

**ABOVE AND BEYOND DELIVERY, INC.  
ABOVE AND BEYOND DELIVERY HAWAII, INC.  
ABOVE AND BEYOND CARGO BROKERS LLC**

**TERMS AND CONDITIONS**

1. Incorporation of Terms

1.1 These terms and conditions are incorporated in and are a part of the Bill of Lading for the shipment of customer's carriage by each of Above and Beyond Delivery, Inc., Above and Beyond Delivery Hawaii, Inc., and Above and Beyond Cargo Brokers LLC ( as applicable, "ABD"). The customer, the shipper and the consignee accept these Terms and Conditions by a representative of the shipper signing the Bill of Lading or by the customer or the shipper proceeding in accordance therewith.

1.2 The primary terms of payment are set forth in customer's Customer Credit Application. Customer accepts those terms by its representative signing the Customer Credit Application or proceeding in accordance therewith. All invoices not paid within thirty (30) days after the invoice date will be subject to a charge of 1.5% per month. ABD shall perform a credit worthiness assessment and assign a credit limit based on ABD's determination of the customer's financial worthiness. ABD may at any time reassess and change the credit limit of the customer. An unfavorable change in the credit limit may result in a lien on the goods and documents as described in Section 5.3 below.

2. Limitations on Liability

2.1 Each shipment must be properly packaged and/or crated by the customer or the shipper in order to withstand ordinary care in handling during transit. At the time of delivery, the consignee must note on the delivery receipt any exceptions to the count or condition of the shipment or the shipping containers. Notwithstanding any other provision herein, ABD shall not be liable for any loss or damage that is not noted on the delivery receipt or is not consistent with visible signs of damage to the outside shipping containers, unless the customer or the consignee provides written notice to ABD within 48 hours of delivery (or verbal notice – followed by written notice - in the case of damage to perishable commodities) and is able to prove that such loss or damage occurred while the shipment was in the possession of ABD or its agent. A delivery receipt without such notation shall be prima facie evidence that ordinary care was used in handling and the shipment was received in full and in good condition. Notations such as "subject to inspection or count" shall not be considered evidence of loss or damage.

2.2 ABD's liability for loss or damage to any shipment of used goods or portion thereof is limited to the lesser of (a) \$0.10 per pound per item lost or damaged with a minimum of \$10.00 per shipment or, if a higher value is declared at the time of shipment and if an excess value charge of \$0.65 for each \$100.00 of declared value is also paid, the declared value; (b) the replacement value of an item of like kind and quality; (c) the customer's cost of the item lost or damaged; or (d) the repair cost if the item can be repaired.

2.3 ABD's liability for loss or damage to any shipment of new goods or portion thereof is limited to the lesser of (a) \$0.50 per pound per item lost or damaged with a minimum of \$50.00 per shipment or, if a higher value is declared at time of shipment and if an excess value charge of \$0.65 for each \$100.00 of declared value is also paid, the declared value; (b) the replacement value of an item of like kind and

quality; (c) the customer's cost of the item lost or damaged; or (d) the repair cost if the item can be repaired.

2.4 If a damaged item, whether new or used, cannot be repaired, the customer shall, at its own expense, provide to ABD either an independent third party's assessment or independent technician's report that details the extent of the damage and why the item is unable to be repaired.

2.5 Notwithstanding any of the foregoing terms, an item or a shipment of items with a declared value in excess of \$25,000 will not be accepted for transportation unless the customer makes advance arrangements therefor with ABD in writing and such arrangements are accepted by an officer of ABD. Moreover, in no event shall ABD's liability for aggregate losses and damages at any one time or at any one place exceed \$100,000 unless a greater amount mutually agreed upon in writing by both ABD and the customer prior to tender of the shipment.

2.6 If ABD inadvertently accepts for transportation (a) any goods not acceptable in accordance with Section 3.5 below or (b) any goods with a declared value in excess of \$25,000 for which the customer has not made advance arrangements in writing that are accepted by ABD, as required in Section 2.5 above, ABD's liability for loss or damage thereto shall be limited pursuant to the foregoing terms for shipments for which no excess value has been declared.

2.7 When a customer seeks to declare a value of a shipment consisting of more than one item, the customer must affix a numbered label to each item and declare a value correlating to each numbered item in the space provided on the face of the shipping document. If the customer fails to comply with this requirement, ABD's liability for loss or damage to any item shall not exceed the average declared value of such items multiplied by the number of items lost or damaged.

2.8 The customer understands and agrees that the rates charged by ABD for services do not include any insurance coverage and that ABD's liability for loss or damage to any shipment is limited as expressly provided herein. ABD may assist the customer, upon the customer's request, with obtaining cargo insurance. The cargo insurance coverage made available by ABD may be insufficient to protect fully the customer's cargo or interests. The customer is encouraged to consult an insurance broker of its own choosing and may purchase insurance elsewhere.

### 3. Liabilities Not Assumed

3.1 In no event shall ABD be liable for any special, incidental, or consequential damages, including loss of profit, income, interest, utility or market, regardless of whether or not ABD had knowledge that such damage might or could be incurred.

3.2 Due to the inherent nature of the transportation business, ABD does not guarantee pick-up, transportation, or delivery by a specific date or a specific time. In no event shall ABD be liable for any delay in pick-up, transportation or delivery or any consequences resulting therefrom.

3.3 ABD shall not be liable for any loss or damage (including delays or monetary losses) of any kind or nature caused in whole or part by: (a) acts of God, including weather; (b) acts of public authorities, whether acting with actual or apparent authority; (c) strikes or labor disputes; (d) mechanical failures; (e) truck, rail, ship or aircraft failures; (f) civil commotions or riots; (g) acts or omissions of customs or quarantine officials; (h) the nature of the freight or any defects thereof; (i) acts of public enemies; (j)

hazards incident to a state of war or civil unrest; (k) acts of terrorism; or (l) acts, delays, defaults, or omissions of the customer, the shipper or the consignee (including improper packing or crating, incorrect marking, or incomplete or inaccurate shipping instructions), or (m) the failure of the customer, the shipper or the consignee to observe any of these Terms and Conditions or the rules relating to freight not acceptable for transportation or freight acceptable only under certain conditions.

3.4 In no event shall ABD be liable for any loss or damage to exterior packaging or shipping containers or for any loss or damage to any goods carried gratuitously or stored as an accommodation. Further, ABD shall not be liable for any electrical and/or mechanical derangement, rust, oxidation, discoloration, or cosmetic damage of any kind to any goods.

3.5 ABD will not accept for transportation any shipment, goods or commodity prohibited by law. In addition, the following items generally are not acceptable for carriage and will not be accepted by ABD unless the customer makes advance arrangements therefor with ABD in writing and such arrangements are accepted by an officer of ABD: (a) cash, cash equivalents, coins, bills, notes, bonds or bullion; (b) securities, including bearer and negotiable securities; (c) gold, silver or other precious metals; (d) precious stones or gems (whether cut, uncut or industrial), including diamonds, pearls and similar items; (e) jewelry (other than costume jewelry) and similar valuables; (f) furs and fur clothing; (g) paintings, prints, lithographs, sculptures, statuary and other works of art; (h) antiques, household goods and personal effects; (i) time sensitive written materials (such as contract bids, proposals or acceptances); (j) software licenses or electronic data (e.g., data stored on computers, discs, credit cards, etc.); (k) one-of-a-kind articles, models or prototypes; (l) valuable or oriental rugs, including Persian rugs; (m) bagged goods, cement, fertilizer or fishmeal; (n) humans, live animals or human or animal remains of any kind or part or live plants; (o) nuclear fuels or other hazardous materials or waste; (p) chocolate, chocolates or confectionery; (q) ceramics, pottery, porcelain, marble, granite, chinaware or glassware; (r) fluorescent tubes, neon lighting, neon signs, x-ray tubes or similar items; (s) glass, including glass mirrors and glass goods, or other inherently fragile items; and (t) such other items as are set forth or provided in ABD's governing tariffs, individual contracts and/or service guide. If any such goods are accepted for shipment by an officer of ABD, the limitations of liability herein still apply. Except as expressly provided otherwise in these Terms and Conditions, no other employee, representative or agent of ABD has any authority to accept any of such goods or items for transportation or to waive the provisions and limitations contained herein.

3.6 If any shipment is an international shipment, any liability of ABD shall be limited as provided in the Warsaw Convention, as amended, or other applicable international governmental treaty, law, statute, rule, regulation, order or other requirement applicable to such shipment, except the applicable terms and conditions posted at ABD's website [www.aboveandbeyonddelivery.com/terms-and-conditions](http://www.aboveandbeyonddelivery.com/terms-and-conditions) shall apply to any shipment or portion thereof which is not or to the extent is not so governed by such convention, treaties, laws, statutes, rules, regulations, orders or other requirements. The customer, the shipper and the consignee accept the domestic shipping documents as their letter of instruction with authorization for ABD to prepare and sign on their behalf any international shipping documents.

3.7 If any shipment is a warehouse shipment, meaning that goods are being stored by ABD for thirty (30) or more days, then ABD's "Warehouse Liability Contract Terms and Conditions" posted at [www.aboveandbeyonddelivery.com/terms-and-conditions](http://www.aboveandbeyonddelivery.com/terms-and-conditions) shall apply once the goods are placed in storage. In such case, ABD accepts the waybill, bill of lading or other shipping document as a

“warehouse receipt” with ABD’s authorization to prepare and sign on the customer’s behalf any warehouse document. Further, the liability of ABD shall be only that of a storage facility, subject to the Liability and Claim provisions of ABD’s “Warehouse Liability Contract Terms and Conditions” at the commencement of storage.

#### 4. Claims Process

4.1 Claims for loss or damage must be made in writing and received by ABD within nine (9) months after the delivery of the shipment, except claims for a failure to make the delivery must be made in writing within nine (9) months after a reasonable time for delivery has elapsed after the scheduled date of delivery. In the case of claims for loss or damage to any shipment, the consignee must indicate on the bill of lading the loss or damage and ABD must be allowed to inspect the shipment, containers, and packaging materials at the place of delivery within 48 hours after the time of delivery. The failure to comply with the conditions in the preceding sentence shall be a complete bar to recovery of any claim for loss or damage.

4.2 If ABD approves a damage claim for payment, ABD shall be entitled to possession and title to the damaged goods for which the claim was made and payment approved, with the exception of food products that may cause harm if sold in a damaged state. The failure to provide possession and title to the damaged goods to ABD shall be a complete bar to recovery of any claim, notwithstanding a prior approval of the claim.

4.3 Claims for an overcharge must be in writing and received by ABD within six (6) months after the date of the original invoice from ABD. If a claim has been timely made, any action or proceeding by the customer against ABD to recover the claimed overcharge must be commenced not more than eighteen (18) months after the customer’s receipt of ABD’s original invoice.

4.4 Claims for damage to the premises of the customer, the shipper or the consignee incurred during ABD’s performance of services must be noted on the bill of lading or delivery receipt or, in the alternative, must be reported to its corporate office in writing within twenty-four (24) hours after the service is rendered at that location. As a condition to ABD’s consideration any such claim, ABD must be allowed the opportunity to inspect the property claimed to be damaged. The failure of the customer, the shipper or the consignee, as applicable, to notify ABD’s corporate office of any such damage in a timely manner or to afford ABD the opportunity to inspect the claimed damage shall be a complete bar to recovery of any claim.

4.5 In addition and notwithstanding any other provision herein, ABD shall have no obligation to consider any claims until all charges have been paid to ABD in full, except in instances where no part of the shipment was delivered. A customer’s claims shall not be deducted from or offset against transportation charges or any other charges or amounts owed to ABD. ABD reserves the right to deduct claim payments it is to make from the customer’s open account balances.

4.6 All claims, notices, and related correspondence shall be filed with ABD in writing at 7240 West Erie Street, Suite 1, Chandler, AZ 85226 and, if sent by email, to [Claims@aboveandbeyonddelivery.com](mailto:Claims@aboveandbeyonddelivery.com) (or such other address that ABD designates).

## 5. Legal

5.1 All notices, acceptances, claims and other matters that are required to be in writing hereunder shall be sufficient only if sent by facsimile, email (as provided herein), U.S. postal service, or reputable overnight courier, postage prepaid and properly addressed. If the writing is mailed or delivered to ABD at its corporate office, the address is 7240 West Erie Street, Suite 1, Chandler, Arizona 85226.

5.2 The customer, the shipper and the consignee shall be jointly and severally liable for all charges incurred in connection with the transportation, handling and delivery of any shipment tendered to ABD and shall indemnify ABD, its agents and its affiliates and their respective shareholders, directors, officers, employees and agents (collectively "ABD Group") and hold them harmless for, from and against all claims, demands, delays, fines, penalties, damages, losses, liabilities, costs (including those for storage, handling, reconsignment, return of freight to the shipper, and other services), expenses (including reasonable attorneys' fees and costs) of any and every kind or nature (collectively "Claims") paid or incurred by ABD or any other member of the ABD Group by reason of any violation of these Terms and Conditions or any other default of the customer, the shipper or the consignee or their officers, managers, employees, agents or other representatives. The customer agrees to pay all Claims within ten (10) days after receipt of ABD's demand therefore.

5.3 The customer, the shipper and the consignee hereby grant to ABD a continuing general lien and a carrier's lien upon all products and documents in its or its agent's possession, custody, or control or enroute for all amounts owed to ABD, including all transportation, handling, delivery and other charges or amounts owed to ABD and all Claims in connection with any shipment or other transaction. If the customer defaults in the customer's performance or the payment of any such amounts, then ABD may sell such property by public auction or private sale. Any notice required to be given by ABD of a sale or other intended action with respect to any goods or documents may be made by sending the same to the customer at least ten (10) days prior to any such action, which the customer agrees constitutes fair, reasonable and adequate notice to the customer. The customer is liable for any deficiency from any sale. These liens supplement ABD's other rights and remedies under any other agreement or applicable law and can be extinguished only by full and complete payment of all secured amounts and full performance by the customer.

5.4 The customer, the shipper and the consignee shall jointly and severally indemnify ABD and the other members of the ABD Group and hold them harmless for, from and against all Claims arising or resulting from auxiliary services performed or arranged by ABD, its affiliates or its agents (such as services performed prior or subsequent to transportation, including local cartage, crating, uncrating, packing, warehousing, and unpacking by the customer, the shipper or the consignee) for which ABD is not fully paid. If auxiliary services are performed by ABD, its affiliates or its agents, in no event shall the aggregate liability of ABD, its affiliates or its agents for any loss or damage resulting from the performance of such services be greater than the liability as set forth and limited in these Terms and Conditions.

5.5 The customer, the shipper and the consignee agree that any assistance provided to ABD, its affiliates or its agents by any the customer, the shipper or the consignee or any of their affiliates, owners, directors, officers, managers, employees, agents, contractors, or others acting on their behalf during the pick-up, transportation or delivery process shall be at their own risk. The customer, the shipper and the consignee hereby assume the responsibility of notifying any such other persons of the

risks of assisting in any service being provided by ABD, its affiliates or its agents. The customer, the shipper and the consignee shall jointly and severally indemnify ABD and the other members of the ABD Group and hold them harmless for, from and against all Claims arising or resulting from any such assistance, participation or acts by the customer, the shipper or the consignee or any of their owners, directors, officers, managers, employees, agents, contractors, or others acting on their behalf.

5.6 In addition, if ABD engages the services of an attorney or if ABD prevails in any legal action or proceeding to enforce any of these Terms and Conditions or to collect of any sums due and payable under these Terms and Conditions, the customer shall pay, and ABD shall be entitled to receive, ABD's reasonable attorneys' fees and costs in addition to all other rights and remedies available to ABD.

5.7 The Customer Credit Application and the bill of lading with respect to a shipment and these Terms and Conditions (including the other documents, instruments, website information expressly referred to herein) constitute the entire understanding of the parties with respect to the matters set forth herein and therein. These Terms and Conditions cannot be altered, modified, amended or replaced in whole or part without the prior written consent of ABD in each instance.

5.8 The parties waive the application of any rule of law that otherwise would be applicable in connection with the interpretation and construction of these Terms and Conditions that ambiguous or conflicting terms or provisions should be interpreted or construed against ABD, its affiliates or its agents. If any provision of these Terms and Conditions is found to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision or any other provision hereof, as each provision of these Terms and Conditions shall be severable from all other provisions hereof.

5.9 The Customer Credit Application and the bill of lading with respect to a shipment and these Terms and Conditions (including the other documents, instruments and website information expressly referred to herein) shall be governed by, and construed in accordance with, the laws of the State of Arizona but without the application of any law of conflict of laws that would require or permit the application of the laws of any other jurisdiction. The customer, the shipper and the consignee agree and submit to the concurrent jurisdiction of the federal and state courts in Maricopa County, Arizona, and further agree that the venue for any proceeding will be only in such courts and county.

5.10 The successors and assigns of the customer, the shipper and the consignee shall be bound by the Customer Credit Application, the bill of lading with respect to a shipment and these Terms and Conditions, which shall benefit ABD, its affiliates and its agents and their respective successors and assigns.

5.10 The references to "including" shall mean "including, without limitation," wherever used herein. The terms and provisions of these Terms and Conditions shall not be construed against the party who drafted them.

## 6. Services

6.1 The rates and charges for the customer's shipments shall be based on actual or dimensional weight, whichever is greater. The customer is responsible for providing accurate weights and measurements for its shipments. ABD reserves the right to weigh and measure any shipment to confirm accuracy.

6.2 Collect on Delivery (“C.O.D.”) service is provided by ABD as a courtesy only under the following conditions: (a) the customer must clearly identify the shipment as a C.O.D. shipment on the appropriate shipping documents and enter the amount to be collected in the C.O.D. amount box on the shipping documents or notify ABD of the amount to be collected in writing prior to tendering shipment to ABD; (b) the customer must clearly 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 shipping documents; and (c) each shipping container must be clearly marked C.O.D. and the amount to be collected must be marked on the side of the container containing the address label. In addition, ABD and the customer agree that ABD does not guarantee or represent that a check, money order, cashier’s check or other financial instrument is valid or negotiable and that ABD shall have no responsibility therefore. All payments are collectable or collected at customer’s risk. If ABD fails to collect the requested C.O.D. amount, customer’s sole recourse shall be against the party from whom the amount was originally due, and customer hereby releases ABD and the other members of the ABD Group from any and all liability related to payments not collected.

6.3 Unless prior arrangements with ABD are made in writing, the acceptance of cash by ABD, its affiliates or its agents for payment of freight charges, C.O.D. amounts or other amounts is limited to a maximum of \$1,000.00 per shipment or per individual delivery.

6.4 If the consignee refuses all or any part of a shipment, or if ABD, its affiliate or its agent for any reason is unable to deliver a shipment, ABD shall hold the shipment as provided above and provide notice to the customer of such non-delivery. The customer shall, within twenty-four (24) hours after receipt of the notice of non-delivery (or by 5:00 p.m. local time at ABD’s corporate office, on the following business day in instances of a notice on a weekend or a holiday), provide ABD with written instructions to re-deliver or return the shipment or to divert the shipment to an alternate delivery address. If the customer fails to provide such instructions within this timeframe or instructs ABD to store the shipment, the liability of ABD with respect to such shipment shall become that of a warehouseman. In such case, the ABD North American Warehousing Terms and Conditions published at ABD’s “Warehouse Liability Contract Terms and Conditions,” which is posted at [www.aboveandbeyonddelivery.com/terms-and-conditions](http://www.aboveandbeyonddelivery.com/terms-and-conditions), shall govern the storage of the shipment. If customer fails to provide disposition instructions for any non-delivered shipment within three (3) business days after the date of its receipt of the notice of non-delivery, the shipment shall be deemed to be abandoned and the original notice of non-delivery shall be deemed to be notice by ABD of its intent to exercise the lien rights under and pursuant to Section 5.3 above. In each such case, ABD may sell such shipment at the expiration of the applicable ten (10) day notice period. The customer shall be responsible for all charges related to storage, delivery, re-delivery, return, and any other or related services arising out of the non-delivery of the shipment.

## 7. Security, Compliance, and Inspection

7.1 Shipments are subject to security controls by carriers and, where applicable, by governmental authorities and agencies.

7.2 Originals or copies of shipping documents will be retained by ABD for two years after the date of the bill of lading.

7.3 Shipments are subject to inspection by ABD, its affiliates or its agents, at ABD's option, to confirm weight, measurement, density, description, security clearance and other matters.

7.4 The customer is solely responsible to know and comply with (a) all licensing, classification, valuation, marking and other customs' laws, regulations, rules, and requirements enforced by the United States and any other territory or country having jurisdiction over a shipment, (b) the laws, regulations, rules and requirements of any applicable governmental authority or agency, including the U.S. Food and Drug Administration, and (c) all other notifications, laws, regulations, rules, and requirements of any applicable territory, country or governmental authority or agency. ABD shall not be responsible for any Claims assessed or imposed by any territory, country or governmental authority or agency against ABD or a shipment by reason of any failure of the customer to comply with the foregoing.

#### 8. LTL Carrier Selection Service Agreement

8.1 If ABD offers to the customer its Less-than-Truckload ("LTL") carrier-selection service, then notwithstanding anything herein to the contrary, all shipments tendered via LTL are brokered shipments on which ABD accepts no cargo liability of any kind or nature and are subject to the terms and conditions of the selected carrier, as set forth in this Section 8.

8.2 The customer acknowledges that all rates and charges and all limitations and exclusions of liability are subject to proper description of the shipment. If the customer or the shipper fails to adequately and properly describe the shipment, the shipment is subject to modification to the rates and charges and the limitations and exclusions of liability corresponding to the actual description of the shipment.

8.3 If any loss or damage to any shipment handled by carriers selected through the web-based carrier selection process, the customer must notify ABD in writing immediately to enable ABD to file timely claims with the applicable carrier. ABD will submit a claim directly to the selected carrier on the customer's behalf. The customer acknowledges, accepts and agrees to the selected carrier's limitations of liability, rules tariffs, claims and liability policies, conditions of contract, and its other related terms, conditions, policies and rules for that shipment, all of which shall be established by the selected carrier's contract with ABD. In many cases, the contract between ABD and the selected carrier may set forth limits of liability below those published on the carrier's public website, published rules of tariff or terms and conditions of carriage. The customer hereby acknowledges, accepts and agrees to any limits of liability that are below the carrier's published limits and any other less favorable terms and conditions in exchange for the presented rates.