

# Chat of Michigan, Inc.

## Terms and Conditions of Services

All shipments on behalf of, to or from the Customer, which term shall include the exporter, importer, sender, receiver, owner, consignor, consignee, transferor or transferee of the shipments, will be handled by the forwarder and/or custom broker handling this shipment (herein called the "Company") on the following terms and conditions.

**1. Service by Third Parties.** Unless the Company carries, stores or otherwise physically handles the shipment, and loss, damage, expense or delay occurs during that activity, the Company assumes no liability as a Carrier and is not to be held responsible for any loss, damage, expense or delay to the goods to be forwarded or imported except as provided in paragraph 10 and subject to the limitations of paragraph 8 below, but undertakes only to use reasonable care in the selection of carriers, truckmen, lightermen, forwarders, custom brokers, agents, warehousemen and others to whom it may entrust the goods for transportation, cartage, handling and/or delivery and/or storage or otherwise. When the Company carries, stores or otherwise physically handles the shipment, it does so subject to the limitation of liability set forth in paragraph 8 below unless a separate bill of lading, air waybill or other contract of carriage is issued by the Company, expanding its liability, in which event the terms thereof shall govern.

**2. Liability Limitations of Third Parties.** The Company is authorized to select and engage carriers, truckmen, lightermen, forwarders, custom brokers, agents, warehousemen and others as required, to transport, store, deal with and deliver the goods, all of whom shall be considered as the agents of the Customer, and the goods may be entrusted to such agencies subject to all conditions as to limitation of liability for loss, damage, expense or delay and to all rules, regulations, requirements and conditions, whether printed, written or stamped, appearing in bills of lading, receipts or tariffs issued by such carriers, carriers, truckmen, lightermen, forwarders, custom brokers, agents, warehousemen and others. The Company shall under no circumstances be liable for any loss, damage, expense or delay to the goods for any reason whatsoever when said goods are in custody, possession or control of third parties selected by the Company to forward, enter and clear, transport or render other services with respect to such goods.

**3. Choosing Routes or Agents.** Unless express instructions in writing are received from the Customer, the Company does have complete freedom in choosing the means, route and procedure to be followed in the handling, transportation and delivery of the goods. Suggestions by the Company to the Customer that a particular person or firm may be selected to render services with respect to the goods shall not be construed to mean that the Company warrants or represents that such person or firms will render such services.

**4. Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to changes without notice and shall not under any circumstances be binding upon the Company unless the Company in writing specifically undertakes the handling or transportation of the shipment at a specific rate.

**5. Duty to furnish Information.** (a) On imported freight, at a reasonable time prior to the goods arriving or entering for or to U S Customs, the Customer shall furnish to the Company all appropriate information in proper form and other documents necessary or useful in the preparation of the U S. Customs entry and also such further information as may be sufficient to establish, inter alia, the dutiable value, the classification, the country of origin, the genuineness of the merchandise and any mark or symbol associated with it, the Customer's right to import and/or distribute the merchandise, and the merchandise's admissibility, pursuant to U.S. law or regulation. If the Customer fails in a timely manner to furnish such information or documents, in whole or in part, as may be required to complete U.S. Customs entry or comply with U.S. laws or regulations, or if the information or documents furnished are inaccurate or incomplete, the Company shall be obligated only to use its best judgment in connection with the shipment and in no instance shall be charged with knowledge by/of the Customer of the true circumstances to which such inaccurate, incomplete, or omitted information or document pertains. Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, the Customer shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by the Company as principal, it being understood that the Company entered into such undertaking at the instance and on behalf of the Customer, and the Customer shall indemnify and hold the Company harmless for the consequences of any breach of the terms of the bond; (b) on an export at a reasonable time prior to the exportation of the shipment, the Customer shall furnish to the Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of U.S. and the country of destination of the goods; (c) on an export or import, the Company shall not in any way be responsible or liable for increased duty, penalty, fine or expense unless caused by the negligence or other fault of the Company, in which event its liability to the Customer shall be governed by the provisions of paragraphs 8-11 below. The Customer shall be bound by and warrant the accuracy of all invoices,

documents and information furnished to the Company by the Customer or its agent for export, entry or other purposes, and the Customer agrees to indemnify and hold harmless the Company against any increased duty, penalty, fine or expense including attorney's fees resulting from any inaccuracy, incomplete statement, omission or any failure to make timely presentation, even if not due to any negligence of the Customer.

**6. Declaring Higher Valuation.** Inasmuch as truckers, carriers, warehousemen and others to whom goods are entrusted usually limit their liability for loss or damage unless a higher value is declared and a charge based on such higher value is agreed to by said truckers, etc., the Company must receive specific written instructions from the Customer to pay such higher charge based on valuation and the trucker, etc., must accept such higher declared value, otherwise the valuation placed by the Customer on the goods shall be considered solely for export or customs purpose and the goods will be delivered to the truckers, etc., subject to the limitation of liability set forth in paragraphs 8-11 below with respect to any claim against the Company, truckers, etc., and subject to the provisions of paragraph 2 above

**7. Insurance.** The Company will make reasonable efforts to effect marine, fire, theft and other insurance upon the goods only after specific written instructions have been received by the Company in sufficient time prior to shipment from point of origin, and the Customer at the same time states specifically the kind and amount of insurance to be placed. The Company does not undertake nor warrant that such insurance can or will be placed. Unless the Customer has its own appropriate coverage/insurance policies and advises the Company to that effect, no such other insurance or insurance policy will be effective with one or more insurance companies or other underwriters to be selected by the Company unless requested in writing by Customer. Any insurance placed shall be governed by the certificate or policy issued and will only be effective when accepted by such insurance companies or underwriters. Should an insurer dispute its liability for any reason, the Insured/Customer shall have recourse against the insurer only and the Company shall not be under any responsibility nor liability in relation thereto, notwithstanding any premium charged or paid by the Company on behalf of Customer or that the shipment was insured under a policy in the name of the Company. Insurance premiums and the charges of the Company for arranging shall be at the Customer's expense. If for any reason the goods are held in a warehouse or elsewhere, the same will not be covered by any previous insurance identified in this paragraph unless the Company receives written instruction from the Customer for additional insurance. Unless specifically agreed in writing, the Company assumes no responsibility to effect insurance on any export or import shipment which it does not handle.

**8. Limitation of Liability.** Subject to the provisions of: 49 U.S.C. §14101(b)(1) and 49 U.S.C. §14706, and 46 U.S.C.S. §30701, Note 2, the Carriage of Goods By Sea Act (COGSA) no matter where the goods are located or how shipped, whether land or sea, the Customer agrees that the Company shall in no event be liable for any loss, damage, expense or delay to the goods resulting from the negligence or other fault of the company for any amount in excess of \$500.00 per customary freight unit/package (or the invoice value, if less) or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the Shipper before shipment and inserted in the bill of lading and agreed to in writing by Company. This Declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the Carrier. Any partial loss or damage for which the Company may be liable shall be adjusted pro rata on the basis of such valuation. The Customer has the option of paying a special compensation to increase the liability of the Company in excess of \$500.00 per customary freight unit/package in case of any loss, damage, expense or delay from causes which would make the Company liable, but such option can be exercised only by specific written agreement made with the Company prior to shipment which agreement shall indicate the limit of the Company's liability and the special compensation for the added liability by it to be assumed. The Terms and Conditions of Services contained in this document shall apply and supersede the language on any bill of lading unless otherwise agreed in writing. It is therefore agreed between Carrier and Customer/Shipper an amount in excess of \$500 per customary freight unit/package can be negotiated and such maximum shall not be less than the figure above named. In no event shall Carrier be liable for more than the amount of damage actually sustained. Neither the Carrier nor the Customer/Shipper shall be responsible in any event for loss or damage to or in connection with the transportation of goods if the nature or value thereof has been knowingly and fraudulently misstated by the Customer/Shipper in the bill of lading. This paragraph is to clearly and unmistakably communicate to Customer that the **Customer does intend to waive the protections of the Carmack Amendment (49 U.S.C. §14706) and allow the protections afforded by COGSA, 46, U.S.C.S. §30701, Note 2, Sec. 4, Rights and Immunities, subsection (1) through (6).** It is further agreed between Company and Customer that all shipments into Mexico (all Mexican trans-border shipments) are treated as either originating or terminating at the border point in the United States and

Company is not responsible for any loss/damage or claim occurring in Mexico. Customer should seek Mexican cargo insurance. This limitation of liability shall also apply to and inure to the benefit of every carrier, agent, or subcontractor of transportation services.

**9. Presenting Claims.** Excluding COGSA, subject to the provisions of 49 U.S.C. §14101(b)(1) and 49 U.S.C. §14706 in no event shall Company be liable for any act, omission or default by it in connection with any transportation, exportation or importation, unless a claim therefore shall be presented to it at its office not less than nine (9) months from date of transportation, exportation or importation of the goods in a written statement to which sworn proof of claim shall be attached. No suit to recover for any claim or demand hereunder shall in any event be maintained against the Company unless instituted in not less than two (2) years after accrual of the claim. Any claim relating to COGSA, 46 U.S.C.S. 30701, Note 2 shall be filed within one (1) year after the delivery of the goods or the date when the goods should have been delivered. No agent or employee of the Company shall have authority to alter or waive any of the provisions of this claim.

**10. Liability of Company.** Subject to the provisions of 49 U.S.C. §14101(b)(1), 49 U.S.C. §14706, and 46 U.S.C.S. §30701, Note 2, the Carriage of Goods By Sea Act (COGSA), it is agreed that any claim or demand for loss, damage, expense or delay shall be only against the carriers, truckmen, lightermen, forwarders, custom brokers, agents, warehousemen and others in whose actual custody or control the goods may be at the time of such loss, damage, expense or delay, and that the Company shall not be liable nor responsible for any claim or demand from any cause whatsoever, unless in each case the goods were in actual custody or control of the Company and the damages alleged to have been suffered be proven to be caused by the negligence or other fault of the Company, its officers or employees, in which event the limitation of liability set forth in paragraph 8 herein shall apply. The Company shall not in any circumstances be liable for consequential, compensatory, punitive or statutory damages nor damages arising from loss of profit or production and shall not be liable to Customer for actual damages unless it is first proven that the Company actually had knowledge of the circumstances giving rise to such claims and that the Company directly contributed to the act(s) allegedly causing such damages, subject to limitations identified in paragraph 8. This limitation of liability shall also apply to and inure to the benefit of every carrier, agent, or subcontractor of transportation services.

**11. Force Majeure.** Any damages, delay or failure of either party to perform its obligations under this Agreement shall be excused as a result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the effected party to the other party as soon as possible after the event or occurrence (but in no event more than 10 days thereafter). During the period of such delay or failure to perform by Company, Customer, at its option and expense, may seek services or performance from other sources.

**12. Advancing Money.** The Company shall not be obligated to incur any expense, guarantee payment or advance any money in connection with the importing, forwarding, transporting, insuring, storing or cooperating of the goods, unless the same is previously provided to the Company by the Customer on demand. The Company shall be under no obligation to advance freight charges, customs duties or taxes on any shipment, nor shall any advance by the Company be construed as a waiver of the provision hereof.

**13. Indemnification for Freight, Duties.** In the event that a carrier, other person or any governmental agency makes a claim or institutes legal action against the Company for ocean or other freight, duties, fines, penalties, liquidated damages or other money due arising from shipment of goods of the Customer, the Customer agrees to indemnify and hold harmless the Company for any amount the Company may be required to pay such carrier, other person or governmental agency, together with reasonable expenses, including attorneys' fees, incurred by the Company in connection with defending such claim or legal action and obtaining reimbursement from Customer. The confiscation or detention of the goods by any governmental authority shall not affect nor diminish the liability of the Customer to the Company to pay all charges or other money due promptly on demand.

**14. C.O.D. Shipments.** Goods received with Customer's or other person's instruction to "Collect on Delivery" (C.O.D.) by drafts or otherwise, or to

collect on any specified terms by time drafts or otherwise, are accepted by the Company only upon the express understanding that Customer or its Agents will exercise reasonable care in the selection of a bank, correspondent, carrier or agent to whom it will send such item for collection, and the Company will not be responsible for any act, omission, default, suspension, insolvency or want of care, negligence, or fault of such bank, correspondent, earner or agent, nor for any delay in remittance lost in exchange, or during transmission, or while in the course of collection.

**15. General/Warehouse/Transportation Lien on Any Property.** The Company shall have a general lien on any and all property (and documents relating thereto) of the Customer, in its possession, custody or control or en route for all claims for charges, expenses or advances incurred by the Customer in connection with any shipments of the Customer. If any such claim remains unsatisfied for thirty (30) days after demand for its payment is made, the Company may sell at public sale, subsequent to the expiration of nine (9) months, with written notice, registered mail (R.R.R.), to the Customer, the goods, wares, and/or merchandise, or so much thereof that may be necessary to satisfy such lien, and apply the net proceeds of such sales to the payment of the amount due to the Company. Any surplus from such sale shall be transmitted to the Customer or Customer shall be liable for any deficiency from the sale.

**16. Compensation of Company.** The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

**17. No Responsibility for Governmental Requirements.** 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. The Company shall not be responsible for action taken or liens 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.

**18. Indemnity Against Liability Arising from Importation of Merchandise.** The Customer agrees to indemnify and hold the Company harmless from any claims and/or liability arising from the importation of merchandise which violates any federal, state and/or other laws or regulations and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, cost, claims and/or expenses, including but not limited to, attorney's fees which the Company may hereafter incur, suffer or be required to pay by reason of claims by any government agency or private party. In the event that any action, suit or proceeding is brought against the Company by any government agency or any private party, the Company shall give notice in writing to the Customer by mail, at its address on file with the Company. Upon receipt of such notice, the Customer at its own expense shall defend, indemnify and hold Company harmless against such action and take all steps as may be necessary or proper to prevent the obtaining of a judgment and/or order against the Company.

**19. Loss, Damages or Expenses Due to Delay.** Unless the services to be performed by the Company on behalf of the Customer are delayed by reason of the negligence or other fault of the Company, the Company shall not be responsible for any loss, damage or expense incurred by the Customer because of such delay. In the event the Company is at fault, as aforesaid, its liability is limited in accordance with the provisions of paragraphs 8-11 above.

**20. Construction of Terms, Venue and Choice of Law.** The foregoing Terms and Conditions shall be construed according to the laws of the State of Michigan and the United States of America. Unless otherwise consented to in writing by the Company, no legal proceedings against the Company may be instituted by the Customer, its assigns, or subrogee except in the State of Michigan, County of Wayne, and the Federal District Court for the Eastern District of Michigan. The Terms and Conditions of Services identified in this document shall supersede any conflicting clause in bills of lading or other documents, including those issued by a contractor or subcontractor.

\_\_\_\_\_  
CUSTOMER/SHIPPER (Print Company Name)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

ITS: \_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CHAT OF MICHIGAN

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

ITS: \_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_