



# General Terms And Conditions For Freight Forwarding

by EP AMERICA INC d/b/a EXPEDITED AMERICA  
hereafter called EP AMERICA

## I. APPLICABILITY

These General Terms and Conditions apply to all Freight Forwarding Services performed by EP AMERICA, its sister, parent, holding or associated companies. Freight Forwarding Services means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the goods for official purposes, procuring insurance of the goods, and collecting or procuring payment or documents relating to the goods.

In the absence of specific terms and conditions that may be issued by local EP AMERICA locations (Regional Terms and Conditions) the present General Terms and Conditions are the governing terms and conditions of services that override any conflicting provisions even when EP AMERICA does not expressly object to their inclusion. In the event that any EP AMERICA country office issues Regional Terms and Conditions, those will take precedence in their entirety.

## II. CONCLUSION OF CONTRACT

Unless a local office has issued independent terms and conditions all offers made by EP AMERICA, its sister, parent, holding or associated companies are based on and subject to these General Terms and Conditions. The order must be given to EP AMERICA in writing and contain the following instructions:

kind of merchandise and descriptions or classification (i.e. dangerous goods)  
value of the goods type of packing with contents, numbers, quantity, and weight

(gross/net) of packages addresses of shipper/consignee place of delivery/receipt general instructions and conditions in respect of shipment, method of transportation (sea/air/road/time sensitive/time critical/-groupage/breakbulk/containerized cargo, etc.) special instructions in respect of customs clearance, issue of documents, etc.

In case of verbally given orders these must be confirmed by letter or email. It is the responsibility of the customer to transmit the above required information correct and complete. EP AMERICA shall carry out its services according to the customer's instructions if accepted.

## III. DELIVERY HINDRANCES

If at any time EP AMERICA performance is or is likely to be affected by any hindrance or risk of any kind (including but not limited to condition of goods) not arising from any fault or neglect of EP AMERICA and which cannot be avoided by the exercise of reasonable endeavors, EP AMERICA may abandon the carriage of the goods under the respective contract and, where reasonably possible, make the goods or any part of them available to the customer at a place which EP AMERICA may deem safe and convenient, where upon delivery shall be deemed to have been made, and the responsibility of EP AMERICA in respect of such goods shall cease. In any event, EP AMERICA shall be entitled to the agreed remuneration under the contract and the customer shall pay any additional costs resulting from the above mentioned circumstances.

## IV. LIABILITY

EP AMERICA organizes the freight forwarding services as agent for the

Customer at its own discretion and shall devote its best attention to the organization of the transport, carriage, and storage of the entrusted goods. EP AMERICA shall select the appropriate means and mode of transport, as well as storage locations and shall be liable for its accurate and conscientious organization only.

EP AMERICA is not liable for acts and omissions by third parties, such as, but not limited to carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless EP AMERICA has failed to exercise due diligence in selecting, instructing, or supervising such third parties.

These General Terms and Conditions apply whenever any claim is made against an employee, agent or other person EP AMERICA engaged for the performance of the service (including any independent contractor) whether such claims are founded in contract or in tort, and the aggregate liability of EP AMERICA and such employees, agents or other persons shall not exceed the limit applicable to the service concerned as expressly agreed between EP AMERICA and the customer or following from these General Terms and Conditions.

EP AMERICA is authorized to carry out the shipment of the goods by substituting EP AMERICA for the third party we would otherwise deal with on the costumer's behalf. If we make use of this right, we have the rights and obligations of a carrier pertaining to the shipment. In such case EP AMERICA is liable for damages to and loss of the goods in its care and custody.

With respect to services other than carriage of goods such as, but not limited to, storage, handling, packing or distribution of the goods, as well as ancillary services in connection there with, EP AMERICA shall be liable only in case such services have been performed by EP AMERICA itself using its own facilities or employees or EP AMERICA has made an express undertaking to assume liability.

#### **V. EXCLUSIONS, ASSESMENT AND MONETARY LIMITS OF LIABILITTY**

EP AMERICA shall in no event be liable for:

loss or damage to goods, which occurs whilst the goods are not in actual custody and control of EP AMERICA

valuables or dangerous goods unless declared to EP AMERICA at the time of the conclusion of the contract

loss following from delay unless expressly agreed in writing

indirect or consequential loss such as, but not limited to, loss of profit, loss of market and conventional fines

inherent vice and nature of the goods

consequences of loading and unloading operations which EP AMERICA has not performed

lack of, or defective packing, markings, or stowage in so far as EP AMERICA has not executed the packing, markings or stowage

war, rebellion, revolution, insurrection, usurped power or confiscation, nationalization, or requisition by or under orders of any government or public or local authority

natural disasters, acts of God, acts of robbery

circumstances which EP AMERICA could not avoid and the consequence of which it was unable to prevent.

The value of the goods shall be determined according to the sales price as indicated in the sales invoice or, if there is no such invoice, the current market price at the time and place of taking over the goods or if there is no current market price, by reference to the normal value of the goods of the same kind and quality.

The liability of EP AMERICA, for any loss of or damage to the goods is limited to an amount equivalent of 2 SDR per kilogram of gross weight of the goods lost or damaged.

If EP AMERICA is liable in respect of loss following from delay, such liability shall be limited to an amount not exceeding the remuneration relating to the service giving rise to the delay.

The aforementioned releases from and limitations of liability do not apply, if the damage was caused by intent or gross negligence of EP AMERICA or its management staff or by violation of fundamental duties of the contract in which

case damage claims shall be limited to foreseeable, international conventions and US Commercial Code acting intentionally or recklessly, knowing that damage to the goods would be probable.

Releases from and limitations of liability shall be considered as **“aforementioned releases from and limitations of liability”** within the meaning of these General Terms and Conditions only if they are provided herein in addition to the law applicable, to the exclusion of releases from and limitations of liability provided in statutory provisions or in international conventions.

In particular this provision shall neither extend EP AMERICA liability nor its responsibility for agents, servants, employees, crewmembers or other third parties to the benefit of the customer beyond the content of provisions as for example article 25 of the Montreal Convention, article 36 of the CIM, article 21 of the CMNI.

To the maximum extent permitted by underlying laws, EP AMERICA liability for damages, losses and other claims arising out of or related to the incorrect Verified Gross Mass (VGM) information declaration or transmission, as may be applicable, shall be limited to the maximum amount of a freight rate for transportation of the container in question.

## **VI. INSURANCE**

EP AMERICA arranges for the insurance of the goods (e.g., cargo or warehouse insurance) with an insurer of his choice only if instructed to do so in writing at the conclusion of the contract. All insurances effected are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing EP AMERICA shall not be under any obligation to affect a separate insurance on each consignment but may declare it on any open or general policy held by EP AMERICA. EP AMERICA is obliged to cover its liabilities resulting from these terms with an insurer of his choice and will provide proof of his liability insurance cover upon the customer's written request.

## **VII. FORFEITURE**

Upon delivery, the consignee shall check the condition of the goods, the quantity, the number, and weight of packages and shall

immediately report any apparent defects and missing items. Should any irregularity or missing item not be immediately apparent, the consignee shall send due reservations in writing within seven days after delivery. Otherwise, the conditions of the goods shall be deemed as delivered in the agreed upon condition. The same shall apply to claims resulting from delay if the consignee does not send due reservations in writing within 21 days after delivery of the goods.

## **VIII. CONDITIONS OF PAYMENT/LIEN**

All monies due shall be paid without any reduction or deferment on account of any claim, counter claim or off-set. This does not restrict the right of off-set with undisputed or legally decided claims.

EP AMERICA shall, to the extent permitted by United States of America law have a general lien on the goods and any documents relating thereto for any amount due at any time to EP AMERICA from the customer including storage fees, uncontended remuneration from other freight forwarding contracts between EP AMERICA and the customer and the cost of recovering same, and may enforce such liens in any reasonable manner.

## **IX. CLAIMS IN TORT**

These General Terms and Conditions apply to all claims against EP AMERICA whether the claim be founded in contract or in tort.

## **X. TIME BAR**

EP AMERICA shall, unless otherwise expressly agreed, be discharged of all liability under these Terms and Conditions unless suit is brought within one year after the delivery of the goods. The limitation period is three years if EP AMERICA acted intentional or with gross negligence.

## **XI. SEVERABILITY**

The terms of these General Terms and Conditions shall be severable, and, if any part or term thereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term thereof.

## **XII. GOVERNING LAW/JURISDICTION**

The legal relationship between EP AMERICA and its customer shall be governed by and construed in accordance with the laws of United States of America. All actions against EP AMERICA shall be in the sole jurisdiction of the courts in State of Texas.