

## **ECMS EXPRESS TRANSPORTATION TERMS AND CONDITIONS**

**THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.**

THESE TERMS REQUIRE THE USE OF ARBITRATION [ON AN INDIVIDUAL BASIS] TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS [OR CLASS ACTIONS].

BY PLACING AN ORDER FOR SERVICES FROM THIS WEBSITE, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT, AND YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS. [YOU AFFIRM THAT IF YOU PLACE AN ORDER ON BEHALF OF AN ORGANIZATION OR COMPANY, YOU HAVE THE LEGAL AUTHORITY TO BIND ANY SUCH ORGANIZATION OR COMPANY TO THESE TERMS AND CONDITIONS.]

YOU MAY NOT ORDER OR OBTAIN SERVICES FROM THIS WEBSITE IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 18 YEARS OF AGE OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT WITH ECMS EXPRESS, OR (C) ARE PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS, SERVICES BY APPLICABLE LAW.

These terms and conditions (these "Terms") apply to the purchase and sale of services through ECMSGLOBAL.COM (the "Site"). These Terms are subject to change by ECMS EXPRESS, INC. (referred to as "us", "we", or "our" as the context may require) without prior written notice at any time, in our sole discretion. You are referred to as "you" or "Shipper." Any changes to the Terms will be in effect as of the "Last Updated Date" referenced on the Site. You should review these Terms prior to purchasing any product or services that are available through this Site. Your continued use of this Site after the "Last Updated Date" will constitute your acceptance of and agreement to such changes.

When a transportation service order is initiated with ECMS EXPRESS, you as Shipper agree and on behalf of the Receiver of the shipment and anyone else with an interest in the Shipment that the following Terms and Conditions shall apply.

The definition of shipment means all documents or parcels that travel under a single waybill and which may be carried by any means ECMS EXPRESS chooses, including air, road or any other mode of transportation. A waybill shall include any document produced by ECMS EXPRESS or Shipper's automated systems such as a label, barcode, waybill or consignment note as well as any electronic version thereof. All shipment transported is on a limited liability basis.

### **1 Customs Clearance**

ECMS EXPRESS may perform any of the following activities on Shipper's or Receiver's behalf in order to establish its services: (A) act as Shipper's forwarding agent for customs and export control purposes and as Receiver solely for the purpose of designating a customs broker to perform customs clearance and entry, (B) complete any documents, amend service codes, pay any duties, taxes or penalties under applicable laws, and (C) redirect the Shipment to Receiver's customs broker or other address upon request by any person, who ECMS EXPRESS believes is authorized in its reasonable opinion.

## **2 Shipment Inspection**

ECMS EXPRESS possess the right to open and inspect a Shipment without prior notice for security, safety, customs or other applicable regulatory reasons.

## **3 Unacceptable or unable to move Shipment**

The Shipment is considered unacceptable and unable to transport if:

- it contains weapons, explosives, ammunition, counterfeit goods, animals, bullion, currency, precious stones, human remains or illegal items such as narcotics
- it is classified as hazardous material, dangerous goods, prohibited or restricted articles by IATA (International Air Transport Association), ICAO (International Civil Aviation Organization), ADR (European Road Transport Regulation on dangerous goods) or other relevant organizations
- no customs declaration is made as required by applicable customs regulations
- its address is incorrect or not properly marked or its packaging is defective or inadequate to ensure safe transportation within reasonable care in handling

## **4 Loading and Unloading**

If collection or delivery of Shipment takes place at your premises, ECMS EXPRESS shall not be under any obligation to provide any equipment or labor which, apart from the driver collecting the Shipment, may be required for loading or unloading of the Shipment. Any Shipment requiring special equipment for loading and unloading shall be pre-discussed and accepted by ECMS EXPRESS for transportation. Where such equipment is not available, ECMS EXPRESS shall be under no liability or obligation of any kind for any damage caused during the loading or unloading of the Shipment. This includes any damage caused whether or not by our negligence and you shall agree to indemnify and hold ECMS EXPRESS or ECMS EXPRESS's partners harmless against any claim or demand.

## **5 Collection and Deliveries**

ECMS EXPRESS or ECMS EXPRESS's partners will make one attempt to deliver the Shipment during normal working hours. If we are unable to obtain a delivery receipt at the delivery location, you agree that ECMS EXPRESS or ECMS EXPRESS's partners shall be authorized to attempt to: (1) deliver the Shipment to, or obtain a delivery receipt from, an alternative address close to the delivery location; or (2) deliver the Shipment to a safe location near the delivery location, and leave at the delivery location information of the address or safe location to which we have delivered the Shipment.

If ECMS EXPRESS or ECMS EXPRESS's partners is unable to deliver to the delivery location, a nearby address or a safe location, we shall return the Shipment to our premises and leave a request for the Receiver to contact ECMS EXPRESS to make alternative delivery arrangements. If the Receiver does not contact ECMS EXPRESS to arrange the alternative delivery within 7 days, the shipment will be returned at your cost prior to delivery.

## **6 Sub-Contractors**

You agree that ECMS EXPRESS may use another carrier to support the service commitment and you agree that both ECMS EXPRESS and such carrier shall be entitled to the protection of all of the terms of this Agreement, which limit the liability for any losses or damage.

## **7 Deliveries and Undeliverable**

Shipments are delivered to the Receiver's address given by Shipper but not necessarily to the person(s) identified as the designated Receiver. ECMS EXPRESS or ECMS EXPRESS's appointed partners may notify the Receiver of a delivery or a missed delivery. If the first delivery attempt is unsuccessful, Receiver may be offered alternative delivery options such as delivery on another day, redirection or collection at an ECMS EXPRESS designated collection location. If the Shipment is deemed to be unacceptable as described in Section 3, or it has been undervalued for customs declaration, or the Receiver cannot be reasonably identified, or the Receiver refuses to pay Customs Duties or other Shipment charges, ECMS EXPRESS will use reasonable efforts to return the Shipment to Shipper at Shipper's sole expense. If the return of the Shipment is impractical, in ECMS's reasonable determination, the Shipment may be released, disposed or sold without any liability whatsoever on the part of ECMS EXPRESS. If the Shipment is sold to a third party, the proceeds to Shipper will be reduced by Customs Duties, Shipment charges and related administrative costs before the net proceeds are returned to Shipper. Shipper authorizes ECMS EXPRESS to destroy or sell any undeliverable Shipment if applicable law or customs regulations prohibit ECMS EXPRESS from returning it to Shipper.

Also, Shipper authorizes ECMS EXPRESS to destroy or sell a Shipment if ECMS EXPRESS cannot reach or communicate with Shipper or Receiver within 2 months after the Shipment's arrival at the destination port if ECMS EXPRESS requires additional shipment information to complete customs clearance. Shipments cannot be delivered to P.O. boxes or postal codes.

## **8 Shipment Charges and Fees**

Delivery charge: ECMS EXPRESS's shipment charges are calculated according to the higher of actual or volumetric weight per piece and any piece will be re-weighed and re-measured by ECMS EXPRESS or ECMS EXPRESS's partner to confirm this calculation. For a Shipment with inaccurate weight or dimension information, ECMS EXPRESS will hold the shipment and notify the Shipper to pay for the shortfall within 7 days after which the Return Process will be initiated.

When ECMS EXPRESS acts on Receiver's behalf, Receiver shall pay or reimburse ECMS EXPRESS for all Shipment or other charges due, or Customs Duties owed for services provided by ECMS EXPRESS or incurred by ECMS EXPRESS on Shipper's or Receiver's behalf. The payment of Customs Duties will be requested prior to delivery. If ECMS EXPRESS advances any Customs Duties on behalf of a Receiver, ECMS EXPRESS is entitled to charge a duty advance payment fee of 3%. If Receiver fails to make sufficient advance payment for customs duties, taxes or applicable destination charges, ECMS has the right to charge the outstanding balance back to Shipper, and Shipper agrees to make prompt payment upon receipt of such invoice. Due to international currency changes, the amounts may vary based on currency conversion at the time of your transaction. An additional administration fee related to the collection of duties and taxes may also

apply. For Shipment which is cancelled after online payment has been made, ECMS EXPRESS will review each request and offer a goodwill refund after deducting related administration costs.

## 9 Payment Method

ECMS EXPRESS currently accepts Visa, MasterCard and American Express. Acceptable payment methods are subject to change at any time. You must include correct information (e.g., the address and phone number the credit card issuer has on file for you) when enrolling. Incorrect information may cause delays in establishing service. All information received from you, including credit card and/or bank account information, will be treated in accordance with ECMS EXPRESS's Privacy Policy. This Privacy Policy can be found at <http://www.ecmsglobal.com>. By utilizing our services, you consent to be contacted at the phone number you select to authenticate such phone number, and you will complete the steps required to confirm such authentication. ECMS EXPRESS may receive updated information regarding your payment card account, debit card account or bank account from your financial institution and by accepting this Agreement you hereby consent to such updating.

ECMS EXPRESS reserves the right to charge you any unpaid fees or other delinquent obligations by your provided payment method including, but not limited to, your credit/debit card or direct debit from a checking account if such checking account information has been provided to be debited via ACH by ECMS EXPRESS for any purpose. You hereby give ECMS EXPRESS permission for such payment method charges or debits to your checking account for any overdue fees or other delinquent payments owed. The billing entity for part or all of the services provided by ECMS EXPRESS may be that of a subsidiary, affiliate or partner organization of ECMS EXPRESS and you hereby consent to any of such billing, including changes to the billing entity from time to time.

## 10 Liability

ECMS EXPRESS's liability in respect of any one Shipment transported by air is limited by the Montreal Convention or the Warsaw Convention as applicable, or in the absence of such Convention, to the lower of (i) the declared value, or (ii) 19 Special Drawing Rights per kilogram (approximate USD 26 per kilogram) and the total compensation limit is limited to a maximum of USD 100 per shipment. Such limits shall also apply to all other forms of transportation except where Shipments are transported through road, when the limits below apply.

For cross-border Shipments transported by road, ECMS EXPRESS liability is or shall be deemed to be limited by the Convention for the International Carriage of Goods by Road (CMR) to the lower of (i) current market value or declared value, or (ii) 8.33 Special Drawing Rights per kilogram (approximately USD 14 per kilogram) and the total compensation limit is limited to a maximum of USD 100 per shipment. Such limits will also apply to national road transportation in the absence of any mandatory or lower liability limits in the applicable national transport law.

**ECMS EXPRESS's liability is strictly limited to direct loss and damage to a Shipment only as described above. All other types of loss or damage are excluded (including but not limited to lost profits, income, interest, consequential damages, future business), whether such loss or damage is special or indirect, and even if the risk of such loss or damage was brought to ECMS EXPRESS attention.**

## **11 Shipper Warranties and Indemnities**

Shipper shall indemnify and hold ECMS EXPRESS harmless for any loss or damage arising out of Shipper's failure to comply with the following warranties and representations:

- Shipper has complied with all applicable customs, import, export, data protection laws, sanctions, embargos and other laws and regulations
- all information provided by Shipper or its representatives is complete and accurate
- the Shipment was prepared in secure premises by reliable persons and was protected against unauthorized interference during preparation, storage and any transportation to ECMS EXPRESS
- Shipper has obtained all necessary consents in relation to personal data provided to ECMS EXPRESS including Receiver's data as may be required for transport, customs clearance and delivery, such as e-mail address and mobile phone number
- the Shipment is acceptable for transport under [Section 3](#) above

## **12 Claims**

All claims must be submitted in writing to ECMS EXPRESS within thirty (30) days from the date that the Shipment was accepted, failing which ECMS EXPRESS shall have no liability whatsoever. Claims are limited to one claim per Shipment, settlement of which will be full and final settlement for all loss or damage in connection therewith.

## **13 Force Majeure; Limitation of Liability**

We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. Also, we are not liable for electrical damage to, or erasure of, electronic or photographic images, data or recordings; any defect or characteristic related to the nature of the Shipment, even if known to ECMS EXPRESS.

## **14 Governing Law and Jurisdiction**

All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

## **15 Dispute Resolution and Binding Arbitration**

(a) YOU AND ECMS EXPRESS ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF PRODUCTS OR SERVICES THROUGH THE SITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.

(b) The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Consumer Arbitration Rules (the "AAA Rules") then in effect, except as modified by this Section 15.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction.

(c) You agree to an arbitration on an individual basis. In any dispute, NEITHER YOU NOR ECMS EXPRESS WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

## **16 Assignment**

You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this Section 16 is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

## **17 No Waivers**

The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of ECMS EXPRESS.

## **18 No Third-Party Beneficiaries**

These Terms do not and are not intended to confer any rights or remedies upon any person other than you.

## **19 Notices**

(a) To You. We may provide any notice to you under these Terms by: (i) sending a message to the email address you provide or (ii) by posting to the Site. Notices sent by email will be effective when we send the email and notices we provide by posting will be effective upon posting. It is your responsibility to keep your email address current.

(b) To Us. To give us notice under these Terms, you must contact us as follows: (i) by facsimile transmission to [FAX NUMBER]; or (ii) by personal delivery, overnight courier, or registered or certified mail to ECMS EXPRESS. We may update the facsimile number or address for notices to us by posting a notice on the Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

## **20 Severability**

If any provision of these Terms is invalid, illegal, void or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

## **21 Entire Agreement**

These Terms, and our Privacy Policy will be deemed the final and integrated agreement between you and us on the matters contained in these Terms.