

# CLASSIC F.A. PACKERS & SHIPPERS

## TERMS AND CONDITIONS OF TRADING – CLASSIC F.A. PACKERS & SHIPPERS

2019.05.01 Updated Terms and Conditions of Trading - No Watermark.doc

- 1.1 GENERAL: The following set forth the standard terms and conditions (the “Terms” or “Terms and Conditions”) on which Classic F.A. Packers & Shippers (“Classic F.A.”) provides storage, shipping and packing services (the “Services”). All Classic F.A. quotations and proposals are subject to these Terms, as are all Classic F.A. service agreements and any other documents that specifically reference these Terms. Any such documents will also be subject to any additional terms and conditions that may be agreed to on the face of a quotation, proposal, service agreement or any schedule or attachment thereto, provided that such document has been signed by a duly authorized officer of Classic F.A. (These Terms and any such other documents being collectively referred to as the “Agreement”). In the case of any conflict between these Terms and any other document constituting a part of the Agreement, the terms set forth in such other document will control, but only if that document has been signed by a duly authorized officer of Classic F.A.
- 1.2 Classic F.A. seeks to provide its customers with prompt and efficient service. To negotiate individually the terms and conditions of each service contract would substantially impair Classic F.A.’s ability to provide such service. Accordingly, Services furnished by Classic F.A. are sold on these Terms, notwithstanding any terms and conditions that may be set forth in or contained on customer’s purchase order, invoice or any other document provided or issued by customer. Classic F.A.’s performance of the Agreement is expressly made conditional on customer’s acceptance of these Terms. If a contract is not earlier formed by mutual agreement in writing, then Customer’s acceptance of any Services furnished hereunder will be deemed assent to and acceptance of all of the terms and conditions stated herein. No course of prior dealings between the parties or uses of the trade will be relevant to give particular measuring to supplement or qualify any of these Terms. No servant, agent or other person has the authority to alter or qualify these Terms. The aforesaid terms and conditions and limitations apply to and for the protection of Classic F.A. and its service agents, employees and independent sub-contractors.
- 1.3 All contracts entered into by Classic F.A. shall be deemed to have been entered into at the New Jersey office of Classic F.A. These Terms and Conditions shall be governed and construed in accordance with the laws of the State of New Jersey, without regard to principles of conflicts of law. Any dispute arising from, relating to, or otherwise concerning these Terms and Conditions shall only be brought in accordance with Paragraph 11 of these Terms and Conditions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 1.4 If any individual term or condition is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, or is otherwise deemed void or unenforceable by statute, regulation or International Convention to which the United States is a signatory, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
- 1.5 The parties acknowledge that Classic F.A. is not a common carrier and the rights and liabilities of the parties hereunder shall apply and/or be determined upon that basis.
- 1.6 Classic F.A. shall not be liable for any loss or damage or delay or failure in performing hereunder, arising or resulting from directly or indirectly: any acts, neglect, default or occurrence beyond its control including, but not limited to, acts of God, perils of the air, sea or land, public enemies, public authorities acting with actual or apparent authority, authority of the law, quarantine, riots, strikes, labor disturbances, civil commotions, or hazards incident to a state of war, explosions, fire, rebellion, insurrections or picketing and other such causes, whether or not specifically listed herein.
- 1.7 **Independent Contractor.** Classic F.A.’s relationship to customer is that of an independent contractor, not an agent or employee, and nothing in this Agreement shall be construed as establishing an employment relationship, partnership or joint venture between the parties. Neither party shall be liable for any obligation incurred by the other, except as is expressly provided in this Agreement.
- 2. PARTIES**
- 2.1 Classic F.A. may engage agents and/or sub-contractors to perform all or any part of the contract to be provided to the customer. Classic F.A. enters into the contract for itself and on behalf of such agent and or sub-contractors all of whom shall have the benefit of these Terms and Conditions and who shall be under no liability to the customer greater than or in addition to that of Classic F.A. under the contract. The parties agree that no claim shall be made against such agent and/or sub-contractor in addition to, or in excess of, the limitation and/or exclusion of liability as set out in these Terms and Conditions.
- 2.2 The servants, agents and/or contractors of Classic F.A. shall be entitled to the benefit of all the provisions herein contained, which exclude or restrict liability of any kind. In entering into any agreement incorporating these Terms and Conditions, Classic F.A. does so on its own behalf and on behalf of its servants, agents and/or sub-contractors.
- 2.3 If the customer is not the owner of the goods or any part of the goods, he shall be deemed, for the purpose of the contract and these Terms and Conditions, to be the agent of such owner and warrants that if the goods are not his own unencumbered property that he has the authority of all persons owning or having an interest in the goods, or any part thereof, to accept these Terms and Conditions and contracts upon their behalf.
- 3. CHARGES**
- 3.1 When no value is declared the responsibility of Classic F.A. is \$0.60 per pound per item. If a customer of Classic F.A. requires All Risks cover for the declared value, this is covered under ‘All Risks’. In the event of loss or damage to such property insured hereunder claims will be settled under the terms and conditions of the “Master Policy” on file at the office of Classic F.A., a copy of which is available on request.
- 3.2 Any charges quoted by Classic F.A. whether oral or in writing may be amended by Classic F.A. if:
- (1) They are not accepted by the customer within 14 days.
  - (2) The work is not completed within one month, the delay being attributable to the actions of the customer, his servants or agents.
  - (3) Costs are altered by changes in taxation and/or freight rates outside the control of Classic F.A.
  - (4) During the course of the work, extra services are supplied at the request of the customer or delay occurs beyond the control of Classic F.A. or the request of the customer.
  - (5) The contract is made for specific quantity by reference to specific items or cubic capacity. If additional goods are packed and/or carried an extra charge may be made and all these conditions shall apply to such extra work.
- 3.3 In all the above circumstances listed in paragraph 3.2, the customer agrees to pay such additional charges as may become payable.
- 3.4 Except as otherwise set forth in the Agreement, customer will be solely responsible for the payment of all taxes (other than taxes on Classic F.A.’s income), duties, excises and other charges (including any increases or new levies) relating to the Services.
- 4. PACKING**
- 4.1 At the request of the customer, Classic F.A. will pack items for carriage by land, sea or air. The choice of materials used in the packing of such items shall be at the sole discretion of Classic F.A.
- 4.2 Classic F.A. will not accept for packaging and/or onward delivery the following items and the customer expressly agrees that he will not submit such items for such packing and/or onward delivery:
- (1) Jewelry, watches, trinkets, precious stones, money, deeds, securities, stamps, coins (or similar collections of any kind) or

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# CLASSIC F.A. PACKERS & SHIPPERS

- (2) Any damaging, dangerous, explosive or hazardous article, substance or contaminant or any article or substance likely to encourage vermin or other pests or likely to cause infection or contamination. The customer acknowledges that Classic F.A. will not accept the items listed in this subparagraph and expressly understands that Classic F.A. Packers & Shippers may, at its sole discretion, remove, sell, destroy or otherwise dispose of any such article or substance listed in this subparagraph.

## 5. COLLECTION AND DELIVERY

5.1 Classic F.A. will, if requested by the customer, collect items for packing. Such collections may be carried out by Classic F.A., its servants, agents or sub-contractors appointed by it and all these Terms and Conditions shall apply to such collection.

5.2 Unless expressly agreed in writing to the contrary, Classic F.A. will not carry out the delivery of items packed by it. For the purpose of effecting an authorized delivery, Classic F.A. shall be entitled and the customer hereby authorizes Classic F.A. to enter into contracts on behalf of the customer as the customers agent:

- (1) For carriage of goods by any route or means or person
- (2) For the storage, packing, trans-shipment, loading, unloading or handling of the goods by any person at any place whether on shore or afloat and for any length of time
- (3) For the carriage or storage of goods in or on containers, trailers, flats, lifts, railway wagons, tanks, igloos or any other unit load device specifically constructed for the carriage of goods by land, sea or air with other goods of whatever nature
- (4) To do such acts as may in the opinion of Classic F.A. be reasonably necessary in the performance of delivery obligations in the interest of the customer

## 6. RESPONSIBILITIES AND LIABILITIES OF CLASSIC F.A.

### 6.1 Collection

Classic F.A. shall not be liable for loss and/or damage of whatever nature and howsoever caused during the collection of items unless such loss or damage caused by the willful misconduct of Classic F.A. its servants, agents or sub-contractors.

### 6.2 Packing

- (1) Classic F.A. shall not be liable for loss and/or damage of whatever nature and howsoever caused during the packing of goods unless such loss and/or damage is proved to have been caused by the willful misconduct of Classic F.A. its servants, agents or sub-contractors.
- (2) Classic F.A. shall not be liable for loss and/or damage caused to goods packed by them as a result of any defect in, or failure of any packing material or as a result of climatic conditions of whatever nature unless it is proved that Classic F.A. has been grossly negligent in its choice and/or use of such packing materials.

### 6.3 Delivery

In effecting delivery of goods, Classic F.A. contracts with the carriers of such goods as agent of the customer. Classic F.A. shall not be liable for loss and/or damage of whatever nature and howsoever caused unless such loss and/or damage is proved to have been caused by;

- (1) Any defect or failure in the packing material, or
- (2) As a result of the gross negligence of Classic F.A. in its choice of carrier.

6.4 Where the loss and/or damage shall be proved to have been caused by the gross negligence of Classic F.A. its servants of agents the liability of Classic F.A. shall be limited to:

- (1) A sum at the rate of \$0.60 per pound gross weight of the goods lost or damaged or, at the sole discretion of Classic F.A., the cost of repairing or replacing the damaged or missing articles, whichever shall be the least.
- (2) In respect of articles being part of a pair or set the liability, if any, of Classic F.A. shall be calculated by reference to the particular part or parts lost or damaged irrespective of any special value which such article may have as such part of such pair or set.

6.5 Any date given by Classic F.A. for delivery of the goods is given only as a guide for the assistance of the customer and time for delivery of the goods shall not be of the essence of the Contract except as shall otherwise be provided in these Terms and Conditions.

6.6 Classic F.A. shall not be liable in any circumstances whatsoever and howsoever caused including the negligence of Classic F.A. its servants, agents or subcontractors for indirect, special or consequential loss or damage such as, but not limited to, loss of profits, loss of market or the consequences of delay or deviation.

6.7 Notwithstanding anything else hereunder in consideration of the rate charged, it is agreed that the liability of Classic F.A. for any reason whatever is limited to \$100.00, United States Dollars. Classic F.A. shall not be liable for loss or damage to shipments improperly packed or labeled, or for loss or damage caused by delay. All complaints regarding loss or damage of any kind must be submitted to Classic F.A. in writing within such seven days of receipt of the shipment. Claims not made within such seven-day period are deemed waived by the shipper. Should any claim in an amount which is in excess of the foregoing limits of liability be asserted against Classic F.A. by a third party for loss or damage to merchandise handled hereunder, the shipper agrees to indemnify and hold Classic F.A. harmless against any such loss or damage including, but not limited to, negligence.

6.8 IN NO EVENT SHALL CLASSIC F.A. BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.9 CUSTOMER ACKNOWLEDGES THAT CLASSIC F.A. IS NOT PROVIDING ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OTHER THAN AS SET FORTH IN THESE TERMS AND CONDITIONS. ANY STATEMENT MADE BY ANY PERSON, INCLUDING REPRESENTATIVES OF CLASSIC F.A., WHICH ARE INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS OF THESE TERMS AND CONDITIONS SHALL NOT BE BINDING UPON CLASSIC F.A. UNLESS THEY ARE REDUCED TO WRITING AND ARE SIGNED AND APPROVED BY AN AUTHORIZED OFFICER OF CLASSIC F.A..

## 7. RESPONSIBILITIES AND LIABILITIES OF THE CUSTOMER

7.1 The customer agrees that he will not submit for packing or delivery;

- (1) Jewelry, watches, trinkets, precious stones, money, deeds, securities, stamps, coins, (or similar collection of such kind)
- (2) Any damaging, dangerous, explosive or hazardous article, substance or containment or any article or substance likely to encourage vermin or other pests or likely to cause infection or contamination.

7.2 It shall be the responsibility of the customer to ensure that proper arrangements are made for the receipt of the goods. A carrier may raise extra charges if delivery cannot be affected in the normal course of business and the customer agrees to be responsible for such charges.

7.3 As agent of the customer, Classic F.A. will give instructions for the delivery of goods. It is the responsibility of the customer to ensure that all delivery addresses and instructions are accurate and the customer agrees to be responsible for any additional, costs or claims, which may be made as a result of any inaccuracies in such addresses or instructions. All shipments that cross international borders shall be cleared through Customs in the destination country

# CLASSIC F.A. PACKERS & SHIPPERS

prior to delivery. Customs clearance is the responsibility of the customer, and this service can be performed by Classic F.A. upon written request. Unless it has been agreed in writing that Classic F.A. will complete all Customs documentation on behalf of the customer, it is the responsibility of the customer to ensure that all Customs requirements and documentation have been met and completed and all requirements of any Customs or similar body have been compiled with.

- 7.4 Should Classic F.A. be put to any costs, charges or expenses in consequence of any claim made by a third party in respect of any goods packed or carried, or be ordered to pay any damages arising out of any such claims, or should it be liable to any penalty under statute or otherwise or put to any expense in recovering any charges due to it, the same shall be recoverable from the customer and the customer hereby agrees to pay all such sums to Classic F.A., including Classic F.A. attorneys' fees and costs of suit.
- 7.5 It is the responsibility of the customer to acquaint himself with the exceptions and conditions of any insurance affected on his behalf and the customer is deemed to have accepted the same.

## 8. TIME LIMIT FOR CLAIMS

- 8.1 Classic F.A. shall be discharged from all liability of whatsoever nature and howsoever caused including negligence unless;
- (1) Notice of loss and/or damage shall have been received by Classic F.A. in writing;
- (a) In respect of damage - within seven (7) days of receipt of the goods by the customer or the person to whom delivery is directed.
- (b) In respect of loss - within seven (7) days of the time when the goods should have been delivered in the normal course of business either alone or with other goods; and
- (2) Proceedings or arbitration procedure is commenced within one year of the period set out in 8.1 (1)
- 8.2 Time shall be of the essence in respect of the making of such claims and the bringing of such procedures.

## 9. PAYMENT

- 9.1 Unless expressly agreed otherwise in writing, all monies due and payable to Classic F.A. in respect of services rendered or goods supplied shall be payable at the offices of Classic F.A.
- 9.2 All monies due to Classic F.A. shall be paid in cash or otherwise as agreed immediately upon receipt of an invoice without deduction or deferment.
- 9.3 The customer expressly agrees that he will not withhold or defer payment of any monies due by virtue of any claim or counterclaim.
- 9.4 Classic F.A. may add interest to any payments due to it from the customer when such payments are not made on time. Such interest shall be at the rate of 1.5% per month or the highest rate permitted by law.

## 10. LIEN AND POWER OF SALE

- 10.1 Classic F.A. is deemed to be authorized to pay all charges claimed by any previous contractor, carrier or freight forwarder and any other charges, duties or levies raised of whatsoever nature upon the goods. Pursuant to the Warehouse Receipt issued by Classic F.A. to the customer and in accordance with N.J.S.A. 12A:7-201, *et seq.*, Classic F.A. shall have a general lien upon all goods in its possession for all monies due to it from the customer or liabilities incurred by it and for monies paid on behalf of the customer, including, but not limited to attorneys' fees incurred by Classic F.A. in enforcing the Warehouseman's Lien. Classic F.A. shall be entitled to raise a warehousing charge and all other expenses during the period in which a lien on the goods is being asserted and all these Terms and Conditions shall continue to apply thereto.
- 10.2 Consistent with N.J.S.A., 12A:7-206, Classic F.A. may, at any time, upon giving not less than 30 days' notice in writing to the customer require the customer to remove the goods from the care, custody or control of Classic F.A. and to pay all monies then due to it. In the event of the customer failing to remove the goods and to pay such monies, Classic F.A. shall have the power to sell or otherwise dispose of the whole or part of the goods in accordance with N.J.S.A. 12A:7-210 and may apply the proceeds of sale towards payment of all sums due to Classic F.A. and any expenses incurred by reason of the said sale or disposal, including, but not limited to attorneys' fees. Any surplus will be paid to the customer in accordance with New Jersey law.

## 11. ARBITRATION OF DISPUTES

Should any dispute arise as to the interpretation of any provision of these Terms and Conditions, the parties agree that the issue shall be decided by arbitration. The arbitration shall be conducted under the rules of the American Arbitration Association in Newark, New Jersey. If such organization ceases to exist the arbitration shall be conducted by a successor, or by a similar arbitration organization, at the time the demand of arbitration is made. The decision of the arbitrators shall be final and binding on both parties. The prevailing party shall be entitled to recover from the other party its or his own expenses, the arbitrators fees, attorneys' fees, expert testimony and for other expenses incurred in presenting its case. Other arbitration costs, including fees for records of transcripts, shall be born equally by the parties.

**Indemnification.** Customer shall defend, indemnify and hold harmless Classic F.A., its officers, directors, employees, agents, and representatives against any and all claims, demands, actions, causes of action and/or liabilities (actual, potential, threatened or pending) and all reasonable expense (including cost of defense, settlement, and reasonable attorneys' fees) ("collectively, "Claims") relating to or arising from (i) Customer's negligent act or omission, (ii) Customer's \ breach of this Agreement, (iii) any want of authority of the customer to enter into this Agreement on behalf of any party having an interest in the goods or any part thereof, (iv) the disposition of any articles or substances listed in Section 4.2, (v) Classic F.A. acting in accordance with the customer's instructions, (vi) any breach by the customer of any warranty or condition contained in these Terms and Conditions.

I have read and understand the above paragraphs 1.1 through 11 TERMS AND CONDITIONS OF TRADING of Classic F.A. Packers & Shippers. I wish to proceed with services as described in the enclosed attachment. Classic F.A. Packers & Shippers takes all jobs on a first come first serve basis. Confirmed received signed copy of our Terms/Contract and receipt of 50% retainer constitutes an official booking with Classic F.A. Packers & Shippers.

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Signature

Date

Printed

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