

## STANDARD TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions ("**Conditions**") shall govern any and all transactions ("**Transactions**") between Aetna Forwarding, Inc., its divisions, subsidiaries, related companies, agents and/or representatives and its Customers. AETNA reserves the right to modify, alter, or amend these Terms and Conditions at any time, and for any reason, that the Company may deem appropriate at its sole discretion. Customer shall comply with all applicable laws and government regulations of any country to, from, through or over which its goods may be carried, including those relating to the packing, carriage, or delivery of the goods, and shall furnish such information to AETNA as may be necessary to comply with such laws and regulations. Shipments covered by these terms and conditions are prohibited if diverted contrary to U.S. law. Customer warrants that the goods are properly marked, addressed, and packaged to withstand any contemplated method of transport. Customer, or such person or entity that originates and tenders goods for handling or transport, hereby consents to an inspection of the cargo.

### 1. DEFINITIONS AND ABBREVIATIONS

A. "**Bill of Lading**" means a document issued by AETNA or a Carrier (or the Carrier Representative), as applicable, that evidences the receipt of Goods for shipment to a specified designation and person. The term may include a waybill as context dictates.

B. "**Carrier**" means any motor carrier, including its drivers and independent owner operators, any rail carrier or rail transportation service provider, any intermodal equipment provider, any ocean or air carrier (including non-vessel operating common carriers and indirect air carriers), any warehouse operator, or other person or entity that provides transportation, storage, handling or related services to the Goods at the request of AETNA.

C. "**Carrier Representative**" means any employees, contractors, subcontractors, and agents of the Carrier.

D. "**Claims**" mean any and all liabilities, claims, losses, suits, actions, costs, fines, penalties, expenses (including attorney's, paralegal's and expert witness' fees and other costs of defense, investigation and settlement), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, environmental damage, or any combination thereof, suffered or claimed to have been suffered by any person or entity as well as the costs of enforcing indemnification obligations.

E. "**Company**" means Aetna Forwarding, Inc. (AETNA), its subsidiaries, divisions, related companies, agents and/or representatives.

F. "**Conditions**" means these Standard Terms and Conditions of Service.

G. "**Customer**" means the person, party or organization, as well as its agents and/or representatives who hires AETNA to render services. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives.

H. "**Documentation**" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form.

I. "**Goods**" means the cargo or goods for which AETNA is arranging transportation or providing other Services and includes packaging, pallets, packing materials, containers, and any related equipment.

J. "**Parties**" means AETNA and Customer unless otherwise specified, and "**Party**" means AETNA or Customer, as applicable.

K. "**Service Agreement**" means a written agreement signed by an authorized representative of Customer and AETNA pertaining to the Services provided by AETNA or one of its divisions or subsidiaries.

L. "**Third Parties**" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTI's, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or "otherwise."

M. "**Transactions**" means any exchange of Services between AETNA or one of its divisions or subsidiaries and Customer.

### 2. APPLICATION OF THESE CONDITIONS

A. Except as otherwise expressly set forth herein, these Conditions apply to all of AETNA's activities in arranging or providing Services. These Conditions apply except to the extent expressly superseded or waived in a Service Agreement. AETNA and Customer may, in a Service Agreement, agree to additional or amended service terms. In the case of conflict between any of these Conditions and any Service Agreement, the terms of the Service Agreement will govern. Where the specific Service Agreement is silent on any matter and does not expressly disclaim these Conditions, the provisions of these Conditions will apply with respect to such matter.

### 3. COMPANY'S GENERAL RESPONSIBILITIES AND DISCLAIMERS

A. Nothing in these Conditions or otherwise will be deemed to require or obligate AETNA to accept Goods tendered by Customer for Services. If AETNA agrees to provide Services, AETNA will exercise reasonable care arranging for or providing Services in accordance with these Conditions, and AETNA will arrange for transport and related Services within a reasonable time after receiving Customer's instructions, but AETNA is not liable in any way for transportation delays.

B. If after AETNA has agreed to arrange for a transportation of a shipment, events or circumstances make it impossible or impracticable, in AETNA's sole discretion, for AETNA to fulfill its obligations under these Conditions, AETNA may depart from any of Customer's instructions without prior authorization from Customer and will not incur any additional liability as a consequence of any such departure or deviation.

C. Carriers engaged by AETNA will have sole and exclusive control over the manner in which they and their Carrier Representatives perform transportation services, including the operations of all vehicles and equipment used to perform its transportation services hereunder. Under no circumstances will Carriers engaged by AETNA or their Carrier Representatives be deemed employees or agents of AETNA or involved in any kind of joint venture and/or partnership with AETNA. The foregoing notwithstanding, AETNA and Carriers may agree that AETNA will act as the Carrier's agent for the sole purpose of collecting the agreed-to freight charges related to Services. Except for such specific designation, none of the terms of these Conditions, or any omission of either Party will be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, employer/employee relationship between Customer, AETNA, or the Carriers.

D. If and as requested, AETNA will provide Customer with proof of acceptance and delivery of Goods shipped in the form of an original or imaged signed Bill of Lading or proof of delivery.

E. For shipments moving intermodally or over the road, insertion of AETNA's name on the Bill of Lading as the "carrier" by any entity other than AETNA will be for convenience only and will not imply that AETNA is the Carrier of that shipment or otherwise change AETNA's status in handling that shipment.

#### **4. CUSTOMER'S GENERAL RESPONSIBILITIES**

A. Customer must provide all information and instructions that are reasonably necessary for AETNA to effectively arrange for the performance of the transportation related services requested by Customer in accordance with applicable laws, rules, regulations, or conventions. Customer will provide detailed and accurate descriptions of any Goods tendered for transportation.

B. In no event will Customer tender any Goods that will or would reasonably be expected to contaminate, taint, corrode, or otherwise adversely impact the quality or condition of other Goods being transported.

C. Customer warrants that it is either the owner or the authorized agent of the owner of the Goods tendered for Services and that it has the authority to, and does, accept these Conditions for itself and, where applicable, as agent for and on behalf of the owner and any other person involved in the transportation, and these Conditions will be binding on such persons or entities.

D. Customer agrees to comply with United States import and export control and trade sanction laws and regulations, to include without limitation the following obligations: (i) Customer warrants that neither it nor its directors, officers, or subsidiaries are designated or sanctioned parties under United States export control and trade sanctions regulations; (ii) Customer agrees not to request services in connection with goods, countries, regions, and/or parties subject to export control and trade sanctions absent U.S. government authorization and prior agreement with AETNA (regions currently subject to applicable comprehensive embargoes are: Cuba, Iran, Syria, Sudan, North Korea, and the Crimea Region of Ukraine); (iii) Customer agrees that AETNA may refuse to receive, process, or release an order that appears to AETNA to involve goods, countries, regions, and/or parties subject to export control and trade sanctions or are otherwise in violation of the laws or treaties of the United States; and (iv) in the case of cross-border transactions for which AETNA is providing transportation or customs-related services, Customer agrees to provide AETNA, within a reasonable time before export or entry, with complete and accurate information required by export control and trade sanctions, including product descriptions, quantities, weights, values, country of origin, harmonized tariff code, export classification, and any required government authorization.

#### **5. COMPANY AS AGENT**

A. AETNA acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the Customer and other dealings with Customs and Government Agencies; as to all other services, AETNA acts as an independent contractor.

#### **6. ESTIMATES / PRICE QUOTATIONS / INVOICING**

A. Estimates are provided by AETNA solely as a guideline and are based on information provided by the shipper and are subject to change without notice. The final charges will be determined when the actual services are completed.

B. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates will be considered "written", and will be binding, upon AETNA's invoicing to Customer.

C. Quotes are given on the basis of immediate acceptance and are subject to withdrawal or revision. Customer is solely responsible for additional charges such as waiting time, layover, demurrage etc. unless such charges directly arise from AETNA's failure to perform the Services in accordance with Customer instructions and such failure is not excused under these Conditions.

D. All Quotes and associated charges do not include any state, county, or harmonized sales taxes, or other use or value-added taxes, duties or similar charges, and Customer will be liable for such taxes, duties, or charges.

E. Rates quoted by AETNA do NOT include any fees, charge or duties related to customs, border crossing, or government taxes, unless otherwise stated. Among other charges, shipments crossing borders will be subject to charges for set-outs of railcars, customs inspections, customs duties, delays for incorrect documentation and government fees.

F. Customer agrees to pay invoices within the credit terms without deduction or setoff. If no credit term has otherwise been established, payment is due upon receipt of the invoice prior to the services rendered. Customer acknowledges and agrees that AETNA may, in AETNA's sole discretion, establish credit limits applicable to Customer, which limits may be revised from time to time in AETNA's sole discretion. AETNA will apply payment to the amount due for the specified invoice, regardless of whether there are earlier unpaid invoices. Customer agrees that all overdue invoices will be subject to interest at 2% per 30 days, or 24% per annum, on the outstanding balance plus collection costs.

G. Customer must notify AETNA in writing of any dispute regarding a Company invoice within (7) days of the date of AETNA's invoice. If Customer fails to timely notify AETNA of the dispute, the Company's original invoice will be deemed to be final, and Customer will be deemed to have accepted such invoice in full and to have waived any and all Claims or defenses to paying such invoice.

## **7. PAYMENT FOR SERVICES GUARANTEE**

A. Customer guarantees payment for all services rendered and carriage arranged by AETNA on Customer's behalf, no matter what person ordered the services or benefited there from. Customer agrees to pay attorney's fees, costs, disbursements, and other expenses incurred in the event a collection effort becomes necessary. Customer agrees to pay AETNA within the credit terms indicated in the quotation or invoice. Any payments not received within the credit terms will be subject to interest at 2% per 30 days, or 24% per annum, on the outstanding balance from the invoice due date.

## **8. CHANGED CIRCUMSTANCES / FAILURE TO TAKE DELIVERY**

A. If events or circumstances, including Customer's or its consignee's failure to take delivery, occur that affect performance, AETNA will take reasonable steps to obtain Customer's further instructions. If, for whatever reason, AETNA does not receive timely instructions, or AETNA, in its sole discretion, determines that compliance with such instructions is impracticable, the Company may:

1. Arrange for storage of, or store, the Goods at the sole risk and expense of Customer or;
2. Authorize any Carrier to abandon transportation and make the Goods or any part of them available to Customer at a place that is reasonable under the circumstances.

B. In the event that any shipment is refused or remains unclaimed at destination or any transshipping point in the course of transit or is returned for any reason, Customer will nevertheless pay AETNA for all charges and expenses in connection therewith.

## **9. IMPORT / EXPORT SERVICES**

A. AETNA acts as the "agent" of Customer for the purpose of performing duties in connection with the entry and release of Goods, post entry services, the securing or export licenses, the filing of export documentation on behalf of Customer, other dealings with Governmental Authorities, and when arranging for transportation, handling, and storage with Carriers and other third parties when doing so on behalf and in the name of Customer.

B. Customer will provide complete and accurate information required for submission of import and export documentation with Governmental Authorities. Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with any customs service, other Governmental Authority and/or Carriers, and will immediately advise AETNA of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's behalf. Customer is hereby advised that the submission of incomplete or inaccurate information related to an import entry, including without limitation descriptions, quantities, weights, purchase prices, discounts, commissions, changed selling prices at time of exportation, assists, importer security filing data or country of origin, may expose Customer to severe governmental penalties, fines, or sanctions and/or delays in transportation or release of a shipment.

C. Customer will indemnify, defend, and hold AETNA harmless from any and all Claims resulting from Customer's failure to disclose information, Customer's provision of inaccurate or incomplete entry, export, or security information or data, shipping details, or documents, or any incorrect or false statement by Customer upon which AETNA has relied. CUSTOMER'S INDEMNITY OBLIGATIONS WILL APPLY NOTWITHSTANDING ANY NEGLIGENCE ON THE PART OF AETNA, INCLUDING BUT NOT LIMITED TO ANY FAILURE ON THE PART OF THE COMPANY TO IDENTIFY A CUSTOMER OR THIRD-PARTY DOCUMENTATION ERROR.

D. Where AETNA is arranging for importation or exportation on behalf of Customer, Customer will furnish to AETNA, within timeframes required by applicable laws or regulations, and in any event, in a reasonable time prior to arrival of the Goods at the initial port of entry or exit, invoices in proper form and other documents necessary or useful in the preparation of the applicable entry and export documentation and also such further information as may be sufficient to establish the dutiable value, the classification and admissibility or exportability. If Customer fails in a timely manner to furnish such information or documents, in whole or in part, as may be required, or if the information or documents furnished are inaccurate or incomplete, AETNA will be obligated only to use reasonable judgment in connection with the shipment and may, in its sole discretion, and without liability to Customer, refuse to make any export or import related filing. Where a bond is required to be given for the production of any document or the performance of any act, Customer will

be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by AETNA as principal, it being understood that AETNA entered into such undertaking at the instance and on behalf of Customer, and Customer will indemnify and hold AETNA harmless for the consequences of any breach of the terms of the bond. AETNA will not in any way be responsible or liable for increased duty, tax, penalty, fine, cost, or expense unless such is caused by the negligence or willful misconduct of the Company, in which event AETNA's liability to Customer will be limited as provided under these Conditions. Customer will be bound by and warrant the accuracy of all invoices, documents, and information furnished to AETNA by Customer or its agent for export, entry, or other purposes.

E. For purposes of this Section 9, "customs services" will have the meaning of "customs business" set forth in 19 C.F.R. § 111.1. Customer acknowledges that AETNA is under no obligation to provide customs business-related services until and unless Customer issues AETNA a valid power of attorney and agrees to be bound by these Conditions. Customer further acknowledges that customs services are separate and distinct from any ancillary transportation, handling, or storage that AETNA may arrange or provide, which are covered by other provisions of these Conditions.

F. It is the Customer's responsibility to know and comply with all licensing, classification, valuation, marking and other Governmental Authority requirements and all laws, regulations, and rules of any Governmental Authority having jurisdiction over the shipment. AETNA will not be responsible for action(s) taken, liquidated damages, fines, or penalties assessed by any Governmental Authority against the shipment because of the Customer's failure to comply with: (i) applicable laws, statutes, regulations, or rules; or (ii) these Conditions or the terms and conditions of any power of attorney. AETNA will have no duty or obligation to take any pre- or post-customs release action, including without limitation, obtaining binding rulings, advising of liquidations, or filing of petitions and/or protests.

G. AETNA will be under no obligation to keep or maintain records on behalf of Customer, and AETNA will only keep and maintain those records which AETNA is required to keep and maintain under laws or regulations specifically applicable to the Company. Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 U.S.C. §§ 1508 and 1509), and regulations promulgated thereunder (among others, 19 C.F.R. §§ 141 and 142), it has the duty to maintain and is solely liable for maintaining all required records.

H. For the benefit of Customer, AETNA makes Customer aware of the following notice under 19 C.F.R. § 111.29(b)(1): "If you are the importer of record, payment to the broker will not relieve you of liability for customs charges (duties, taxes, or other debts owed to CBP) in the event the charges are not paid by the broker."

## **10. WAREHOUSING / STORAGE SERVICES**

A. Customer's Goods are accepted by AETNA in apparent good order and condition. By tender of the Goods to AETNA, Customer represents that Customer is storing only Goods that Customer has the legal right to store and acknowledges that AETNA is relying on Customer's representations. Customer acknowledges that the Goods will not be inspected by AETNA for any purpose whatsoever, and Customer waives any claim that the condition of the Goods has changed, or the Goods have been damaged while in AETNA's possession.

B. Customer warrants that Goods provided to AETNA "packed by shipper" for the purpose of tender to AETNA have been packed, packaged, protected, and labeled to ensure safe handling. AETNA shall not be liable for loss or damage to Goods received "packed by shipper". Customer acknowledges that AETNA shall be entitled to rely on the description of the Goods provided by Customer to AETNA and that acceptance of the care, custody, or control of the Goods by AETNA is not an acknowledgement or confirmation by AETNA of the accuracy of such description, and that AETNA is entitled to rely upon such description and to use such description in AETNA's business records, including inventory and other reports, service requests and shipping documentation without any liability to Customer or any third party with respect thereto.

C. Customer understands and agrees that AETNA is relying upon Customer's representations with respect to the identity, nature and condition of the Goods, and agrees to indemnify, defend and hold harmless AETNA from and against all claims, liabilities, demands, costs and expenses of every nature and description (including attorney's fees and disbursements and court costs) incurred by or asserted against AETNA if this representation is untrue in any respect.

D. No Goods shall be delivered or transferred, except upon receipt by AETNA of complete written instructions from Customer. A reasonable time shall be given AETNA to carry out and execute such instructions. If AETNA is unable to carry out or execute such instructions for any reason, AETNA shall not be liable for the failure and the Goods remaining in storage shall continue to be subject to regular storage charges until AETNA can carry out or execute Customer's instructions.

E. The terms of storage shall be set forth in a Storage Agreement. Absent such a written agreement, storage of Goods is provided by AETNA on a month-to-month basis at AETNA's prevailing rate. The month-to-month terms will automatically renew, unless terminated by either party, in writing, with 30 days' notice stating the date of termination. Storage may be, at AETNA's option, in any location that provides reasonable protection against loss or damage to the Goods. Such storage shall be at the Customer's expense and without liability to AETNA.

F. Storage charges are determined based on size, quantity, dimension, or storage space required, as well as declared value, if applicable. Storage charges become applicable on the date that AETNA accepts care, custody and control of the Goods, regardless of unloading date or issue of the Warehouse Receipt(s). A full month's storage charge will apply to all Goods received between the

1st and 15th, inclusive, of a calendar month; one-half month's storage charge will apply to all Goods received between the 16th and the last day, inclusive, of a calendar month, and a full month's storage charge will apply to all Goods in storage on the first day of the next and succeeding calendar months. Customer shall pay, as part of its first storage invoice, a charge for the first month storage fee, plus a deposit to be determined at the time of the estimate. Monthly storage charges may be periodically subject to reasonable increases at AETNA's discretion absent a fixed rate Storage Agreement stating otherwise.

G. Customer acknowledges and agrees that its access to AETNA facilities will be restricted, and that Customer must be accompanied by AETNA personnel while in one of AETNA's facilities. Pursuant to applicable restrictions, AETNA only allows the Customer and the Customer's expressly authorized and previously identified agents, employees or assigns to access or view the Customer's Goods. AETNA does not allow any other persons, including, but not limited to, other logistics companies or outside art handlers to enter AETNA's warehouses under any circumstances.

## **11. AIR TRANSPORTATION SERVICES**

A. Any air transportation with respect to which AETNA issues its own Air Waybill as the "carrier" (as opposed to an Air Waybill issued by AETNA in its capacity as an agent on behalf of the underlying air Carrier or where the underlying air Carrier directly issues its own waybill to Customer) will be subject to and governed by the terms and conditions of the Air Waybill issued by AETNA. In the event of a dispute between any such Company-issued Air Waybill and these Conditions, the terms and conditions of the Air Waybill will control. In those instances where AETNA is arranging for transportation by air, but does not issue its own air waybill, the rights and obligations as between AETNA and Customer will be governed by these Conditions, and Customer acknowledges and agrees that its rights and obligations with respect to the underlying air Carrier will be governed by the waybill issued by the Carrier.

## **12. INTERNATIONAL OCEAN TRANSPORTATION SERVICES**

A. Any international ocean transportation provided by AETNA or another Company as a non-vessel operating common carrier (NVOCC) as defined by 46 C.F.R. Part 515 will be subject to and governed by the terms and conditions of the Bill of Lading and applicable tariff issued by such Company and will not be subject to these Conditions. AETNA has a policy against payment, solicitation, or receipt of any rebate, directly or indirectly, which would be unlawful under the United States Shipping Act of 1984, as amended. In those instances where AETNA is arranging for international transportation by ocean, but does not issue its ocean Bill of Lading, the rights and obligations as between AETNA and Customer will be governed by these Conditions, and Customer acknowledges and agrees that its rights and obligations with respect to the underlying ocean Carrier will be governed by the bill of lading issued by the Carrier.

## **13. INSURANCE**

A. The shipper must provide an all-risk marine insurance during transportation and handling at his/her own expense with an endorsement to cover the complete cost of the merchandise while being stored, consolidated and in the care of AETNA. AETNA shall not be liable for any damage in excess of the amount of \$0.60/lb. per article, up to an aggregate limit of USD 500.00. Unless requested by the Customer and confirmed in writing, AETNA is under no obligation to procure insurance on the Customer's behalf. In all cases, Customer shall pay all premiums and costs associated with procuring the requested insurance coverage.

B. AETNA will only honor insurance claims when a premium is charged, and it has been paid by the Customer for the shipment in which the claim occurred.

## **14. NO LIABILITY FOR THIRD-PARTY SERVICES AND/OR ROUTES**

A. Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, AETNA shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by AETNA that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that AETNA warrants or represents that such person or firm will render such services nor does AETNA assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, AETNA shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by AETNA.

## **15. LOSS OR DAMAGE CLAIMS AND LIMITATIONS OF LIABILITY**

A. Except to the extent otherwise expressly set forth herein, AETNA is NOT LIABLE FOR ANY CLAIMS FOR LOSS OR DAMAGE TO GOODS WHATSOEVER EXCEPT TO THE LIMITED EXTENT THAT CUSTOMER'S DIRECT DAMAGES ARE ACTUALLY AND PROXIMATELY CAUSED BY THE AETNA'S NEGLIGENCE OR WILLFUL MISCONDUCT. The liability of AETNA, if any, with respect to any such claim shall be limited to \$0.60/lb. per article, up to an aggregate limit of USD 500.00, in accordance with these Conditions.

B. In the event of Claims related to loss, damage and/or delay to Goods, AETNA's sole responsibility under these Conditions where AETNA has arranged, whether as an air, ground, or ocean freight forwarder or as a property broker, for a Carrier to perform

the Services will be to facilitate settlement or assist in the filing of any such Claim hereunder between Customer and/or owner of the Goods shipped, and the applicable Carrier(s).

C. The Carrier's liability is subject to otherwise applicable convention, law, rule or regulation, and may be further limited by Carrier terms and conditions of service or otherwise by contractual arrangements in place between AETNA and the Carrier. Customer hereby acknowledges, understands, and agrees that the Carrier(s) have limitations of liability in place that restrict Customer's recovery with respect to such claims and that, except as otherwise expressly set forth herein, AETNA is under no obligation to ensure that Carriers accept full value liability with respect to Goods.

D. As a condition to filing a claim against AETNA as well as to the Company assisting with submission of any Claims for loss, damage or delay to Goods, Customer on its own behalf and on behalf of the owner of the Goods will provide AETNA with any and all information relating to the Claim within (14) calendar days from the date of delivery.

E. Customer recognizes that Carriers may impose claim-filing limitations and agrees that claims filed after such notice periods will be validly denied by the Carriers.

F. In case of a Claim for loss or damage to Goods, Customer agrees not to withhold or set off outstanding invoices and will pay such invoices in full.

G. If a shipment arrives with visible or obvious damage or loss of Goods, Customer must notify AETNA promptly. Failure to provide such notice may be construed by the Carriers as a waiver of Customer's loss and damage claim or as creating a presumption that loss or damage occurred subsequent to delivery. Customer will (or will cause its consignee to) preserve and make available to AETNA and the Carriers all damaged Goods, the packaging, blocking and bracing, and the Trailer in which the Goods were transported. Any failure by AETNA or the Carrier to inspect the damaged shipment will not change the burden of proof or be considered an admission of liability by AETNA or any Carrier.

H. NEITHER AETNA NOR THE CARRIER WILL BE LIABLE IN ANY WAY FOR LOSS OF OR DAMAGE TO CUSTOMER'S SHIPMENT FOR THE FOLLOWING:

Hostile or war like action in time of peace or war including action in hindering, combating or defending against attack by any government or sovereign power, or by any authority maintaining or using military, naval or air forces, or any agent of any government power, authority or forces or any Acts of God, public enemies and acts of terrorism foreign or domestic;

1. Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether direct, indirect, approximate or remote;
2. Chemical or biological warfare;
3. Seizure, confiscation, destruction or damages pursuant to customs or quarantine regulations or laws;
4. Insects, moths, vermin, gradual deterioration, and ordinary wear and tear;
5. The nature of the article, or any defect, characteristic, or inherent vice thereof, including rusting of metals, swelling of wood and the susceptibility to internal damage of electronic equipment and musical instruments or because of atmospheric conditions such as temperature and humidity, moisture, condensation or changes therein;
6. Strikes, lockouts, labor disturbances, riots, civil commotion, or the acts of any persons taking part in any such occurrence or disorder;
7. For documents, currency, money, jewelry, watches, precious stones, or articles of extraordinary value including accounts, bills, deeds, evidence of debt, securities, notes, postage stamps, trading card or stamps, stamp and coin or other valuable collections, revenue stamps, letter or packets of letters, precious metal or article manufactured therefrom, or articles of peculiarly inherent value. AETNA is not responsible for firearms, live plants or seeds, flammable items and pressure spray cans.
8. Items improperly or inadequately packed or mislabeled by the shipper.
9. Items containing internal damage or concealed breakage; glass, ceramic and stone with existing cracks.
10. Items of inherent vice or weakness due to poor craftsmanship in fabrication.
11. Items containing internal mechanics or instrumentation.
12. Items with waxen, resinous, or viscous surface area, be they in wet, semi-dry, or hardened state.
13. Damaged or excessively worn antique items in disrepair, items exhibiting prior repairs or breakage.
14. Uncured and/or not thoroughly dry paintings; uncured and/or unset varnish applied to furniture.

15. Items with directional orientation to which the shipper does not affix descriptive arrows in advance.

16. Items shipped unwrapped at the stated request of the shipper.

I. Customer is obligated to mitigate its damages for loss or damage to Goods and is not entitled to abandon the Goods to AETNA or the Carrier. If Customer does not elect to salvage the Goods, any Claim for Goods loss or damage will nevertheless be reduced by regular storage charges and other costs incurred while waiting for disposition instructions.

J. Customer is not entitled to reject a shipment, in whole or in part, due to ants or other bugs on the outside of packaging. In the absence of any other evidence, the presence of ants or other bugs will not create a presumption of loss to or contamination of the Goods.

#### **16. INDEMNITY**

A. Except for Claims for loss or damage to Goods, which are governed by Section 15 of these Conditions, or as otherwise set forth herein, AETNA will defend, indemnify and hold Customer, its employees, and agents harmless from and against any and all Claims arising out of AETNA's performance under these Conditions to the extent such Claim is directly and proximately caused by (1) the negligence and intentional misconduct of AETNA; (2) AETNA's or its employees' or agents' violation of applicable laws or regulations; or (3) AETNA's or its employees' or agents' failure to comply with these Conditions, except in each case to the extent such Claim represents consequential, punitive, or special damages or is the result of the negligence or other wrongful conduct of the Customer or a Carrier.

B. Except for Claims for loss or damage to Goods, which are governed by Section 15 of these Conditions, Customer will defend, indemnify and hold AETNA, its employees, and agents harmless from and against any and all Claims arising out of Customer's acts or omissions where such Claim is caused by (1) the negligence or intentional misconduct of Customer; (2) Customer's or its employees' or agents' violation of applicable laws or regulations; (3) Customer's or its employees' or agents' failure to comply with these Conditions; (4) Customer's or its employees' or agents' failure to comply with obligations imposed by underlying Carriers; or (5) AETNA's compliance with or reliance on Customer's instructions; except in each case to the extent such Claim represents consequential, punitive, or special damages or is the result of the negligence or other wrongful conduct of the AETNA or a Carrier.

C. If Customer or AETNA receives a Claim for which the other party is responsible as an indemnifying party, the party receiving the Claim will promptly notify the other party and provide reasonable assistance and information requested in the defense against such Claim.

#### **17. RIGHT OF DETENTION AND LIEN**

A. Pursuant to § 7-209 of the Uniform Commercial Code as adopted by the State of New York, all Goods (and documents relating to Goods) will be subject to a continuing and general lien on any and all property of Customer that comes into AETNA's actual or constructive possession and right of detention for monies owing either in respect of such Goods, or for any particular or general balance or other monies owed, whether then due or not, by Customer, consignor, consignee, or owner of the Goods to AETNA. In order to protect its lien, AETNA reserves the right, but is not required, to require advance payment of all charges prior to shipment of Goods.

B. AETNA shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges. Customer shall notify all parties having an interest in its shipment(s) of AETNA's rights and/or the exercise of such lien.

C. Unless, within 30 days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of AETNA, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, AETNA shall have the right to sell such shipment(s) at public or private sale or auction at its sole discretion, applying the net proceeds to satisfy the monies owing. Any net proceeds remaining after satisfaction of the debt shall be returned to Customer. In the event that there is a deficiency and monies are owed to AETNA after the sale or auction, Customer shall be liable for and shall promptly pay to AETNA the deficiency.

D. AETNA will not be liable for any deficiencies or reduction in value received on the sale of the Goods nor will Customer be relieved from the liability merely because the Goods have been sold.

E. This lien is superior to any other lien or security interest of any party. Customer shall be responsible for notifying any third party having or claiming any interest in the Goods, or any part thereof, including any security interest under the Uniform Commercial Code, of the lien of AETNA as set forth herein and in any other agreement between Customer and AETNA with respect to the Goods.

#### **18. FORCE MAJEURE**

A. Neither AETNA nor any Carrier will be liable to Customer for delay or failure to perform the Services during any time in which such performance is prevented by fire, explosion, act of God (including floods, hurricanes, tornadoes, earthquakes, blizzards, other severe weather conditions and natural disasters); strike, lockout or labor shortage or disturbance; war, terrorism, embargo, quarantine, riot, civil disobedience, hijacking or robbery; networks, ports, air traffic or other transportation systems; the acts of any Government

Authority or customs inspection requirements; acts or omissions of Customer; or any other cause outside of the reasonable control of AETNA or the Carrier. AETNA will provide notice within a reasonable time to Customer of such delay or inability to perform.

#### **19. SEVERABILITY**

A. In the event that any portion of these Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision will be severable and that the remaining provisions of these Conditions will continue in full force and effect. The representations and obligations of the Parties will survive the termination of these Conditions for any reason.

#### **20. NON-WAIVER; REMEDIES**

A. Delay or failure of either Party to insist upon performance of any of these Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the Conditions, will not be construed as waiving any such terms, conditions, provisions, rights, or privileges, but the same will continue and remain in full force and effect as if no forbearance or waiver or delay had occurred. Consent or approval by a Party to any act requiring consent or approval will not be deemed to waive or render unnecessary consent or approval of any subsequent similar act. AETNA and Customer hereby waive any and all rights and remedies provided for under 49 U.S.C. Subtitle IV Part B to the extent such rights and remedies under these Conditions will be cumulative, and its pursuit of any such right or remedy will not preclude it from pursuing any other available right or remedy.

#### **21. APPLICABLE LAWS AND JURISDICTION**

A. These Terms and Conditions will be deemed to have been drawn in accordance with the statutes and laws of the State of New York. Any act or contract or transaction to which these Conditions apply shall be governed by the laws of the State of New York without regard to the principles of conflicts of law and any disagreement or dispute arising out of any such act or contract or transaction to which these Conditions apply shall be subject to the exclusive jurisdiction of the Courts of the State of New York. In the event that AETNA is required to appear in a legal proceeding or action, either as a plaintiff or defendant, to enforce these Terms and Conditions or its rights hereunder, including the limitation of liability provisions contained herein, AETNA shall be entitled to recover, in addition to any other damages or remedies available to it, its attorney's fees and costs incurred in such proceeding or action.

#### **22. WAIVER OF JURY TRIAL**

A. To the fullest extent permitted by law, AETNA and Customer waive their respective rights to trial by jury of any cause of action, claim, counterclaim, or cross complaint, in any action brought by either party against the other on any matter arising out of, or in any way connected with the Goods or Services, Customer's use of the facility, or any Claim of bodily injury or property loss or damage, or the enforcement of any remedy under any law, statute or regulation. This jury trial waiver is also made by Customer on behalf of any of Customer's agents, guests or invitees, and in favor of the agents, employees and representatives of AETNA.

#### **23. OTHER LIMITATIONS**

A. IN NO EVENT WILL AETNA BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, USE OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT AETNA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. THE SERVICES ARE PROVIDED "AS IS", AND AETNA DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS RELATING TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE SERVICES PROVIDED HEREUNDER.