



## TERMS AND CONDITIONS OF SERVICE

The following terms and conditions shall apply to any service of any kind provided by A.S.A.P. to or on behalf of any customer. By hiring A.S.A.P., customer certifies that it has read and expressly agreed to the application of each and every term and condition hereunder.

### 1. DEFINITIONS

- 1.1 The following definitions are applicable to all terms as used herein and in any shipping documents or paperwork issued by A.S.A.P.:
  - 1.1.1 Carrier or Courier – shall refer to A.S.A.P. or any other entity to which A.S.A.P. outsources carriage services, and who performs such carriage services under its own authority.
  - 1.1.2 Consignor or Shipper – the entity or individual who tenders cargo to A.S.A.P. for transportation.
  - 1.1.3 Consignee – the entity or individual to whom the Shipper has directed A.S.A.P. to deliver the cargo or the entity listed on the bill of lading as consignee.
  - 1.1.4 "Carrier", "consignor" or "consignee" include the authorized representatives or agents of such "carrier", "consignor" or "consignee".
  - 1.1.5 Shipment or Cargo – a unit of cargo tendered to A.S.A.P. for transportation by the Shipper under a single receipt, bill of lading or shipping document, or any item or group of items being transported together from the same origin to the same destination.
  - 1.1.6 Limitation of Liability or Release Value – the maximum liability of Carrier for any Shipment, either measured in a “per pound” or “per shipment” basis. The standard limitation of liability applicable to any shipment hereunder, absent a separate written and signed agreement for greater liability, shall be the lesser of \$50 per shipment or \$0.50 per pound.
  - 1.1.7 Claim – a written document provided to A.S.A.P. identifying the Shipment at issue, asserting liability upon A.S.A.P. for loss or damage thereto, and specifying a monetary value of the alleged damage or loss, providing supporting documentation therefore.
  - 1.1.8 Concealed Damage – concealed damage is any damage not noted on the delivery receipt by the consignee at the time of delivery. A.S.A.P. is NOT liable for concealed damage under any circumstances.
  - 1.1.9 Warehousing or Warehouseman – A.S.A.P. shall be engaged in warehousing/storage and its liability shall be that of a warehouseman when goods are stored with or left in A.S.A.P.’s possession by a customer in excess of thirty (30) days. A.S.A.P.’s liability for warehousing or acting as a warehouseman shall be as described in paragraph 4.11.

## **2. SCOPE**

- 2.1 A.S.A.P. and/or the carrier in possession of any property moving under this agreement shall be liable for loss, damage, or delayed delivery only as hereinafter provided.
- 2.2 A.S.A.P. shall have no liability for any loss or damage to a shipment or for any delay caused by an Act of God, public enemy, public authority, inherent vice or defect in the cargo, or act or default of the shipper. A.S.A.P. or the carrier in possession shall not be liable for loss, damage or delay which results: when the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request.
- 2.3 Unless arranged or agreed upon, in writing, prior to shipment, carrier is not bound to transport a shipment by a particular schedule or in time for a particular market, but is responsible to transport with reasonable dispatch.

## **3. CLAIM FILING, CONCEALED DAMAGE, AND CONDITIONS PRECEDENT TO RECOVERY**

- 3.1 As a condition precedent to recovery, any claim for loss, damage, or delay must be submitted in writing to A.S.A.P. within 30 days of delivery or such date as delivery was anticipated in the case of loss. Such written claim must include an identification of the shipment in question by job number, a specification as to the precise damage to each item included within the shipment, an assertion of liability on the part of the A.S.A.P., and a demand for a specified amount of monetary damages, with supporting documentation for such a demand including all relevant invoices or repair estimates.
- 3.2 As a further condition precedent to recovery, any damage or shortage must be noted on the delivery receipt. Failure to note shortage or damage on the delivery receipt shall be considered concealed damage. Concealed damage must be reported to A.S.A.P. within twenty-four hours of delivery. A.S.A.P. will not have any liability for concealed damage not reported within twenty-four hours of delivery. A.S.A.P.'s maximum liability in all cases of concealed damage shall not be more than the freight charge for that singular shipment.
- 3.3 Suits for loss, damage, injury or delay shall be instituted against any A.S.A.P. not later than two years and one day from the day when written notice is given by the A.S.A.P. to the claimant that A.S.A.P. has disallowed the claim or any part or parts of the claim specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, A.S.A.P. shall have no liability, and such claims will not be paid.

## **4. LIMITATIONS OF LIABILITY**

- 4.1 A.S.A.P. shall not under any circumstances be held liable for special or consequential damages arising from or related in any way to transportation services to which these terms apply. Special and Consequential damages include any type of damages, monetary or equitable other than physical damage to the cargo being transported.
- 4.2 A.S.A.P. shall have no liability for delay claims. As provided in section 2.3, absent a separate written, signed agreement, A.S.A.P. has no duty to deliver cargo by a

date or time specific, and instead shall proceed with reasonable dispatch. In any event where A.S.A.P. is found liable for a claim of delay, A.S.A.P.'s liability shall be limited to the total freight charge paid by the shipper for the transportation of that particular delayed shipment.

- 4.3 A.S.A.P. if found liable for loss or damage to any property tendered to it shall have the full benefit of any insurance that may have been affected, upon or on account of said property, so far as this shall not void the policies or the contracts of insurance.
- 4.4 In any and all matters not prohibited by law, where the shipper fails, refuses, or simply does not declare a value in writing to A.S.A.P. prior to tendering the subject shipment, which declaration is received by A.S.A.P., and commensurate rate increase is agreed upon and paid by shipper, the value of any shipment of cargo tendered to A.S.A.P. shall be the lesser of \$50 per shipment or \$0.50 per pound per article or the actual repair or actual cash value of the cargo.
- 4.5 Where shipper does wish to purchase a higher released value, shipper shall request that from A.S.A.P. in writing and pay an additional fee of \$.50 per \$100 in increase valuation.
- 4.6 The limitation of liability provided for in this section shall be enforceable regardless of cause of loss, damage or delay, including gross negligence, recklessness or willful and wanton conduct. Nothing short of conversion to A.S.A.P.'s own use, for the direct benefit of the corporation itself, shall vitiate this limitation of liability.
- 4.7 A.S.A.P. will not carry a shipment declared to have a value in excess of \$25,000.00 under these terms and any standard bill of lading. Any shipment with a value in excess of \$25,000.00 must be represented by a separate written agreement whereby the commodity is described in detail and A.S.A.P. expressly agrees to such greater value. Such separate written agreement must be executed by duly authorized representatives of each party at least seventy-two (72) hours prior to transportation.
- 4.8 Under no circumstances will any shipment containing extremely high valued items such as cash, furs, jewelry, coins, negotiable instruments, or items of similar value to weight ratios be accepted pursuant to this bill of lading. Any such shipments must be covered by a separate written agreement executed by both parties. If such a shipment is inadvertently accepted by carrier, or mislabeled by shipper for any reason, A.S.A.P.'s liability shall be limited as provided in section 4.4.
- 4.9 No employee or representative of A.S.A.P. is authorized to alter, vary or contradict these terms regarding A.S.A.P.'s liability.
- 4.10 Should any claim in any amount even if in excess of such limits of A.S.A.P.'s liability be asserted against A.S.A.P. by any third party for any loss or damage to any shipments carried hereunder, shipper agrees to indemnify A.S.A.P. and hold it harmless against any damages, expenses, or cost including attorney's fees, arising out of any such claim regardless of the cause.
- 4.11 Where A.S.A.P. is acting as a warehouseman, as defined in section 1.1.9, the limitations of liability within this section (4) shall remain fully applicable. However, without concern as to the cause of damage or loss, and regardless of any alleged or actual want of care, including but not limited to wanton conduct or gross negligence, in no circumstance shall A.S.A.P.'s liability exceed that provided for in its current warehouseman's legal liability policy in effect on the date of loss (a copy of such policy can be requested by customers at any time). All conditions and exclusions of such policy shall apply to any claims against A.S.A.P. by customers

storing goods with A.S.A.P., and under no circumstance shall A.S.A.P.'s complete and absolute liability for any such claim on Warehoused goods exceed the lesser of the actual invoice value, the cost to repair the goods, or \$25,000.00. This limitation only applies when the limitation in paragraph 4.4 is held inapplicable, which lesser limitation shall apply where not prohibited by law.

## **5. INDEMNIFICATION**

- 5.1 It is the sole and non-delegable duty of shipper to provide appropriate packaging, containerization, sealing, palletizing, boxing, or crating of product tendered to A.S.A.P..
- 5.2 All cargo must be packaged and prepared in a manner so as to withstand the normal rigors of motor carriage and handling.
- 5.3 Acceptance by A.S.A.P. of any package or cargo does not serve as acquiescence or agreement to the fitness of the packaging or packing of said cargo.
- 5.4 In the event that a failure, flaw, omission, mistake, or negligence of any kind of degree in the packaging of the product tendered by shipper to A.S.A.P., shipper hereby agrees to indemnify and hold harmless A.S.A.P. from any and all damage resulting from said insufficient, improper, failing, or negligent packaging, including damage to other commodities transported or stored by A.S.A.P. and damage to A.S.A.P.'s property or that of any other entity or individual.
- 5.5 It is shipper's further duty to ensure that all product is accurately and properly marked, classified, and tendered in accordance with these rules and the normal standards of interstate and intrastate shipping.
- 5.6 Shipper shall defend, indemnify, and hold harmless, A.S.A.P. from any damage, loss, liability, or claims of any kind resulting from the improper or negligent packing, marking, description or classification of any product.

## **6. PAYMENT OF FREIGHT CHARGES**

- 6.1 Freight charges pursuant to this bill of lading are due within fifteen (15) business days of delivery of said shipment unless a credit agreement is in place between A.S.A.P. and Shipper. In the event of customer's failure to pay freight charges in full within fifteen (15) days of delivery, customer hereby agrees to pay liquidated damages in the amount of thirty percent (35%) of the original freight charges in addition to the original freight charges, not as a penalty but to cover collection costs and compensate A.S.A.P. for opportunity loss, plus interest at the maximum rate permitted by Florida law on the date of tender of the cargo (presently 18% per annum).
- 6.2 No shipper or consignee shall be entitled to set off any claims for loss, damage or delay against freight charges owed to A.S.A.P., and any pending or denied claims shall not serve to toll or void the A.S.A.P.'s collection efforts, loss of discount, or A.S.A.P.'s entitlement to fees.
- 6.3 Nothing in this bill of lading shall limit the right of the A.S.A.P. to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery.
- 6.4 If the description of articles or other information on this bill of lading or other shipping document is found to be incorrect or incomplete, the freight charges must be paid based upon the articles, weights, and counts actually shipped.

- 6.5 Any and every party, whether principal or agent, shipper or consignee, who ships explosives, illegal goods, contraband, or dangerous goods, shall be liable for and indemnify A.S.A.P. against all loss or damage caused by such goods. Such goods may be warehoused at owner's risk and expense or destroyed without compensation.
- 6.6 If the consignee refuses the shipment tendered for delivery by A.S.A.P. or if carrier is unable to deliver the shipment, because of fault or mistake of the consignor or consignee or for any reason not directly attributable to carrier, A.S.A.P.'s liability shall then become that of a warehouseman, except that the limitations of liability herein shall still apply unless a lesser limitation is found to apply by virtue of the law. A.S.A.P. shall promptly attempt to provide notice, by telephonic or electronic communication as provided on the face of the bill of lading, if so indicated, to the shipper or the party, if any, designated to receive notice on this bill of lading. Storage charges, based on carrier's terms and conditions, shall start no sooner than the next business day following the attempted notification. Storage may be, at A.S.A.P. option, in any location that provides reasonable protection against loss or damage. A.S.A.P. may place the shipment in public storage at the owner's expense and without liability to A.S.A.P.
- 6.7 If A.S.A.P. does not receive disposition instructions within 48 hours of the time of A.S.A.P.'s attempted first notification, A.S.A.P. will attempt to issue a second and final confirmed notification. Such notice shall advise that if carrier does not receive disposition instructions within 10 days of that notification, A.S.A.P. may offer the shipment for sale at a public or private auction and A.S.A.P. has the right to offer the shipment for sale. The amount of sale will be applied to A.S.A.P.'s invoice for transportation, storage and other lawful charges. The owner will be responsible for the balance of charges not covered by the sale of the goods. If there is a balance remaining after all charges and expenses are paid, such balance will be paid to the owner of the property sold hereunder, upon claim and proof of ownership.

## **7. NON-SOLICITATION**

- 7.1 A.S.A.P. values its independent contractor delivery service providers. A.S.A.P. has gone to considerable expense to recruit, compensate, contract with, and otherwise engage these independent contractors. While said independent contractors are free from any restraint of trade by A.S.A.P., solicitation of these drivers to create a shipper's own fleet is discouraged.
- 7.2 In the event that you, as a customer of A.S.A.P. solicits one of the independent contractor delivery service providers of A.S.A.P. currently servicing its account in order to replace services currently being provided by A.S.A.P., you agree hereby to pay a finders fee/referral fee to A.S.A.P. in the amount of the greater of fifteen percent of the gross receipts paid to said contractor for the first year, or \$4,000.00, as just compensation for the recruitment efforts of A.S.A.P.

## **8. BROKERAGE**

- 8.1 A.S.A.P., at its sole discretion, may act as a broker in completing the transportation and delivery services of any customer hereunder.
- 8.2 A.S.A.P. may, at its sole discretion, utilize independent contractors or agents to perform any part or portion of the services contemplated hereunder.

- 8.3 When acting as a broker, or otherwise substituting carriage, transportation, or related services, A.S.A.P.'s liability shall not vary from these terms as in section 4. Any carrier or delivery company providing substitute service hereunder shall have no liability greater than that contemplated by these terms.

## **9. INDEPENDENCE OF PARTIES**

- 9.1 This Agreement does not constitute a hiring by either party. It is the parties' intention that A.S.A.P. shall have an independent contractor status and not be an employee for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Workers' Compensation Insurance Code, and/or other benefit payments and third party liability claims. A.S.A.P. shall retain sole and absolute discretion in the manner and means of carrying out his or her activities and responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture, and shipper shall not be liable for any obligations incurred by A.S.A.P. unless specifically authorized in writing. A.S.A.P. shall not act as an agent of the shipper, ostensibly or otherwise, nor bind the shipper in any manner, unless specifically authorized to do so in writing.

## **10. FORCE MAJEURE**

- 10.1 Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the Parties provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.

## **11. CARMACK LIABILITY**

- 11.1 Unless it is determined otherwise by a court of competent jurisdiction, the liability of A.S.A.P. for loss, damage and delay shall be determined in all respects in accordance with 49 U.S.C. §14706, regardless of the interstate or solely intrastate nature of the shipment, to the extent not modified herein. This contract controls in the case of any conflict.
- 11.2 The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. §370 et seq. to the extent not modified herein.

## **12. NO THIRD PARTY BENEFICIARY:**

- 12.1 Shipper, Consignee, and A.S.A.P. are the only parties to this Agreement, and that the Parties do not intend for any third party to specifically benefit from this Agreement.

## **13. NONWAIVER**

- 13.1 Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the

waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

#### **14. ASSIGNMENT**

- 14.1 This Agreement shall not be assignable by either party, in whole or in part, without the written consent of the other party, which consent shall not be unreasonably withheld.

#### **15. GOVERNING LAW/ ATTORNEY'S FEES**

- 15.1 Without regard to the principles of conflicts of law, these terms shall be construed in accordance with, and any and all disputes arising under or out of transportation services performed by A.S.A.P., shall be governed by federal law where applicable, or otherwise Florida law. Venue shall be in Orange or Hillsborough County, Florida.
- 15.2 By using the services of A.S.A.P., shipper asserts that it is and does conduct business in Orange or Hillsborough, Florida and is subject to the jurisdiction of Orange or Hillsborough County Courts.
- 15.3 Shipper waives any challenge to personal jurisdiction or venue in court's located within Orange or Hillsborough County, Florida.

#### **16. SEPARABILITY/SEVERABILITY**

- 16.1 If any provision of these terms and conditions is held to be illegal, invalid or unenforceable under the present or future laws effected, such provision shall be fully severable from the remaining provisions, and it shall not affect the validity of the remaining provisions, which provisions shall be given full force and effect as if the illegal, unenforceable, or invalid provision had not been included. In lieu of an illegal, unenforceable, or invalid provision, there shall be substituted a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

#### **17. ENTIRE AGREEMENT AND SUPREMACY**

- 17.1 These terms along with the delivery instructions included on a bill of lading or receipt embody the entire understanding between shipper, consignee, and A.S.A.P. covering the services to be performed hereunder, and there are no other agreements, understandings, conditions, warranties, or representations, oral or implied with reference to the subject matter hereof.
- 17.2 In the event of any conflict between these terms and conditions and any term or provision in any other document related to or used in the process of arranging or transporting of goods by A.S.A.P., these terms and conditions shall be superior and shall govern to the extent of the conflict.