

# **SWAN TRANSPORTATION SERVICE, LTD.**

## **TERMS & CONDITIONS OF SERVICE**

These Terms & Conditions of Service (“Terms & Conditions”) govern the services offered and provided by SWAN TRANSPORTATION SERVICE, LTD., “SWAN”. These Terms & Conditions apply to all services offered or provided by SWAN to or for the Customer and can only be altered by written agreement signed by SWAN prior to shipment. These Terms & Conditions, have been incorporated through reference on SWAN’s offering to the public via its internet site, and through its documents, including but not to limited customer credit application, initial rate offers, rate confirmation sheets, invoices, service orders, shipping documents, bills of lading and warehouse receipts where applicable.

Only conflicting terms in a written contract signed by both Customer and SWAN will take precedence and these Term & Conditions will then be treated as supplemental. Contrary terms in any shipping, warehousing or other document shall be subordinate to this Terms & Conditions, and this Terms & Conditions shall supersede and negate any claimed, alleged or asserted oral or written contract, promise, representation or understanding between the parties with respect to any transactions as to SWAN. By requesting or receiving service from SWAN Customer agrees to these Terms & Conditions of Service, which no agent or employee of the parties may alter. To the extent applicable, and allowable by law, those provisions of the Interstate Commerce Act which are inconsistent with these Terms & Conditions are expressly waived.

Though effort has been made to present a uniform and consistent statement it is understood and agreed that these Terms & Conditions pertains to commerce with SWAN but that arranged “Service Providers” each may have their own rules, tariffs, terms and conditions. To the extent there is any conflict, the Service Provider’s rules, tariff or terms and conditions will take precedence in all legal proceedings against such Service Provide.

If any portion of these Terms & Conditions is found unenforceable by the courts or by any agency having jurisdiction such portions shall be deemed stricken, however, the rest of these Terms & Conditions will remain valid and enforceable.

## INDEX

1. SWAN TRANSPORTATION SERVICE, LTD
2. DEFINITIONS
3. BILLS OF LADING
4. CARGO LOSS OR DAMAGE
5. FILING OF CLAIMS
6. MOTOR CARRIER FILING REQUIREMENTS
6. CONFIDENTIALITY AND NO BACK SOLICITATION
7. CONSOLIDATION AND DISTRIBUTION- LTL
8. CONTROL
9. CREDIT and COLLECTIONS.
10. CUSTOMER AUTHORIZAITON, REPRESENTATIONS AND WARRANTIES
11. DESCRIPTION OF FREIGHT.
12. DETENTION - MOTOR FREIGHT
13. DUTY OF CARE
14. EQUIPMENT ORDERED NOT USED -MOTOR FREIGHT – TL and LTL
15. FUEL SURCHARGE
16. GOVERNING LAW
17. HAZARDOUS MATERIALS
18. HOLDING DELIVERIES, STORAGE IN TRANSIT AND WAREHOUSING
20. INDEMNIFICATION.
21. INDEPENDENT CONTRACTORS.
22. INJURY TO PERSONS OR PROPERTY.
23. INSIDE DELIVERY AND STORE DOOR DELIVERY.
24. INTERMODAL
25. LIABILITY FOR LOSS OR DAMAGE OF EQUIPMENT
26. LOADING OR UNLOADING
27. MARKING SHIPMENTS AND PRODUCT- MOTOR FREIGHT
28. MAXIMUM DECLARED VALUE.
29. MAXIMUM WEIGHT.
30. MINIMUM CHARGE.
31. NO WAIVER.
32. NO WARRANTIES OR PERFORMANCE GUARANTEES.
33. ORDERING SERVICE
34. OVERFLOW - SHIPMENT CANNOT BE LOADED INTO ONE VEHICLE
35. PACKING/PACKAGING – SAFE LOADING REQUIREMENTS.
36. PALLET EXCHANGE
37. PER DIEM CHARGES and FREE TIME
38. PROHIBITED ARTICLES
39. PROTECTIVE SERVICE
40. REDELIVERY SERVICE, RECONSIGNMENT OR DIVERSION
41. REFUSED OR UNDELIVERED SHIPMENTS
42. ROUTING
43. SEALS
44. SORTING AND SEGREGATING
45. STOPOFFS - TO PARTIALLY LOAD OR UNLOAD
46. TAILGATE SERVICE.

47. UNCLAIMED OR REFUSED FREIGHT.

**1. SWAN TRANSPORTATION SERVICES, LTD.** SWAN operates as a transportation broker of general commodities pursuant to US DOT number 2213666, and FMCSA Docket Number MC-330163/DOT#2223673 The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. (49 U.S.C. §13102(2)). SWAN undertakes to operate within the regulations set forth at 49 C.F.R. §371, and as otherwise promulgated by State and Federal authority. As a transportation broker, SWAN neither owns or operates equipment, employs or contracts with drivers, nor physically performs any transportation related services.

**2. DEFINITIONS.**

**AIR CARRIER** - A person who undertakes directly by lease, or other arrangement, to engage in air transportation

**BENEFICIAL OWNER** - The person or company to whom the freight belongs.

**BLOCKING & BRACING** – Refers to the physical securing of freight from longitudinal or lateral movement through the use of wooden blocks, stakes, sideboards, endboards or other device attached, fastened to nailed to trailer/container sides or floor, or use of chains, straps or other means tied down to the floor or side of the trailer/container.

**CARRIER** - Underlying rail, air or motor carriers – one who physically transports the shipment.

**CONSIGNEE** - The actual receiver, including its agents or employees; the party designated on the shipping documents as the party to whom delivery should be made.

**CONSIGNOR** – The party from whom a shipment actually originated; the party designated on the shipping documents as the party from whom a shipment was physically received.

**CONSTRUCTIVE PLACEMENT**- The holding of a container at a location other than the loading or unloading site due to the inability or failure of the consignor or consignee to accept the container after notification.

**CONTAINER – AIR FREIGHT** - Aircraft Unit Load devices - cargo loaded in specific loading units which will fit the configuration of the aircraft being used. These units are referred to as Unit Load Devices (ULD). These units vary in size depending on the aircraft type.

**CONTAINER** – A reusable shipping conveyance not less than 20 feet and not more than 53 feet long, outside measurement, loaded or empty, with or without chassis, especially designed to facilitate the carriage of goods by one or more modes of transport. The container is fitted with devices permitting its ready transfer from one mode of transport to another and may be constructed so as to enable the attachment of removable chassis for further transportation.

**CUSTOMER** - The party to whom SWAN has extended credit or from whom SWAN receives a request for service including exporter, importer, sender, receiver, consignor, consignee, transferor, transferee, owner, beneficial owner, and third-party beneficiary of the shipments or services.

DEPOSITOR – The party tendering goods to SWAN for warehousing and/or distribution.

DETENTION – Refers to delay at the Consignor or Consignee’s facility in the loading or unloading of equipment (trailer or container) while attached to a power unit (tractor), or with driver, beyond the stated “free time” allotted. (“Per Diem” refers to any such delay or detention beyond the allotted “free time”, and the additional charges thereon, of equipment when not attached to a power unit or with driver.)

DRAYAGE – Transportation by motor carrier to or from a rail head as part of an intermodal movement. Also known as “Cartage”.

DUNNAGE - Any temporary blocking, flooring or lining, racks, standards, strips, stakes, bracing, or supports (not a part of the original packaging) required to protect and make shipments secured for transportation, and that must be furnished and installed by the shipper at the shipper's expense. (Note: The term dunnage does not include excelsior, hay, sawdust, shavings, shredded paper, straw, packing cushions or pads, or similar packing materials.)

GROSS WEIGHT - Combined weight of lading and container, including converter gear or chassis, if applicable.

HAZARDOUS MATERIAL - A substance or material that has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has been so designated. There is a 49-series Standard Transportation Commodity Code (STCC) designated for each hazardous material.

IATA – International Air Transportation Association and its publications.

IN & OUT HANDLING – The physical movement of materials and product into and out of storage or temporary holding facilities, (and/or the charges for such, including labor and equipment, maintenance, depreciation and proration of management and overhead.)

LTL – Less than Truckload shipments are subject to motor carriers limitations of liability and other specific requirements as published in the motor carrier’s rules tariff, terms and conditions, circular or by participation in another governing publication.

NMFC - National Motor Freight Classification and its publications.

SERVICE PROVIDER – Includes but is not limited to arranged motor carriers, rail carriers, drayman, intermodal carriers, warehousemen, loaders, lumpers, or other purveyors of the physical transportation, storage or handling of goods.

SHIPMENT - A shipment is a quantity of freight received from one consignor, at one point or origin, or from places within a single plant, at one time for one consignee at one destination and covered by one bill of lading or written shipping order, for transportation in one vehicle.

SHIPPER - The party from whom the shipment is received, the party who requested the shipment be transported by SWAN, and/or the party having an interest in the shipment, and any party that acts as an agent for any of the above

SKID – AKA Pallet; a standard skid is no larger than 48” long by 48” wide, and no more than 96” tall. Total weight for any one standard skid shall not exceed 2000#. Any overage on any one of these four variables shall be considered an additional skid.

STORAGE – Means either the retention of vehicles/containers/trailers at a rail terminal or tender to warehouse or warehouseman for storing of the goods, depending on context.

**3. BILLS OF LADING.** The Customer may prepare the bill of lading or other shipping documents required for carriage, in light of the services being sought, and the pick up or destination requested. The bill of lading or other shipping document is non-negotiable, and Customer certifies and represents that the information inserted on the face of the bill of lading or other shipping document is complete and accurate.

These Terms & Conditions will supersede any conflicting provision contained on the bill of lading or other shipping document in regard to SWAN.

In the event the Customer fails to timely and properly complete the appropriate documents, the Customer hereby instructs SWAN, where permitted by law, and SWAN may at its option, but without obligation, complete, correct or replace the documents for them at the expense of the Customer. If a substitute form of bill of lading or shipping document is needed to complete delivery of this shipment for any reason and SWAN completes that document, the terms of the completed document will govern and SWAN will be exonerated from all liability for undertaking such actions on behalf of the Customer including specifically liability for, in whole or in part, negligence by SWAN. All bills of lading or other shipping document are non-negotiable and have been prepared by the Customer or by SWAN on behalf of the Customer in accordance with the Customer’s instructions and approved by the Customer, and shall be deemed, conclusively, to have been prepared by the Customer. The Customer is required to provide the BOL to the Carrier designated by SWAN. Failure to provide the proper bill of lading or other shipping document to the designated Carrier shall relieve SWAN of all responsibility and/or liability for such shipment. SWAN shall have no obligation to make any payments or honor any rate quotes in any of the following instances: (i) the unauthorized alteration or use of the bill of lading, or (ii) tendering of shipments to any carrier other than that designated by SWAN, or (iii) the use of any bill of lading not authorized or issued by SWAN.

**4. CARGO LOSS OR DAMAGE.** SWAN shall not be liable for loss of or damage to freight except as provided herein. Unless the loss or damage is the direct result of negligence of SWAN or its employees, SWAN shall not be liable. Negligence of underlying Service Providers shall not be imputed to SWAN.

SWAN has no duty to discover the value of Customers’ freight, or arrange for carriers with “adequate insurance coverage” unless a sum certain is specifically requested and agreed in writing at least 48 hours prior to pick up on a shipment by shipment basis. In no event shall SWAN be liable for special, consequential, or punitive damages, or for any amount in excess of actual damage to or loss of the commodity transported subject to the limitations of liability and/or maximum declared values set forth below. No claim under the minimum claim threshold amount of \$500.00 shall be filed against SWAN or SWAN’s underlying Carriers.

All freight must be packaged to withstand the rigors of cross-dock handling and motor, air, rail or ocean transport as applicable. The Customer is responsible for packaging, loading, blocking, and bracing of commodities to industry standards such as those published by the NMFC or IATA

prior to tendering the shipment to SWAN. Any devices required to secure the shipment for transport are to be provided by the Customer at the Customer's expense. The Customer is responsible for assuring that the Consignor, Shipper and/or Beneficial Owner comply with all applicable rules and regulations.

Damage of a visible or obvious nature must be documented on delivery. The absence of any notation of damage, broken shrink wrap or lack of seals on the bill of lading, AWB or other shipping document creates a presumption that the shipment was delivered in good condition and the burden of proof will be on the claimant to prove otherwise. However, a broken seal or other "inconsequential failure" by a carrier to meet the shipper's temperature-control or other specifications, will not create a "per se presumption of adulteration." Only a failure to comply with SFT Rule requirements that causes food to be "actually unsafe" will render the food adulterated and is a prohibited act under the Federal Food, Drug, and Cosmetic Act (FDCA). Inspection by a FDA or other qualified inspector can be used to demonstrate that food is safe, unadulterated and fit for consumption

.Neither SWAN nor the Carrier shall be responsible for shortage on shipments which are shipper load and count "SLC", in sealed containers, or banded, strapped, netted, shrink-wrapped or otherwise where such securing material is found to be intact at the time of unloading by consignee.

Failure of SWAN and/or Carriers to inspect the shipment or its packaging is not a waiver of any defenses to claims or suits, nor is it an admission of liability. In the event no inspection is made, the claimant is not relieved of any of its obligations to notify, document, and mitigate any losses.

The Carrier's liability for loss of or damage to the shipment shall be \$100,000 per truckload or container shipment, \$1.50 per pound for "LTL" subject to released values, and the provisions for loss or damage as established by such carrier in its tariff or other governing publication. Customers desiring higher liability limits than currently provided by the underlying carriers must declare a higher value in writing at least 48 hours prior to tendering the shipment so that SWAN has sufficient time to obtain an appropriate rate for the shipment based on the higher valuation – subject to the maximum declared values set forth below and or set forth within the underlying carrier's tariff.

**IN NO EVENT SHALL CARRIERS' LIABILITY EXCEED THE DECLARED VALUE OF THE SHIPMENT OR THE AMOUNT OF LOSS OR DAMAGE ACTUALLY SUSTAINED, WHICHEVER IS LOWER.**

Neither SWAN, nor the Carriers will be liable for any delay, loss, or damage to freight resulting from act or events outside of its (their) control. Neither SWAN, nor the Carriers shall be liable for delay, loss, or damage occurring while the freight is stopped in transit, held, or stored at the request of any party entitled to make such request.

Matters relating to loss or damage claims and suits against underlying carriers that are not covered by these Terms & Conditions or such Carrier's applicable tariff or other governing publications of the Carriers are governed by the Uniform Straight Bill of Lading regardless of the terms on the actual bill of lading used.

In the event there is partial loss or damage to a shipment that does not render it worthless, it is the duty of the Consignor to arrange for acceptance of the freight in its damaged condition. The Customer, Consignor, Consignee and/or Beneficial Owner must mitigate the loss or damage and

may file a claim only for the amount of damage sustained, subject to any other claim provisions. Shipments that have been only partially damaged and that retain a substantial value may not be abandoned to the carrier. Under no circumstances shall SWAN be liable for loss and/or damage to external shipping containers of any kind.

SWAN does not accept certain goods for transportation or distribution as set forth in the "Prohibited Articles" Section. SWAN assumes no liability whatsoever for such goods if tendered to SWAN in violation of these Terms & Conditions. Additionally, liquidated damage provisions may apply if prohibited articles are tendered to SWAN – see Hazardous Materials section. Regardless of whether SWAN would otherwise have been liable, if Customer, Shipper, Consignor, Beneficial Owner or other party mis-declared or mis-described the freight in a material way, SWAN shall not have any liability for any loss or damage to that freight.

**5. FILING OF CLAIMS.** Notice of loss or damage should be reported to the SWAN Sales Representative or Claims Manager immediately, but no later than 48 hours after occurrence. All claims must be filed in writing with SWAN or the actual carrier, as set forth below in the Motor Carrier Filing Requirements paragraphs, and must include specific information and/or documentation including where applicable:

In regard to truckload or container shipments only, the receiver must immediately notify the carrier when damage or shortage is noted. The carrier must be given a reasonable time to inspect the container, trailer or shipment while still loaded. In certain limited circumstances, SWAN may accept notification and arrange for inspection on behalf of the carrier.

**6. MOTOR CARRIER FILING REQUIREMENTS.** All claims must be filed in writing with SWAN or the motor carrier within nine (9) months of the date of delivery, or within nine (9) months of when delivery reasonably would have been made in accordance with 49 C.F.R. 370. Suit for loss or damage must be filed within two years of delivery or scheduled delivery. Customers are required to handle their own claims including timely and proper filing and follow-up with the carrier. As a courtesy, SWAN will reasonably assist and cooperate with Customer, or other party entitled to recover under the bill of lading or shipping order, to investigate and help process freight loss or damage claims against the Carriers. However, in no circumstance will such assistance imply or create a duty from or for SWAN in regard to claims. If claims are not reported to SWAN in accordance with the foregoing provisions, SWAN will not be liable, regardless of SWAN's actual negligence. To the extent inconsistent with the foregoing terms, the provisions of the Interstate Commerce Act (49 U.S.C. §13101 et seq.) specifically the Carmack Amendment (49 U.S.C. §14706) the regulations promulgated there under (49 C.F.R. §300 et seq.) are hereby waived under 49 U.S.C. §14101(b).

**6. CONFIDENTIALITY AND NO BACK SOLICITATION**

Customer acknowledges and agrees that the names, routes and pricing of the Service Providers arranged for by SWAN are confidential information and are in the nature of a trade secret. Customer shall not directly contact or solicit rates, bids or service from any underlying carrier or service provider where (1) the availability of carrier or service provider to perform such services first became known to Customer as a result of SWAN's efforts, or (2) where Customer's traffic was first tendered to the underlying carrier or service provider by SWAN. If Customer breaches this provisions and "back-solicits" SWAN's underlying carriers and/or service providers, and/or tenders traffic to such carriers or service providers, SWAN is then entitled, for a period of eighteen (18) months after the involved traffic first begins to move, to payment from Customer of

15% of the gross transportation charges for all such traffic, as liquidated damages. Termination of the relationship between SWAN and Customer shall not affect the enforceability and applicability of the foregoing provisions of this clause for a period of two years after termination.

**7. CONSOLIDATION AND DISTRIBUTION OF SHIPMENTS - LESS THAN TRUCKLOAD.** Upon instructions from Customer, Consignor or Consignee, SWAN will arrange for consolidation of shipments picked up from multiple origins into one shipment to one destination or arrange for distribution of shipments from one origin to multiple destinations within a specified route subject to the following conditions:

- a) All shipments to be consolidated or distributed must be tendered together at one time and made available for pick up together from a single origin or must be feasibly picked up the same day if shipped from multiple origins.
- b) A master bill of lading covering all shipments to be distributed must be prepared and available at the point of origin, in addition to individual bills of lading for each stop.
- c) Unless otherwise provided, the aggregate shipment shall be rated at the highest minimum weight column provided for and at the highest rate stated among the points service is requested to or from.
- d) All charges applicable to shipments receiving assembly or consolidation service shall be paid by the Customer or Consignee, if there is more than one consignor; all charges applicable to shipments receiving break-bulk or distribution service shall be paid by the Customer or Consignor, if there is more than one Consignee.
- e) SWAN will not perform Assembly or Consolidation service in connection with any shipment which is accorded Break-Bulk or Distribution services, nor will it perform Break-Bulk or Distribution services on any shipment which is accorded Assembly or Consolidation services.
- f) LTL and multiple stop shipments are not subject to trailer or container seals, or other sealing requirements.

**8. CONTROL.** SWAN shall arrange for the handling and transportation of Customer's goods by Service Provider, however all Service Providers are separately licensed and insured independent contractors and SWAN exercises no control over Service Providers' equipment, facilities, personnel, subcontractors or agents, nor over the route, schedule or manner in which Service Provider performs. Likewise, SWAN does not physically accept, supervise or control the freight, or the manner in which it is packaged, loaded or transported.

**9. CREDIT and COLLECTIONS.** At its discretion SWAN, may extend credit. Unless otherwise specified in writing, charges are due and payable to SWAN within 15 days of date of delivery. Bills unpaid after 30 days from due date, including dishonored drafts, will be subject to a service charge of one and one half percent per month (18% per annum) or fraction thereof. Such service charge shall begin to accrue on the 31st day after the date of invoice. Furthermore, SWAN reserves the right to withhold delivery, or deliveries, at the customer's expense, for payment of all unpaid or past due charges. In such event, SWAN shall have a possessory lien on all inventory, cargo, freight, shipments and/or tangible commodities tendered to SWAN, or any of SWAN's Carriers, for all unpaid, past due and other charges for transportation, distribution or storage. Whether or not suit is filed, SWAN may also add its reasonable attorney fees, collection costs or service charges incurred in attempting to collect transportation, handling, storage or other charges. SWAN, at its sole discretion, may revoke any and all discounting associated with a shipping order for non-timely payment if such charges are not paid within 45 days.



If Customer disputes any charges, including any claim of overcharges, Customer shall pay the amount it deems correct within the normal 15 day time frame and must provide written notice of dispute and documentation supporting its claim within 21 days of receipt of invoice or billing. Customer's failure to dispute charges or assert an overcharge claim in accordance with provisions and time frame set forth above shall be deemed an acknowledgement by Customer that all such charges are correct.

Customer is responsible for all charges and fees relating to a shipment, including but not limited to transportation charges, handling, storage, detention, and service charges, regardless of any payment instructions to the contrary. In the event of default by Customer, and in addition to the lien rights set forth above SWAN reserves the right to collect all such charges from the Shipper, Consignor, Consignee, Beneficial Owner or other party to the transaction, and such parties' liability for freight and other charges shall be joint and several, regardless of the payee designated on the bill of lading or other documents. The provisions of "Section 7" of the National Motor Freight Classification's ("NMFC") Uniform Straight Bill of Lading shall not apply. SWAN may, at its sole discretion, initiate collections (with or without discount application) as provided above.

By special arrangement, as a courtesy to the Customer, SWAN may undertake "Collect" or third party payable shipments, though such shipments may be subject to additional charges or a different scale of rates. Collect or third party freight charges shall be issued to the party specified on the shipping documents, including, but not limited to, bills of lading. Any unpaid collect or third party freight charges remain the responsibility of the Customer regardless of any notations to the contrary on the bill of lading. The Customer warrants payment shall be made to SWAN within 15 days of presentation of its freight charges.

Payment of freight or other charges is not subject to deductions, offset or withholding for any reason whatsoever.

In addition to its lien rights, SWAN shall be entitled to sue in its own name, or as assignee and/or subrogee of the Service Providers for any and all unpaid freight and other charges plus interest, reasonable attorney fees and other collection costs.

In consideration and exchange for granting credit to Customer, Customer specifically agrees that the state or federal court for Lenexa, Kansas shall have personal jurisdiction over Customer and subject matter jurisdiction for any claim by SWAN for collection of its freight or other charges. This Agreement and all obligations arising hereunder are deemed to be performed in Smith County, Texas and the laws of the State of Texas shall govern and control. The limitations period set forth at 49 U.S.C. §14705 is not applicable to SWAN, and to the extent applicable to SWAN is expressly waived. The time period for bringing any action to collect its charges shall be governed by the laws of the State of Kansas regarding actions upon a written contract.

It is understood that any payments rendered are for essential and necessary services and shall, in no way, be considered preferential. Payment of freight or other charges is not subject to deductions, offset or withholding for any reason whatsoever.

## **10. CUSTOMER AUTHORIZAITON, REPRESENTATIONS AND WARRANTIES**

Customer authorizes SWAN to request bids or offers of service and arrange for motor carriers, brokers, forwarders, customs brokers, shipping agents, warehousemen and others ("service providers") as required, to receive, transport, store, assemble, consolidate, break-bulk and deliver

the goods. SWAN may utilize any available service provider. Customer warrants the accuracy of shipment descriptions, weights, dimensions, written vehicle sanitary or temperature requirements invoices, documents and other information furnished to SWAN by the Customer or its agent for export, entry or other purposes and the Customer agrees to indemnify and hold harmless SWAN against any increased rates, charges, duty, penalty, fine or expense including attorneys' fees, resulting from inaccurate, incomplete statement, omission or any failure to make timely presentation, even if not due to any negligence of the Customer.

It is the responsibility of the Customer to know and comply with the marking requirements of the U.S. Customs Service, the regulations of the U.S. Food and Drug Administration and all other requirements, including regulations of Federal, state and/or local agencies pertaining to the merchandise. It is understood and agreed that Customer bears all responsibilities of the "Shipper" and/or "Loader" under the FDA Sanitary Food Transportation regulations, and must provide specific written requirements as to vehicle sanitary requirements and/or temperature requirements to SWAN prior to shipment and to the motor carrier at the time of physical tender. Any commodity description and temperature instructions on the bill of lading must match precisely with markings on the packages and prior description or instructions provided to SWAN. Customer is exclusively responsible for assessing vehicle cleanliness and/or trailer temperature, prior shipments, cleaning history or any other shipment requirements at pick-up. SWAN shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Customer by any such agency.

Customer represents and warrants to SWAN that for each and every shipment tendered to SWAN, it will be in compliance with all applicable laws, rules, and regulations ("**Laws**") including applicable Laws relating to customs, import and export required by country to, from, through or over which the shipment may be carried. The Customer agrees to furnish such information and complete and attach to the BOL such documents as are necessary to comply with such Laws. Any individual or entity acting on behalf of the Customer in scheduling shipments or undertaking any other performance hereunder warrants and represents that he, she or it has the right to act on behalf of and legally bind the Customer. SWAN assumes no liability for any loss or expense due to the failure of the Customer to comply with this paragraph and Customer shall indemnify and hold SWAN harmless for any claims or damages resulting from violation of this paragraph, including attorney's fees and costs.

**11. DESCRIPTION OF FREIGHT.** Customer, shall accurately declare and describe the commodities shipped in terms of freight class if applicable, density, value, airfreight or international shipping classifications, temperature and specific sanitary shipping requirements as applicable. If it is determined that the articles shipped or stored are not those described in the bill of lading, AWB, warehouse receipt, shipping order or other shipping or storage document, the freight and all other charges must be paid on the basis of the commodities or articles actually shipped. Additionally, an administrative fee may, at SWAN's discretion, be assessed to Customer, or other party for each mis-declared shipment as follows:

First instance	\$ 25.00	Fourth instance	\$200.00
Second instance	\$ 50.00	Fifth instance	\$400.00
Third instance	\$100.00	Sixth instance+	\$800.00

SWAN shall have no liability in the event of loss of or damage to the materially mis-declared or mis-described freight regardless of SWAN's actual negligence.

Where applicable, charges shall be computed on the gross weight at the time of shipment including weight of packing and preservatives. If the product net weight, rather than the shipment gross weight, is the only weight stated on the bill of lading, SWAN may add 10% tare weight to the net weight shown before computing final freight charges.

**12. DETENTION - MOTOR FREIGHT.** In the event that the carrier's equipment (tractor and/or trailer) is detained by the Customer, Consignor or Consignee while loading, unloading, checking freight, or preparing paperwork for the receipt or movement of freight, charges of \$75.00 per hour, billed in quarter hour increments will be assessed for any time beyond the normal free time specified as follows:

- a) Less than Truckload (LTL) shipment the free time is 60 minutes;
- b) Truckload and container shipments the free time is 120 minutes;
- c) In the event of an inside delivery, store door delivery or tailgate delivery the free time allowance will be the amount stated times two.

Computations of time are to be made based on regular business hours, unless loading and unloading is permitted to continue beyond regular business hours until completion. The amounts due SWAN under the provisions of this rule shall be assessed against the Customer, or any other party responsible for the applicable freight charges. Charges for driver loading and unloading, sorting and segregating of freight by SWAN or underlying carrier at Consignor's or Consignee's dock, are separate from, and in addition to these charges, if any.

**13. DUTY OF CARE.** SWAN undertakes to arrange for the transportation of customers' freight by motor carrier and other Service Providers. Prior to tendering Customers' freight to any *motor carrier*, SWAN, or its Agent(s), shall obtain a copy of carrier's federal operating authority for interstate shipments and state operating authority for intrastate shipments. SWAN shall verify carriers' operating authority and federal safety rating via Federal Motor Carrier Safety Administration's ("FMCSA") website "Safersys.org" or other means.

SWAN will only use carriers with a "Satisfactory", "Conditional" or "unrated" safety rating. SWAN is in the business of arranging for transportation by motor carrier and is neither trained, licensed nor otherwise qualified to assess, analyze or predict the likelihood of a carrier's safe operations. SWAN reasonably relies upon the Federal and State Governments to only allow safe carriers to operate on the public roads, and is under no duty to investigate individual carriers' operations.

SWAN shall obtain an Acord Certificate of Liability Insurance for each carrier. SWAN shall only use carriers showing a minimum of \$750,000 public liability insurance and \$100,000 cargo insurance. However, SWAN has no duty to obtain, review or read carriers' insurance policies. Nor does it have any duty to discover policy limitation, exclusions or endorsements not specified on the Acord Certificate. SWAN has no duty to discover the value of Customers' freight, or arrange for carriers with "adequate insurance coverage" unless specifically requested in writing to do so by Customer prior to shipment on a shipment by shipment basis.

**14. EQUIPMENT ORDERED NOT USED -MOTOR FREIGHT – TRUCK LOAD and Less-Than-Truckload (LTL).** In the event pickup is requested then canceled within 24 hours or less of the specified pickup time the party requesting pickup shall be charged a minimum of

\$50.00 up to maximum of \$250.00 for the requested pickup. The \$250.00 maximum fee does not include below listed mileage charge. In the event the pickup is canceled the same day that pickup is scheduled to be made, the party requesting pickup shall be charged per mile from the point the vehicle was scheduled to travel from, to the pickup point at a per mile rate of (\$1.50 per mile) provided herein subject to a \$50.00 minimum. If the vehicle arrived for pickup prior to SWAN being notified of cancellation, a charge of \$150.00 shall be assessed in addition to the mileage charge.

**15. FUEL SURCHARGE.** When the Department of Transportation national average self-serve fuel price index rises above \$1.00 per gallon a fuel surcharge may be applied by the carrier. SWAN shall be entitled to pass along the carrier's fuel surcharge on a cost plus basis.

**16. GOVERNING LAW.** Any action against SWAN for loss or damage to cargo must be commenced no later than two years from the date of delivery or, in cases where delivery is not made, two years from the date of a reasonable time for delivery. Any other action must be brought within one year of the date on which the cause of action arose.

Any action against SWAN must be brought in the State or Federal Court for Lenexa, Kansas. Any dispute arising from transportation or services provided under this Terms & Conditions shall be interpreted in accordance with Federal Statutory, Regulatory or common law regarding interstate transportation, and the laws of the State of Kansas, where applicable.

**17. HAZARDOUS MATERIALS.** Shipments of hazardous materials and hazardous substances are subject to 49 Code of Federal Regulations (CFR), PaSWAN 100-179, as amended and supplemented from time to time. **UNDER NO CIRCUMSTANCE WILL SWAN ACCEPT FOR SHIPMENT, HANDLING OR STORAGE ANY COMMODITY DESIGNATED OR DEFINED AS A HAZARDOUS MATERIAL EXCEPT WHERE THERE IS A SPECIFIC WRITTEN AGREEMENT WITH CUSTOMER SIGNED BY AN OFFICER OF SWAN.**

As SWAN does not knowingly accept Hazardous Materials in any circumstance, neither SWAN nor the Carriers shall have any liability whatsoever for loss or damage to such commodities.

Customer will also be held responsible for the cost of decontamination and/or rehabilitation of the container or any other shipping conveyance. Customer shall further indemnify SWAN and its Carriers, from the cost of any spill, response, mitigation, fines and penalties, clean up, and ultimate disposal resulting from the transportation, handling or storage of hazardous materials.

Any hazardous material found may be warehoused at the owner's risk and expense or destroyed without compensation. A \$50,000 charge as liquidated damages will be assessed against the shipper and/or consignor for each and every shipment of hazardous materials tendered to SWAN in violation of this section, and such liquidated damages represent the reasonable approximation of SWAN's anticipated damages.

**18. HOLDING DELIVERIES, STORAGE IN TRANSIT and WAREHOUSING.** When requested and if operating conditions permit, SWAN will delay delivery of a shipment, at any time prior to or at the point of delivery. The following additional charges will be assessed by

SWAN for each day of delay, including weekends and legal holidays. Chargeable days will be computed on total days from pickup to delivery, minus the scheduled days for transit involved. SWAN reserves the right to place products into a public warehouse or other storage facilities and, or arrange for interline delivery at the expense of Customer or the party responsible for freight and other charges. When a shipment is held or placed in storage, SWAN's and/or the motor carrier's liability, if any (See Liability Section), shall be that of a warehouseman's, or if placed in a public warehouse or other storage facility SWAN's and/or the motor carrier's liability, if any, shall terminate.

A \$35.00 per standard skid per day with a \$50.00 minimum charge for the first 10 days. After 10 days of storage, storage charges shall increase from \$35.00 per standard skid per day to \$75.00 per standard skid per day.

**19. IMPRACTICABLE OPERATIONS.** Nothing shall require SWAN contracted carriers to pick-up or deliver freight at any point at which, on account of conditions of alleys, streets, roads, driveways, or local ordinances, it is impracticable or unsafe to operate motor vehicles.

**20. INDEMNIFICATION.** The Customer, Shipper, Consignor, Consignee, Beneficial Owner, Shipper's Agent, Broker and/or any other party(s) to the transaction shall be liable, jointly and severally, to pay or indemnify SWAN for all claims, fines, penalties, damages, reasonable attorney's fees, costs or other sums which may be incurred, suffered or disbursed by SWAN by reason of any violation of any of the provision contained in this Terms & Conditions, or the underlying motor carriers' applicable tariffs or publications, or any other default of the Customer, Shipper, Consignor, Consignee, Beneficial Owner, Shipper's Agent or Broker or other such party with respect to a shipment.

Customer agrees to defend, indemnify and hold SWAN harmless for all costs arising out of any spill, response, mitigation, fine or penalty, clean up (including decontamination and/or rehabilitation of the equipment) or ultimate disposal of cargo, including hazardous materials which result from a failure by the Customer, Shipper, Consignor or Beneficial Owner to properly package, or in regard to truck load shipments, load, secure, placard or otherwise properly prepare the shipment for transportation. Such a failure shall include, but is not limited to, the failure to properly package, load, block or brace the freight; the failure to properly document or placard or describe the freight. Additionally, Customer agrees to indemnify SWAN, for any costs, fines or penalties arising out of the transportation of an overweight shipment or container. Though Customer is entitled to seek indemnification from others ultimately responsible, the responsibility of others shall in no way relieve Customer of its duty to indemnify SWAN. Additionally, SWAN shall be entitled to reasonable attorney fees and costs for enforcement of these terms.

**21. INDEPENDENT CONTRACTORS.** All service providers are independent contractors, unless required to act as the agent of Customer for U.S. Customs purposes. Customer's goods shall be tendered to such service providers subject to their rules, tariffs, terms and conditions, including but not limited to limitation of liability for loss, damage, expense. SWAN will supply or direct Customer to Service Providers' specific rules, tariffs, limitations, terms and conditions upon Customer's written request.

**22. INJURY TO PERSONS OR PROPERTY.** SWAN shall not be liable to Customer or any other entity for injury to persons or property unless such injury is solely attributable to SWAN's negligent acts or omissions. To the extent that Customer causes or contributes to such injury it shall defend, indemnify and hold SWAN harmless from any claims, suits, causes of action, including reasonable attorney fees and costs. Additionally, SWAN shall be entitled to reasonable attorney fees and costs for enforcement of these terms.

**23. INSIDE DELIVERY AND STORE DOOR DELIVERY.** When requested by the Customer, Consignor or Consignee, and operating conditions permit, SWAN will move or arrange for shipments or portions of shipments to be moved to a position or place other than a truck dock suitable for loading and unloading the vehicles.

- a) For the purposes of this item driver loading, unloading, sorting and segregating are included. Driver and vehicle detention rules however, are not included and will apply in addition to inside delivery.
- b) SWAN will, at its discretion, put such shipments into temporary storage for later delivery and, or interline such shipments, if such handling will likely result in a delay to SWAN's operations.
- c) Store door deliveries, deliveries to strip malls, or deliveries into doorways immediately adjacent to the delivery vehicle will be subject to a cost plus charge.
- d) Inside deliveries to places not immediately adjacent to delivery vehicle; deliveries into shopping centers and malls and deliveries to kiosks will be subject to a cost plus charge.
- e) Deliveries to private residences, schools and churches will be subject to a cost plus charge.
- f) Deliveries to floors other than ground floor will subject to a cost plus charge.

**24. INTERMODAL.** Intermodal services are provided by SWAN are subject to the Rail Carrier's Circulars, Rules, Tariffs and other terms and conditions, including but not limited to limitations of liability and filing procedures for cargo claims, indemnification, packaging and securing. Customer acknowledges and agrees that the Consignor is primarily responsible for proper loading and securement of all intermodal shipments in accordance with the Intermodal Loading Guide as issued by the Association of American Railroads (AAR), and that Customer shall indemnify SWAN and all other parties to the bill of lading contracts for any and all claims arising from including by not limited to failure to properly classify, load, secure, identify shipments. <http://www.aar.org/Operations/IndustryStandards.aspx>

**25. LIABILITY FOR LOSS OR DAMAGE OF EQUIPMENT.** The Customer, Consignor or Consignee is responsible for any loss or damage to equipment (trailer, chassis, container) while in their possession or proximately caused by Customer, Consignor or Consignee's acts, including but not limited to improper packaging, loading, bracing, securing or positioning of the freight. Payment for such loss or damage will be the greater of the replacement cost or actual cash value at the time the equipment is damaged or lost. Customer, Consignor or Consignee shall indemnify SWAN and hold SWAN harmless for any and all actions resulting from such losses and any resultant action by the damaged carrier.

**26. LOADING OR UNLOADING.** Loading of shipments onto the trailer or container shall be performed by the consignor and the unloading of shipments shall be performed by the consignee. Upon request of the Customer, or other party responsible for the regular freight

charges, Customer may request motor carrier furnish labor to perform loading or unloading. The charge shall be issued with regular freight charges on a cost plus basis.

Shipments loaded by the consignor and unloaded by the consignee are also subject to the following provisions:

The Bill of lading or Shipping Order covering the shipment must contain the notation "Shipper/Consignor to load and/or consignee to unload" the shipment.

In the event the shipment is stopped for partial loading or partial unloading, the party tendering or receiving any portion of the shipment will be subject to the same requirements as to loading or unloading.

**27. MARKING SHIPMENTS AND PRODUCT- MOTOR FREIGHT.** Every pallet load or container of product tendered for transportation must be clearly marked with the name, city and state of the consignee and in accordance with consignee's specifications. Every pallet or container shall also be numbered and marked with the total number of pallet loads for each consignee. For example, if a consignee is to receive two pallets the pallets should be numbered "1 of 2" and "2 of 2". Additionally, all packages of product must be labeled such that they are easily identified with the respective shipper or consignor, packing lists, bills of lading and shipping orders. Mixtures of different items must not be packed in the same container, unless each item is listed both on the outside of the container and on the bill of lading with the proper piece count noted. Any commodity description and temperature instructions on the bill of lading must match precisely with markings on the packages. If packages and bill of lading do not match, SWAN assumes no claim liability whatsoever. Shipments not marked in accordance with these rules will be subject to sort and segregate charges, delay charges and possible delays in transit. In addition, SWAN may return shipment(s) to Consignor without claim liability, place product in storage and reship product as necessary to reconcile shipping errors at the expense of Customer or other party responsible for freight charges.

**28. MAXIMUM DECLARED VALUE.**

**MOTOR FREIGHT - TRUCKLOAD.** The maximum declared value for any truckload or container shipment is \$100,000.00.

**MOTOR FREIGHT – LTL.** The maximum declared value for any less than truckload shipment is \$2.50 per pound.

**AIR FREIGHT -** The maximum declared value of any air freight shipment tendered to SWAN is \$.50 per pound.

Declaration of value in excess of these amount shall be null and void unless specifically agreed to in writing by SWAN at least 24 hours prior to the time of shipment, and additional fees paid thereon. A notation of value in excess of these maximums on the bill of lading or air waybill shall not constitute the requisite notice and agreement

**29. MAXIMUM WEIGHT.**

**MOTOR FREIGHT** – The maximum allowable weight per shipment shall be 45,000 pounds, gross weight including necessary packing and shipping equipment;

**INTERMODAL/RAIL FREIGHT** – The maximum allowable weight per containerized shipment shall be 45,000 pounds, gross weight including necessary packing and shipping equipment; Subject to all Federal, State and Local regulations regarding maximum weight.

**30. MINIMUM CHARGE.** The minimum charge for a straight or mixed shipment will be the applicable rate at the actual weight or minimum weight specified, whichever is greater. Any deficit between actual weight and the minimum weight specified will be charged for at the rate applying to the lowest rated article in the shipment.

Additionally, Commodities with a density of less than 9 pounds per cubic foot and/or tendered on pallets that may not be double stacked or must be top loaded will be charged at a minimum of 2000 pounds per pallet space utilized.

**31. NO WAIVER.** Failure by SWAN to invoke or enforce any or all of the provisions of this Terms & Conditions shall not constitute a waiver of any or all such provisions, nor shall any assertion or showing of “custom” or “usage” be deemed a waiver of the written provisions contained in this Terms & Conditions.

**32. NO WARRANTIES OR PERFORMANCE GUARANTEES.** SWAN shall attempt to secure on-time, scheduled performance from Carriers in regard to the movement of Customer’s freight, however SWAN makes no warranties, express or implied, and expressly disclaims any and all warranties. SWAN is not bound to transport property in any particular vehicle, stack train, aircraft or for any particular market or markets, other than according to reasonable dispatch. Reasonable dispatch shall be dictated, among other things, by the nature of the transportation, safe and legal transportation operating requirements, and multiple shipper, receiver and customer requirements and parameters. Further SWAN does not warrant that shipments en route will remain in continuous transit. Customer understands and acknowledges that, from time to time, shipments may be delayed while en route.

SWAN’s offer to arrange, provide or perform transportation service is subject to availability of appropriate equipment, which will be determined by SWAN, as soon as possible after service is requested. Neither SWAN, nor the underlying Carriers shall be liable for suspension of service or operations or cargo loss or damage that result from the Shipper/Customer’s Acts, Improper packaging, Inherent Vice, Acts of Public Authority, Acts of God, Acts of War, terrorism, insurrection, strikes, derailment, any Force Majeure or any other cause beyond their control. The service standards for SWAN’s underlying carriers are not guaranteed, nor shall they be construed as such by any SWAN Customer, Consignor, or Consignee.

SWAN will not be responsible for any charges levied by anyone for failure to perform any service as to the timeliness of pick-up or delivery, whether implied by an effort to accommodate the Customer, Consignor and Consignee or not. Such fees may include, but are not limited to a failure to make or meet appointment times or a failure to notify of a change in schedule.

In no event shall SWAN be liable for any special, incidental, consequential or punitive damages, including without limitation, damages due to delay, loss of profits, rental or income, travel, labor



or expense, interest, costs or attorney fees, whether or not SWAN, the motor or air carrier had knowledge that such damages might be incurred.

**33. ORDERING SERVICE.** Request for service from SWAN shall be made by form approved by SWAN or other mutually agreed format which may include forms electronically transmitted via internet, telephone, or facsimile.

In some cases SWAN may have submitted an initial rate offer or quotation to Customer prior to shipment. The initial rate offer and subsequent shipping, billing and other documents specifically incorporate by reference this Terms & Conditions.

Any change or notation made on the Shipping Documents that is in any way inconsistent with the terms of this Terms & Conditions or the underlying publications or purports to enlarge, modify, or change them will be considered as a notation made for the private benefit and information of consignor or consignee. Such a notation shall not be a part of any contract or agreement with SWAN. Also any changes made to SWAN shipping documents without approval that result in additional charges being levied to SWAN from the underlying carrier shall be chargeable to the Customer, Shipper Consignor, Consignee, or Beneficial Owner with the addition of a 20% administrative fee but not less than \$45.

**34. OVERFLOW - CHARGE WHEN SHIPMENT CANNOT BE LOADED INTO ONE VEHICLE.** When SWAN is tendered a shipment on one bill of lading, and at one time, where the lading cannot be loaded in one trailer, or container, the portion of the shipment that cannot be loaded into the first trailer, or container, either because of weight or cubic volume of the lading, will be considered an overflow. The overflow will be treated as a separate shipment and charges will be assessed as such.

**35. PACKING AND PACKAGING REQUIREMENTS – SAFE LOADING REQUIREMENTS.** Customer is responsible for the proper packing and packaging of freight to withstand the ordinary rigors of transportation to industry standards such as those published by the NMFC or IATA or International specifications and standards as applicable.

Any shipment or part thereof deemed by SWAN or the Carrier not to be in proper condition for safe transportation will be refused. However, failure of SWAN or the Carrier(s) to reject a shipment that does not comply will not make SWAN or such carrier(s) responsible for loss, damage, or injury resulting from improper packaging, loading, packing or securing. Where SWAN or the Carrier undertakes to re-package, re-wrap, re-load, re-block or re-brace or otherwise re-furbish a shipment, Customer will be responsible for all charges provided for such services, plus a twenty percent (20%) administrative fee.

In no instance should the gross weight of the container or Aircraft Unit Load Device and its contents exceed state, federal or international laws governing weight. Customer has the responsibility to ensure that the Consignor, Shipper and/or Beneficial Owner adequately packages, loads, blocks, and braces the shipment.

Customer, Shipper, Consignor and Beneficial Owner are liable to SWAN or any other involved party for damages, personal injuries, or death resulting from failure to comply with equipment specifications and loading standards as contained in the Uniform Freight Classification and/or

from a failure of the Customer, Consignor, or Beneficial Owner to load and brace the lading properly, if such defect or failure is a proximate cause of the damage, injury, or death. Acceptance of a sealed trailer or container by any underlying carrier for transportation does not constitute a waiver of SWAN's right to seek indemnity from Customer, Shipper Consignor or Beneficial Owner for noncompliance with its obligations.

Customer agrees to indemnify and hold SWAN harmless from the loss or damage described above and for the cost of defending claims or suits filed against SWAN for such damage, including reasonable attorney fees and costs incurred.

**36. PALLET EXCHANGE.** Except as otherwise provided, SWAN will not exchange pallets. Palletized shipments will be accepted for transportation and will be delivered to the consignee as part of the shipment provided that the pallets and pallet weight are included with the shipment description on the bill of lading. Pallets will become the property of the carrier when they are not properly noted on the bill of lading. Upon special request SWAN will endeavor to furnish pallets for exchange, when available, under the following conditions:

- (a) Pallets may be removed by consignor and consignee, from carrier's vehicle, provided such consignor and consignee replaces in the vehicle a like number of pallets of identical size, construction, loaded or empty.
- (b) When the consignor or consignee desires that SWAN maintain pallet exchange records and maintain an even pallet balance, exchanges must be clearly noted and initiated by the driver on the bill of lading. Separate pallet slips will not constitute a record of uneven pallet exchanges. SWAN will maintain a record of uneven exchanges and undertake to return excess pallets received at no charge provided that 1) pallet returns can be accomplished without expense and at SWAN's convenience and SWAN is compensated at a rate of \$12.00 per pallet, per shipment, by Customer or other party responsible for freight charges, for pallets supplied to the consignor and not returned by the consignee.
- (c) Under no circumstances will deductions in payment be permitted for outstanding pallet balances owed by SWAN.
- (d) SWAN shall be entitled to a pallet exchange charge of \$10.00 per pallet on all LTL and TL shipments to the following destinations:

Such charges shall not apply on "CHEP" or beveled pallets.

**37. PER DIEM CHARGES and FREE TIME.** For empty trailers and/or containers dropped off at origin for loading, free time shall be as set forth in the underlying carriers tariff or governing publication. SWAN shall be entitled to charge for all additional time at cost plus 20%.

**38. PROHIBITED ARTICLES.** SWAN WILL NOT ACCEPT the following articles except as specifically agreed in a written agreement with Customer for each specific commodity:

- Accounts, bills, deeds, evidences of debt, currency, money, securities, notes, letters of credit, passports, tickets or other valuable papers;
- Bullion, precious stones, jewelry or other similar valuables, paintings, statuary, or other works of art, furs, or garments trimmed with fur;
- The following hazardous materials, as described in Bureau of Explosives Tariff 6000 series:
  - Liquid corrosive materials, in excess of 25 percent of total weight

- ❑ Explosives, Class 1.1, 1.2, or 1.5
  - ❑ Nitrostarch, wet or dry
  - ❑ Radioactive materials (as described in Item UFC 6000-A)
- ❑ Sodium compounds (as covered by STCC 28-123 of STCC Tariff 6001-K)
- ❑ Poisons
- ❑ Metal Coils
- ❑ Hazardous Wastes - Regulated by the DOT and EPA, as described in Part 261, Title 40, Code of Federal Regulations – SWAN DOES NOT HANDLE HAZARDOUS WASTE UNDER ANY CIRCUMSTANCES.
- ❑ Corpses, cremated or disinterred remains
- ❑ Live Animals or Birds

Additional commodities may also be restricted in individual rail and motor carrier's rules circular(s).

A \$50,000 charge as liquidated damages will be assessed against the shipper and/or consignor for each and every shipment of prohibited articles (excluding hazardous material which are subject to \$50,000 liquidated damages charge) tendered to SWAN in violation of this section, and such liquidated damages represent the reasonable approximation of SWAN's anticipated damages.

**39. PROTECTIVE SERVICE.** SWAN does not currently offer protective service. Any agreement to provide protective services must be in writing, signed by an Officer of SWAN and subject to all additional charges as stated by SWAN.

**40. REDELIVERY SERVICE, RECONSIGNMENT OR DIVERSION.** When, through no fault of SWAN, a shipment cannot be delivered when tendered for delivery, or after the underlying carrier has made reasonable effort to effect delivery, or redelivery is requested, charges for each additional delivery, or attempted delivery, will be assessed, plus applicable return to terminal or agent charges and storage charges.

Shipments may be diverted or reconsigned at point of original destination or at some intermediate point subject to the following:

- a) Charges on a cost plus basis, but not less than \$50 shall apply in addition to all other applicable charges.
- b) The rate on a shipment diverted in transit or at original destination shall be cost plus 20% but not less than \$50, providing the shipment is reconsigned to the commercial zone of the original destination. A truckload shipment reconsigned to another commercial district shall be rated on the basis of service from origin to the new destination and shall be subject to circuitry via the point of diversion. An LTL shipment reconsigned to another commercial district shall be rated from point of origin to original destination, regardless of point of diversion, plus interline from the point of diversion to new destination.
- c) If reconsignment results in a vehicle delay, refusal, redelivery, additional stop in transit, storage or return then such charges will apply in addition to all other applicable charges.

**41. REFUSED OR UNDELIVERED SHIPMENTS.** Shipments which have been refused, or which for any reason the motor carrier is unable to deliver, will be placed in storage, at SWAN's discretion. SWAN will attempt to contact the Customer or Consignor for alternative instructions at the time delivery is attempted, however SWAN will notify Customer or Consignor

within 24 hours. Unclaimed product will be considered as refused after 3 days from such notification. Such shipments shall be subject to an administrative fee of \$50.00 plus a stop charge of \$50.00 to place product on hold within the original destination commercial zone, plus all applicable detention and storage charges. If the product is placed in a location other than the commercial zone of the original shipment destination charges will apply as provided herein to reship product to the nearest practical location en route. Shipments shall also be subject to applicable storage, redelivery, reconsignment, or return charges.

**42. ROUTING.** Unless otherwise specified in writing, the route, mode of transportation and/or particular Carrier utilized shall be at the sole discretion of SWAN. SWAN reserves the right to route or re-route shipments via the route, mode of transportation, or Carrier which in its judgment will provide the most expeditious service to destination. SWAN shall not be obligated to provide advance notice of the means selected to effect delivery.

**43. SEALS.** Shipper provided and applied Cargo Security Seals may be used at time of loading of Full Truck Load shipments only. When Cargo Security Seals are applied by Shipper, "Shipper Load and Count" will control all claims or issues. LTL shipments are not required to have a Security Seal or Continuous Security Seal Record due to the inherent nature of LTL shipments. (See Claims)

**44. SORTING AND SEGREGATING.** When requested, the service of sorting or segregating at delivery point according to size, brand, flavor, individual lot, or other distinguishing characteristics, so identified on the bill of lading, or accompanying paper given to motor carrier at time of tender, SWAN will charge on a cost plus basis, but not less than \$50.00 per skid. The charge named in this item shall be assessed against the party responsible for freight charges irrespective of who requests the service to be performed. Charges shall be in addition to all other lawful charges assessed the shipment.

**45. STOPOFFS - TO PARTIALLY LOAD OR UNLOAD.** Shipments may be stopped in transit to partially load or complete loading or to partially unload subject to the following provisions:

- a) Stops for partial loading or unloading will be permitted only at points within the scope of carrier's operations.
- b) A shipment with stops in transit must be from one shipper at one point of origin to one consignee at one destination, on one master bill of lading.
- c) The master bill of lading or shipping order must show the point or points at which shipment is to be stopped for partial loading or unloading together with a complete description of the kind and quantity of freight to be loaded or unloaded at each point and the name and address of the party from or to whom each portion is to be received or delivered. If receipt or delivery is made at two or more different locations at the same point (city, town or village) each pick-up or delivery will be considered as a separate stop in the application of this rule.
- d) Stops to partially unload will be permitted only at points beyond those at which the last stop for partial loading is made.
- e) Transportation charges shall be assessed on basis of actual weight of the entire shipment, but not less than the applicable minimum weight, and at the rate or rates, in effect on date

- of shipment, for the applicable distance from point of origin through the stop-over point or points to the final destination, plus charge provided in paragraph (g).
- f) An additional charge of \$50.00 or cost plus 20%, whichever is higher per stop for the first two additional stops and \$200.00 or cost plus 20%, whichever is higher per stop for the third and subsequent additional stops shall be made for each stop to partially load or unload a shipment, exclusive of the initial pick-up stop and delivery stop.
  - g) Freight charges on a shipment stopped to partially unload must be prepaid or guaranteed by the Customer or Consignor. The consignor may show on the bill of lading the name of one party from whom the entire freight charges, including the stop-off charges, shall be collected, which must be a party to whom a portion of the shipment is to be delivered.
  - h) Stopping in transit for partial unloading will not be permitted on a shipment when consigned "C.O.D.", "To order", or to be delivered on shipper's written order, or where accompanied by any instructions from the consignor requiring the surrender or presentation of the bill of lading, a written order or any other documents as a condition precedent to delivery at stopoff point.

**46. TAILGATE SERVICE.** Unloading is the responsibility of the consignee. When requested by the consignor or consignee, and when safe and practicable operating conditions permit, motor carrier may move shipments or portions of shipments from or to the rear of the trailer to accommodate loading or unloading on a cost plus basis but not less than \$35.00 per skid. Motor carrier shall be permitted to interline or put such shipments into temporary storage for later delivery pick up or delivery, at Customer's expense, if such handling will result in a delay to motor carrier's operations. The charges provided in this item will be in addition to all other lawful charges and shall be paid by the Customer or other party responsible for the regular freight charges.

**47. UNCLAIMED OR REFUSED FREIGHT.** Freight not removed by the receiver after the freight has been made available and notice of the arrival at destination has been sent may be kept by SWAN and will be subject to storage charges. At the option of SWAN, the freight may be stored in a warehouse at the expense of the Customer, Consignor, Consignee, Beneficial Owner, or other party liable for freight and other charges. In this case, the freight will be held without liability to SWAN, and subject to SWAN's lien for all charges, including a reasonable charge for storage.

If the receiver of nonperishable freight fails or refuses to accept deliver within a reasonable time after notice of arrival has been given, SWAN may sell the freight to the highest bidder. Before such a sale is made, SWAN will first give formal notice to the Customer, Consignor, or Beneficial Owner that the freight has been refused or unclaimed, and that the freight will be subject to sale if disposition is not made within three (3) business days. On perishable freight, SWAN may sell the freight to the best advantage to protect its interest and prevent deterioration. Where the procedures outlined are not possible, SWAN may sell the freight in a commercially reasonable manner consistent with the circumstances. The proceeds of any sale made under this section will be applied by SWAN to payment of freight and accessorial charges, interest and attorney fees, costs of sale and other necessary expenses. Any balance will be paid to the Customer or Beneficial Owner of the freight.

For questions or comments regarding this SWAN Terms & Conditions of Service, please contact:  
Gallagher & Howarth, P.C. at: (860) 254-5434