

CAP LOGISTICS

AIR CHARTER TERMS AND CONDITIONS

1. APPLICABILITY. These CAP Logistics Air Charter Terms and Conditions govern arrangement of air charter cargo transportation services by C. A. P. Air Freight, Inc. d/b/a CAP Logistics (“CAP”) on behalf of the customer as well as any other entity with an interest in the goods (“Customer”). Customer acknowledges and agrees that it is authorized to arrange for the services to be provided by CAP hereunder. Upon acceptance, CAP agrees to arrange transportation services with due diligence, but does not guarantee any speed, route, departure or arrival time, or date. CAP may terminate this Agreement without notice if Customer is in breach hereof.

2. PROCUREMENT SERVICES. CAP performs Procurement Services under this Agreement as solely a transportation arranger, and not as an air carrier. CAP’s acceptance of or performance of its obligations under this Agreement shall not subject CAP to any liabilities of the Aircraft Operator. CAP shall arrange, directly or indirectly, for the provision of the Aircraft from the Aircraft Operator for Customer’s use.

3. CHARTER PRICE. All oil, crew salary, crew expense, and aircraft maintenance fees are included in the Charter Price. All other expenses, charges and costs, including, without limitation, de-icing, transportation taxes, fuel surcharges, changes in route due to weather or changes in the size of the cargo, foreign taxes, levies duties, special or accessorial services (e.g., storage, non-standard on/offloading equipment, cargo security screening, cargo preparation/palletization, etc.) are the responsibility of Customer. Any advancements or disbursements by CAP of such amounts will be promptly reimbursed by Customer. Any payload referred to in this Agreement means the gross payload including the weight of the cargo, packaging, and any and all special equipment required for the loading, carriage or unloading of the shipment to or from the Aircraft. In addition, any layover or detention charges assessed by the Aircraft Operator will be the responsibility of Customer.

4. PAYMENT. Customer will deliver the cargo properly prepared, labeled, securely packaged, loaded, and ready for transportation by aircraft. All charges owed by Customer must be paid in advance, although CAP may, in its sole discretion, grant credit to Customer which shall in no way be interpreted as a waiver of Customer’s obligation of prepayment. Customer shall pay to CAP all amounts owed in U.S. currency without offset and within fifteen (15) days from the date of delivery. In no event will any amounts paid hereunder be deemed a deposit or refundable. If cancellation charges are imposed by the Aircraft Operator, Customer shall be solely responsible therefore. If

charges arise subsequent to payment by Customer, which charges are advanced by CAP, Customer will immediately pay CAP such amounts upon demand. CAP will invoice charges, and invoices are due upon presentation. Amounts due but unpaid shall be subject to a late payment fee of 0.05% per day, up to 1-½ % per month, which shall be assessed on the outstanding amount of any invoice. Any late payment fees accrued for a 30-day period shall be added to the outstanding invoice balance of the succeeding 30-day period for purposes of assessing the late payment fee. The entire Charter Price shall be deemed to be earned at the time the aircraft is dispatched to the origin location to make pick-up. No set-off, delay or counterclaim (whether arising in respect of this Agreement or otherwise) shall entitle Customer to withhold the Charter Price or any other sums payable or reimbursable to CAP and/or Aircraft Operator under or by reason of this Agreement. Customer shall pay for or reimburse CAP for its costs related to any efforts to collect amounts due hereunder, including, but not limited to, legal fees and collection costs.

5. OBLIGATIONS OF CUSTOMER. Prior to loading, Customer shall provide CAP or the Aircraft Operator with the following information: date and place of tender of the Shipment; Shipment destination; name and address of consignee; precise nature of the cargo; contact phone number; number of packages, method of packing; particular marks/numbers used; weight, quantity, volume, and dimensions of cargo; actual condition of the cargo and its packaging at time of tender for shipment; and any special circumstances, conditions or handling information. Customer shall be deemed to have warranted the completeness and accuracy of this information and to have agreed that neither CAP nor the Aircraft Operator shall be responsible for confirming its completeness and accuracy, and to have agreed that CAP and Aircraft Operator shall be entitled to rely upon the completeness and accuracy thereof. All preparation of the shipment for carriage shall be the responsibility of and to the account of Customer. Customer shall not tender to CAP or the Aircraft Operator any Shipment whose contents is classified as a hazardous material or dangerous goods under the 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”) without prior notification to, and the written assent of, CAP and the Aircraft Operator. CUSTOMER HEREBY DECLARES THAT ALL OF THE APPLICABLE AIR TRANSPORT REQUIREMENTS APPLICABLE TO SUCH SHIPMENTS HAVE BEEN MET.

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6. AIR WAYBILL. The contract of transportation shall be directly between Customer and the Aircraft Operator and will be subject to the terms and conditions set forth in the Aircraft Operator's air waybill, if not otherwise superseded by an agreement between Customer and the Aircraft Operator.

7. LOSS AND DAMAGE CLAIMS. (a) CAP does not assume liability for any cargo loss or damage with respect to any shipment serviced by it hereunder, except as otherwise provided in this section. In the event CAP is liable for cargo loss or damage on any basis whatsoever, Customer agrees that CAP's liability, if any, shall be limited to the same extent as the underlying Aircraft Operator's or, if the Customer has declared excess value, then the amount that the Aircraft Operator would have been liable for but for such declared value. IN NO EVENT SHALL CAP BE LIABLE TO CUSTOMER FOR DELAY DAMAGES, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. (b) Aircraft Operator liability is governed by the transportation contract entered into between Customer and the Aircraft Operator (e.g., the air waybill). Aircraft Operators limit their liability. When notified by Customer in writing at least 72 hours prior to scheduled pick-up of the Shipment of Customer's request for higher levels of carrier liability than those accepted by the Aircraft Operator, CAP shall make commercially reasonable efforts to secure higher levels of carrier liability for Customer. (c) In the event of any loss of or damage to a Customer Shipment serviced hereunder, Customer may pursue all such claims ("Transportation Claims") directly against the applicable Aircraft Operator, or Customer may submit Transportation Claims to CAP for processing with the applicable Aircraft Operator. In no event will CAP be liable for expiration of any claim filing deadline with respect to any claim tendered by Customer for filing by CAP. If Customer wishes for CAP to file a Transportation Claim on its behalf, it must provide this claim to CAP no later than seven (7) days after receipt of the cargo for which the damage claim is made. Upon receipt from Customer of notice of a claim and all other information required to process a Transportation Claim, CAP shall file such Transportation Claim on behalf of Customer with the applicable carrier. CAP assumes no liability in respect of any such Transportation Claim and provides no guarantees as to a settlement or disposition of any such Transportation Claim. In the rare event that CAP is liable to Customer for a cargo claim as set forth above, Customer shall file a proper claim for loss, damage, or delay to a Shipment in writing or by Fax in writing with CAP's designated cargo claims office within twenty-one (21) days from date of

delivery (or when reasonable time has lapsed for delivery for non-delivery). Lawsuits involving Shipments, if any, shall be filed within one (1) year and one (1) day from the date of delivery.

8. FORCE MAJEURE. Neither CAP nor the carrier shall be liable for any delay in the performance of their respective obligations under this Agreement resulting directly or indirectly from or contributed to by any force majeure, including, but not limited to, acts of God or other circumstances beyond their reasonable control.

9. DISPUTE RESOLUTION. These CAP Logistics Air Charter Terms and Conditions shall be interpreted in accordance with, and governed by, the laws of the United States and of the State of Colorado, without regard to the choice-of-law rules of Colorado or any other jurisdiction. THE PARTIES AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING DENVER, COLORADO. THE PARTIES HEREBY CONSENT TO THE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS SERVING DENVER, COLORADO.