



REDWOOD DISTRIBUTION

TERMS AND CONDITIONS APPLICABLE TO TRANSPORTATION AND CROSS-DOCK / TRANSLOAD SERVICES

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I. INTRODUCTION

These Terms and Conditions Applicable to Transportation and Cross-Dock/Transload Service, as amended by FXE Warehouse, LLC d/b/a Redwood Distribution (“Redwood”) from time to time (“Terms”), shall apply to: (i) arrangement by Redwood of transportation services with respect to goods stored by Redwood as a warehouseman, or with respect to goods for which Redwood is providing Transloading, as defined herein; and (ii) to Redwood’s unloading of inbound goods from rail and/or motor conveyances and reloading of such goods onto trailers or containers for outbound carriage by motor and/or rail carrier (“Transloading”). If for any reason Redwood provides storage of goods that have been tendered for transportation and/or Transloading, Customer acknowledges and agrees that such storage shall be governed the terms and conditions of Redwood’s [“Standard Contract Terms and Conditions for Merchandise Warehousemen”](#) as amended from Redwood from time to time. If Customer is not the owner of goods with respect to which services have been requested, Customer warrants and represents that it is authorized to tender such goods and that it is authorized to arrange for services pursuant to these Terms on behalf of such owner.

These Terms are part of every agreement between Redwood and Customer as if they were fully written and contained in each agreement. Application of these Terms may be waived only if such waiver is express and contained in a written agreement signed by an authorized representative of Customer and an officer of Redwood. For purposes of these Terms, “Customer” shall mean any entity responsible for requesting that Redwood provide services governed by these Terms, any entity responsible for payment to Redwood for such services, or any entity receiving the benefit of such services.

If there is a conflict between these Terms and the terms and conditions on any bill of lading, air waybill, manifest, label, or other transit documentation, these Terms will control.

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II. TENDER.

- a. Redwood shall have sole discretion as to whether to accept or reject any request for services by Customer and shall have no liability arising from or related to any refusal to provide services. Customer will advise Redwood of its service needs in sufficient time to allow Redwood to make necessary preparations to provide required services.
- b. If Redwood agrees to provide Transloading, all goods will be tendered in a segregated manner, properly marked and packaged for handling, and adequately protected or covered. All handling will be performed at the pallet level only. Customer will furnish or cause to be furnished, at or prior to such delivery, a manifest instructing Redwood as to the proper routing of all tendered goods.
- c. Customer represents and warrants that it is lawfully possessed of the goods and has the right and authority to deliver them to and arrange for services by Redwood. Customer agrees to defend, indemnify and hold harmless Redwood from all claims made against Redwood, and all liabilities which Redwood pays or incurs, or which are alleged against Redwood, as a result of any dispute or litigation, which is instituted by Redwood or others, respecting Customer’s or any third party’s right, title or interest in any goods. Such amounts shall be charges in relation to the goods and subject to Redwood’s lien.
- d. Customer will provide Redwood with information (including, but not limited to, descriptions of cargo, precise dimensions and weight, and requested classifications) that is accurate, complete and sufficient to allow Redwood to comply these Terms, Customer’s instructions and all laws and regulations concerning the storage, handling and transportation of the goods. Customer shall promptly notify Redwood of the characteristics of any goods that (i) require special storage, handling, packaging, material, equipment or precautions; (ii) may be hazardous or dangerous to persons or property, including individuals engaged in the provision of services hereunder, whether by handling or exposure; (iii) are defined as hazardous materials under any federal, state or local law or regulation governing the environment; or (iv) are or should be reasonably believed or known to be likely to cause damage to Redwood’s premises or equipment, goods, or to other goods that may be stored or handled by Redwood. Redwood may refuse to accept any goods that are identified per the above categories or that reasonably might cause infestation, contamination, or damage to other goods in its custody. Redwood shall promptly notify Customer of such refusal and shall have no liability for any alternate storage, demurrage, detention, transportation or other charges by virtue of such refusal. Redwood shall have no liability arising from or related to any underlying carrier’s refusal to accept goods of the type tendered by Customer.
- e. Customer agrees not to tender any of the following: flammable material, personal effects or household goods, automobiles, waste, alcoholic beverages, live plants, live animals, currency, works of art, jewelry or other precious stones or metals, goods requiring controlled temperature handling, cosmetics, medical devices, pharmaceuticals, controlled substances, guns, ammunition, explosives, or food intended for human or animal consumption.

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III. RATES, CHARGES AND PAYMENT.

- a. Rates may be established by Redwood in rate catalogs or schedules, or may be agreed upon by the parties via a written spot quotation. Rates and service quotations are good faith estimates based upon information provided to Redwood, but final rates and service may vary based upon the shipment actually tendered, unknown circumstances, incorrect or incomplete information, and accessorial services provided by the carrier, charges for which shall be the responsibility of Customer.
- b. Whenever Redwood incurs costs due to Customer requirements, the Customer shall be invoiced at 110% of any and all fees, charges, repairs, replacements and/or general expenses associated with those incurred costs.
- c. All charges are due and payable in full and without offset within fifteen (15) days of the date of Redwood's invoice. In addition to any other party that may be responsible for payment (e.g., the shipper, Customer, or a third-party "bill-to" payor, etc.), both the consignor and the consignee are liable for Redwood's charges regardless of whether services purport to be provided on a pre-paid or collect basis.
- d. Payments received more than 30 days after the date of Redwood's invoice will be assessed a late payment fee equal to 1.5% (or the highest legal rate, whichever is less) of the total invoice for each 30-day period or portion thereof, from the date of the Redwood's freight invoice until the date the payment is received, in addition to all other charges. In any action to recover unpaid freight invoices from delinquent accounts, Redwood shall be entitled to interest, reimbursement for collection agency fees and costs, reasonable attorney's fees, court costs and any related fees associated with the collection or attempted collection of past due invoices. Customer agrees to pay Redwood a \$25.00 service charge for all returned or "NSF" checks.
- e. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, REDWOOD WILL HAVE A GENERAL LIEN ON ANY GOODS THAT HAVE COME OR WILL COME INTO ITS POSSESSION, AND ON ANY PROCEEDS THEREOF, FOR ANY AND ALL CHARGES DUE AND OWING TO REDWOOD REGARDLESS OF WHETHER THOSE CHARGES RELATED TO THE GOODS OR PROCEEDS AGAINST WHICH THE GENERAL LIEN IS ENFORCED.

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IV. TRANSPORTATION.

- a. Upon request, Redwood will arrange for surface transportation of goods by motor carrier or joint motor/rail intermodal service. Redwood shall make reasonable efforts to place Customer's loads with responsible carriers, but in no event will Redwood have any responsibility to ensure that carriers accept liability for the goods tendered, for the full value of such goods.
- b. Customer acknowledges and agrees that Redwood has sole discretion in selecting carriers to provide transportation services hereunder, and in selecting the mode and/or route of transportation. Customer further acknowledges and agrees that any such carriers are independent contractors of Redwood and that in no event will Redwood liable for the acts or omissions of any such carrier. Redwood's sole obligation with respect to selection of any carrier is to ensure that the carrier is authorized to perform transportation services for which it is retained in accordance with applicable law.
- c. Redwood makes no express or implied warranties or guarantees concerning delivery time or the locating of a carrier to provide the transportation services requested by Customer.
- d. Customer acknowledges and agrees that additional accessorial charges imposed by carriers will be passed through to, and the responsibility of, Customer including, but not limited to, fuel surcharges, detention, demurrage, specialized equipment, redelivery charges, stoppage in-transit, etc.
- e. With respect to transportation arranged by Customer, if any, Customer agrees not to ship goods to Redwood as a named consignee. If, in violation of this requirement, goods are shipped to Redwood as named consignee, Customer agrees to notify the delivering carrier in writing prior to such shipment, with a copy of such notice to the Redwood, that Redwood named as consignee is a warehouseman or logistics provider and has no beneficial title or interest in such property. Customer further agrees to indemnify and hold harmless Redwood from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. Customer further agrees that, if it fails to notify the delivering carrier as required by this provision, Redwood shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury or damage of any nature of, to, or related to such goods. Customer agrees that this Agreement will be binding on Customer's representatives, successors and assigns.

- f. With respect to goods physically tendered by Customer to any carrier, regardless of whether the carrier has been retained by Redwood, Customer will be responsible for compliance with any and all obligations or charges imposed by the carrier with respect to tender of cargo including, but not limited to, the obligation to ensure proper blocking and bracing of cargo.

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V. HANDLING.

- a. Handling rates and charges related to Transloading services include receipt of pallet-loaded goods at the facility door, and staging of in-transit goods for outbound transportation.
- b. Unless additional charges have been agreed upon by Redwood in writing in advance, in no event will Redwood have any responsibility to break down any pallets received by Redwood.
- c. Redwood's responsibility for accurate counts with respect to inbound and outbound transportation is limited to ensuring accurate pallet counts are received from inbound carriers and tendered to outbound carriers. Likewise, Redwood will not be responsible for identifying or reporting damage or shortage unless visible during reasonable inspection of loaded pallets.
- d. Any labor, equipment or materials used by Redwood to load the goods in any vehicle are chargeable to Customer. If Redwood is arranging for transportation by rail carrier with respect to goods with respect to which Redwood is providing Transloading services, then Redwood will use reasonable efforts to block and brace cargo in accordance with applicable requirements imposed by rail carriers.

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VI. EXTRA SERVICES.

- a. Labor required for services other than ordinary handling and storage will be charged to the Customer.
- b. Dunnage, bracing, packing material or other special supplies will be provided for the Customer at charges in addition to the Redwood's cost.

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VII. LIABILITY.

- a. Redwood's liability for loss, damage, destruction or delay to goods with respect to which services are being provided hereunder shall be that of a carrier as set forth in the Carmack Amendment currently codified at 49 U.S.C. § 14706 (Carmack), as amended from time to time, regardless of whether transport is interstate or intrastate, or involves foreign commerce. The period of Redwood's liability shall commence at the later of the time that cargo is loaded onto the trailer of a carrier retained by Redwood or, if such loading occurs at any time while such trailer is not coupled to a power unit operated by a carrier retained by Redwood, then upon coupling of a power unit operated by such carrier to the loaded trailer. The period of Redwood's liability shall terminate once the trailer has been made available for unloading at the consignee's location. Redwood's sole liability with respect to delay in pick-up or transportation shall be if Redwood fails to deliver with reasonable dispatch and such failure results in loss, damage or destruction to cargo being transported. Unless a higher value is declared by Customer in accordance with the provisions herein and the additional freight charges applicable to such declaration have been paid, Redwood's liability for loss, damage, or delay as to any cargo shall not exceed the lesser of: (i) the cost to repair or replace lost, damaged, or destroyed goods; (ii) \$2.50 per pound per package; or (iii) \$50,000 per occurrence.
- b. Declaring values in excess of \$50,000.
 - i. Redwood must be notified at the time it agrees to transport cargo that a value in excess of \$50,000 (but in any event, not exceeding \$100,000 per occurrence) will be declared, and the amount that will be declared. Redwood's \$50,000 limitation of liability shall apply unless Redwood has agreed in writing signed by an authorized representative to accept the cargo at the declared value. In order request such additional liability, the Customer must contact Redwood at (630) 384-6131 and make such request. If Redwood agrees to accept the additional liability, Redwood will provide a signed rate confirmation sheet acknowledging Redwood's acceptance of increased liability and reflecting additional charges as set forth below. Declaration of value on the bill of lading at the time of physical tender, without complying with the remaining provisions of this Item, is an insufficient method of declaring value.
 - ii. The declared value must be clearly stated as such on the face of the bill of lading.
 - iii. A charge of \$3.00 per \$100 of declared value in excess of \$50,000, in addition to all other charges, shall be assessed.

- iv. Declared values in excess of \$100,000 shall not be accepted, and in the event Customer attempts to declare a value in excess of \$100,000 per trailer or conveyance, Redwood's liability shall continue to be limited to \$50,000 per trailer or conveyance.
- v. If Customer complies with the foregoing, and Redwood agrees to accept such declared value, then Customer's recovery shall be limited to the lesser of: (i) the cost to repair or replace lost, damaged, or destroyed goods; (ii) the amount of the declared value; or (iii) \$100,000 per occurrence.
- c. The foregoing notwithstanding, Redwood's cargo liability on used or reconditioned equipment is limited to the lesser of the cost of repair, cost to replace, actual value, released value or declared value. In any event, Redwood cargo liability for such goods is limited to \$0.50 per pound per item up to \$5,000 per occurrence unless excess value is declared and obtained in accordance with the foregoing provisions. Regardless of valuation, Redwood's liability is limited to visual surface damage to external parts only and not to the electrical or mechanical condition of the unit, and will not be liable for any claims of diminished value or any other value not specifically set forth herein. The charge will be \$3.00 per \$100.00 of value declared over \$5,000 with a maximum limit of \$10,000 valuation permissible. Shipments which unknowingly involve used or reconditioned equipment will still be governed by these terms regardless of other terms arranged. Freight will be considered reconditioned freight if it has been in previous service and was later reconditioned, regardless of the percentage or value of the new, unused, or reconditioned parts added during the reconditioning processes.
- d. The value of shipments involving documents (including, but not limited to, blueprints, mechanical drawings, manuscripts, tickets, stamps, currency, commercial paper, valuable papers, deeds, letters of credit, accounts, invoices, bills, passports, lottery or other tickets, money, securities, drafts, notes, evidences of debt, checks, bonds, stock certificates, or any other negotiable or non-negotiable instruments), records and data records, without limitation as to the type, including but not limited to electronic or paper hard copy, shall be limited to the value of the actual media upon which it is contained. Further, no costs, expenses, or claims of any nature will be assumed or accepted which is associated with the replication, duplication or recreation of lost data or documentation. For example, in the case of paper documents the value shall be limited to the value of the paper.
- e. Redwood will have no liability for the following commodities: bullion, coins, precious stones, jewelry, abstracts, paintings, etchings, drawings, rare books, tapestries, sculptures, statuary and other bona fide works of art, rarity, historic value or artistic merit.
- f. Regardless of commodity shipped or valuation, all transportation charges must be paid in full before any settlement for a claim for loss or damage will be made. No payor or other party with an interest in a shipment may deduct or offset any cargo loss, damage, or delay claims from any freight charges owed to Redwood. Redwood reserves the right, at its sole discretion, to either credit an account or provide an actual refund for any sums determined to be owed by Redwood.
- g. The valuation as determined by the provisions of this item shall be the maximum liability in connection with a shipment of the specific cargo, including, but not limited to, any loss, damage, delay, misdelivery, non-delivery, misinformation, any failure to provide information, or misdelivery of information relating to the shipment. It is the shipper's responsibility to prove actual damages. Exposure to and risk of any loss in excess of the released value provisions or declared value provisions as provided for in this item is assumed by Customer.
- h. Redwood shall have the full benefit of the limitations on the amount of Redwood's liability as set forth herein unless Redwood has converted the cargo to its own use, or, through its intentionally wrongful conduct, has destroyed the cargo.
- i. Redwood shall not be liable for acts or omission by third parties, such as, but not limited to, carriers and freight forwarders.
- j. NOTWITHSTANDING ANY OTHER LIMITATION OF LIABILITY OR PROVISION GOVERNING CALCULATION OF DAMAGES UNDER THESE TERMS, IN NO EVENT WILL CUSTOMER'S RECOVERY AGAINST REDWOOD FOR ANY SINGLE OCCURRENCE, NO MATTER THE CAUSE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO REDWOOD DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING SUCH LOSS.

- k. UNDER NO CIRCUMSTANCES WILL REDWOOD BE LIABLE TO CUSTOMER, ANY PERSON CLAIMING BY OR THROUGH CUSTOMER, ANY SUCCESSOR IN INTEREST TO CUSTOMER, OR ANY OTHER PERSON WITH RESPECT TO ANY MATTERS ARISING FROM OR RELATED TO THESE TERM OR SERVICES PROVIDED OR ARRANGED BY REDWOOD PURSUANT TO THESE TERMS FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, STATUTORY, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, INCOME, UTILITY, INTEREST OR LOSS OF MARKET) FOR ANY REASON WHATSOEVER WHETHER OR NOT THE LIKELIHOOD OR CERTAINTY OF SUCH DAMAGES WAS KNOWN OR SHOULD HAVE BEEN KNOWN TO REDWOOD.
- l. A communication in writing from a claimant for loss or damage must be filed within nine (9) months after the delivery of the property except that claims for failure to make delivery (or portion thereof) must be filed within nine (9) months from the date delivery should have been made: (1) containing facts sufficient to identify the shipment (or shipments) or property involved, (2) asserting liability for alleged loss, damage, injury, or delay, and (3) making claim for the payment of a specified or determinable amount of money, will be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage. Suit for loss, damage, injury or delay shall be instituted against Redwood no later than two years and one day from the day when written notice is given by Redwood to the claimant that Redwood has disallowed all or any part of the claim specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, Redwood shall not be liable, and such claims will not be paid.

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VIII. INDEMNITY.

CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD REDWOOD, ITS AFFILIATED ENTITIES, AND EACH OF THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, LOSS, COST, PENALTY, EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES), ACTIONS AND PROCEEDINGS AS A RESULT OF: (i) CUSTOMER FAILING TO FULLY DISCHARGE ITS OBLIGATIONS HEREUNDER; (ii) CUSTOMER'S BREACH OF ANY APPLICABLE LAW, RULE OR REGULATION; (iii) FAILURE BY CUSTOMER TO FULLY COMPLY WITH THESE TERMS; OR (iv) THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CUSTOMER.

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IX. MISCELLANEOUS

- a. Redwood shall not be liable for any failure to perform, including failure to timely perform, services under this tariff where such failure is wholly or partially due to an Act of God, War, Fire, Weather, Explosion, Riot, Civil Commotion, Act of Terrorism, Restriction by Government or other Authority, Strikes, Lock Outs, Failure of Suppliers, or to any cause whatsoever which is beyond the direct and exclusive ability of Redwood to control, or which could not be reasonably anticipated by Redwood.
- b. These Terms shall be deemed to have been drawn in accordance with the statutes and laws of the State of Illinois. In the event of any disagreement or dispute, the laws of Illinois shall apply. All such disagreements or disputes shall be submitted to the court of proper jurisdiction in the State of Illinois and the parties hereby agree to the exclusive jurisdiction of the courts located in the State of Illinois.

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