

## **DHL GLOBAL FORWARDING TERMS AND CONDITIONS OF SERVICE.**

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". Where a DHL Transport Document is issued, the terms and conditions contained or evidenced in such DHL Transport Document shall, in so far as these are inconsistent with the DHL Conditions, be paramount and govern the Services in respect of which the DHL Transport Document is issued.

### **1. Definitions.**

"Company" shall mean the applicable DHL Global Forwarding entities operating in Latin America that is providing the service, as well as their subsidiaries, related companies, agents and/or representatives;

"Consignee": the Person to whom the Goods are consigned.

"Customer" shall mean the person for which the Company is rendering service as applicable, as well as its principals, agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc.

It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;

"Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

"Goods": the cargo to which any business under these conditions relates;

"Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";

"Owner": the Owner of the Goods or Transport Unit and any other person who is or may become interested in them;

"Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the Goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise";

Services: means freight forwarding services, customs brokerage services, storage services, transportation services, transport management services and any other service describe the Agreement and/or rate quotation.

DHL Transport Document" Airway Bill, DanmarBill of Lading, Road Bill.

"Transport Unit": packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air.

**2. Application.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, all valid provisions that are severable from the invalid provision(s) shall remain in full force and effect. The Parties shall in that case enter into consultation with the aim of coming to an agreement as to the replacement of the invalid and/or nullified stipulation with a new stipulation, which achieves

to the greatest extent possible the economic, legal and commercial objective of the invalid or unenforceable provision.

**3. Company as agent.** The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of Goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of the Customer and other dealings with Government Agencies, arrangement of contracts with carriers, forwarders, customs agents, warehousing companies for the account of or in the name of Customer and other parties pursuant to the instructions of Customers and therefore DGF is liable only in respect of their careful selection and instruction, as to all other services, Company acts as an independent contractor.

**4. Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

**5. Examination.** The Company shall carefully examine the placed orders, however the Company shall not be obliged to verify the contents of transport containers or shipments, or to check weights or dimensions. If any ambiguities come to the notice of the Company, the Company shall clarify as soon as possible with Customer.

**6. Declaring Higher Value to Third Parties.** Third parties to whom the Goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the Goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and Company's liability shall not exceed the maximum liability set forth in the transport document and/or the terms and conditions of service.

**7. First loading/last unloading.** Insofar as there are no agreements to the contrary, the first loading of the means of conveyance and the transport containers is the responsibility of the consignor or consignee, the driver shall be deemed auxiliary personnel of the consignor or consignee.

**8. Delivery times.** Guarantees of delivery times are generally excluded, unless agreed upon in advance and in writing. In such case, they must at least state the latest time of delivery and the agreed surcharge to be paid by the Customer.

**9. Unforeseen intermediate storage.** If the consignee does not take delivery of the shipment at its destination, or if the shipment is held up in transit due to factors beyond the

control of the Company, it shall be placed in storage for the account of and at the risk of the Customer. The Company shall, as soon as possible, inform the Customer (in all cases) of such unforeseen intermediate storage.

**10. C.O.D. or Cash Collect Shipments.** Company shall use reasonable care regarding written instructions relating to "Cash/Collect on Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have liability if the bank or consignee refuses to pay for the shipment. Despite the acceptance of the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and in absence of evidence of payment (for whatever reason) by such Consignee, or other person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses. The Company shall not be liable for exchange rate losses.

**11. Additional charges and reimbursements.** The Company is not liable for the incorrect charging of freight, customs duties, levies, etc. for which not caused by the Company is not responsible.

**12. Instructions relating to delivery or release of Goods.** Except under special arrangements previously made in writing by an officer of the Company so authorized, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer. Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.

**13. No Liability For The Selection or Services of Third Parties and/or Routes.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company is entitled to subcontract its services and shall use reasonable care in its selection of such third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the Goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is

in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

**14. Goods requiring special handling or dangerous Goods**

Without prior agreement in writing by an officer of the Company so authorized, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their thief attractive nature or otherwise including, but not limited to bullion, coin, precious stones, jewelry, valuables, antiques, pictures, human remains, livestock, pets, plants. Should any Customer nevertheless deliver any such Goods to the Company, or cause the Company to handle or deal with any such Goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the Goods, howsoever arising.

Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other Goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the Goods, but reserves the right, in any event, to do so at the expense of the Customer.

**15. Failure to take delivery.** Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the Company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.

The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances): (i) after at least 28 days notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 90 days and which cannot be delivered as instructed; and (ii) without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage.

**16. Loss or damage notice.** Any apparent, loss or damage to the cargo must be noted immediately on the transportation document (HAWB, B/L or road bill) at the time of taking delivery of goods. If the delivery had been delivered short or if there is any evidence of any damage to the boxes / cartons in which the goods are placed then such shortage or apparent damage shall be annotated on the POD and the Customer shall notify The Company within two (2) working days and advise The Company of the apparent shortage or damage and both parties shall thereafter arrange for a joint inspection and a third party survey (for Insurance requirement) of the relevant Products. Failure to do so will result in a presumption of delivery of shipments in the condition stated in the transport document.

Customer must notify in writing DHL all non-apparent loss or damage within three (3) days from the date of receipt. Upon discovering loss or damage DHL must be given granted an opportunity to inspect the shipment within the earlier of the following terms: (a) five (5) days following the written notice of loss or damage; and consignee shall not proceed to break down the shipment until DHL inspection has taken place or (b) five (5) days have elapsed.

**17. Limitation of Actions.** Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide will be subject to the time limits included in the applicable international conventions or a specific local statutes. Notwithstanding the above, any claim by the Customer against the Company shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was possible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.

**18. Reliance On Information Furnished.** Customer acknowledges that it is required to review all documents and declarations prepared and/or filed before Government Agencies and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customers behalf. In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required

to import, export or enter the Goods. Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.

**19. Disclaimers; Limitation of Liability.**

(a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;

(b) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefore; such request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).

(c) In the absence of additional coverage under (b) above, the Company's liability shall be limited to the following:

For transportation services, Company shall in no case be liable for any loss, damage, misdelivery or non-delivery beyond the limitations specified in the Standard Conditions printed on the backside of the transport documents (Bill of Lading, Air Way Bill, Road Bill of Lading) or as mentioned in the applicable international conventions.

In absence of such terms or for other services not covered by a transport document, The Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed the following:

(i) in the case of claims for loss or damage to Goods:

(a) the value of any loss or damage, or (b) a sum at the rate of 2 SDRs per kilo of the gross weight of any Goods lost or damaged, whichever shall be the lower.

The Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of Goods, in a reasonable time, or to adhere to agreed departure or arrival dates, shall not in any circumstances whatsoever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract and Company's liability shall be limited to 10,000 SDR in the aggregate of any one calendar year commencing from the time of the making of the original error, and/or omission.

The Company shall not, under any circumstances whatsoever, be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.

On express instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in this clause upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the

Company's additional charges will be provided upon request."

Where the claim arises from activities relating to Customs Brokerage Services, \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less.

**20. Insurance.** Unless requested to do so in writing and confirmed to Customer in writing and where permitted under applicable law, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance. All insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the Goods, but may declare it on any open or general policy held by the Company. Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause 9 below of these conditions shall not apply to the Company's obligations. In certain countries, Company shall, upon Customer's written request and subject to local conditions and costs, arrange for Shipment Value Protection.

**21. Advancing Money.** All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

**22. Payment terms.** All charges and/or payments are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority and are subject to the addition of value added tax and such other tax, duty, fee or charges at the appropriate rate. If any sum payable under this Agreement is not paid on the due date for payment, save where such sum has been disputed in writing, the party in default shall pay to the other interest on such sum at the highest rate permitted by applicable law, such interest shall accrue on a daily basis provided that this right shall not prejudice any other right or remedy in respect of any such sum. All payments to be made by Customer to the Company under this Agreement shall be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.

**23. Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss,

damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company. The Customer agrees to indemnify, defend, and hold the Company harmless from all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents, and any claims of a general average nature which may be made on the Company.

**24. Costs of Collection.** In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.

**25. General Lien and Right To Sell Customer's Property.** In accordance with the applicable laws, Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both; Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien. Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

**26. Set off.** All payments to be made by Customer to DHL shall be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of a counter claim unless Customer is required by law to make such deduction or withholding.

**27. Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

**28. Preparation and Issuance of Bills of Lading.** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer. The Company shall not be under any liability in respect of such arrangements as are referred to above save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause 9 of these conditions.

**29. No Modification or Amendment Unless Written.** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

**30. Compensation of Company.** The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the Goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee. In the event

that Company receives a commission or other remuneration customarily retained by freight forwarders, it may retain it.

**31. Severability.** In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in Full force and effect. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

**32. Force Majeure**

The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:

(a) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or

(b) any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.

Compliance with any laws.

**33. Governing Law; Consent to Jurisdiction and Venue.**

These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the country where the service was provided by the Company, without giving consideration to principals of conflict of law. Customer and Company agree that any action relating to the services performed by Company, shall only be brought in said courts; consent to the exercise of *in personam* jurisdiction by said courts over it, and further agree that any action to enforce a judgment may be instituted in any jurisdiction.