

PRO CARGO CANADA LTD.

Terms and Conditions of Service

All Shipments to or from the Customer, which term shall include the exporter, importer, sender, receiver, owner, consignee, transferor or transferee of the shipments, will be handled by Pro Cargo Canada Ltd. (herein after called the "Company") on the following terms and conditions:

1. **ROLE OF FORWARDER ("the Company")**

The Company offers its services on the basis of these conditions that apply to all activities of the Company in arranging transportation or providing related services, such as, but not limited to, warehousing and any other kind of logistics services. The Company may provide its services as either principal or agent. The Company acts as agent of the Customer, except

- (a) where it issues a transport document or electronic record evidencing its obligation for the delivery of goods, or
- (b) to the extent it physically handles goods by its own employees and equipment in the course of performing any service in which cases it acts as principal,

but whether acting as principal or as agent these conditions govern the rights and liabilities of the Customer and the Company.

Advice and information that is not related to instructions accepted by the Company is provided gratuitously and without liability. Advice is for the Customer only and is not to be furnished to any other party without prior written consent.

2. **CLAIMS AGAINST OTHERS**

These Conditions also apply whenever any claim is made against any employee, agent or independent contractor engaged by the Company to perform any transport or related service for the Customer's goods, whether such claims are founded in contract or in tort, and the aggregate liability of the Company and all such persons shall not exceed the limitations of liability in these conditions. For purposes of this Clause the company acts as agent for all such persons who may ratify such agency at any subsequent time.

3. **ROLE AS AGENT**

When acting as an agent, the Company acts solely on behalf of the Customer in engaging the services of third parties on the usual terms and conditions on which the third parties offer such services for the carriage, storage, packing or handling of any goods, or for any other service in relation to them, thereby establishing a direct contract between the Customer and the provider of such services capable of being enforced by the Customer as principal, whether or not the Customer is identified in the contract. The Company shall on demand by the Customer provide evidence of any contracts made on its behalf.

4. **OTHER SERVICES**

Where requested by the Customer the Company may

- (a) issue a transport document or electronic record by which it as principal undertakes carriage of particular goods; or
- (b) guarantee in writing proper performance of the terms of any contract between the Customer and a third party whose services the Company has engaged on behalf of the Customer. As guarantor the Company is liable only to the same extent as the third party whose actions have been guaranteed, as may be limited by the conditions on which that party customarily offers its services.

Where it issues a transport document or electronic record, or provides a guarantee, the rights and obligations of the Company will be governed by the special conditions therein in addition to these Conditions. In the event of any inconsistency the special conditions prevail.

5. **SERVICES REQUIRING SPECIAL ARRANGEMENTS**

The Customer must give instructions in writing to the Company a reasonable time before the tender of goods for storage or transport where it requests the Company to:

- (a) arrange for the departure or arrival of goods before specific dates;
- (b) arrange for goods to be carried, stored or handled separately from other goods;
- (c) arrange for the transport of goods that may taint or affect other goods, or may harbor or encourage vermin or pests;
- (d) make a declaration of value or special interest in delivery to any carrier or terminal;
- (e) direct carriers or delivery agents to hold goods until payment of any amount or until surrender of a document;
- (f) Arrange for the transport of goods of unusual high value, luxury goods, currency, negotiable instruments or securities of any kind, precious metals or stones; antiques or art; human remains, livestock or plants, or any other comparable cargos.

Where for any reason it does not accept such instructions, the Company must promptly so advise the Customer by any means of communication used in the ordinary course of business. If it continues to use the Company's services for the contemplated transport, the Customer assumes all risks connected with the non-performance of such instructions, whether caused or contributed to by the Company's negligence or not.

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6. THE COMPANY'S GENERAL RESPONSIBILITIES

- A. The Company shall exercise reasonable care in the discharge of its obligations including the selection and instruction of third parties that provide any services engaged on behalf of the Customer.
- B. The Company shall arrange transport and any related services within a reasonable time after receiving the Customer's instructions.
- C. If it has reasonable grounds for departing from any of the Customer's instructions, the Company can do so without prior authorization from the Customer, but must act with due regard to the interests of the Customer, and, as soon as possible, inform the Customer of its actions and any additional charges resulting there from.

7. CUSTOMER'S GENERAL RESPONSIBILITIES

- A. The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of its business, including terms of purchase and sale, the need for insurance and the extent of coverage available for the type of goods being tendered for shipment, the need for care to avoid transmitting viruses by electronic communications, the need for confidential handling of information relating to high value goods, and all other matter relating thereto.
- B. The Customer warrants that all information in whatever form relating to the general and dangerous character of the Goods, their description, Bar-Coding, marks, number, weight, volume and quantity of the Goods, as furnished by the Customer or on its behalf, was accurate and complete at the time the Goods were taken in charge by the Company or any third party whose services it has engaged. The Customer further undertakes to provide independent confirmation of such particulars on the request of the Company.

8. CUSTOMER'S RESPONSIBILITY FOR PACKAGED AND CONTAINERIZED GOODS

- A. Except where the Company has accepted instructions in respect of the preparation, packing, stowage, labeling, or marking of the goods the Customer warrants that all goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods.
- B. Unless the Company has accepted instructions to arrange for or to perform the loading of a transport unit by its employees, the Customer warrants that:
 - a) the transport unit has been properly and competently loaded;
 - b) the goods are suitable for carriage in or on the transport unit; and
 - c) the transport unit is in a suitable condition to carry the goods loaded therein (save to such extent as the Company has approved the suitability of the transport unit).

9. QUOTATIONS AND INVOICING

- A. The Company does not assume a role as principal by delivering a fixed price quotation or invoice. The Customer acknowledges that the difference between the amounts payable to third parties retained to carry out the Customer's instructions and the fixed price represents the Company's gross profit for its services. A Customer agrees that the Company is an agent as provided in Section 1 where the Customer
 - a) accepts a fixed price quotation,
 - b) does not within fifteen days after receipt of the invoice object to the Company charging a fixed price for its services.
- B. Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise provided in the quotation the Company may, after acceptance, revise quotations or charges upon notice in the event of changes beyond the Company's control, including changes in exchange rates, rates of freight, carrier surcharges, or any charges applicable to the goods.

10. C.O.D. SHIPMENT

When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the Consignee or any other person the Customer shall remain responsible for the same if they are not paid by such Consignee or other person immediately when due.

11. CHANGED CIRCUMSTANCES / FAILURE TO TAKE DELIVERY

If events or circumstances, including a Customer's failure to take delivery, occur that affect performances of the Customer's mandate, the Company shall take reasonable steps to obtain the Customer's further instructions. If for whatever reason it does not receive timely instructions, the Company may

- a) store the goods at the sole risk and expense of the Customer, or
- b) sell the goods immediately and without further notice, and hold any net proceeds for the account of the Customer or
- c) authorize any third party to abandon carriage and make the goods or any part of them available to the Customer at a place that is reasonable in the circumstances.

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12. DANGEROUS GOODS

- A. The Customer undertakes not to tender for transportation any goods that are of a dangerous, inflammable, radioactive, hazardous or damaging nature without giving full particulars of the goods to the Company. The Customer undertakes to mark the goods and the outside of any packages or container in which they may be placed to comply with any laws or regulations that may be applicable during the carriage. In the case of goods where the place of receipt is a point within Canada, the Customer further warrants that the goods, the packaging and marking thereof comply in all respects with the provisions of any legislation or regulations governing the transportation of dangerous goods.
- B. If it fails to comply with the requirements of Sub-clause (A), the Customer shall indemnify the Company against all loss, damage or expense arising out of the goods being tendered for transportation or handled or carried by or on behalf of third parties retained by the Company.
- C. Goods which in the opinion of the Company or the person who has custody or possession thereof are or may become dangerous and present a hazard may at any time or place be unloaded, destroyed or rendered harmless without liability on the part of the Company.

13. INSURANCE

- A. The Customer must give the Company instructions in writing to arrange insurance on its goods a reasonable time before the tender of goods for storage or transport. The Company may carry out these instructions by declaring the value of the goods under an open marine cargo policy taken out by the Company, and, upon request, provide a certificate or declaration of insurance or other evidence of insurance. The coverage on goods so declared is subject to the terms and conditions of the policy. The Company is not liable if the Customer for any reason whatsoever fails to recover a loss in whole or in part from the insurer under the policy, even though the premium charged by the insurer is different from the Company's charges to the Customer.
- B. If coverage under its open marine cargo policy is not satisfactory, the Company will recommend an insurance broker to arrange insurance appropriate to the customer's needs. After making this recommendation, the Company has no further duty regarding insurance, and no liability for loss of or damage to the goods during transport or storage that could have been covered by insurance on the goods, whether such loss or damage has been caused or contributed to by its negligence or breach of these conditions, or otherwise.

14. NOTIFICATION OF CLAIMS

The Customer on its own behalf and on behalf of the Owner of the goods shall notify the Company in writing of any claim

- a) in case of loss and/or damage to goods within 45 days of the completion of transit
- b) in case of delay in delivery or non-delivery within 45 days of the date when the goods should have been delivered
- c) In any other case within 60 days of the event giving rise to the claim.

If a claim was not discoverable by the exercise of reasonable care within the applicable time period, the Customer must give notice forthwith after receiving information as to events that may give rise to a claim. Failing notice as required by this clause, the claim is barred and no action can be brought against the Company to enforce the claim.

15. LIMITATION OF LIABILITY

Compensation for any claim for which the Company is liable shall not in any event exceed 2 SDR (SDR = Special Drawing Rights) per kilo of the gross weight of the goods that are the subject of the claim. Without prejudice to any other conditions herein or other defenses available to the Company, in no circumstances whatsoever shall the Company be liable to the Customer or owner for

- a) consequential or indirect loss, including loss of market, except as provided for in paragraph (b):
- b) loss of, damage to or consequential or indirect loss caused by delay or deviation in connection with the transport of goods in a sum in excess of twice the difference between the charges invoiced by the Company and amounts paid by the Company to third parties for transport or other service related to those goods;
- c) amounts in excess of a maximum recoverable of 75,000 SDR's per transaction

Upon the Customer's written request, the Company may accept liability in excess of these limits provided the Customer pays the Company's additional charges for such increased liability. The Customer can obtain details of these charges from the Company.

16. INDEMNITY

The Customer shall indemnify the Company against all duties, taxes, payments, fines, expenses, losses, claims and liabilities, including any liability to indemnify any other person against claims made against such other person by the Customer or by the Owner

- a) for which the Company may be held responsible unless caused or contributed to by any negligence or breach of duty of the Company, or

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b) in excess of the liability of the Company in accordance with these Conditions, resulting from or connected with the actions of the Company related to any service to which these Conditions apply.

17. SET OFF AND COUNTERCLAIM

The Customer shall pay to the Company in cash, or as otherwise agreed, all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off.

18. RIGHT OF DETENTION AND LIEN

All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender, consignee or owner of the goods to the Company. If these monies remain unpaid for 28 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold by private contract or otherwise at the sole discretion of the Company, and the net proceeds applied on account of the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Customer be relieved from the liability merely because the goods have been sold.

19. TIME BAR

The Company shall, unless otherwise expressly agreed, be discharged of all liability under these Conditions unless suit is brought within 9 months from

- a) the date of delivery of the Goods for claims to damage to goods, or
- b) the date when the Goods should have been delivered for claims for delay in delivery or loss of goods.

With respect to loss or damage other than loss of or damage to the Goods, the 9 months period shall be counted from the time when the act or omission of the Company giving rise to the claim occurred.

20. CUSTOMARY REMUNERATION RECEIVED FROM THIRD PARTIES

The Company shall be entitled to be paid and retain all brokerages paid by carriers, commissions, documentation allowances, profits on foreign exchange and other remunerations paid by third parties as is customary in the trade.

21. APPLICABLE LAW AND JURISDICTION

The Parties agree that where they have used electronic communications to transact in whole or in part any business such communications will be given legal effect in accordance with the provisions (so far as they may be applicable) of the Uniform Electronic Commerce Act as approved by the Uniform Law Conference of Canada. Otherwise these Conditions shall be governed by the law of the Province within Canada in which the Company has its principal place of business. By accepting the services provided under these Conditions, the Customer irrevocably attorns to the exclusive jurisdiction of the Courts or that Province.

22. VALIDITY

Company may add to, change or remove any part of these Terms and Conditions of Service at any time, without notice. Any changes to these Terms and Conditions of service or any terms posted on this Site apply as soon as they are posted on www.procargo.com/terms.html.

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[Pro Cargo Website](http://www.procargo.com)