

CONDITIONS OF CONTRACT

- (1) Definitions As used in this contract, "Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, 12 Oct., 1929, or that Convention as amended by the Hague Protocol, 1955, whichever applicable; "airbill" equals air consignment note; "Carriage" equals transportation, "Carrier" includes the Forwarder (seen here in as "Forwarder") issuing this airbill and also all other carriers that carry goods hereunder or performs any other services related to such air cargo; "Forwarder" means NIPPON EXPRESS USA, INC. For the purposes of the exemption from the limitation of liability provisions set forth or referred to herein, "Forwarder" includes agents, servants or representatives of the Forwarder.
- (2) Carriage and other services performed hereunder are subject to: (a) the rules relating to liability established by the Convention, unless such carriage is not "international carriage" as defined by the Convention, (See Forwarder's tariffs for such definitions); (b) And, to the extent not in conflict with the foregoing, to (i) applicable laws (including national laws implementing the convention), government regulations, orders and requirements. (b) Provisions herein set forth. (c) applicable tariffs, rules and regulations of the Forwarder, which are made part hereof and which may be inspected at any of its offices.
- (3) Insofar as any provision contained in this airbill may be contrary to mandatory law or government regulations, such provisions shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part hereof.
- (4) Except as applicable laws may otherwise require: (a) Forwarder is not liable to the shipper or any other person for any damage, delay or loss of whatsoever nature hereinafter collectively referred to as "damage" arising out of or in connection with the carriage of goods, unless such damage is proved to have been caused by the negligence or willful fault of the Forwarder and there has been no contributory negligence of the shipper, consignee or other claimant; (b) uncrated, unprotected, or improperly packaged merchandise is handled by the carrier on a "hold harmless" basis, liabilities will not be assumed in cases of damages; (c) Forwarder is not liable for any damage directly or indirectly arising out of compliance with laws, government regulations, orders or requirements, or from any cause beyond Forwarders control; (d) the charges for carriage hereunder having been in part based upon the value declared by the shipper or the Forwarder's limitation of liability in the absence of such declared value, the Forwarder's liability shall not exceed 22 Special Drawing Right per kilogram for that part of the consignment lost, damaged or delayed plus the amount of paid freight charges applicable to that part of the consignment. The weight used to determine the Forwarder's limit of liability on a shipment, or part thereof, shall be the same as that which is used (or on a pro rata share in the case of a part shipment) to determine the transportation charge for such equipment. The Forwarder will maintain a cargo legal liability insurance policy with an insurance company to cover such liability. Shipments with a declared value for carriage in excess of \$10,000 will be acceptable for carriage only upon advance arrangements with the Forwarder; (e) The Forwarder will not be liable for consequential or special damages regardless whether the Forwarder had knowledge such damages might be incurred; (f) all claims shall be subject to proof of value; (g) a carrier issuing an airbill for carriage exclusively over the lines of others does so only as a sales agent.
- (5) It is agreed that no time is fixed for the completion of carriage hereunder and that Forwarder may without notice substitute alternate carriers or aircraft. Carrier assumes no obligation to carry the goods by any specified aircraft or over any particular route or routes to make connection at any point according to any particular schedule and Forwarder is authorized to select, or deviate from, the route or routes of shipment, notwithstanding that the same may be stated on the face of the airbill. The shipper, guarantees the payment of all charges and advances.
- (6) The goods, or packages said to contain the goods, described on the face hereof, are accepted for carriage from their receipt at Forwarder's terminal or airport offices at the place of departure to the airport at the place of destination. As such, Forwarder's liability will be limited to carriage "airport-to-airport" unless the shipper chooses, and Forwarder accepts for carriage goods under its Small Package Service. If so specifically agreed, the goods, described on the face hereof, are also accepted for forwarding to the airport of departure and for reforwarding beyond the airport of destination. If such forwarding or reforwarding is by carriage operated by the Forwarder, such carriage shall be upon the same terms as to liability as set forth in Conditions (2), (4), and (11), herein. In any other event the issuing carrier and last carrier respectively, in forwarding or reforwarding the goods, shall do so only as agents of the shipper, owner, or consignee, as the case may be, and shall not be liable for any damage arising out of such additional carriage unless proved to have been caused by its own negligence or willful fault. The shipper, owner and consignee hereby authorizes the Forwarder to do all things deemed advisable to effect such forwarding or reforwarding, including, but without limitation, selection of the means of forwarding or reforwarding and the routes thereof (unless these have been herein specified by the shipper), execution and acceptance of documents of carriage (which may include provisions exempting or limiting liability) and consigning goods with no declaration of value, notwithstanding any declaration of value in this air waybill.
- (7) Forwarder is authorized (but shall be under no obligation to advance any duties, taxes or charges and to make any disbursements with respect to the goods, and the shipper, owner, and consignee shall be jointly and severally liable for the reimbursement thereof. No carrier shall be under obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the goods except against repayment by the shipper. If it is necessary to make customs entry of the goods, the goods shall be deemed to be consigned at such place to the person named on the face of the airbill as customs consignee or, if no such person be named, the carrier carrying the goods to such place or to such customs consignee, if any, as such carrier may designate.
- (8) Except as otherwise specifically provided in this contract, delivery of the goods will be made only to the consignee named on the face of the airbill unless such consignee is one of the carriers participating in carriage, in which event delivery shall be made to the person indicated on the face of the airbill as the person to be notified. Notice of arrival of the goods will, in the absence of other instructions, be sent to the consignee, or the person to be notified, by ordinary methods: Forwarder is not liable for non-receipt or delay in receipt of such notice. In the event of failure of the consignee to claim the shipment after notification of its arrival, Forwarder will hold the shipment subject to storage charges and or will dispose of the shipment at public or private sale, not earlier than 30 days after providing notice by mail to the shipper and the consignee, paying itself out of the proceeds of such sale all sums due and payable including storage charges.
- (9) No action shall be maintained for damaged and/or loss discovered by the consignee after delivery and after a clear receipt has been given to the carrier unless notice in writing is presented to the delivering carrier at destination within seven days from the date of receipt with privilege to the carrier to make inspection of the shipment and original shipping container(s). No action will be maintained for delay unless notice in writing is presented to the Forwarder within 14 days from the date of receipt and (a) Forwarder is told upon receipt of goods that they have a limited life and they are identified as such on the airbill; (b) the limited life of the goods results in loss or damages; and (c) delay is proven to be caused by negligence or fault of the Forwarder or its agents. A claim in writing must be submitted on the forwarder within 120 days for any loss, damage or delay. Claims for overcharge must be filed in writing with the Forwarder within 1 year after the acceptance of the consignment by the Forwarder. No action shall be maintained against the Forwarder for any kind of loss, damage or delay, or for overcharge, unless such action is instituted within one year from the date the Forwarder has disallowed the claim in whole or in part. No claims with respect to a shipment, any part of which is received by the consignee, will be entertained until all transportation charges have been paid. Claims may not be deducted from transportation charges.
- (10) This shipper shall comply with all applicable laws customs and other government regulations of any country to, from, through or over which the goods may be carried, including those related to the packing, carriage, or delivery of the goods, and shall furnish such information and attach such documents to the airbill as may be necessary to comply with such laws and regulations. Forwarder is not liable to the shipper or any other person for loss or expense due to the shipper's failure to comply with this provision.
- (11) No agent, servant or representative of the Forwarder has authority to alter, modify or waive any provision of this contract.
- (12) SMALL PACKAGE SERVICE**
When the shipper chooses and Forwarder accepts goods which fall into the limits of its SMALL PACKAGE SERVICE it is agreed that, (a) goods are accepted for forwarding from point of origin to the airport of departure and for reforwarding beyond the airport of destination to consignee's point of receiving such carriage shall be upon the same terms as to liability as set forth in Conditions (2), (4), and (11), herein; (b) This shipper and consignee agree that the act of customs clearance will be performed and/or designated by the forwarder; (c) Conditions (3), (5), (8), (9), and (10) herein apply to the goods tendered under this program.
- (13) At the request of the shipper, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by this air waybill are insured on behalf of the shipper under an open policy for the amount requested by the shipper as set out on the face hereof (recovery being limited to the actual loss or damage not exceeding the insured value) against all risks of physical loss or damage from any external cause whatsoever, except those arising directly or indirectly from war risks, strikes, riots, hostilities, legal seizure or delay inherent vice, and subject to the terms and conditions of such open policy which is available for inspection by the shipper. Claims under such policy must be reported immediately to an office of Forwarder.