

TERMS & CONDITIONS OF CONTRACT OF CARRIAGE BY AIR

NOTICE CONCERNING MAGIC TRANSPORT'S LIMITATION OF LIABILITY

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention, as defined below, may be applicable to the liability of Magic Transport, Inc. and its subsidiaries and affiliates (hereinafter "Magic") in respect to loss, damage, or delay to cargo. Magic's limitation of liability shall be as set forth in the terms in Clause 5 unless a higher value is declared in advance by the Shipper and a supplementary charge paid if required.

CONDITIONS OF CONTRACT

1. In this contract and Notices appearing hereon:

1.1 "Carrier" includes the air carrier issuing this air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage.

1.2 "Warsaw Convention" means: (a) the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, October 12, 1929; or (b) that Convention as amended at The Hague, September 28, 1955; or (c) that Convention as amended at The Hague, September 28, 1955, and by Montreal Protocol No. 1, 2, or 4, whichever may be applicable.

1.3 "Montreal Convention" means the Convention for Unification of Certain Rules for International Carriage by Air, signed at Montreal on May 28, 1999.

1.4 "Shipper" means the exporter, importer, consignor, shipper, merchant, consignee, owner of the goods, holder of the Air Waybill, and its/their employees, principals and agents.

1.5 "Special Drawing Right" is a Special Drawing Right as defined by the International Monetary Fund and may fluctuate in value.

2. **2.1** Carriage hereunder is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Convention.

2.2 To the extent not in conflict with the foregoing, carriage hereunder and other services performed by Magic and carriers are subject to:

2.2.1 Applicable laws (including national laws implementing the applicable Convention), government regulations, orders and requirements;

2.2.2 Provisions set forth; and

2.2.3 Applicable tariffs, rules, conditions of carriage, regulations and timetables (but not the times of departure and arrival therein) of Magic; which are made part hereof and which may be inspected at any of its offices, at airports from which it operates, or other cargo sales offices from which it operates regular services. In transportation between a place in the United States or Canada and any place outside thereof the applicable tariffs are the tariffs in force in those countries.

3. By giving Magic the shipment, the Shipper agrees, regardless of whether it signs the front of the Air Waybill for itself and/or as agent for and on behalf of any other person having an interest in the shipment, to all terms on the Air Waybill and any applicable tariff, conditions of carriage, regulations and timetables. Magic's air waybill is NON-

NEGOTIABLE, and the Shipper acknowledges that it has been prepared by the Shipper or by Magic on the Shipper's behalf. The Shipper warrants that it is the owner of the goods transported hereunder or the authorized agent of the owner of the goods.

4. The first carrier's name may be abbreviated on the face of Magic's Air Waybill, the full name and its abbreviation being set forth in such carrier's tariff, conditions of carriage, regulations and timetables. The first carrier's address is the airport of departure shown on the face hereof. The agreed stopping places (which may be altered by Magic or any carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face of Magic's Air Waybill or shown in carrier's timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

5. 5.1 Except as otherwise provided in Magic's tariffs or conditions of carriage, in United States domestic carriage or carriage to which the Warsaw Convention and Montreal Convention do not apply Magic's limitation of liability for cargo lost, damaged or delayed shall be USD \$0.50 multiplied by the number of pounds that are actually damaged, lost or delayed, but not less than USD \$50.00 per shipment, unless a higher value is declared by the Shipper and a supplementary charge is paid to Magic.

5.2 If the carriage involves an ultimate destination or stop in a country other than the country of departure, Warsaw Convention and Montreal Convention govern and limits Magic's liability in respect of loss, damage or delay to cargo to 17 Special Drawing Rights per kilo, unless a higher value is declared in advance by the Shipper and a supplementary charge is paid to Magic.

5.3 In any case of loss of, damage to, or delay to a shipment, the weight to be used in determining Magic's limitation of liability shall be the weight that is used to determine the charge for carriage of such shipment. In any case of loss of, damage to, or delay to part of the cargo, the weight to be taken into account in determining Magic's limit of liability shall be only the weight of the package or packages concerned. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the individual articles concerned.

5.4 Magic does not and cannot guarantee the transportation or delivery time for any goods, and under no circumstances shall be liable for any delay in the transportation or delivery of any goods.

6. If the sum entered on the Air Waybill as "Declared Value for Carriage" represents an amount in excess of the applicable limits of liability referred to in the above Notice and in these Conditions and if the Shipper has paid any supplementary charge that may be required by Magic's tariff, conditions of carriage or regulations, this shall constitute a special declaration of value and in this case Magic's limit of liability shall be the sum so declared. Payment of claims shall be subject to proof of actual damages suffered.

7. Magic will not be liable for:

7.1 Shipper's acts or omissions, including but not limited to, improper or insufficient packaging, securing, marking or addressing; violation of any terms of this Contract; loss or damage to materials not acceptable for transport or prohibited items; loss, damage or delay caused by events Magic or Carriers cannot control, including, but not limited to electrical or magnetic injury, erasure, acts of God, perils of the air, weather

conditions, mechanical delay, acts of public enemies, war, strikes, civil commotion or acts of public authorities with actual or apparent authority.

7.2 Delays in pick-up, transportation or delivery of any shipment, regardless of the cause of such delay.

7.3 Special, incidental, punitive or consequential damages including, but not limited to, loss of profits, income, utility, interest or loss of market, whether or not Magic had or should have had knowledge that such damage might be incurred.

7.4 Damage to electronic or photographic images or recordings in any form.

8. Any exclusion or limitation of liability applicable to Magic shall apply to and be for the benefit of Magic's agents, servants, contractors and representatives and any person whose aircraft or other form of conveyance used by Magic for carriage and its agents, servants and representatives. For purposes of this Clause Magic acts herein as agent for all such persons.

9. **9.1** Magic undertakes to complete the carriage hereunder with reasonable dispatch. Magic may use alternate carriers or aircraft and may without notice and with due regard to the interests of the Shipper use other means of transportation. Magic is authorized by the Shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face of the Air Waybill.

9.2 If the Shipper requests motor carrier service or if Magic decides that the Shipper's shipment should be transported by motor carriage rather than air for all or part of the transportation, Magic shall use its own motor carriers or arrange with an authorized motor carrier(s) to perform such transportation on the same cargo liability limitations and terms contained in these Conditions.

10. **10.1** The Shipper guarantees payment of all charges for carriage due in accordance with Magic's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the applicable Convention), government regulations, orders and requirements.

10.2 The Shipper shall not offset claims against amounts owed to Magic on its invoices.

10.3 In the event any carrier, governmental agency, or other person makes a claim or institutes legal action against Magic for air, motor, or other cargo revenue, fees, commissions, restitution, disgorgement, or other moneys arising out of a shipment of cargo of the Shipper, Shipper agrees to defend, indemnify, and hold harmless Magic for any amount Magic incurs, including reasonable attorneys' fees and other expenses in defending against such claim or legal action and in obtaining reimbursement from the Shipper. The confiscation or detention of the cargo by any governmental agency shall not diminish the obligation of the Shipper to Magic to pay, promptly on demand, all amounts owed under this paragraph or other charges or money due to Magic.

10.4 These Conditions and any act or contract to which they apply shall be governed by the applicable convention and the laws of the United States, without regard to the choice of law rules of Puerto Rico or any other State or country. Shipper and Magic agree that any claim or dispute arising from or in connection with this Agreement, whether under federal, state, local, or foreign statutes, regulations, or common law, shall be brought exclusively in the courts of Puerto Rico or the United States District Court for the District of Puerto Rico. Shipper and Magic hereby consent to the jurisdiction of such courts.

10.5 In the event it becomes necessary for Carrier to utilize a collection agency and/or attorney for collection of any unpaid amount of a credit or cash transaction, the

Shipper shall be obligated to pay the actual collection fees, legal fees, costs and expenses incurred by Magic in recovering any amounts due.

10.6 The Shippers shall be jointly and severally liable to Magic for payment of all charges for carriage due in accordance with Magic's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the applicable Convention), government regulations, orders and requirements.

11. 11.1 Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good order and condition in accordance with the contract of carriage. The person entitled to delivery or the Shipper must make a complaint to Magic in writing in the case of:

11.1.1 Of damage to or loss of the cargo, immediately after discovery of the damage, shortage or loss and at the latest within fourteen (14) days from receipt of the cargo;

11.1.2 Of delay, within twenty-one (21) days of the date the cargo are placed at the disposal of the person entitled to delivery; and

11.1.3 Of non-delivery of the cargo, within one hundred and twenty (120) days from the date of the issue of the air waybill

11.2 For the purpose of Clause 11.1, complaint in writing must be made to Magic regardless of the carrier whose Air Waybill was used, and regardless of those carriers that were the first carrier, the last carrier or the carrier who performed the transportation during which the loss, damage or delay took place.

11.3 The Shipper agrees that Magic shall be discharged of all liability if a written claim is not filed in accordance with this Clause and Sub-Clauses and that the filing of a written claim is required before a suit can be filed against Magic.

11.4 Any rights to damages against Magic shall be extinguished unless an action is brought within two (2) years (if the carriage is governed by the Warsaw Convention) and one (1) year (in all other cases) from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

11.5 In the event the Shipper files an action against Magic, the Shipper consents to any Magic-instituted transfer or removal of such action to any other venue in which Magic is a party or subsequently becomes a party to an action concerning loss, damage or delay to the cargo that is the subject of the Shipper's action.

11.6 In no event shall Magic be liable for incidental, consequential, punitive, exemplary, or non-compensatory damages or for restitution or disgorgement.

12. The Shipper warrants that it shall comply with all applicable laws and government regulations of the United States, States, and territories or possessions of the United States. The Shipper warrants it shall also comply with all applicable laws and government regulations of any country to, from, through or over which the cargo may be carried, including those relating to the security, packing, carriage, or delivery of the cargo. Pursuant to the foregoing, the Shipper shall furnish such information and attach documents to the Air Waybill as may be necessary to comply with such laws and regulations. The Shipper warrants that the cargo is properly marked, addressed, and packaged to withstand air transport and necessary ground transport. Magic is not liable to the Shipper for loss or expense due to the Shipper's failure to comply with this Agreement. Shipper shall indemnify and hold Magic harmless against any and all claims, losses, or damages arising from the conduct of the Shipper or any of its officers, directors, employees, agents, owners, shareholders or other persons working for or with Shipper under this agreement that constitutes a violation of the representations and warranties contained herein.

13. No agent, servant, or representative of Magic has authority to alter, modify, or waive any provisions of this contract, including any of these Conditions. No waiver by Magic of, or failure by Magic to perform, any provision of this contract (including any of these Conditions) shall be deemed a waiver of any other provision (or Condition).

14. If Magic offers insurance and such insurance is requested, and if the appropriate premium is paid and the fact recorded on the face of the Air Waybill, the cargo covered by the Air Waybill is insured under an open policy for the amount requested as set out on the face of the Air Waybill (recovery being limited to the actual value of cargo lost or damaged provided that such amount does not exceed the insured value). The insurance is subject to the terms, conditions, coverage and exclusions of the open policy, which is available for inspection at Magic's offices. Claims under such policy must be reported immediately to Magic in writing.

15. Magic shall have a continuing general lien upon all goods and documents in its possession, custody, or control or en route for all amounts owed to Magic, including all charges, expenses, duties, fines, penalties, or advances in connection with any shipment or other transaction involving the Shipper. This lien supplements Magic's other rights under any other agreements and/or applicable law and can be extinguished only by full and indefeasible payment of all secured amounts. If the Shipper defaults in the payment of any such amounts, then Magic may sell such property by public auction or private sale. Any notice required to be given by Magic for sale or other intended action with respect to any goods or documents, made by sending same to the Shipper at least ten (10) days prior to any proposed action shall constitute fair, reasonable and adequate notice to the Shipper. The Shipper is liable for any deficiency from any sale.

16. All packages containing hazardous materials or dangerous goods shall be limited to the materials and quantities for air transportation under the U.S. Department of Transportation hazardous materials transportation regulations (49 C.F.R. Parts 171, 172, and 173) and the current edition of the International Air Transportation Association (IATA) Dangerous Goods Regulations (together "Regulations"). Shipper and its agents shall comply with the Regulations regardless of the routing or the mode by which the shipment is transported. Each shipment requiring a Shipper's Declaration of Dangerous Goods under the Regulations shall be accompanied by properly executed documents in conformance with the requirements of the Regulations. If a shipment contains hazardous materials or dangerous goods, the contents shall be – and the Shipper hereby certifies they are – fully and accurately described on the Air Waybill or other shipping documents by proper shipping name and are classified, packaged, marked and labeled, and in proper condition for carriage by air (or, if tendered for other mode of transportation, then for carriage by such other mode) according to the Regulations and any other applicable national governmental regulations. The Shipper hereby declares that all of the applicable air transport requirements have been met.

17. Magic is authorized (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursements with respect to the cargo, and the Shippers shall be jointly and severally liable for the reimbursement thereof. Magic and carriers shall be under no obligation to incur any expense or to make any advance in connection with the forwarding or re-forwarding of the cargo except against repayment by the shipper, consignee, or owner. If it is necessary to make customs entry of the cargo at any place, the cargo shall be deemed to be consigned at such place to the person named on the face hereof as customs consignee

or, if not such person be named, to the Carrier carrying the cargo to such place or to such customs consignee, if any, as such Magic may designate.

18. If, for any reason, it is impossible for Magic to complete this contract of carriage or if the Shipper fails to accept delivery of the goods, Magic may store the goods in its warehouse at its storage rates, or, at its option, may store the goods in a public warehouse, in which event the storage rates charged by such warehouse shall apply. All such charges shall be the responsibility of the Shipper.

19. Except as agreed to in writing by an authorized officer of Magic, the shipper shall not tender any cargo which requires temperature or humidity control. For all temperature controlled cargo, the shipper shall advise Magic in writing of the particular temperature range or humidity to be maintained.

20. Perishable goods which are not taken up immediately upon arrival, or which are insufficiently addressed or marked or otherwise not readily deliverable, may be sold or otherwise disposed of without any notice to the Shipper and payment or tender of the net proceeds of any sale after deduction of charges and expenses shall be equivalent to delivery. The Shipper shall pay all charges and expenses arising in connection with the sale or disposal of the goods.

21. Goods that remain unclaimed for a period of thirty (30) days may be sold by Magic at public or private sale and the proceeds of such sale may be applied against any outstanding freight charges, advances or charges of any kind that are due. Any balance remaining after payment of such charges will be remitted to the Shipper. However, the Shippers shall remain jointly and severally liable to the Carrier for any deficiency should the proceeds of such sale be insufficient to offset all charges due the Carrier with respect to the goods.

22. The Shipper acknowledges that Magic, like all indirect air carriers, is required by applicable laws and regulations, including without limitation the federal Transportation Security Administration (“TSA”) to maintain an air cargo security program. If Shipper is acting as an agent, authorized representative, broker, carrier, or other freight intermediary for any person or entity that originates and tenders cargo for air transportation, the Shipper shall disclose that fact to Magic and shall assist Magic in complying with all applicable laws and regulations, including without limitation the TSA requirements by enabling Magic to obtain any necessary documents from, or otherwise qualify, such person or entity. As required or permitted by any applicable law or regulation, including without limitation TSA regulations (49 C.F.R. § 1548.9(b)), the Shipper, or such person or entity that originates and tenders cargo for air transportation, hereby consents to a search or inspection, including screening, of all cargo.

23. If any provision of these Conditions be declared void, invalid or unenforceable by any court of law or administrative agency, the remaining provisions of these Conditions shall to the extent permitted by such declaration, remain in full force and effect as though the void, invalid or unenforceable provisions were never a provision of these Conditions.

24. Magic may from time to time change the terms of its Air Waybill and these Conditions. The current and applicable terms of the Air Waybill and these Conditions can be found on Magic’s website at www.magictransport.com and may differ from the pre-printed terms for the Air Waybill.