

# **NOVO EXPRESS INTERNATIONAL**

## **TERMS AND CONDITIONS OF SERVICE**

The Terms and Conditions of Service set forth below shall apply to all services performed by Novo Express International, Inc. and shall constitute a binding contract between Novo Express and the Customers, Shippers. Third Parties and Consignees for whom it provides services.

### **1. Definitions**

(a) "Novo Express" means Novo Express International, Inc., its subsidiaries, related companies, shareholders, employees, agents and/or representatives.

(b) "Customer" means the person or firm on whose behalf Novo Express has been hired to perform services, as well as its agents and/ or representatives.

(c) "Shipper" means the person tendering goods to Novo Express for transport or storage and the person for whose account goods are being transported or stored, and any and all agents and/or representatives of the Shipper, including, but not limited to, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, and consignees.

(d) "Consignee" means the person named as the "consignee" on any shipper's instructions, receipt, truck tag, bill of lading or other document, the owner of the Goods, and all other persons lawfully entitled to possession of the Goods upon delivery.

(e) "Third Party" means the articles of every kind or description, including their packaging, containers, or other shipping units or materials, tendered to Novo Express for transportation, storage and/or delivery as identified on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Novo Express.

(f) "Goods" means articles of every kind or description, including their packaging, containers, or other shipping units or materials, tendered to Novo Express for transportation, storage and/or delivery as identified on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Novo Express.

### **2. Responsibilities of Novo Express**

Unless Novo Express issues a bill of lading under its own name as a carrier, Novo Express acts only as the agent of the Customer, Shipper, and Third Party in arranging for the handling, transport, storage and/or delivery of Goods and does not assume liability as a carrier or warehouseman. In cases where the Customer/Shipper/Third Party/Consignee does not select a person or firm to perform the services requested, Novo Express shall use reasonable care in selecting a person or firm to do so.

Novo Express shall use reasonable care to ensure that written special instructions concerning the handling, transport, storage or delivery of Goods or collection of funds in payment for the Goods, including instructions relating to "Cash/Collect" on "Delivery (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other documents, are complied with. However, Novo Express shall have no liability if the person or firm which is responsible for executing the instructions or obtaining the documents required fails to follow the instructions provided.

Although Novo Express may arrange for cargo insurance to its Customers, Novo Express is under no obligation to procure such insurance. If a Customer requests cargo insurance, it shall be liable for the amount charged by Novo Express to procure such insurance, which shall consist of the insurance plus an amount to cover Novo Express's overhead and profit.

Novo Express does not warrant or represent that any person or firm to whom it entrusts Goods for handling, transport, storage and/or delivery will render the services for which it has selected, nor does Novo Express assume responsibility or liability for any actions and/or inactions of such persons or firms. Novo Express shall not be liable for delay or loss of any kind which occurs while the Goods are in the custody or control of a person or firm other than Novo Express.

All claims which arise from the acts or conduct of a person or firm other than Novo Express shall be brought solely against such person or firm. Novo Express shall reasonably cooperate with the Customer in connection with any such claims. Customer/Shipper/Third Party agrees, jointly and severally, to pay any charges or costs incurred by Novo Express in doing so.

### **3. Limitations of Liability of Carriers and Others**

Persons or firms to whom Novo Express entrusts Goods often limit their liability to amounts which are substantially less than the actual value of the Goods involved unless a higher limit of liability is requested or a declared value stated, both of which require additional payments. Novo Express will not request a higher limit of liability is requested or declare a value for Goods unless it receives specific written instructions to do so from Customer, along with payment for the excess coverage or declared value requested.

**If Novo Express does not receive written instructions to request a higher limit of liability or declare a value, or upon the failure or refusal of the Customer/Shipper/Third Party to pay for the higher limit of liability or declared value requested, or upon the refusal of the person or firm to whom the goods are to be entrusted to accept the goods at the higher limit of liability or declared value requested, Novo Express may, in its discretion, tender the goods to the person or firm subject to the standard limit of liability offered, without incurring liability for doing so.**

### **4. Customer/Shipper/Third Party/Consignee Warranties**

Customer, Shipper, Third Party and Consignee warrant and represent as follows:

(a) The amount and description of any Goods tendered to Novo Express for handling, transportation, storage and/or delivery as set forth on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Novo Express is accurate.

(b) The goods tendered for handling, transport, storage and/or delivery are not "unacceptable goods" as described in paragraphs 5(a) through 5(h) below;

(c) The Goods have been properly packed, marked and secured to ensure safe handling, transportation, storage and/or delivery with ordinary care;

(d) The Goods have been packed in compliance with any applicable governmental laws or regulations which pertain to their transport, storage and/or delivery.

Customer, Shipper, Third Party and Consignee jointly and severally agree to indemnify Novo Express and hold it harmless from any claims which may arise as a consequence of any breach of the foregoing representations and warranties, including, without limitation, claims for personal injury or property damage.

### **5. Unacceptable Goods**

The following goods are unacceptable goods and shall not be accepted for handling, transport, storage and/or delivery:

- (a) Valuables, including articles which have a value, whether declared or not, of more than \$500 per pound, unless Novo Express has consented to transport or store such Goods in a separate writing;
- (b) Gold, platinum or other precious metals or any products thereof;
- (c) Paper money, coins, marketable securities, traveler's checks, stamps and bank cards or credit cards which are valid or in usable condition.
- (d) Precious gems, including diamonds, rubies, emeralds, sapphires, opals, pearls (including cultured pearls), and ornaments and accessories made therefrom or incorporating such articles;
- (e) Animals;
- (f) Human remains and ashes;
- (g) Dangerous or hazardous articles, including, without limitation explosives, gases, flammable liquids, or combustible solids, oxidants, poisons, or substances which easily disseminate viruses, radioactive substances, corrosive substances, and other harmful materials;
- (h) Any article with a declared value in excess of \$1,000.00, unless an authorized agent of Novo Express agrees to special terms and conditions with the Customer/Shipper/Third Party/Consignee in a separate writing; and
- (i) Other Goods which are deemed to be inappropriate for transport or storage by Novo Express.

#### **6. Right to Inspect**

Novo Express and the persons or firms to whom Goods are entrusted are entitled, but shall have no obligation, to open any closed container or shipping unit to inspect the contents thereof to ascertain whether the description, amount, and/or value of the Goods described in any shipper's instructions, receipt, truck tag, bill of lading or other document provided to Novo Express is accurate, and that Goods have been properly packed.

#### **7. Freight and Other Charges**

(a) Quotations as to fees, freight charges, insurance premiums or other charges given by Novo Express are for informational purposes only and are subject to change without notice; no quotation shall be binding unless and until Novo Express agrees in writing to undertake the handling, transportation, storage or delivery of the Goods at the specified rate or amount and payment arrangements have been agreed upon.

(b) The Customer, Shipper and Third Party, jointly and severally, and the Consignee in the event of a freight collect shipment, agree to pay all freight, storage and other charges payable for shipment of the Goods described on the face of any shipper's instructions, receipts, track tag, bill of lading or other document provided to Novo Express.

(c) If the transaction involves a freight collect shipment, Customer, Shipper and Third Party acknowledge and agree that Novo Express may decline to make delivery of the shipment unless and until all freight and other charges have been paid.

(d) Customer, Shipper, Consignee and Third Party acknowledge that the freight and other charges collected or determined to be due at the time of receipt by Novo Express have been established based upon their representations concerning the Goods to be transported and/or stored, and that additional charges may be due if the representations are later determined to be inaccurate.

(e) **Novo Express shall have a general and continuing lien on all Goods and documents delivered to Novo Express by the Customer, Shipper, Third Party or Consignee for all charges which are payable to Novo Express by the Customer, Shipper, Third Party or Consignee, regardless of whether the charges related to (i) the Goods and documents upon which the lien is asserted, (ii) Goods previously handled, or (iii) other charges.**

(f) Novo Express may file a suit for recovery of freight, storage or other charges owed, including amounts which may be due under paragraph 4, in a jurisdiction where the Goods were accepted for handling, transport, storage and/or delivery, or in a jurisdiction where a Customer/Shipper/Third Party defendant resides or maintains its principal office, at Novo Express's option.

(g) In the event that it becomes necessary to retain an attorney to collect freight, storage or other charges owed under these Terms and Conditions or to recover an amount which is due under paragraph 4, Novo Express shall be entitled to recover its attorney's fees and costs in addition to the transportation, storage and/or other charges or amounts owed, plus interest.

## **8. General Provisions Regarding Handling, Transportation and Storage of Goods**

(a) The handling, transportation, storage and delivery of Goods is subject to availability of suitable equipment and space therein. Novo Express and the persons and firms entrusted with Goods shall have the right without giving notice to or obtaining the consent of Customer, Shipper, Consignee or Third Party, to (i) substitute sub-carriers and/or a mode of transportation other than that described on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document, or as otherwise designated by the Customer, Shipper, Consignee or Third Party, and (ii) deviate from the routing described on a truck tag, bill of lading, set of shipper's instructions or other document, or as otherwise designated by the Customer, Shipper, Third Party or Consignee.

(b) The transportation of Goods is subject to inherent delays which cannot be controlled by Novo Express or the carrier of the goods. Notwithstanding any oral or written agreement to the contrary, neither Novo Express nor the carrier guarantees that the Goods will arrive at the destination at any particular time.

(c) If Novo Express has issued a bill of lading in its own name as a carrier, and if the Goods are not claimed within forty-eight (48) hours after notice of arrival is given to the Consignee. Carrier will hold the shipment as a Bailee, and not as a carrier. If the Goods come into the possession, custody and control of Novo Express for any reason, Novo Express will also hold the Goods as a Bailee, and not as a carrier. In either event, Novo Express shall have the right to sell the Goods at a public or private sale not less than thirty (30) days after having given written notice of its intention to do so to the Customer. Novo Express shall have the right to reimburse itself for any unpaid storage, freight or other charges incurred in connection with the Goods from the proceeds of the sale, and shall remit the balance to the party entitled thereto.

## **9. Limitation on Novo Express's Liability**

(a) Unless Novo Express issues a bill of lading under its own name as carrier (in which case its liability shall be described and governed by the provisions set forth in the bill of lading), Novo Express shall be liable only for its own negligence, and only to the extent that its negligence is the direct and proximate cause of any injury claimed; Novo Express shall not be liable for the acts of other parties, including persons or firms to whom it entrusts Goods.

(b) Unless additional liability coverage is purchased in accordance with subparagraph (c) below, Novo Express's liability shall be limited to the lesser of (i) \$50 per shipment, (ii) \$.50 per pound of the Goods which are lost, damaged or delayed, or (iii) the difference between the amount incurred by Novo Express in connection with the handling, transport, storage and/or delivery of the Goods and the amount charged to the Customer, Shipper, Third Party and/or Consignee.

(c) In connection with all services performed by Novo Express, additional liability coverage may be available, up to the actual or declared value of the Goods in issued; such coverage must be requested and confirmed in writing by Novo Express prior to tender of Goods to Novo Express for handling, transportation or storage.

(d) Novo Express shall not be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been put on notice of the possibility of such damages.

#### **10. Indemnification**

Customer/Shipper/Third Party/Consignee agrees to indemnify, defend, and hold Novo Express harmless from any liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorneys' fees, which Novo Express may incur, suffer or be required to pay by reason of a claim, suit or proceeding which arises from their violation of any law or regulation of any state or nation regarding the handling, transport, storage, import, export or delivery of Goods.

#### **11. Advancing Money**

Customer/Shipper/Third Party agrees, jointly and severally, to pay all charges in advance unless the Novo Express agrees in writing to extend credit; the granting of credit in connection with a particular transaction shall not be considered a waiver of this provision as to other transaction.

#### **12. Arbitration**

To the extent permitted by law, Customer, Shipper, Third Party and Consignee agree that, in the event that any dispute arises concerning the rights and/or responsibilities of the parties with respect to this agreement, the dispute shall be submitted to arbitration before an arbitrator on a panel established by the Transportation Lawyer's Association. The initiation of an arbitration proceeding shall be considered a "suit" for the purposes of paragraph 13 of this Agreement. Notwithstanding the foregoing, Novo Express may initiate a lawsuit to obtain pre-judgment attachment remedies; however, any such action shall be stayed pending submission of the underlying dispute to Arbitration unless both parties elect to proceed without Arbitration.

#### **13. Conditions for Filing Suit Against Novo Express**

(a) Except in cases in which a shorter or longer period of notice is prescribed by law, Novo Express shall be relieved of all liability unless the claimant delivers a written notice of claim to Novo Express within thirty (30) days of the event giving rise to claim; the notice shall include a description of the transaction(s) involved which is sufficient to enable Novo Express to identify the transaction(s) from its records, a description of the events which give rise to the claim, including the dates the events occurred, and a description of the nature and amount of the loss or damage claimed.

(b) Novo Express shall be relieved of all liability unless suit is filed in a proper forum and venue and a copy of the suit is properly served on Novo Express within the following time limits:

(i) For claims arising out of ocean transportation, within one (1) year from the date of the loss or damage, or the date the Goods arrived or should have arrived at the destination, whichever is earlier;

(ii) For claims arising out of air, ground, inland water or rail transportation, within two (2) years from the date of the loss or damage, or the date the Goods arrived or should have arrived at the destination, whichever is earlier;

(iii) For claims of any other type, within two (2) years from the date of the events giving rise to the loss or damage.

(c) Any suit against Novo Express for loss or damage arising out of the handling, transport, storage or delivery of Goods must be filed in the County of San Mateo, State of California, United States of America.

**14. Modification of These Terms and Conditions**

These Terms and Conditions of Service may only be modified, altered or amended in a writing signed by Novo Express.

**15. Severability**

In the event any paragraph and/or portion of these Terms and Conditions is found to be invalid or unenforceable, the remaining portions of these Terms and Conditions shall remain in force and effect.

**16. Governing Law**

These Terms and Conditions of Service and the relationship of the parties shall be governed by the law of the State of California, to the extent not pre-empted by federal law or treaties of the United States.