PROVISION.

- 24. C.O.D. OR COLLECT SHIPMENTS ("C.O.D."):** Customer must enter the amount of the C.O.D. in U.S. dollars and cents in spaces specifically provided on the face of BTX waybill, and must specify the type of payment to be received (e.g. cash, check, money order, etc.). Under no circumstances shall BTX be responsible if payment proves to be counterfeit, forged, or is for any reason dishonored. In the event payment is dishonored after delivery, Customer will be invoiced those transportation charges and must remit payment for these charges within 15 days to the BTX. BTX will not accept the following Shipments on collect terms: Shipments to a transient consignee; shipments to a government agency unless tendered by a government agent presenting proper bill of lading; and Shipments to construction sites, hotels or convention centers.
- 25. CUSTOM DUTIES AND OTHER FEES:** BTX is authorized by Customer (but shall be under no obligation) to advance any duties, taxes, or charges and to make any disbursements with respect to a Shipment(s), and Customer, owner and consignee shall be jointly and severally liable for the reimbursement thereof. Customer agrees to an administrative charge for any such advances equal to 5% of such advance, with a minimum charge of \$10.00.
- 26. LIEN RIGHTS:** BTX shall have a continuing, general lien on all Shipments for all freight charges (including past due charges on other Shipments), advances or charges of any kind arising out of this contract and may refuse to surrender possession of any or all Shipment(s) until all such charges are paid and is entitled to all rights and remedies legally available. Shipments retained pursuant to the lien established herein may be subject to storage fees and/or disposed of at public or private sale, with BTX paid from the proceeds of such sale, including storage charges and costs of sale. BTX shall provide written notice to Customer of its intent to exercise its lien, the amount of monies then due and owed, as well as any ongoing storage or other charges; Customer shall notify all parties claiming an interest in the Shipment(s) subject to the lien of the exercise of BTX's lien and BTX's rights as set forth herein. Customer remains liable for charges, including any deficiency remaining after sale.
- 27. PAYMENT TERM: All invoice terms are net 15 days.** Any payment which is past due shall be subject to an additional charge of 1 ½% per month of the outstanding balance due or the maximum interest rate permitted by applicable law, whichever is more, together with all collection costs, including reasonable attorney fees, incurred by BTX. Unless prior arrangements are made, BTX will accept cash payments up to \$2,000.00 per Shipment. Shipments where freight charges exceed \$2,000.00 must be paid by cashier's check, certified check or money order. Irrespective of Customer's use of a third-party payment agency, Customer at all times remains primarily liable for payment of all BTX-invoiced charges. Customer's obligation to pay BTX's invoices is not extinguished by Customer's payment to a third-party payment agency unless and until such third-party payment agency has actually paid all BTX invoices.
- 28. COMPLIANCE WITH LAW/EXPORT CONTROLS:** BTX shall comply with all laws applicable to its operation, including any insurance and bonding requirements. Customer shall comply with all applicable laws, government regulations and customs of any country to, from, through or over which the Shipment may be carried, including those relating to its packing, carriage or delivery, and shall furnish to BTX complete and



accurate information and provide such fully legally compliant documents as may be necessary to comply with such laws and regulations. Customer agrees that it will not engage BTX to transport cargo to any sanctioned or embargoed country or individual, whether or not BTX is engaged to transport such cargo to an end user. Further, Customer represents and warrants that in connection with any transaction handled by BTX it has not and will not engage in any conduct that may implicate the U.S. Foreign Corrupt Practices Act or any other applicable anti-corruption/anti-bribery law.

- 29. SEVERABILITY:** If any provision contained or referred to in this contract may be contrary to mandatory law, government regulations, orders, or requirements, such provisions shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provisions shall not affect any other part hereof.
- 30. NO MODIFICATION OR AMENDMENT UNLESS WRITTEN:** Any attempt by Customer to unilaterally alter, amend or modify these Terms and Conditions shall be null and void. Customer and BTX may agree to alternative terms only in a writing signed by authorized representatives of both parties. No obligation contained herein shall be deemed to have been waived by BTX unless in writing, and no such waiver shall be deemed a waiver of any other term or condition herein.
- 31. DISPUTE RESOLUTION AND GOVERNING LAW:** These Terms and Conditions, and the services provided by BTX under them, shall be governed by and subject to the applicable federal law of the United States and by the laws of the State of Connecticut, without regard to the choice-of-law rules of that State or any other jurisdiction. The foregoing notwithstanding, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention may be applicable by force of law. In the event of a direct conflict between these Terms and Conditions and a mandatory provision of any such Convention, the terms of such Convention shall control, but only to the extent of such direct conflict. CUSTOMER AND BTX AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER INTERNATIONAL CONVENTION, FEDERAL, STATE, LOCAL, OR FOREIGN STATUTES, REGULATIONS, OR COMMON LAW, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING FAIRFIELD COUNTY, CONNECTICUT. CUSTOMER AND BTX HEREBY CONSENT TO THE JURISDICTION OF SUCH COURTS. In the event Customer files an action against BTX, Customer hereby consents to any BTX-instituted transfer of such action to any other venue in which BTX is a party or subsequently becomes a party to an action concerning loss or damage to the cargo that is the subject of Customer's action. Should BTX successfully defend itself in any legal actions brought by any person with an interest in a Shipment, BTX shall be entitled to reasonable attorney fees and litigation expenses.

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