

- 1. Applicability.** These Air Cargo Terms of Service (“Terms”) govern the arrangement by **Armstrong Transport Group, LLC** (“3PL”) of air cargo transportation services on behalf of the customer requesting such services, as well as the consignee, consignor, and any other entity with an interest in the goods (“Customer”), with an Indirect Air Carrier (“IAC”), which will in turn arrange for transportation with an aircraft operator (“Air Carrier”) (the “Services”). Customer acknowledges and agrees that these Terms represent the entire understanding of the parties with respect to the Services, regardless of whether any other contractual arrangements between the parties might govern in the absence of these Terms. Customer warrants that it is authorized to tender the cargo and arrange for the Services to be provided by 3PL hereunder. 3PL’s role under these Terms is to arrange on Customer’s behalf for transportation service by engaging an IAC which will, in turn, engage an Air Carrier.
- 2. Authorization to Procure Transportation.** Upon receiving a signed Air Rate Quote and Service Agreement from Customer, 3PL agrees to use commercially reasonable efforts to secure transportation requested by Customer, but does not guarantee that it will be able to source such transportation, nor does 3PL guarantee any speed, route, departure or arrival time, or date. Customer acknowledges that 3PL is not an IAC. IAC services are provided by an IAC selected by 3PL. 3PL may transmit details regarding Customer’s air-cargo moves to the IAC. The IAC will then book those moves directly with Air Carriers. The IAC will charge 3PL for its services, an amount that includes the cost of transportation charged by the Air Carriers. For the avoidance of doubt, 3PL is not an IAC or Air Carrier, and does not own or operate aircraft. 3PL’s sole role is to arrange air transportation on Customer’s behalf by engaging an IAC for that purpose.
- 3. Scheduling.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE IAC OR THE AIR CARRIER MAY IMPOSE CANCELLATION FEES OR OTHER ASSESSMENTS RELATED TO CANCELING OR RE-SCHEDULING SHIPMENTS, UP TO THE FULL AGREED UPON PRICE. CUSTOMER AUTHORIZES 3PL TO BIND CUSTOMER TO PAYMENT OF ANY AND ALL SUCH AMOUNTS AND WARRANTS AND REPRESENTS THAT CUSTOMER IS FULLY RESPONSIBLE FOR ANY AND ALL SUCH FEES AND CHARGES. 3PL will notify Customer as soon as reasonably possible if 3PL is notified that the IAC or Air Carrier is unable to secure the rights to operate to
- and/or from the origin or destination airports prior to the scheduled departure. In such instances, 3PL will use reasonable commercial efforts to attempt to identify alternative transportation arrangements for Customer, and if it is able to do so, shall provide an estimate for the cost of such replacement services. Customer acknowledges and agrees that 3PL shall have no liability arising from or related to delays or cancellations arising from or related to the IAC’s or the Air Carrier inability or refusal to perform.
- 4. Base Freight Charge.** Unless otherwise noted, all IAC and Air Carrier expenses (e.g., oil, crew salary, crew expense, aircraft maintenance and normal aircraft landing and fueling charges) are included in the rate agreed upon between Customer and 3PL (the “Base Freight Charge”). Unless included in the Base Freight Charge, all other IAC or Air Carrier expenses, charges and costs, including, without limitation, any cancellation fees, de-icing, transportation taxes, fuel surcharges, foreign taxes, levies duties, special or accessorial services (e.g., storage, non-standard on/offloading equipment, cargo security screening, cargo preparation/palletization, etc.) will be the responsibility of Customer. If 3PL is assessed such charges on a gross basis in instances where cargo of more than one customer of 3PL has been tendered, 3PL will apportion charges to the involved customers on a pro-rata basis. In no event will 3PL be obligated to advance any such amounts, and any advancements by 3PL of such amounts will be promptly reimbursed by Customer. In addition, any lay-over or detention charges assessed by the IAC or Air Carrier will be the responsibility of Customer.
- 5. Payment.** All charges owed by Customer must be paid in advance, although 3PL may, in its sole discretion, grant credit to Customer, which shall not be interpreted as a waiver of Customer’s obligation of prepayment. Customer shall pay to 3PL all amounts owed in U.S. currency without deduction or offset and in the manner and within the time specified in these Terms. In no event will any amounts paid hereunder be deemed a deposit or refundable. If charges arise subsequent to payment by Customer, Customer will be directly responsible for such amounts and 3PL shall have no duty to advance any such amounts, but should 3PL choose, in its sole discretion, to advance such amounts, Customer will immediately reimburse 3PL such amounts upon demand. 3PL will invoice charges, and invoices are due upon presentation. Amounts due but unpaid shall be subject to a late payment fee of **1.5%** per month, which shall be assessed on the outstanding amount of any invoice.

Customer shall pay for or reimburse 3PL for its costs related to any efforts to collect amounts due to 3PL, including but not limited to legal fees and collection costs.

**6. Obligations of Customer.** Customer will deliver the cargo at the time and place indicated, properly prepared, labeled, securely packaged, loaded, and ready for transportation by aircraft. Prior to loading, Customer shall provide 3PL, the IAC, or the Air Carrier (as applicable) with the following information: date and place of tender of the Shipment; Shipment destination; name and address of consignee; precise nature of the cargo; number of packages, method of packing; particular marks/numbers used; weight (including any and all packaging or handling units), 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 warrants the completeness and accuracy of any and all information and acknowledges that 3PL, the IAC, and the Air Carrier may rely on all information furnished by or on behalf of the Customer. All preparation of the shipment for carriage shall be the responsibility of and to the account of Customer. Customer warrants and represents that in no event will it tender any cargo classified as a hazardous material or dangerous goods under any applicable law, regulation or convention, including, but not limited to, the USDOT hazardous materials transportation regulations (49 C.F.R. Parts 171, 172, and 173) or the current edition of the International Air Transport Association ("IATA") Dangerous Goods Regulations (together "HM/DG Regulations"). Customer warrants that no cargo tendered pursuant to these Terms requires controlled temperature handling.

**7. Air Waybill.** The contract of transportation shall be directly between Customer and the Air Carrier and will be subject to the terms and conditions set forth in the Air Carrier's air waybill. If 3PL is shown as the shipper/consignor or receiver/consignee on any air waybill or other shipment documentation, 3PL may assign its rights and remedies pursuant to any such documentation to Customer.

## **8. Loss and Damage Claims.**

8.1. 3PL 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.

8.2. 3PL shall not be liable for loss, damage or destruction to cargo except to the extent directly and proximately caused by 3PL's negligence or intentional misconduct, in which case such liability will in no event exceed the lesser of the cost to repair or replace the goods, or **\$0.50** per pound per package, whichever is less. 3PL's sole liability in respect of delay shall be if the following conditions are satisfied: (i) the IAC or the Air Carrier fails to deliver with reasonable dispatch; (ii) such failure is directly caused by the negligence or intentional misconduct of 3PL; and (iii) such failure results in physical loss of or degradation to the cargo.

8.3. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT IACS, AIR CARRIERS, CARGO HANDLERS, AND MOTOR CARRIERS TRANSPORTING CARGO LIMIT THEIR LIABILITY FOR CARGO LOSS AND DAMAGE, AND IN NO EVENT SHALL 3PL HAVE ANY DUTY TO ENSURE THAT SUCH PARTIES PROVIDE A MINIMUM AMOUNT OF RECOVERY IN THE EVENT OF CARGO LOSS OR DAMAGE.

8.4. In the event of any loss of or damage to cargo serviced hereunder, Customer may either (i) pursue all such claims ("Transportation Claims") directly against the applicable IAC or Air Carrier, or (ii) submit Transportation Claims to 3PL for processing with the applicable IAC or Air Carrier, in which case, 3PL will use reasonable commercial efforts to assist Customer in pursuing recovery. In no event will 3PL be liable for expiration of any claim filing deadline with respect to any claim tendered by Customer for filing by 3PL. If Customer wishes for 3PL to file a Transportation Claim on its behalf, it must provide this claim to 3PL no later than 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, 3PL shall file such Transportation Claim on behalf of Customer with the applicable IAC or Air Carrier. 3PL 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.

8.5. In the event that 3PL 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 with 3PL's designated cargo claims office within 5 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 2 years from the date of delivery.

**9. Indemnity.** CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS 3PL, THE IAC, THE AIR CARRIER, AND ANY OF THEIR AFFILIATES FROM AND AGAINST, AND SHALL PAY AND REIMBURSE THEM FOR ANY AND ALL DIRECT AND INDIRECT LIABILITIES, CLAIMS, LOSSES, EXPENSES, COSTS (INCLUDING ATTORNEY FEES) OR DAMAGES (FOR PURPOSES OF THIS PROVISION, "CLAIMS") INCURRED OR OCCASIONED BY (I) A BREACH BY THE CUSTOMER OF ANY OF THE WARRANTIES CONTAINED HEREIN; (II) THE FAILURE OF THE CUSTOMER TO COMPLY WITH THESE PROVISIONS; (III) 3PL'S EXECUTION OF CUSTOMER'S INSTRUCTIONS; (IV) CUSTOMER'S NEGLIGENCE OR WILLFUL MISCONDUCT; (V) CLAIMS, SEEKING TO IMPOSE LIABILITY IN EXCESS OF ANY LIABILITY EXPRESSLY ASSUMED BY 3PL HEREIN OR IN EXCESS OF ANY LIMITATION OF LIABILITY TO WHICH 3PL IS ENTITLED HEREUNDER; OR (VI) RELIANCE ON OR COMPLIANCE WITH ANY INFORMATION OR INSTRUCTIONS PROVIDED BY OR ON BEHALF OF CUSTOMER. THE INDEMNITY OBLIGATIONS IN THIS PROVISION SHALL NOT APPLY TO THE EXTENT A CLAIM IS DETERMINED BY A COURT OF APPROPRIATE JURISDICTION TO HAVE BEEN CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY

OTHERWISE ENTITLED TO THE PROTECTIONS OF THIS PROVISION.

**10. Force Majeure.** The 3PL, the IAC, and the Air Carrier shall not be liable for any delay in the performance of their respective obligations under these Terms resulting directly or indirectly from or contributed to by any force majeure, including, but not limited to, weather, strike, war, insurrection, terrorist act, acts of God or other circumstances beyond their reasonable control.

**11. Dispute Resolution.** These Terms shall be interpreted in accordance with, and governed by, the laws of the United States and of the State of **North Carolina** without regard to that or any state's choice-of-law rules. THE PARTIES AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH SERVICES RENDERED PURSUANT TO THESE TERMS, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING NORTH CAROLINA. THE PARTIES HEREBY CONSENT TO THE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS SERVING NORTH CAROLINA. IN NO EVENT SHALL 3PL BE LIABLE TO CUSTOMER FOR DELAY DAMAGES, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES DUE TO LOSS OR PROFIT OR BUSINESS INTERRUPTION REGARDLESS OF WHETHER 3PL HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.