

CAP LOGISTICS

GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

These **CAP Logistics Ground and U.S. Air Freight Terms and Conditions** (“Terms and Conditions”) apply to arrangement by CAP of transportation of any air (including combined air and ground transportation) Shipment that originates in, is destined for, and does not include an ultimate destination or stop outside of the United States or any U.S. territory, possession, or commonwealth. These Terms and Conditions also apply to arrangement by CAP of any barge or all-ground (less-than-truckload, truckload, or rail) Shipment between or within the U.S. and Canada. For air Shipments arranged by CAP Logistics between the U.S. and Canada, please see the **CAP Logistics International Conditions of Air Carriage**, for all other international air shipments, please see the **CAP Worldwide International Conditions of Air Carriage**, and for ground shipments between the United States and Mexico, please see the **CAP Worldwide International Ground Transportation Terms and Conditions**.

1. **Definitions.** The following definitions apply to these Terms and Conditions: “CAP” refers to C. A. P. Air Freight, Inc. d/b/a CAP Logistics. “Shipment” means all pieces that are tendered to and accepted by CAP on a single air waybill, bill of lading or other transportation document. “Shipper” means any party that tendered the Shipment, has an interest in the Shipment, or any party that contacts CAP or otherwise requests transportation (including anyone that acts as an agent for any of the above). The term “conveyance” means any steamer, vessel, barge, aircraft, truck, trailer, or rail car, or any connecting conveyance while in the ordinary course of transit by land, sea, or air.

2. **Agreement to Terms.** CAP’s services are limited to arranging transportation with underlying carriers, but not actually performing such transportation. Shipper acknowledges and agrees that transportation will be performed via carriers that may place limitations or conditions on Shipper’s right to recover for loss or damage to Shipments, that CAP is authorized to arrange for transportation on such terms, and that Shipper is bound by such limitations. In tendering or accepting any Shipment governed by these Terms and Conditions, Shipper agrees to all the terms set forth herein, as amended by CAP from time to time. Except to the extent of any written contract signed by both Shipper and an officer of CAP expressly superseding these Terms and Conditions, these Terms and Conditions supersede and negate any claimed, alleged, or asserted oral or written contract, promise, representation, or understanding between the parties with respect to this Shipment. As between Shipper and CAP, these Terms and Conditions shall supersede any rules and regulations contained on the shipping document on which the freight was tendered.

3. **Shipment Detail, Packaging, and Other Requirements.** Shipper shall comply with all applicable laws, rules and regulations, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information as may be necessary to comply with such laws and regulations. Shipper shall likewise ensure that all goods tendered are properly packaged to withstand the rigors of transportation via air and highway transport. CAP may in its sole discretion, but is not obligated and shall have no liability for failure to, repackage any goods which, in CAP’s sole discretion, are improperly packaged. Shipper will be responsible for all costs associated with such repackaging. Except as otherwise set forth herein with respect to claims for loss or damage for which CAP is liable, in no event will CAP be responsible for the consequences or effects arising from or related to any such repackaging including, but not limited to, loss, damage, or delay. Shipper certifies and represents to CAP that Shipper is authorized to tender the Shipment for transportation and all information regarding the Shipment provided to CAP is complete and accurate. Shipper warrants and certifies, with respect to

CAP LOGISTICS

GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

each package in this Shipment, that the contents of this consignment are fully and accurately described by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. Shipper authorizes CAP to include any such information on the air waybill or bill of lading and hereby agrees to defend, indemnify and hold harmless CAP from any and all direct and indirect claims, liabilities, losses, damages, fines or penalties arising from or related to CAP's inclusion of any information provided by the Shipper on any air waybill or other shipping document. For articles shipped in unenclosed containers, CAP shall not be liable for damage/loss unless mishandling and/or loss is evident and is so noted on the delivery receipt at time of delivery.

4. **Right to Reject.** CAP reserves the right to reject any Shipment for any reason whatsoever, including but not limited to, safety or security concerns.

5. **Hazardous Materials/Dangerous Goods.** Shipper warrants and represents that the Shipment does not include any explosive, incendiary or other device, substance or weapon which may endanger life or the safety of any aircraft, vehicle or other transport conveyance used in connection with the transportation of the Shipment. Shipper shall limit all packages containing hazardous materials/dangerous goods to the materials and quantities authorized for air transportation under the U.S. Department of Transportation ("USDOT") hazardous materials transportation regulations (49 C.F.R. Parts 171, 172, and 173) and the current edition of the International Air Transport Association ("IATA") Dangerous Goods Regulations (together "HM/DG Regulations"). Shipper 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 IATA HM/DG Regulations. Shipper shall also ensure, and Shipper hereby certifies, that, before tendering any Shipment containing hazardous materials/dangerous goods to CAP, the contents of the consignment are fully and accurately described on the shipping papers by proper shipping name; are not prohibited for transport via air or ground by the HM/DG Regulations; and are properly classified, packaged, marked, and labeled, and in proper condition for carriage by air as required by the HM/DG Regulations. Shipper hereby declares that all of the applicable air transport requirements have been met. This Paragraph shall apply regardless of the routing or transportation mode by which the Shipment is transported. CAP reserves the right to reject any Shipment containing any known or suspected dangerous goods.

6. **Liability.** CAP shall be liable for cargo loss or damage, including cargo loss or damage due to unreasonable delay, for any Shipment subject to these Terms and Conditions solely to the extent directly and proximately caused by its negligence or willful misconduct. CAP's sole liability arising from or related to cargo loss or damage, including delay, shall be as set forth in these Terms and Conditions and in no event shall CAP be liable to any Shipper or any other party with an interest in the Shipment except pursuant to these Terms and Conditions.

7. **Liabilities Not Assumed.** CAP SHALL NOT BE LIABLE FOR ANY DAMAGES NOT EXPRESSLY ACCEPTED HEREIN NOR FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INCOME, INTEREST, UTILITY, LOSS OF MARKET, OR THE EFFECTS OF BUSINESS INTERRUPTION, WHETHER OR NOT CAP KNEW OR HAD REASON TO KNOW THAT SUCH

CAP LOGISTICS

GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

DAMAGES MIGHT BE INCURRED. While CAP agrees to make reasonable efforts to ensure completion of the carriage hereunder with reasonable dispatch, CAP does not undertake to arrange for transportation in accordance with any set schedule or timeframe and shall not be liable for failure to do so.

8. **Declared Value and Limitation of Liability.** CAP's liability, regardless of any actual or alleged negligence or willful misconduct and for air transportation, ground transportation (including over the entire route), storage, and other handling, for any loss, damage or delay to the Shipment is limited to the greater of: (i) One Hundred Dollars (US\$100.00), or (ii) Fifty Cents (US\$0.50) per pound per package, subject to a maximum liability of One Hundred Thousand Dollars (US\$100,000.00) per Shipment. In no event will CAP's liability exceed Shipper's actual cost to repair or replace the Shipment or that portion of the Shipment that is lost or damaged in the event the entire Shipment is not lost or damaged. Shipper may request that CAP accept increased liability if Shipper notifies CAP of Shipper's intent to request a higher value prior to the scheduled pick-up of the Shipment by the underlying carrier. Shipper shall pay CAP Sixty-Five Cents (US\$0.65) per One Hundred Dollars (US\$100.00) of value declared. Provided that Shipper declares a higher value and receives a Shipment Confirmation from CAP showing the value declared, CAP's liability for cargo loss and damage will be increased to the lesser of Shipper's actual cost to repair or replace that portion of the Shipment that is lost or damaged in the event the entire Shipment is not lost or damaged, or the declared value. In addition, if Shipper has complied with the requirements set forth above for declaring increased value on the part of CAP, CAP will use reasonable efforts to arrange with underlying carriers to accept liability to the full extent of such declared value. Shipper assumes all risk of any loss, damage, or delay in excess of the declared value or liability limitations set forth herein. The maximum declared value per Shipment is One Hundred Thousand U.S. dollars (US\$100,000.00) unless a greater amount is accepted by CAP as confirmed by written authorization of a corporate officer of CAP, and any effort to declare a value in excess of this maximum, except by obtaining written authorization from a corporate officer of CAP, shall be null and void. Regardless of the value declared, CAP's liability for loss, damage or delay shall not exceed the Shipment's repair cost, depreciated value or replacement cost, whichever is less.
9. **Claims.** The following provisions shall apply to all claims for loss, damage, or delay. A claim for loss or damage must be filed with CAP in writing within fourteen (14) calendar days after the delivery of the Shipment or, of any claim for delay, within twenty-one (21) calendar days of the date of tender to the consignee. The claim shall include complete consignor and consignee information, the Shipment tracking number, the date of the Shipment, and be for a sum certain amount. Failure to provide CAP with notice in the manner and within the time limits set forth herein shall result in the claim being denied. CAP is not obligated to act on any claim until all transportation charges have been paid. The claim amount may not be deducted from these charges or from any outstanding balance owed to CAP without the prior written approval of CAP. All of the original shipping containers, packing, packages, and contents shall be available for CAP's inspection and retained until the claim is resolved. Except as otherwise provided for herein, receipt of the Shipment by the consignee without written notice of damage on the airbill or delivery receipt shall be considered to be prima facie evidence that the Shipment was delivered in good condition. Under no circumstances shall CAP be liable for loss, damage, or delay to the external shipping containers used in the transportation of the Shipment. Any lawsuit to enforce a claim shall be brought against CAP within two (2) years from the date of delivery of

CAP LOGISTICS

GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

the Shipment or, if no delivery, from the date on which the Shipment should have been delivered. The failure of Shipper to comply with the notice provisions specified herein shall be an absolute bar to any such lawsuit filed against or liability of, CAP. Shipper is solely responsible for complying with any claim filing limitations imposed by the underlying carrier, or any limitations applicable to initiation of a legal action. CAP may, in its sole discretion, facilitate claim filing with the underlying carrier, but in no event will CAP have any liability arising from or related to late filing of claims with any such carrier.

10. **Non-Delivery.** In the event of the failure or inability of the consignee to take delivery of the Shipment, CAP shall notify Shipper in writing at the address shown on the shipping document and request disposition instructions, and then may store the goods in a public warehouse in which event the storage charges by such warehouse shall apply. Goods which remain unclaimed for a period of thirty (30) days from the date of notice to Shipper may be sold by CAP at public or private sales and the proceeds of such sale may be applied against any outstanding freight charges, advances or charges of any kind which are due. Any balance remaining after payment of such charges shall be remitted to Shipper, the consignee, or owner. However, Shipper, consignee, and owner shall remain jointly and severally liable to CAP for any deficiency should the proceeds of such sales be insufficient to offset all charges due CAP with respect to the goods. Shipper and consignee agree jointly and severally to indemnify CAP and to hold CAP harmless against all loss and expense, including attorney's fees of whatever nature brought by any other owner or other person having an interest in the goods sold under this provision.
11. **Force Majeure.** CAP shall not be liable for failure to perform, loss, damage, delay or monetary loss of any type caused by: Acts of God; public authorities acting with actual or apparent authority; strikes; labor disputes; weather; mechanical failures; aircraft failures; civil commotions; acts or omissions of customs or quarantine officials; the nature and inherent vice of the freight or any defects thereof; public enemies; hazards incident to a state of war; acts of terrorism; any other matters beyond CAP's reasonable control, or by acts, defaults or omissions of Shipper or consignee for failure to observe these Terms and Conditions, including but not limited to improper packaging, classifying, marking, labeling, incomplete/inaccurate shipping instructions, and failure to observe the rules relating to freight not acceptable for transportation or to freight acceptable only under certain conditions outlined below.
12. **Exceptions to Liability.** The following articles shall not be accepted for carriage and shall not be tendered by Shipper: (a) any Shipment prohibited by law, including, but not limited to, hazardous waste; or (b) household goods and/or personal effects; perishables, computers or servers with data, original works of art, antiques, bonds, coins of any kind, currency, currency equivalents, furs, fur clothing, gems or stones (cut or uncut), industrial diamonds, gold or silver, coined concentrates, jewelry (other than costume jewelry), pearls, precious metals, securities (negotiable), time sensitive written material (for example, bids, contract proposals, etc.), or one-of-a-kind articles or models, prototypes, valuable rugs (that is, Oriental rugs, Persian rugs) and prints or lithographs when the total declared value of any Shipment under this sub-article (b) exceeds sixty-five cents (US\$0.65) per pound per package. If Shipper tenders or CAP unintentionally accepts any such Shipments, CAP's liability shall in no event exceed the lesser of the actual value of the Shipment or sixty-five cents (US\$0.65) per pound per package.

CAP LOGISTICS
GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

13. **Dimensions.** Rates and charges for this Shipment shall be based on actual or dimensional weight, whichever is greater.
14. **C.O.D. Service.** Collect on Delivery (C.O.D.) service is provided under the following conditions: (a) Shipper shall identify the Shipment as a C.O.D. shipment at the time service is requested, (b) Shipper shall specify the type of payment to be received (for example, cash, check, money order, or cashier's check) and (c) CAP and Shipper agree that CAP does not guarantee nor verify that a check, money order, cashier's check, or other such financial instrument is valid or negotiable. All payments are collected at Shipper's risk. Unless prior arrangements are made, the acceptance of cash by CAP and its agents for payment of freight charges and/or C.O.D. amounts is limited to a maximum of one thousand U.S. dollars (US\$1,000.00) per Shipment and/or stop. Payment of freight charges and/or C.O.D. amounts in excess of one thousand U.S. dollars (US\$1,000.00) shall be remitted by cashier's check, certified check, money order, or consignee's check as authorized by Shipper in writing.
15. **Routing, Means of Transportation, and Cargo Liability Limitations.** CAP shall have the right to, in its sole discretion, determine the mode or modes of transport, select the underlying carriers and routing, and arrange for transport on any terms whatsoever. CAP may, in its sole discretion, arrange for transportation via rail directly with rail carriers or indirectly with third party intermodal marketing companies (rail carriers and intermodal marketing companies will be referred to herein as "Rail Providers"). In the event a Rail Provider is used to perform any portion of the underlying transportation, Shipper acknowledges and agrees that the Rail Provider services, including, but not limited to, liability for loss or damage to cargo, and terms and conditions of services are governed by tariffs, circulars or similar documents maintained by the Rail Provider (the "Rail Conditions") and Shipper is bound by and will comply with the Rail Conditions. Shipper shall be solely responsible for proper packing, blocking and bracing of all cargo in accordance with the Rail Conditions, and shall further be responsible for compliance with any and all obligations or charges imposed by the Rail Provider with respect to tender of cargo for rail and/or intermodal transportation, including any and all obligations set forth in the Rail Conditions. Shipper shall indemnify and hold CAP and its officers, directors and employees harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including cost of defense, settlement and reasonable attorney fees), arising from or related to Shipper's failure to comply with, or breach of, the Rail Conditions.
16. **Inspections.** CAP is not obligated to open and inspect the contents of any Shipment. CAP shall have the right to refuse any article, the transportation of which is prohibited by applicable law, rules, orders or regulations, or the transportation of which, in CAP's judgment, would be unsafe. If such Shipment should be accepted or transported, CAP reserves the right to remove it and, if necessary, to abandon it. Where circumstances permit, such Shipment shall be stored at Shipper's expense pending receipt of disposition instructions from Shipper.
17. **Rates and Charges.** Upon Shipper's request, rates may be confirmed via a Quote Confirmation form provided by CAP to Shipper. Shipper shall also be responsible for additional charges for services that were not anticipated by or which were not otherwise included in the rate quoted by CAP to Shipper, including, but not limited to, accessorial charges for wait time, loading and unloading, cancellation fees, diversion, stop-off in-transit, border crossing fees, etc. Regardless of whether the rate is confirmed via

CAP LOGISTICS
GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

Quote Confirmation form, the Shipper and the consignee shall be liable jointly and severally for all unpaid charges payable on account of the Shipment and to pay or indemnify CAP from claims, fines, penalties, damages, costs (storage, handling, reconsignment, return of freight to Shipper, etc.) or other sums which may be incurred by CAP by reason of any violation of this contract or any other default of Shipper or consignee or their agents. All charges are due without offset within thirty (30) days of CAP's invoice. All invoices not paid within 30 days of invoice date shall be subject to a charge of one and one-half percent (1-1/2%) per month, together with all collection costs incurred by CAP, including attorney fees. Claims for overcharges or duplicative payments shall be made in writing and are extinguished unless received by CAP within one (1) year after the date of acceptance of the shipment by CAP.

18. **Lien.** CAP shall have a lien on any and all documents and Shipments of Shipper under CAP's actual or constructive possession or control for monies owed to CAP with regard to the Shipment on which the lien is claimed, prior Shipment(s) or both. In the event CAP exercises its lien it shall notify Shipper of the exact amount of monies due and owing by Shipper. CAP shall also notify Shipper of all storage and continuing charges accruing on Shipments subject to CAP's lien. CAP may refuse to surrender possession of the Shipment(s) until such charges are paid. CAP shall release its lien upon receipt of payment by Shipper of the total amount due. In the event Shipper does not satisfy CAP's lien within fifteen (15) days of CAP's exercise of the lien, CAP shall have the right, but not the obligation, to sell such Shipment(s) at public or private sale or auction without further notice to Shipper.
19. **Shipper's Indemnities.** Shipper and consignee shall defend, indemnify and hold CAP and its agents, employees, representatives and contractors harmless for any claim, allegation, loss, penalty, fine or any other monetary losses which are a result of: (a) negligence or other wrongful conduct of Shipper, or its employees, agents, representatives or contractors; (b) breach of these Terms and Conditions by Shipper, or its employees, agents, representatives or contractors; (c) any claim for loss, damage or delay to cargo in excess of CAP's limit of liability as set forth herein; (d) CAP's compliance with instructions provided by or on behalf of Shipper, or CAP's reliance on information provided by or on behalf of Shipper; or (e) any auxiliary services including but not limited to local cartage, crating, uncrating, packing, and unpacking which are requested by Shipper or consignee and arranged by CAP as a customer service unless such services are actually performed by CAP or its agents.
20. **Dispute Resolution and Governing Law.** These Terms and Conditions and the services provided by CAP under the airbill shall be governed by and subject to the applicable federal law of the United States and by the laws of the State of Colorado, without regard to the choice-of-law rules of Colorado or any other State. The Parties waive any and all rights and remedies provided by Part B of Subtitle IV to Title 49 of the U.S. Code to the extent such rights or remedies conflict with the provisions of these Terms and Conditions. The Parties also waive access to records pursuant to 49 C.F.R. Part 371. SHIPPER AND CAP AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN STATUTES, REGULATIONS, OR COMMON LAW, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING DENVER, COLORADO. SHIPPER AND CAP HEREBY CONSENT TO THE JURISDICTION OF SUCH COURTS. In the event Shipper files an action against CAP, Shipper hereby consents to any CAP-instituted transfer of such action to any other venue in which CAP is a party or subsequently becomes a party to an action concerning loss, damage or delay to the

CAP LOGISTICS GROUND AND U.S. AIR FREIGHT TERMS AND CONDITIONS

cargo that is the subject of Shipper's action. Should CAP successfully defend itself or any legal actions brought by any party with an interest in this Shipment, CAP shall be entitled to reasonable attorney fees and costs. NOTE: In lieu of legal actions, any disputed claim not greater than fifteen thousand U.S. dollars (US\$15,000.00), and all claims arising in the event of bankruptcy of Shipper, shall be settled through binding arbitration submitted to the Transportation Arbitration Board or the American Arbitration Association under its cargo claim arbitration program. An alternative arbitrator is to be selected by CAP if the claim is unacceptable for arbitration by both of the foregoing arbitration organizations. The Parties agree that no consolidated claims or class actions shall be arbitrated.

21. **Cargo Security Requirements.** Shipper acknowledges that CAP, like all indirect air carriers, is required by the Transportation Security Administration of the U.S. Department of Homeland Security ("TSA") to maintain an air cargo security program. **If Shipper is acting as an agent, authorized representative, broker, carrier, or other freight intermediary for any other person or entity,** Shipper shall disclose that fact to CAP and shall assist CAP in complying with the TSA requirements by enabling CAP to obtain any necessary documents from, or otherwise qualify, such other person or entity. **As required by TSA regulations (49 C.F.R. § 1548.9(b)), Shipper hereby consents to a search or inspection of the cargo, including screening of the cargo.** If Shipper, as the person who originates and tenders cargo for air transportation or as such person's representative, is an individual (natural person), such person shall advise CAP of that fact, and CAP shall, if required by law, provide Shipper or such person with a Privacy Act Notice.