

TERMS AND CONDITIONS

These Terms and Conditions apply to the arrangement of motor, rail and less than truckload transportation as well as cross-dock and incidental warehouse services with respect to the Customer's Cargo tendered to National Xpress Logistics ("NXL"). These Terms and Conditions contain the entire understanding between NXL and the Customer with respect to the subject matter contained herein. Customer agrees that to the extent there is a conflict between these Terms and Conditions and the terms and conditions of any executed agreement(s) between Customer and NXL ("Agreements") that the terms and conditions of such Agreements shall control, except that the limitations of NXL's liability provided herein shall supersede any limitations set forth in such Agreements. The limitations of liability provided herein are binding notwithstanding contrary terms included in such Agreements. The Customer acknowledges that NXL's responsibilities are limited to arranging for, but not actually performing, transportation of the Customer's Cargo.

1. Definitions:

1. **NXL** - shall mean National Xpress Logistics, its agents, employees, representatives, officers and directors.
2. **LTL Shipments**- shall mean shipments tendered to NXL that do not require the exclusive use of a trailer and which can be comingled with the shipments of other customers.
3. **Full Load Shipments**- shall mean shipments tendered to NXL that exceed 15,000 lbs., or which otherwise require the exclusive use of a trailer or cannot be comingled with shipments from other customers.
4. **Carrier or Carriers**- shall mean LTL carriers, motor carriers, rail carriers or rail transportation arrangers, third party logistics providers, and local transportation by motor carriers.
5. **Terms and Conditions**- shall mean the terms and conditions contained herein as well as any incorporated terms. **Cargo**- Shall mean tangible goods including any packaging, containers or equipment tendered to NXL for the purpose of NXL providing the Services.
6. **Customer**- Shall mean the party that engages NXL to facilitate transportation of the Cargo. The Customer may be acting on its own behalf or on the behalf of another party; however, whether as principal or agent, the Customer is bound in its own right to these Terms and Conditions. The Customer might or might not be the owner of the Cargo. When acting as a disclosed or undisclosed agent, the Customer binds not only itself but also its principal including the owner of the Cargo (if not the Customer) to the terms and obligations of these Terms and Conditions.
7. **Service(s)**- Shall mean the arrangement of freight transportation by Carriers and the arrangement of services pursuant to these Terms and Conditions. All transportation services provided by a Carrier will be subject to the circulars, tariffs, directories, agreements, rules, or policies governing the transportation of the Cargo published by the respective Carrier and in effect at the time of the engagement of such carrier with respect to the transportation and or storage of Cargo ("Tariff"). Customer agrees that NXL shall act solely as a facilitator with respect to any claims for damage as discussed herein.

2. Customer Warranties:

Customer warrants and represents that it is either the owner of the Cargo, or that it is otherwise authorized to arrange for the transportation of the Cargo and to bind the owner of the Cargo to these Terms and Conditions. The Customer also warrants that its agreement(s) with the owner of the Cargo do not preclude the Customer from tendering the Cargo to entities providing services similar to the Services and/or NXL. The Customer also warrants as follows:

1. **Description of the Cargo-** Customer warrants that the description and particulars, including but not limited to their marks, number, weight, volume and quantity, of any Cargo tendered by or on behalf of the Customer to NXL are complete and accurate. Customer further warrants that the Cargo does not require any special licenses, permits or authorizations in order to store, handle, possess or otherwise provide services related to the Cargo .
2. **LTL Shipments-** Customer acknowledges that the tendering of Cargo to NXL as an LTL Shipment allows NXL to commingle the Customer's Cargo with the Cargo of other Customers. Customer further warrants that it has the authority to tender freight to NXL as an LTL Shipment.
3. **Customer compliance with applicable laws-** Customer shall be responsible for and warrants compliance by it and all consignors and consignees with applicable laws, rules, and regulations, including, but not limited to, customs laws, import and export laws, anti-corruption laws and governmental regulations of any jurisdiction to, from, through or over which the Cargo may be carried. NXL assumes no liability to the Customer or to any other person for any loss or expense due to the failure of Customer to comply with this provision.
4. **Right to act on behalf of Cargo owner-**Any individual or entity acting on behalf of the Customer in requesting Services hereunder warrants that it has the right to act on behalf of the Cargo owner and the right to legally bind the Cargo owner or anyone else with an interest in the Cargo.

3. Special Instructions

Except where NXL has accepted special instructions in writing, and has issued written acknowledgement of its acceptance thereof, the Customer warrants that the Cargo does not require insulated, refrigerated, ventilated or other special storage or handling not disclosed to and agreed to by NXL at or before the time of Customer's request for Services with respect to such Cargo.

4. Customer Responsibilities:

Customer is responsible for ensuring that all Cargo subject to these Terms and Conditions has been properly and sufficiently prepared, packed, packaged, stowed and labeled and/or marked for transportation, including any special handling requested by the Customer if applicable, and that the Cargo has been properly loaded in a suitable transport unit in suitable condition to carry the Cargo. Except where NXL has accepted special instructions in writing, and has issued written acknowledgement of its acceptance thereof, the Customer warrants that: (i) the consignor has loaded, blocked and braced the shipment in such proper and timely manner to prevent shifting of the shipment during transportation and in compliance will all laws, regulations or rules related to the highway and rail transportation of the Cargo including any requirements in the Tariffs as well as to comply with applicable federal and state gross and axle weight limits and (ii) consignee will unload shipments from the underlying Carrier's vehicle in a timely manner and within the free time allowed by the Carrier. Detention beyond allowed free time may cause assessment of additional charges.

1. **Shipper Load and Count-** All shipments shall be treated as "Shipper load and count, consignee unload" if the shipment is sealed at origin.
2. **Hazardous, Dangerous or Restricted Goods-** Except under special arrangements previously agreed to in writing by NXL as more fully described in ¶ 17, the Customer will not tender or attempt to tender any Cargo containing Hazardous goods including, but not limited to, any waste or fertilizers; any goods of a noxious, dangerous, hazardous or flammable or explosive nature; or any goods likely to cause damage. Any specially arranged consignment must be packaged, tendered and labeled in accordance with the hazardous material regulations of the U.S. Department of Transportation, applicable Dangerous Goods Regulations ("DGR") or any other applicable governmental or industry rules and regulations, and such consignments must be identified as such

at the time of Customer's request for Services and again at the time of tender. Should any Customer deliver any such Cargo to NXL or cause NXL to handle or deal with any such goods, otherwise than under special arrangements previously agreed to in writing by NXL, the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Cargo however arising and hereby indemnifies NXL against all penalties, fines, claims, damages, costs and expenses whatsoever including any reasonable attorneys' fees to defend against any penalties, fines, claims, damages, costs and expenses arising in connection therewith whether such negligence or condition is caused or created, in whole or in part as a result of NXL's negligence or not and the Cargo may be destroyed or otherwise dealt with at the sole discretion of NXL or any other person in whose custody they may be at the relevant time. If such Cargo is accepted under arrangements previously agreed to in writing, they may nevertheless be so destroyed or otherwise dealt with on account of risk to other goods, property, life or health, though NXL will where reasonably practicable contact the Customer. The expression "goods likely to cause damage" includes goods likely to harbor or encourage vermin or other pests and goods which are liable to taint or affect other goods.

5. Equipment:

- 1. Inspection of Equipment.** The Customer will cause all empty containers or trailers tendered for loading to be inspected before loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the Cargo during transportation. Customer will promptly notify NXL of any rejected equipment.
- 2. Use of Equipment.** If the Customer requests that NXL arrange for equipment to be dropped at a location for the Customer's convenience and left unattended by a Carrier, the Customer and its consignors or consignees will not lose, damage or misuse the equipment and the Customer will pay for loss or damage to equipment occurring during or as a result of such possession or use of the equipment.

6. NXL's Engagement of Carriers:

NXL shall select Carriers authorized to transport or store the Cargo on behalf of Customer. NXL shall ensure that any Carrier is not designated as unsatisfactory by the U.S. Department of Transportation (the "DOT").

7. Carrier Insurance Requirements:

- 1.** NXL shall ensure that all motor carriers transporting Full Load Shipments have a minimum of \$100,000.00 in cargo insurance on file with the DOT.
- 2.** NXL shall ensure that all motor carrier transporting LTL Shipments have a minimum of \$100,000.00 in cargo insurance on file with the DOT.

8. Payment:

NXL shall charge, and Customer agrees to pay the rates and charges set forth in any rate quote provided by NXL to the Customer and any rate agreements signed by the parties, or such rates as otherwise agreed in writing prior to commencement of the Services (including, without limitation, by email). Customer shall also be responsible for any additional applicable accessorial service charges, including, but not limited to, charges for detention, loading and unloading, and equipment ordered but not used. NXL agrees to submit to the Customer an invoice for all Services provided together with proof of delivery, if applicable. The Customer agrees to pay all such invoices within fifteen (15) days of receipt without offset unless otherwise agreed to in writing. NXL reserves the right to demand payment for any requested Services prior to the performance of the Services.

- 1. Finance Charges and Costs of Collection-**Invoices not paid within fifteen (15) days will be subject to interest at the rate of 1% (or, if less, the maximum rate permitted by applicable law) per month or any part thereof plus attorney's fees and/or other costs of collection.
- 2. No Offset-** Customer agrees that claims made against a Carrier or NXL may not be offset by the Customer, consignee or freight payer against freight charges or accessorial charges otherwise owed to NXL.

9. Shipping Documentation:

Unless agreed to in writing by NXL as described in ¶17, in no event shall any terms or conditions of any bill of lading, cargo receipt, proof of delivery or other shipment specific documentation relating to a shipment of Cargo apply to any Services provided by NXL or otherwise be binding on NXL. Any bill of lading issued by Customer or Carrier shall constitute a delivery receipt only. Customer will not insert NXL name as the “carrier” on a bill of lading, and NXL’s inclusion as the “carrier” on any bill of lading shall not impact NXL’s status as a property broker.

10. Responsibility For Carrier Charges:

Upon payment by NXL of freight or accessorial charges to its retained Carrier(s), Customer assigns, and NXL acquires by assignment, all collection rights of its Carrier.

11. Independent Contractor:

Customer acknowledges and agrees that NXL is not an agent for the Customer or Carrier(s) and NXL shall remain at all times an independent contractor.

12. NXL Insurance:

NXL agrees to procure and maintain at its own expense, at all times insurance coverage amounts adequate to facilitate NXL’s obligations as required by these Terms and Conditions.

13. Liability:

Customer understands and agrees that only the Carrier(s), are liable for any loss, damage or delay and NXL is not responsible for or liable for the acts or omissions of such Carriers. NXL’s sole liability with respect to loss or damage to Cargo shall be to the extent that such loss or damage is exclusively caused by the intentional misconduct of NXL. NXL and Carriers shall not be liable for loss, damage or for any delay to a shipment caused by an act of God, the public enemy, the authority of law, the inherent nature or vice of the goods (including but not limited to natural shrinkage), or resulting from an act or default of the Customer or consignee. NXL SHALL NOT BE LIABLE AND HEREBY DISCLAIMS RESPONSIBILITY FOR, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL PUNITIVE, OR MULTIPLIED DAMAGES OR OTHER INDIRECT COSTS, LOST PROFITS, FEES, LEGAL FEES, COURT COSTS, OR CHARGES OF ANY KIND ARISING FROM ANY CLAIMS FILED HEREUNDER OR ANY OTHER ACTS, INCLUDING DELAYS OR OMISSIONS OF NXL, WHETHER FORESEEABLE, DISCLOSED OR NOT.

- 1. Claims for Damage or Loss:** In the event of a cargo loss, damage or shortage claim, as an accommodation to Customer, NXL will facilitate the filing of a claim with the Carrier conditioned on Customer submitting to NXL any such claim, *before nine (9) months from the date of delivery.* All claims must be fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage. Customer understands and agrees that the underlying Carrier may have a limitation of liability in place that limits Customer’s recovery with respect to such claims. Customer shall have a duty to mitigate damages for all claims. Each Carrier’s liability shall be subject to the limitations found in such Carrier’s tariff. NXL may, in its sole discretion and without liability to Customer, discontinue pursuit of claims with the Carrier if such claim is not resolved within sixty (60) days of receipt by Customer. In no event will NXL have any liability arising from or related to Carrier’s refusal to accept full value liability or the Carrier otherwise limiting its liability for cargo loss and damage. Customer acknowledges that it has been provided the opportunity to elect full value liability for the transportation of its Cargo in exchange for paying a higher rate and has agreed for its Cargo to be transported at the rate provided by NXL pursuant to the liability terms herein or as identified in each Carriers Tariff. NXL shall be under no obligation to arrange, and Carrier shall be under no obligation to provide, service in accordance with any set pick-up or delivery schedule. Customer warrants and represents that if it is not the owner of such Cargo, Customer holds authority from such owner to bind the owner to the provisions of these Terms and Conditions.
- 2. Damage Evidence Requirements:** Delivery receipts without written notice of damage by the consignee will be evidence that the shipment was delivered in good condition. Visible loss or damage apparent at the time of delivery should be recorded in detail on the delivery receipt. Neither

NXL nor the Carrier(s) shall accept liability for damage claims stemming from the transport, handling or delivery of said freight without notation of damage on the bill of lading.

- 3. Liability Limits:** To the extent that loss or damage to Cargo was exclusively caused by the sole intentional misconduct of NXL, NXL's liability for the damage or loss of freight, if any will not exceed the lesser of:
- a. The actual value of the article(s);
 - b. \$2.00 per pound per lost or damaged package;
 - c. The lowest value of any new commodity contained in the shipment will be used if the Customer does not properly describe the freight on the Bill of Lading or uses a description of "FAK" or "Freight All Kinds" or other language that does not properly identify the commodities shipped including subsequent claims for shortage or damage;
 - d. \$100,000.00 per shipment;
 - e. Any general statutory or regulatory domestic or international cargo liability limitations;
 - f. \$1.00 per pound per lost or damaged package for household goods;
 - g. The amount stated on any Carrier's insurance coverage which controls any portion of the shipment's movement throughout transit of the shipment; or
 - h. All commodities other than new (including household goods and personal effects), when accepted and transported, will be subject to liability equal to the lesser of \$0.10 per pound with a maximum of \$5,000 per shipment.
- 4. NXL Liability:** Customer acknowledges and agrees that the sole liability of NXL related to the Services provided shall be as set forth in these Terms and Conditions. Any lawsuit arising from such a claim must be commenced within eighteen (18) months of denial of all or any part of such claim. Failure to do so will result in an absolute bar to any such claim and will relieve NXL of any and all liability with respect thereto.

14. Indemnification and Warranties:

CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS NXL FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY CUSTOMER OF THESE TERMS AND CONDITIONS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF CUSTOMER, ITS REPRESENTATIVES, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS REPRESENTATIVES, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULES OR REGULATIONS; (iv) COMPLIANCE WITH OR RELIANCE ON ANY INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER, OR (v) CLAIMS ASSERTED BY THE OWNER OF THE CARGO AGAINST NXL. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED.

15. Headings:

All headings are utilized herein only as a matter of convenience and reference, and in no way define, limit or describe the scope of the terms contained therein.

16. Integration:

NXL and Customer intend that no extrinsic evidence may be introduced to reform these Terms and Conditions in any legal or equitable proceeding unless contained in a written and signed Agreement.

17. No Modification:

Notice is hereby given that no person, other than an officer or director of NXL has or will be given authority to agree to any modification, cancellation or waiver of these Terms and Conditions. No waiver, modification, or cancellation and/or purported waiver, modification, or cancellation on the part of NXL shall be deemed to bind NXL unless made in writing and signed by an authorized NXL officer or authorized delegate. Any waiver on the part of NXL of any term or condition of these Terms and Conditions shall not constitute a precedent, nor require NXL to continue waiving such term or condition or to waive any succeeding breach of the same or any other of the terms and conditions of these Terms and conditions.

18. Waiver:

Failure of NXL to insist upon the Customer's performance under these Terms and Conditions or to exercise any right or privilege herein, will not be a waiver of any rights or privileges. To the extent applicable, NXL and the Customer hereby expressly waive any and all conflicting rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated thereunder, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, et seq., including 49 U.S.C. § 14706 and 49 U.S.C. § 14101(b) (collectively the "Acts"). These Terms and Conditions in conjunction with any applicable Agreement(s) is a contract for specified services provided under specified rates and conditions. Neither NXL nor Customer shall challenge any provision of these Terms and Conditions on the ground that any provision(s) violate the waived rights and remedies under the Acts. For avoidance of doubt this waiver does not waive the preemption of state law claims by the Acts.

19. Severability:

In the event any paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

20. Choice of Law:

These Terms and Conditions and the relationship of Customer and NXL shall be governed by applicable Federal law of the United States and by the law of the Commonwealth of Pennsylvania and any dispute arising out of any such act or contract shall be within the exclusive jurisdiction of the federal or state courts with jurisdiction in Montgomery County, Pennsylvania without giving consideration to the choice of law principles thereof. Customer and NXL hereby irrevocably consent to the jurisdiction of those courts; agree that any action relating to the Services performed by NXL shall be brought only in said courts; consent to the exercise of in personam jurisdiction by said courts over them; and further agree that any action to enforce a judgment may be instituted in any jurisdiction.