

TERMS AND CONDITIONS OF CARRIAGE

- Agreement to Terms of Contract.** Shipper agrees that by booking shipments on the website asapexpediting.net or otherwise tendering shipments it accepts (a) these Terms and Conditions of Carriage, which no agent or employee of the parties may alter; and (b) that this air bill is non-negotiable and has been prepared by or at the request of Shipper. Shipper certifies and represents to ASAP EXPEDITING & LOGISTICS, and any and all other carriers that undertake to carry the cargo (herein "ASAP") that the information inserted on the face of this air bill is complete and accurate, and that it may be reasonably relied upon by ASAP. The term "Shipper" in this contract means the party from whom the shipment is received, the party who requested the shipment be transported by ASAP, any party having an interest in the shipment, and any party who acts as an agent for any of the above, including without limitation consignees.
- These Terms and Conditions Supersede All Others.** These Terms and Conditions of Carriage air bill supersede and negate any other terms and conditions contained in any other shipping document related to the shipment, and any claimed, alleged, or asserted oral or written contract, promise, representation or understanding between the parties with respect to this shipment.
- Shipper's Warranty of Accuracy and Adequate Packaging.** Shipper warrants that (a) it has beneficial interest in the shipment; (b) each package is properly described on the air bill, is properly marked and addressed, and is packaged adequately to protect the enclosed goods to ensure safe air transportation with ordinary care in handling; and (c) the shipment and shipper's instructions for its handling comply with all applicable laws and regulations of any country to or from which the shipment may be carried. All Shipments may, at ASAP's option but not obligation, be opened and inspected. Shipper also agrees that a shipment may be opened and inspected when necessary to comply with regulatory and governmental authorities.
- Alternate Carriers or Routes May Be Selected.** ASAP shall have the right to substitute alternate carriers or other means of transportation other than air and select the routing or deviate from the route shown on the face hereof. Due to the inherent nature of the transportation business, ASAP does not guarantee pickup up, transportation, or delivery by a stipulated date or a stipulated time, nor shall ASAP be liable for consequences of failure to do so.
- Dimensional or Actual Weight, and Fuel Surcharge.** Rates and charges for this shipment will be based on actual or dimensional weight, whichever is greater. ASAP reserves the right to assess fuel and other surcharges on shipments without notice. The amount and duration of any such surcharges will be determined at our sole discretion. By tendering the shipment to ASAP, Shipper agrees to pay the surcharges as determined by ASAP.
- Shipper and Consignee Liable for ASAP's Transportation Charges.** Shipper and Consignee shall be liable jointly and severally for all unpaid charges payable on account of this shipment and any outstanding amounts owed on prior shipments, and will indemnify and hold harmless ASAP for claims, fines, penalties, damages, costs (storage, handling, re-consignment, return of freight to Shipper, etc.) or other sums or losses which may be incurred by ASAP as a result of any of the activities described by this contract. ASAP shall have an actual or constructive general and continuing lien on any goods shipped for failure to pay for charges payable on account of this shipment or prior shipments. ASAP may refuse to surrender possession of the goods until such charges are paid. Should ASAP bring legal action including cross-claim or cross-complaint for the enforcement of this contract or collection of any sums due and payable under this contract, ASAP shall be entitled to reasonable attorney fees and costs.
- Late Payment of ASAP's Transportation Charges.** All invoices not paid in full within 21 days of invoice date will be subject to interest of 2% per month. ASAP reserves the right to demand payment of all outstanding and past due freight charges as a precondition for releasing any shipment at destination. This right includes the right to demand payment upon delivery of any shipment at any time. Claims may not be set off or otherwise deducted from any charges owed ASAP. ASAP will be entitled to 18% of the withheld transportation charges as liquidated damages for the loss of use of the funds during the time that they are withheld or deducted due to a pending cargo claim.
- C.O.D. Collect on Delivery (C.O.D.) service is provided under the following conditions:** (a) Shipper must identify the shipment as a C.O.D. shipment by entering the amount to be collected in the "Shipper's C.O.D. Box" on the front of this shipping document; (b) Shipper must specify the type of payment to be received (e.g. cash, check, money order, or cashier's check) in the "Special Instructions" box on the front of this air bill; and (c) ASAP and Shipper agree that ASAP does not guarantee nor verify that a check, money order, cashier's check, or other such financial instrument is valid or negotiable. All payments are collected at shipper's risk and ASAP will not be liable for Consignee's failure to pay or defrauding of Shipper. Unless prior arrangements are made, the acceptance of cash by ASAP and its agents for payment of freight charges or C.O.D. amounts is limited to a maximum of \$2,000.00 per shipment or stop. Payment of freight charges and/or C.O.D. amounts in excess of \$2,000.00 must be remitted by cashier's check, certified check, money order, or consignee's check as authorized by Shipper in writing.
- Failure of Consignee to Accept Delivery - Possible Sale of Cargo.** In the event of the failure of Consignee to take delivery of the shipment, ASAP will notify Shipper in writing at the address shown on the air bill and request disposition instructions. If Shipper fails to provide disposition instructions within 30 days after the date of ASAP's notice, ASAP will return shipment to Shipper at Shipper's expense. If Shipper fails to accept delivery of a shipment thus returned, ASAP may dispose of the shipment at public or private sale and pay itself out of the proceeds to satisfy the transportation charges, storage charges, and other costs associated with storing and selling the shipment. Any sums collected by ASAP in excess of such charges will be paid to Shipper. No sale or disposal pursuant to this rule will discharge any liability or lien to any greater extent than the proceeds thereof. Shipper and Consignee shall remain liable, jointly and severally, for any deficiency.
- Exceptions at Delivery.** It is Shipper's Consignee's responsibility at time of delivery, to note on the air bill any shortage or damage to the shipping containers. Consignee may not inspect the contents of the shipping containers until Consignee signs for the shipment on the delivery receipt. Such notations as "subject to inspection" and "subject to recount" are not exceptions. A clear delivery receipt given in exchange for a shipment shall be prima facie evidence of that shipment being free from damage and having received ordinary care in handling.
- Overcharge Claims.** Overcharge claims must be received IN WRITING by ASAP within 4 months of the date of acceptance of the shipment by ASAP. The claim must state the amount of the overcharge, the shipment(s) in question, and the basis for the claim of overcharge. Legal action to enforce an overcharge claim must be brought within one year after the claim has been denied in writing by ASAP, in whole or in part.
- Concealed Loss or Damage Claims.** ASAP will not accept any concealed loss or damage claim unless the following terms are met. Initial notification of concealed loss or damage claims (i.e., claims for loss or damage discovered by Consignee after delivery and after a clear receipt has been given) must be received IN WRITING by ASAP within 3 days after delivery, or if perishables, verbally within 48 hours. For damage claims and concealed loss claims, ASAP must be allowed the privilege to make inspection of the shipment and its container(s) and packaging material(s) at place of delivery. Failure to allow said inspection, or moving the cargo prior to inspection will waive any and all claims. Valid written claims must be received within the applicable time periods set forth in these Terms and Conditions of Carriage.
- Domestic Cargo Liability.** ASAP's liability for any claim related to the domestic delivery of the cargo, in absence of a higher declared value for carriage, is limited to \$0.50 per pound of each piece of cargo lost, damaged, misdelivered, or otherwise adversely affected, but in no event shall exceed the actual replacement value of the goods. Shipper can ship the cargo at the limited liability value, or Shipper can declare a value in excess of \$0.50 per pound, per piece. If Shipper declares an excess value, Shipper will be charged an additional charge for this excess value as detailed in the rate sheet that ASAP will provide to Shipper upon request. Written notification on all claims (except concealed loss or damage claims, and overcharge claims) must be received IN WRITING by ASAP within 5 days after ASAP delivered the shipment, or in the case of non-delivery, 5 days after ASAP was scheduled to deliver the shipment. The written claim must specify the shipment in question, the nature of the loss or damage, the value of the loss, and the date that the loss or damage was discovered. Any right to recover for lost, damaged, or delayed cargo is extinguished unless suit is filed against ASAP within 1 year of the date of actual delivery, or in the event of non-delivery, the date of scheduled delivery.
- International Cargo Liability.** ASAP's liability for any claim related to the international delivery of the cargo, in absence of a higher declared value for carriage, is limited according to the terms of the Montreal Convention. Except as otherwise provided in these Terms and Conditions, ASAP's liability shall not exceed 19 special drawing rights (as defined by the International Monetary Fund) per kilogram per affected package, unless a written higher value is declared by Shipper and a supplementary charge paid. ASAP accepts the air waybill as a Shipper's letter of instruction with authorization to prepare and sign on Shipper's behalf an international air waybill. ASAP reserves the option to act as agent of the carrier tendering the shipment, instead of as a forwarder, in which event the tendering carrier's tariffs and terms and conditions of carriage shall apply to this shipment. In the case of lost, damaged, or delayed cargo, a written claim must be received by ASAP from the person entitled to delivery: (a) within 14 days of the delivery date in the case of damage; (b) within 21 days of actual delivery in the case of delay; and (c) within 120 days from the date of issue of this air waybill in the case of non-delivery. The written claim must specify the shipment in question, the nature of the loss or damage, the value of the loss, and the date that the loss or damage was discovered. If ASAP does not receive a written complaint as specified, no action may be brought against ASAP. Any right to recover for lost, damaged, or delayed cargo is extinguished unless suit is filed against ASAP within 2 years of the date of actual delivery, or in the event of non-delivery, the date of scheduled delivery.
- Failure to Insert Full Declared Value.** Failure to insert at least the full replacement value of the shipment in the box entitled DECLARED VALUE shall reduce any liability payment proportionately by the applicable percentage that the shipment was so under-valued.
- Average Declared Value.** Unless each piece of the shipment has a separate declared value stated and is specifically identified on ASAP's air bill at time of shipment and is so identified on the delivery receipt as being lost, damaged, destroyed, or otherwise adversely affected at time of delivery, ASAP shall be liable only for the "average declared value" of the shipment. The "average declared value" of the shipment shall be determined by dividing the total declared value of the shipment by the total number of pieces of the shipment. This figure, multiplied by the number of pieces adversely affected, shall then establish the amount of ASAP's liability. The total declared value amount must be inserted in the DECLARED VALUE box on the face of this air bill. ASAP's liability shall in no event exceed the actual replacement value of the goods adversely affected. ASAP shall not be liable for damages in excess of Fifty Thousand Dollars (\$50,000) per shipment, regardless of the value declared.
- Force Majeure.** Shipper agrees that ASAP shall not be liable for loss, damage, or delay or monetary loss of any type caused by: Acts of God; public authorities acting with actual or apparent authority; strikes; labor disputes; weather; mechanical failures; aircraft failures; civil commotions; acts or omission of customs or quarantine officials; the nature of the shipment or any defects thereof; public enemies; hazards incident to a state of war; acts of terrorism; and acts, defaults, or omissions of Shipper or Consignee for failure to observe the terms and conditions of the contract of carriage contained in this air bill including but not limited to improper packaging, marking, incomplete or inaccurate shipping instructions and the rules relating to freight not acceptable for transportation or freight acceptable only under certain conditions.
- Indemnity for Losses Caused by Auxiliary Services.** Shipper and Consignee shall hold ASAP and its agents harmless for loss, damage, delay, or any monetary losses which are a result of auxiliary services including but not limited to local cartage, crating, uncrating, packing, and unpacking which are requested by Shipper or Consignee and arranged by or provided by ASAP as a customer service. Auxiliary services are those which are performed prior or subsequent to transportation and which may be billed directly by the provider of the service or by ASAP. Local cartage is the movement of unpackage/uncrated freight.
- Limitation of Liability.** In no event shall ASAP be liable to Shipper or any consignee for: (a) Any delayed pickup, transport, or delivery; (b) any incidental or consequential damages of any kind (including without limitation, lost profits); (c) any punitive damages arising by virtue of any dealings between the parties; (d) any claims or demands against Shipper by a third party arising out of or connected with the Services; or (e) Aggregate damages in connection with the services in excess of the total fees collected by ASAP from Shipper for the services over the prior year. Any rights to damages against ASAP whatsoever shall be extinguished unless an action is brought within the time periods set forth in these Terms and Conditions of Carriage or, if not specified, within 1 year from the date of claim accrual. The terms and provisions of this paragraph constitute a material inducement for the parties entering into this agreement. The Parties, which are both sophisticated commercial organizations negotiating at arm's length, jointly acknowledge and agree they have negotiated a commercially reasonable limitation on liability that is not unreasonably disproportionate to the Fees charged and that reasonably reflects the Parties' respective business interests.
- ASAP is Entitled to Attorneys' Fees and Costs.** Should ASAP successfully defend itself for any legal actions brought by any party with an interest in this shipment, ASAP shall be entitled to reasonable attorney fees and costs.
- Arbitration of Claims Less than \$15,000.** In lieu of legal actions, any disputed claim less than \$15,000.00 is to be settled through binding arbitration submitted to the Transportation Arbitration Board or the American Arbitration Association under its cargo claim arbitration program. An alternative arbitrator is to be selected by ASAP if the claim is unacceptable for the arbitration by both the above arbitrators.
- Choice of Law: California.** To the extent not governed by treaty or Federal law, this air bill and all applicable documents shall be determined by the laws of California and all controversies shall be resolved in San Diego County California.
- Cargo Security and Recordkeeping.** Cargo items tendered for air transportation are subject to aviation security controls by air carriers and when appropriate, other government regulations. Copies of all relevant shipping documents showing the cargo's consignee, description, and other relevant data will be retained on file until the cargo completes its air transportation.