

# WAYBILL TERMS OF CARRIAGE

**TWI Group, Inc.**

## **SUPPLEMENTAL TERMS FOR INTERNATIONAL AIR CARRIAGE**

### **GENERAL TERMS FOR ALL CARRIAGE**

- A.** In this contract and the Notices appearing hereon: "Carrier" includes TWI Group, Inc. its affiliated companies, and every carrier, subcontractor, servant and agent who carries or undertakes to carry the cargo or perform any other service related to, or incidental to, such carriage.
- B.** The Shipper warrants it has the authority of any and all parties having any interest in the cargo to enter this contract on their behalf. In tendering the cargo described herein for carriage, shipper agrees to the conditions of this contract and that this Waybill is non-negotiable unless otherwise clearly marked and agreed by Carrier in writing prior to shipment.
- C.** All provisions herein shall govern to the fullest extent permissible under any national law or international convention which may apply by force of law. In the event one or more provisions herein should for any reason be held unenforceable or invalid, such provision(s) shall be enforced to the maximum extent possible and the remaining provisions shall survive unaffected. Nothing in this waybill contract-for-carriage shall be considered a waiver of any defense available to the Carrier under applicable national law or international convention. No agent, employee or representative of Carrier has the authority to waive or revise in any way any provision of this contract.
- D.** Shipment is subject to charges for actual or dimensional weight in accordance with applicable rates and rules. The shipper(s) and consignee(s), as identified on the waybill face, and their principals, shall be jointly and severally liable for any and all unpaid charges payable on account of this contract and also for indemnity payment to carrier for any and all damages, fines, claims, penalties, liabilities, costs or other moneys whatsoever which may be incurred by Carrier by reason of breach of this contract or other cause not exclusively attributable to Carrier. Charges may be reversed to the responsible parties if shipment is refused or payment is not made by the original bill-to party. Claims for overcharges and duplicate billings must be made within ninety (90) days from the date of the issue of the waybill, as must claims for duplicate payments and overpayments. The claim amount may not be deducted from the waybill charges. Instead, it will be refunded when the claim is validated and the claim amount is substantiated by the Carrier.
- E.** In tendering the cargo to Carrier, shipper warrants the cargo and all parties having any interest in the cargo are in full compliance and adherence with all rules and regulations of this contract as well as government regulations and controls applicable for the carriage contemplated on the face hereof. The shipper is responsible for sufficiency and accuracy of accompanying documents. Except in the circumstance of packing performed by the Carrier, the Shipper warrants the cargo is packed to withstand the ordinary rigors of the carriage contemplated on the face hereof. Without any obligation to do so, the Carrier shall have the unrestricted liberty to inspect the packaging and contents of the cargo for any purpose and to inquire and verify the accuracy or sufficiency of information provided and to seek assurances. Any discrepancies may result in shipment delay, cancellation and/or additional charges assessed by the Carrier. The Carrier may disclose and report, whether on a mandatory or voluntary basis, any and all regulatory non-compliance to authorities; such authorities may exercise forfeiture or assess penalties against parties having an interest in the cargo, including, but not necessarily limited to, the Shipper.
- F.** As set forth herein, Carrier limits its liability to varying release rates depending upon the service provided, unless a higher value is declared herein and commensurate charges paid. Certain commodities may have a maximum value which can be declared with the Carrier, including items of subjective / extraordinary value and / or fragility. Where there is a collective declared value for all packages, the declared value for each package will be determined by dividing the total declared value by the number of packages on the waybill face, absent verifiable evidence to Carrier's satisfaction of alternative allocation. In no event shall Carrier be liable for an amount greater than the value of the affected cargo or for consequential, indirect, incidental, or punitive damages even if Carrier has been put on notice of the possibility of such damages. Carrier shall have no liability for damage to, or loss of, the cargo or any part of the cargo in circumstances of inherent defect of that cargo, quality or vice of that cargo, defective packing not performed by the Carrier, or any force majeure event, to include but not be limited to, natural disasters, strikes, civil unrest, acts of war or armed conflicts, acts of public authorities, and acts or threatened acts of public enemies, hijackers or assailing thieves.
- G.** The liability of Carrier will be that of a warehouseman if the cargo is not picked up within 48 hours after notice of its arrival is issued. Notwithstanding, Carrier shall be entitled to all benefits conveyed under this Contract, with the additional rights to lien the cargo for storage charges and to sell the cargo at public or private sale not less than 30 days after having given written notice thereof to the shipper and consignee, as identified on the waybill face. Carrier further reserves all other rights as may exist by law to recover unpaid amounts.

### **SUPPLEMENTAL TERMS FOR SURFACE TRANSPORTATION AND DOMESTIC AIR CARRIAGE**

- (i)** This section – (i) through (v) – applies only to TRANSPORTATION AND ANY SEGMENT OF TRANSPORTATION NOT COMPRISING INTERNATIONAL AIR CARRIAGE AND NOT GOVERNED BY FORCE OF LAW BY AN INTERNATIONAL AIR CONVENTION. In the event carriage under this waybill includes a period or segment of international air transportation which is governed by force of law by an international air convention, any loss, damage or shortage shall be presumed to have occurred during the course of such international air transportation subject to evidence of the contrary.
- (ii)** Transportation of the cargo hereunder is subject to availability of equipment and space therein. The Carrier undertakes to complete the carriage with reasonable dispatch. The Carrier shall be permitted in its discretion to use alternative carriers, equipment and also modes of transportation without any obligation of prior notice. The Carrier shall exclusively determine the routing as it deems appropriate, and shall have the liberty to change or deviate from the routing shown on the face hereof.
- (iii)** NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY>> The Carrier's liability is limited to US\$50 (fifty cents), per pound, multiplied by the weight of each piece of the shipment which may have been delayed, lost, or damaged, unless a higher value is declared herein and commensurate charges paid thereon for the actual value of such piece plus the transportation charges for which the shipper, consignee and bill-to third party may be liable. If applicable, and for good and sufficient consideration acknowledged hereby, shipper expressly waives pursuant to 49 U.S.C. § 14101 Carrier's general liability as may otherwise exist under 49 U.S.C. § 14706(a), and any successor statute(s).
- (iv)** The cargo is subject to a general lien by the Carrier for monies owed the Carrier relating to the cargo, a prior shipment, and/or both, subject to sale, notice and reservation of rights provisions in clause (G) above.
- (v)** To the extent applicable, and for good and sufficient consideration hereby acknowledged received, the shipper expressly waives pursuant to 49 U.S.C. § 14101 the minimum periods for the filing of claims and civil actions, as defined under 49 U.S.C. § 14706(e)(1), and any successor statute(s). Considerations as to time for notice of claim and time for suit are otherwise governed in accordance with applicable law, and such time limits shall in no event be considered extended by this contract. Unless applicable law provides for a shorter time limit, any rights and/or claims against Carrier shall be extinguished unless: **(a)** notice is given within 90 days from the date of delivery or the date the cargo should have been delivered; and **(b)** an action is both filed and served upon the Carrier within one year from the date of delivery or the date the cargo should have been delivered. Notwithstanding the foregoing, as a condition precedent to recovery, any damage or loss discovered after a delivery without written exception (as may be the circumstance with concealed damage or shortage) must be reported in writing to Carrier within 7 days after delivery. In all events, Carrier must be given an opportunity to inspect the cargo and its packaging within 15 days after its receipt of the written notice as provided herein. All disputes hereunder shall be determined exclusively in the State and Federal courts located in Los Angeles County, California. If applicable, and for good and sufficient consideration acknowledged hereby, shipper expressly waives pursuant to 49 U.S.C. § 14101 the venue provisions of 49 U.S.C. § 14706(d) to the extent inconsistent with Los Angeles County, California.

NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY>> 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 to the liability of the Carrier in respect of loss of, damage or delay to cargo. Carrier's limitation of liability in accordance with those Conventions shall be as set forth in subparagraph 4 unless a higher value is declared.

1. In this contract and the Notices appearing hereon: "CARRIER" Includes the air carrier issuing this air waybill and every carrier and agent who carries or undertakes to carry the cargo or perform any other service related to, or incidental to, such carriage. SPECIAL DRAWING RIGHT (SDR) is a Special Drawing Right as defined by the International Monetary Fund. WARSAW CONVENTION means whichever of the following instruments is applicable to the contract of carriage: the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; that Convention as amended at The Hague on 28 September 1955; that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be. MONTREAL CONVENTION means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.
2. 2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.  
2.2 To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:  
2.2.1 applicable laws and government regulations;  
2.2.2 provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. When carriage is to/from the USA, the shipper and the consignee are entitled, upon request, to receive a free copy of the Carrier's conditions of carriage. The Carrier's conditions of carriage include, but are not limited to:  
2.2.2.1 limits on the Carrier's liability for loss, damage or delay of goods, including fragile or perishable goods;  
2.2.2.2 claims restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the Carrier for its acts or omissions, or those of its agents;  
2.2.2.3 rights, if any, of the Carrier to change the terms of the contract;  
2.2.2.4 rules about Carrier's right to refuse to carry;  
2.2.2.5 rights of the Carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate Carrier or aircraft and rerouting.
3. The agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and place of destination, set forth on the face hereof or shown in Carrier's timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive Carriers is regarded as a single operation.
4. Carrier's liability limitation shall be the per kilogram monetary limit set out in any applicable Convention. During the course of any international carriage by air, where neither the Warsaw Convention nor the Montreal Convention applies, Carrier's liability shall not exceed 19 SDRs per kilogram, subject to section 6.2.
5. 5.1 Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with Carrier's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements.  
5.2 When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.
6. 6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.  
6.2 In carriage to which neither the Warsaw Convention nor the Montreal Convention applies Carrier shall, in accordance with the procedures set forth in its general conditions of carriage and applicable tariffs, permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if so required.
7. 7.1 In cases of loss of, damage or delay to part of the cargo, the weight to be taken into account in determining Carrier's limit of liability shall be only the weight of the package or packages concerned.  
7.2 Notwithstanding any other provisions, for "foreign air transportation" as defined by the U.S. Transportation Code:  
7.2.1 in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and  
7.2.2 in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.
8. Any exclusion or limitation of liability applicable to Carrier shall apply to Carrier's agents, employees, and representatives and to any person whose aircraft or equipment is used by Carrier for carriage and such person's agents, employees and representatives.
9. Carrier undertakes to complete the carriage with reasonable dispatch. Where permitted by applicable laws, tariffs and government regulations, Carrier may use alternative carriers, aircraft or modes of transport without notice but with due regard to the interests of the shipper. Carrier is authorized by the shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.
10. Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good condition and in accordance with the contract of carriage.  
10.1 In the case of loss of, damage or delay to cargo a written complaint must be made to Carrier by the person entitled to delivery. Such complaint must be made:  
10.1.1 in the case of damage to the cargo, immediately after discovery of the damage and at the latest within 14 days from the date of receipt of the cargo;  
10.1.2 in the case of delay, within 21 days from the date on which the cargo was placed at the disposal of the person entitled to delivery.  
10.1.3 in the case of non-delivery of the cargo, within 120 days from the date of issue of the air waybill, or if an air waybill has not been issued, within 120 days from the date of receipt of the cargo for transportation by the Carrier.  
10.2 Such complaint may be made to the Carrier whose air waybill was used, or to the first Carrier or to the last Carrier or to the Carrier, which performed the carriage during which the loss, damage or delay took place.  
10.3 Unless a written complaint is made within the time limits specified in 10.1 no action may be brought against Carrier.  
10.4 Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
11. Shipper shall comply with all applicable laws and government regulations of any country to or from which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws and regulations. Carrier is not liable to shipper and shipper shall indemnify Carrier for loss or expense due to carrier's failure to comply with this provision.
12. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.