



## **eShipping, LLC**

### **Terms and Conditions**

These terms and conditions of service (the “Terms and Conditions”) constitute a legally binding contract among the Parties (defined below) and shall apply solely to services provided by eShipping, LLC “eShipping” for the arrangement of surface transportation in North America and Auxiliary Services described herein. The Terms and Conditions are subject to change by eShipping upon posting on eShipping’s website from time to time. The most current and controlling version of the Terms and Conditions are published at [www.eshipping.biz](http://www.eshipping.biz).

#### **1. DEFINITIONS:**

(a) “Auxiliary Services” are those services which are performed prior or subsequent to transportation such as local cartage, loading, unloading, crating, uncrating, packing, unpacking and storage which are requested by Customer and arranged by eShipping as an additional service. “Auxiliary Services” shall not include warehousing services or services provided by eShipping, of which are governed by separate terms and conditions of service.

(b) “Bill of Lading” is the reference to the official shipping document, sometimes completed by Customer or in some cases by the Carrier or other authorized person or entity, accepting the Shipment, authorizing eShipping to broker the load for carrier to carry the Shipment to said destination, and containing pertinent information about the Shipment such as piece count, weight, quantity, and the like; The Bill of Lading may include, but not be limited to, shipping documents directly referred to and titled as a Bill of Lading, and also other shipping documents commonly used in the industry such as Shippers Letter of Instruction, Air Waybill, etc., which duly authorize eShipping’s assigned carrier to accept the Shipment.

(c) “Bill to Party” is the person or entity to whom the Bill of Lading instructs the carrier to issue the invoice to for the Shipment.

(d) “Carrier” is the person or entity actually performing the carriage of the Shipment with its own means of transport as the performing carrier, and subject to carrier liability as a result of an express or implied undertaking to assume such liability.

(e) “Consignee” is the person or entity listed as the “ship to” party or to whom the Bill of Lading instructs eShipping to deliver the Shipment.

(f) “Consignor” is the person or entity listed on the bill of lading as the origin of the freight or the place where the freight is received by the carrier.

(g) “Customer” or “Shipper” includes the Person with whom eShipping has contracted to arrange to move the Shipment and any Person whom directly benefits from services performed pursuant to the Terms and Conditions.

(h) “Package” or “Packages” are the customary shipping units as listed on the Bill of Lading including, but not limited to, packages, cartons, pallets, tubes, etc.

(i) “Parties” include the Customer, the Consignee, the consignor, eShipping, and any other Person having a present or future interest in the Shipment or any Person acting on behalf of any of the above-mentioned parties with respect to a Shipment.

(j) “Person” means any individual, corporation, limited liability company, joint venture, trust, partnership or other entity.

(k) “eShipping” means eShipping, LLC and its affiliated companies, and their respective employees, officers, directors, and agents performing freight brokerage services pursuant to the Terms and Conditions.

(l) “Shipment” is the total of the Packages and their contents listed and described on the Bill of Lading, or as amended in subsequent written documentation provided to eShipping.

2. AGREEMENT TO TERMS AND CONDITIONS. In tendering a Shipment to eShipping or otherwise engaging the services of eShipping in any other fashion, Customer agrees that the version of the Terms and Conditions in effect at the time the shipment is tendered to eShipping will apply to the Shipment, its transportation and the Auxiliary Services, which no agent or employee of the Parties may alter. To the extent the Terms and Conditions conflict with a Bill of Lading or other shipping document, the Terms and Conditions shall control. If the services provided are for international air, international ocean, warehousing, or customs brokerage, then the separate terms and conditions for each respective service shall govern and control. Further, except to the extent the Terms and Conditions conflict with any written agreement between the Parties, the Terms and Conditions shall supersede any alleged or asserted oral agreement, promise, representation, or understanding between the Parties.

3. CUSTOMER’S WARRANTY. Customer warrants that each Package and Shipment is properly classified and completely described on the Bill of Lading or other relevant shipping documentation furnished by Customer, that each Package and Shipment is properly marked and addressed, is packaged properly and adequately to protect the contents in the normal course of transportation for each surface and air transport, and except as otherwise noted on the Bill of Lading, is in good order and condition. Customer also warrants its compliance with all applicable laws, rules, and regulations including, but not limited to, customs laws, import and export laws. Customer shall furnish such information and attach to the Bill of Lading such documents as are necessary to comply with all laws, rules and regulations.

4. QUOTATIONS NOT BINDING. Except as set forth in a written agreement between the Customer and eShipping, quotations as to fees, rates of duty, freight charges, insurance premiums or other charges provided by eShipping to Customer are for informational purposes only and are subject to change without notice. No quotation shall be binding on eShipping unless eShipping agrees in writing to undertake the handling and transportation of the Shipment at a specific rate

accepted by Customer within five (5) business days from the date of the quote, unless otherwise noted by eShipping. Customer understands that quotations are provided to Customer in reliance on the information furnished to eShipping at the time the quotation is provided, and are subject to change based on actual weights, commodity, contents, mode of transportation, dimensions, and volumes tendered by the Customer, as well as due to unforeseen or unanticipated costs, occurrences or events which are beyond the control of eShipping. Rates are not valid for any residential, inside, or show delivery. If such service is requested, additional charges will apply.

5. RATES AND CHARGES. Rates are in USD and include fuel surcharges, and unless noted in the rate confirmation, rates exclude accessorial charges, custom clearance or other international crossing fees. Except as provided in any written agreement between the parties, rates and charges for Shipments will be based on actual or dimensional weight, whichever is greater, and LTL shipments will be based on class rate provided by NMFC 100 tariff.

## 6. CLAIMS.

(a) Notice of Claims. A timely notice to eShipping of a claim in accordance with the requirements set forth in this section is a prerequisite to the institution of a suit pursuant to Section 6 (b) of the Terms and Conditions as follows:

(i) Apparent Damage Upon Delivery. If the loss or damage to a Shipment is apparent at the time of delivery, Consignee must immediately note such loss or damage on the delivery receipt or other documentation or platform utilized to sign for delivery of a Shipment (i.e. signature on android application, tablet, truck pro, or other shipping documentation utilized as evidence of goods received by Consignee). Apparent loss or damage shall include, without limitation, shortage in the shipment, damage to the package(s), or possible damage to the contents which is ascertainable without inspection of the contents itself. NOTE: Notations such as “subject to inspection” and “subject to count” are not valid. Failure to note exceptions of actual product loss or damage at the time of delivery on the delivery receipt is prima facie evidence of delivery in good order and condition and shall be an absolute bar to a claim for apparent damage.

(ii) Cargo claims liability for the Carrier will be handled per the provisions of 49 CFR § 14706 and claims filing per the provisions of 49 CFR § 370, et seq. except as detailed in these Terms and Conditions. eShipping shall have no liability for freight claims. eShipping may be involved in facilitating freight claims for its customer, but nothing in that facilitation shall be deemed as waiving eShipping’s absolute defense to freight claims.

(iii) Concealed Damage Upon Delivery. If the loss or damage to a Shipment is not apparent (concealed), eShipping must be given written notice within 3 days from the date of delivery. Notwithstanding the foregoing, in the case of perishables, eShipping must be notified of all claims within 48 hours of delivery. If Customer gives eShipping notice of Customer’s intention to make a concealed loss or damage claim, eShipping shall have the right to inspect the Shipment and all materials used to package or protect the Shipment for transportation at the location where the Shipment was delivered.

(iv) Timeliness of Notice. Unless otherwise provided in an applicable statute, the failure to give timely notice of any loss or damage in accordance with this Section 6 (a) or the failure to permit

or arrange inspection as required herein shall constitute an absolute bar to recovery for any claim for loss or damage. Failure to keep all product and packaging of damaged product, unless otherwise instructed in writing by eShipping, may result in non-payment of claim. Further, it is incumbent upon the claimant and all other interested parties to mitigate the damages to the extent that is reasonably possible under the circumstances.

(b) Claims Process.

(i) Time Limit for All Claims. All claims for loss, damage, or delay must be received in writing by eShipping no later than six (6) months from the date of delivery for damage claims or from date of shipment for loss claims. All such claims must include copies of the Bill of Lading, delivery receipt, invoice and any other documents supporting the claim, or such claims shall be barred. Further, there shall be no offsetting of claims and any claimed amounts shall not be deducted from transportation charges due to eShipping. eShipping will not process or consider any claim until all transportation charges have been paid in full. A claim will be considered to be a valid claim only when it meets the requirements of these Terms and Conditions and 49 CFR Part 370.

(ii) Salvage Right. In the event eShipping pays a claim, eShipping shall be entitled to possession of the portion of the Shipment for which the claim was made and shall be under no obligation to return any portion of the Shipment to Customer or other Parties. eShipping shall be entitled to salvage any such portion of the Shipment and shall be under no obligation to return any salvaged proceeds to Customer or other Parties. The failure to provide the salvage shall be a bar to recovery of such claim. Finally, if eShipping pays a claim and Customer or a third party later salvages that portion of the Shipment for which the claim was made, eShipping shall be entitled to a refund, up to the amount of the claim paid by eShipping. In the event that Customer requires the shipment be destroyed rather than salvaged, eShipping will be entitled to a credit for what would have been realized at a salvage sale.

(iii) Lawsuits Arising from Denied Claims. Suit to recover for any loss or damage claims must be instituted within eighteen (18) months from the date the claim has been denied in writing, in whole or in part, by carrier, and must be filed in accordance with Section 10 herein.

(iv) Address for Notice and Claims. ALL COMMUNICATIONS REGARDING A CLAIM, INCLUDING DISPUTED DEBTS AND INSTRUMENTS TENDERED AS FULL SATISFACTION OF A DEBT ARE TO BE SENT IN WRITING TO eShipping at [claims@eshipping.biz](mailto:claims@eshipping.biz).

7. PICK UP AND DELIVERY TIMES. Due to the inherent nature of the transportation business, eShipping does not guarantee pick up, transportation, or delivery by a stipulated time.

8. LIMITATION OF LIABILITY. eShipping will not have liability for cargo loss or damage. The provisions of this Section will govern the liability of the carrier's liability for loss or damage, and references in this section to "eShipping" will include the carrier. Where eShipping is held liable for loss or damage notwithstanding the prohibition of its liability under these Terms and Conditions, the provisions of this Section will apply to eShipping's liability. For all shipments, Customer authorizes eShipping to contract with or otherwise make arrangements with carriers for the transportation of Customer's freight. The terms and conditions of any written contract between

eShipping and the carrier or of the carrier's rules tariff/terms and conditions shall control and be binding on Customer. In the event of any conflict between these Terms and Conditions and the terms of any carrier contract or rules tariff/terms and conditions, the provisions of the carrier contract or rules tariff/terms and conditions will control.

(a) Force Majeure. eShipping shall not be liable for loss, damage, delay or monetary losses of any type caused by: acts of God; public authorities acting with actual or apparent authority; strikes; labor disputes; cyber-attacks; weather; mechanical failures; aircraft failures; civil commotions; acts or omissions of customs or quarantine officials; acts of carriers related to security; the nature of the freight or any defects thereof; inherent vice of the goods; public enemies; hazards incident to a state of war; and acts of terrorism.

(b) Exclusions. In no event shall eShipping be liable for any loss or damage caused by:

(i) Acts, defaults or omissions of the Customer, Shipper, Consignor, or Consignee, including but not limited to, inadequate or improper packaging, marking, addressing, or providing incomplete/inaccurate shipping instructions, documents or information; or from eShipping's compliance with instructions received by Customer or from any other person authorized to give them;

(ii) The handling, loading, stowage, or unloading when not performed by eShipping;

(iii) For Return Shipments, eShipping shall not be liable for any claims for shipments which have been previously unpackaged by Consignee or Customer, are no longer in their original sealed condition, or where eShipping did not arrange for the transportation of the original shipment to Consignee; or

(iv) The selection of Carriers for Shipments or service providers for Auxiliary Services.

(v) Shipment delay

(c) Monetary Maximum Liability. The monetary maximum liabilities set forth herein shall be imposed in all instances, unless the Customer has declared a higher value for the Shipment and paid an excess valuation charge and then only to such declared higher value, subject to Section 20. In the event that eShipping is deemed liable for loss or damage in accordance with the Terms and Conditions, such claims shall be subject to the following maximum monetary recovery(s):

(i) Surface Shipments in the U.S. eShipping's liability is limited to the greater of USD \$50.00 per Shipment or USD \$0.50 per pound, per package whichever is greater to a maximum amount of \$100,000 per occurrence.

(ii) Surface Shipments between the U.S. and Canada. eShipping's liability is limited to a maximum of \$2.00 Canadian per pound computed on the total weight of the lost or damaged goods by the Shipper.

(iii) Surface Shipments between the U.S. and Mexico. eShipping's liability is limited to a maximum of \$.10 per pound computed on the total weight of the lost or damaged goods by the Shipper.

(iv) Domestic Air Shipments. eShipping's liability is limited and governed by the terms and conditions of the domestic air carrier's air waybill and terms and conditions.

(e) No Consequential Damages. IN NO EVENT SHALL eShipping BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF MARKET, LOSS OF INCOME, DAMAGES ARISING FROM LOSS, CONSIGNEE or CONSIGNOR COMPLIANCE FEES or CHARGEBACKS, ATTORNEYS' FEES OR PUNITIVE DAMAGES, WRONG DELIVERY, OR DAMAGE TO PROPERTY, DELAYED DELIVERY OR FAILURE TO ATTEMPT DELIVERY, WHETHER OR NOT eShipping HAD KNOWLEDGE THAT SUCH DAMAGES OR LOSSES MIGHT OCCUR.

(f) Bill of Lading. eShipping reserves the right to rely on the Bill of Lading, as defined herein, as Customer's letter of instruction for all other modes of transportation including LTL or FTL truck brokerage (U.S. and international), rail, and U.S. air.

(g) Third Parties and Routes. eShipping is authorized to select and engage carriers, truckmen, custom brokers, agents, warehousemen and other third parties, as required, and the Shipments may be entrusted to such agents subject to all limitations of liability set forth in the Terms and Conditions. Every eShipping party, including without limitation, every employee, agent carrier, or subcontractor of eShipping shall be entitled to the same rights, exemptions and/or limitations of liability, defenses and immunities to which eShipping is entitled. It is expressly intended that all eShipping parties and subcontractors (and subcontractors' subcontractors) shall have the benefit of the Terms and Conditions. Finally, unless express instructions are agreed upon in a signed writing between the Parties, eShipping has complete discretion to select the means, route and procedure to be followed in the handling, transportation and delivery of the Shipment.

9. LTL SHIPMENTS. Notwithstanding anything herein to the contrary, all shipments handled via Less Than a Truck Load ("LTL") truck brokerage are arranged by eShipping acting as a broker, and not as a freight forwarder. As such, eShipping accepts no cargo liability, and all reports correspondence, claim filing and settlement issues are to be pursued with the carrier whom the LTL shipment has been brokered, and are subject to the terms and conditions of that carrier.

10. GOVERNING LAW, VENUE, JURISDICTION. The Terms and Conditions, and any action or contract to which they apply, shall be governed and interpreted by federal law, or where federal law does not apply, by the laws of the State of South Carolina, U.S., without reference to its choice of law provisions. All suits to recover a claim must be exclusively submitted to the jurisdiction of a state or federal court with jurisdiction over Richland County, South Carolina, to which the Parties irrevocably consent to personal jurisdiction and waive all objections thereto. Where claims are not filed or suits are not instituted in accordance with the foregoing provisions, such claims shall be deemed waived and will not be paid.

11. SEVERABILITY. If any provision of the Terms and Conditions may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision shall have the meaning which renders it valid and enforceable. The language of all provisions of the Terms and Conditions shall be construed according to fair meaning and not strictly construed against any party. The provisions

of the Terms and Conditions are severable and shall be interpreted and enforced as if all completely invalid or unenforceable provisions are not contained herein, and partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable.

12. PROHIBITED/RESTRICTED CARGO. There are certain types of articles that are prohibited items which will not be accepted for transport by eShipping and its contracted carriers. Each carrier maintains a list of prohibited/restricted cargo that will not be accepted for transportation. Customer must verify with eShipping or with each carrier's published tariff whether its cargo is prohibited or restricted. , For any prohibited/restricted item, eShipping shall not be liable for any loss, damage, delay, liabilities, penalties or fines resulting from the arrangement of transportation, however described or mis-described in the Bill of Lading (including unacceptable descriptions such as "FAK"), and no employee or agent of eShipping has any authority to waive the limitations herein contained. eShipping retains the right to refuse any such Shipment prior to acceptance. In the event eShipping discovers, after acceptance of a Shipment, that the Shipment contains any of the herein mentioned articles, it reserves the right to refuse the Shipment, or if already in transit, to refuse to deliver the Shipment to the Consignee. Customer agrees to pay all expenses, freight charges, fines and penalties for said Shipment. Customer further agrees to indemnify and hold harmless eShipping from any and all loss, damage, delay, liabilities, penalties or fines arising out of or related in any way to Shipments containing any of the items described in this Section 12.

13. COMPLIANCE WITH LAWS. eShipping conducts its business ethically and in compliance with all laws in the countries where eShipping does business. Shipments are subject to all applicable international, federal, state and local laws and regulations, including all anti-corruption laws such as the U.S. Foreign Corrupt Practices Act of 1977, as amended and the UK Bribery Act, as amended (collectively, the "Laws"). Customer shall not send any Shipment in any manner that violates any laws. Exporting Shipments to companies, organizations, or persons listed on the Specially Designated Nationals List, the U.S Debarred List, the U.S. Entity List, and other governmental lists are prohibited, including those on other lists of denied parties. Customer agrees not to use eShipping's services to transport cargo in any manner that violates any embargoes of countries or persons, including U.S. embargoes against Burma, Cuba, Iran, Libya, North Korea, Sudan and Syria.

14. C.O.D. SHIPMENTS. Collect on Delivery (C.O.D.) service is provided under the following conditions: (a) Customer must identify the shipment as a C.O.D. Shipment by entering the amount to be collected on the front of the Bill of Lading or other shipping document, (b) Customer must specify the type of payment to be received (e.g. check, money order or cashier's check) on the front of the Bill of Lading or other shipping document, and (c) eShipping and Customer agree that eShipping does not guarantee nor verify that a check, money order, cashier's check or other such financial instrument is valid or negotiable. All payments are collected at Customer's risk. Unless prior arrangements are made, payment of freight charges and/or C.O.D. amounts must be remitted by cashier's check, certified check, money order, or Consignee's check as authorized by the Customer in writing.

15. INSPECTION & SECURITY. All Shipments are subject to inspection by eShipping, including by eShipping's performing carriers and by any duly authorized government entities, including but not limited to the U.S. Transportation Security Administration, U.S. Customs and Border Protection, and like entities. Notwithstanding the foregoing right to inspect shipments, eShipping

is not obligated to perform such inspection except as mandated by law. Further, eShipping reserves the right to unilaterally reject any Shipment that it deems unfit for transport after inspection.

16. INDEMNITY. Customer, Shipper, Consignor, and Consignee shall be jointly and severally liable for all unpaid charges payable on account of the Shipment pursuant to the Terms and Conditions and shall pay or indemnify eShipping for claims, fines, penalties, damages, costs (storage, handling, re-consignment, return of freight to shipper, etc.) or other sums which may be incurred by eShipping by reason of any violation of the Terms and Conditions, any other default of Customer, Consignor, Consignee or claims arising in connection with or related to the selection of service providers for Auxiliary Services.

17. PAYMENT. All charges are payable in US Dollars and are due and payable fifteen (15) days from the date of invoice, unless specified otherwise stated in a written agreement. Invoices not paid in full by the Due Date printed on the invoice are subject to a late fee up to the maximum allowable by law. At eShipping's discretion, all funds received by eShipping will be applied to the oldest (based on pick-up date) invoiced BOL that is outstanding. Overpayments do not accrue interest. All reimbursements for overpayments must be requested within 6 months of payment date or the request may be declined. In the event eShipping retains an attorney or collection agency to collect unpaid charges or for the enforcement of these Terms and Conditions, all unpaid charges will be subject to a late payment penalties and the Customer shall also be liable for all attorneys and collection agency fees incurred by eShipping, together with related costs and expenses. All shippers, consignors, consignees, freight forwarders or freight brokers are jointly and severally liable for the freight charges relating to this shipment.

All Customers are subject to credit approval. eShipping intends to perform a credit check based on the information provided at the time of enrollment by the Customer. The amount of credit, if any, granted to the Customer is at the sole discretion of eShipping. When paying by credit card or electronic funds, the Customer agrees they will be responsible for all charges payable, including any adjustments and credit card processing fees of up to 3%, on account of such Customer's shipment. These charges and adjustments, if any, will be automatically debited to the Customer's credit card or bank account.

The Customer shall be liable, jointly and severally, for all charges payable on account of such Customer's shipment, including but not limited to transportation, fuel and other applicable accessorial charges, including all adjustments issued by the carrier(s) after the shipment, and all duties, customs assessments, governmental penalties and fines, taxes, and Organization's attorney fees and legal costs allocable to this shipment and/or all disputes related thereto. Unless otherwise agreed, Brokers scheduling shipments for clients shall be liable, jointly and severally, for all charges payable on account of such client's shipment. eShipping reserves the right to amend or adjust the original quoted amount or re-invoice the Customer if the original quoted amount was based upon incorrect information provided at the time of the original quote or if additional services by the carrier were required or otherwise authorized by the Customer to perform the pick-up, transportation and delivery functions therein. Billing (invoice) disputes must be reported to [billing@eshipping.biz](mailto:billing@eshipping.biz) within 10 business days of the invoice date, unless otherwise stated in a written agreement with eShipping. If eShipping does not receive a dispute within the allowable ten (10) business days, the disputed item will be denied by eShipping.



eShipping or its agents, as herein defined, shall have a general lien on any and all property (and documents relating thereto) within the care, custody or control of eShipping's carriers for all charges and expenses advanced by eShipping, including any charges due for prior unrelated shipments, invoices or services performed by eShipping. eShipping may refuse to surrender possession of the goods until all such charges are paid in full. If such amounts remain unpaid for 30 days after eShipping's demand for payment, eShipping may sell such property at public auction or private sale. The proceeds of such sale shall be applied to the amounts owed to eShipping, and any surplus shall be paid to the Customer. Customer shall remain responsible for any deficiency.

18. [OMITTED]

19. [OMITTED]

20. INSURANCE. Insurance is available to Customer upon request only. The amount and type of available coverage is based on eShipping's open cargo insurance policy in effect on the date the Shipment is tendered to eShipping. In order to obtain coverage under that policy; a) Customer must properly notify eShipping in writing of the need for increased insurance at the time of load offer, b) eShipping must agree in writing to the higher declared value at, and c) the higher declared value must be inserted on the face of the Bill of Lading or other document that is used for receipt purposes. Failure to insert a full value insurance amount shall reduce any insurance payment proportionately. NOTWITHSTANDING ANYTHING IN THE TERMS AND CONDITIONS TO THE CONTRARY, INSURANCE PROCEEDS SHALL BE LIMITED TO THE LESSER OF (A) THE INSURED VALUE OF THE GOOD(S) AND (B) THE SUM OF THE ACTUAL COST TO THE CUSTOMER OF THE DAMAGED OR LOST GOOD(S) SHIPPED AND FREIGHT CHARGES. Insurance coverage and/or special insuring conditions are subject to the insurance option and related coverage and will be limited thereby. Certain commodities will be subject to a deductible.

ANY AND ALL INSURANCE OFFERED HEREIN IS PROVIDED BY THIRD PARTY INSURERS AND NOT BY ESHIPPING. ESHIPPING IS NOT IN THE BUSINESS OF PROVIDING OR SELLING INSURANCE BUT MERELY OBTAINS SUCH INSURANCE FOR THE BENEFIT OF ITS CUSTOMER WHEN REQUESTED BY THE CUSTOMER IN ACCORDANCE WITH THE PROVISIONS THESE TERMS AND CONDITIONS.

21. CUSTOMER USE OF eShipping SOFTWARE. Customer shall have a limited, personal, revocable, non-transferable and non-exclusive right to use eShipping Software as set forth in this Section 21. eShipping shall make the eShipping Software available to Customer for the purpose of allowing Customer to create, rate, track and obtain information about Shipments during transit and for a reasonable period of time after delivery has been made, and for no other purpose Customer agrees to only use the eShipping Software for the limited scope of use and purpose described herein. Customer further agrees to keep all passwords to the eShipping Software confidential and to limit its disclosure only to those employees with a need-to-know and who are bound by written confidentiality obligations for such information. Customer will not provide its login or password to any third party and will not alter or remove any copyright notice or other proprietary rights that may appear in the eShipping Software. Customer will not reproduce, copy, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the eShipping Software and will not challenge eShipping's rights in the eShipping Software.

The eShipping Software shall at all times remain the sole and exclusive property of eShipping. eShipping reserves the right to terminate Customer's password and its access to the eShipping Software, at its convenience without notice or cause. eShipping makes no warranties, whether express, implied, or statutory regarding or relating to the eShipping Software. eShipping HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE eShipping SOFTWARE INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR TITLE. eShipping will not be liable for any indirect, direct, special or consequential losses or damages, including but not limited to, loss of business or lost profits. Customer hereby releases, forever discharges and hold eShipping harmless from and against all claims, actions, suit, proceedings, obligations, liabilities, losses, costs or expenses resulting from, related to or in connection with Customer's access to or usage of eShipping Software or breach of this Section 21. As used herein, the term "eShipping Software" means eShipping's shipping information system, including without limitation all translations (including translation into any other computer languages), conversions, partitions, corrections, additions, extensions, enhancements, upgrades, improvements, modifications, compilations, abridgements, or other forms in which any portion thereof may be re-casted, transformed and/or adapted.

22. CONFIDENTIALITY. The information contained in any freight quote or load confirmation sheet is confidential information between the parties and may not be disseminated to other than those Customer employees and agents with a need to know and who are responsible for analyzing its contents and may not be disseminated to any third parties without the express permission of the other party.

23. LOGO/TRADEMARK. Customer shall not use eShipping's name, logo, trademarks or trade names in publicity releases, promotional material, customer lists, advertising, marketing or business generating efforts, whether written or oral, without obtaining eShipping's prior written consent, which consent shall be given at eShipping's sole discretion.

24. FOOD SAFETY MODERNIZATION ACT (FSMA). Any required documents to be compliant with the FSMA shall be provided by Customer to eShipping when the shipment is tendered booked. Broker will relay those documents to the Carrier per the FSMA. If Customer fails to comply with this subsection, it will defend, indemnify, and hold eShipping and motor carrier harmless from all fines, penalties, claims, liability, and damages, including reasonable attorney's fees and costs of defense as they are incurred.

25. HAZMAT. The Customer shall comply with all applicable laws and regulations to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that any shipment constitute hazardous materials as designated under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of 49 CFR B(I). The Customer is obligated to inform eShipping immediately if any such shipments do constitute hazardous materials. It is the Customer's responsibility to insure that any hazardous materials shipment is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of subchapter C of 49 CFR B(I) or

an exemption or special permit, approval, or registration issued under subchapters A or C of 49 CFR B(I). When required, the shipper is responsible for ensuring that all of its employees involved in the preparation of Hazardous Materials for the transport are properly trained, tested, and certified in accordance with 49 C.F.R. Part 172.700 through 172.704, or with IATA (Section 1.5) and for ensuring that a program exists for the retraining, testing, and certification as required by these rules. All packaging used by the shipper for the transportation of Hazardous Materials, when required by regulation, must meet the requirements set forth in 49 CFR Part 173.24. Customer shall defend, indemnify and hold eShipping harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of Customer's failure to comply with applicable hazardous materials laws and regulations.

26. Customer agrees to waive its rights as outlined in 49 CFR 371.3c.