

Nippon Express USA, Inc. (NEU)

Domestic Trucking Contract Terms and Condition

1. In tendering this shipment for carriage, the Shipper agrees to these Terms and Conditions of Contract (the "Contract"), which no agent or employee of the parties may alter. This Contract, which is fully incorporated into the Bill of Lading, is Non-Negotiable and has been prepared by the Shipper or on Shipper's behalf by Nippon Express USA, Inc. as domestic freight forwarder. As used in this Contract and the Bill of Lading, the terms "Forwarder" and "Carrier" are interchangeable and refer to Nippon Express USA, Inc. and its authorized agents, while the term "Consignor" is interchangeable with "Shipper."
2. The Shipper agrees that carriage is subject to the rates, terms and conditions of contract stated herein and those terms and conditions which are also stated in the most recent Forwarder Tariff which is available for inspection at the Nippon Express USA, Inc. main office at 590 Madison Avenue, New York, New York 10022 and online at <http://www.nipponexpressusa.com/resources/download/>, and are incorporated into this contract by reference.
3. In tendering this shipment for carriage, the Shipper warrants that the shipment is packaged adequately to protect the enclosed goods and to ensure safe transportation with ordinary care and handling, and that each package is appropriately labeled and is in good order and condition except as noted for carriage as specified. Forwarder will not be liable for mis-delivery and/or non-delivery of any package which is not properly labeled by the Shipper showing the exact delivery address of the consignee. Shipper also declares that the commodity description is accurate and exact.
4. Shipper understands and acknowledges that Forwarder is not in the business of shipping dangerous or hazardous materials, including, but not limited to, weapons, environmentally harmful or infectious substances, fireworks, human or animal specimens, etc., and Shipper warrants and represents that no such materials have been tendered to Forwarder for shipment. Shipper also warrants and represents that it has complied with all laws governing the shipment of particular materials, including, but not limited to, laws governing the shipment of alcohol and tobacco products. Shipper also understands and acknowledges that Forwarder does not guarantee the protection of any perishable products, and Shipper expressly assumes the risk of loss or damage in tendering such products to Forwarder for delivery.
5. Shipper agrees to indemnify, hold harmless and defend Forwarder against any claims, losses or damages arising from the nature of the shipment, including, but not limited to, the shipment of dangerous, hazardous, licensed or perishable materials.
6. The amount of any COD shipment must be inserted in the COD portion of the Forwarder Bill of Lading. To be bound by such COD provision, Forwarder must either make the insertion itself or acknowledge the insertion by its signature. Forwarder will, under no circumstances, be responsible for the form of payment by consignee unless specified otherwise in writing by Shipper. Forwarder will not be liable for any fraudulent certification or the non-payment of checks. A COD fee will be assessed for all COD shipments.
7. The Shipper and consignee shall be liable jointly and severally for all unpaid freight and other lawful charges accruing on the shipment as billed or corrected, except that COD or collect shipments may move without recourse to the Shipper-consignor when the parties so stipulate per sec. 6 above. Nevertheless, the Shipper shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information provided by the Shipper. Notwithstanding the above, the Shipper's liability for payment of additional charges that may be found to be due after delivery shall be as specified by 49 U.S.C., sec. 13706, except that the Shipper need not provide the specified written notice to the delivering carrier if the consignee is a for-hire carrier. Nothing in the Bill of Lading or this Contract shall limit the right of Forwarder to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery. If the description of articles or other information on the Bill of Lading is found to be incorrect or incomplete, the freight charges must be paid based upon the articles actually shipped.
8. In consideration of Forwarder's rate for transportation, which is in part dependent upon the declared value of the shipment, Forwarder's liability of any kind whatsoever shall be limited to an amount not exceeding: (a) For Shipments without a Value Declared by the Shipper in writing in box on the Bill of Lading, \$.50 per pound multiplied by the number of pounds of that part of the shipment lost or damaged, (but not less than \$50.00 per shipment); or (b) For Shipments with a Value Declared, the declared value in case of loss or damage of the entire shipment, or in the event of loss or damage of part of the shipment, the average declared value per pound of the shipment multiplied by the number of pounds of that part of the shipment lost or damaged, (but not less than \$50.00 per shipment), plus the amount of any transportation charges for which Forwarder has been paid for such part of the shipment lost or damaged.
9. The Forwarder is not liable for loss, damage, delay, mis-delivery or non-delivery caused by: (1) any cause other than its own negligence; (2) the act, default or omission of Shipper, consignee or any other party or person; (3) the nature of the shipment or any defective characteristics or inherent vice thereof, including the shipment of hazardous, dangerous or perishable materials; (4) violation by Shipper or consignee of (a) any law governing the handling or shipment of the tendered materials, or of (b) the terms or conditions of this Contract or other terms contained in the Bill of Lading or in the Forwarder Rules/Rate Tariff, including, but not limited to, improper or insufficient packing, securing, marking or addressing; (5) acts of God, perils of the air, public enemies, public authorities acting with the actual or apparent authority of the law, acts or omissions of customs or quarantine officials, riots, strikes or other local disputes, civil commotions, hazards incident to state of war, weather conditions, mechanical delay of aircraft or aircraft loading equipment, or other causes beyond the reasonable control of the parties; (6) acts or omissions by Forwarder caused by the acts or omissions of another, including, but not limited to, Forwarder's compliance with delivery instructions from Shipper or consignee. Forwarder shall not be liable for the loss of articles loaded and sealed in packages by the Shipper provided the seal is unbroken at the time of delivery and the package retains its basic integrity. Forwarder shall not be liable in any event for any special, incidental or consequential damages, including, but not limited to, loss of profits or income, whether or not Forwarder had knowledge that such damages might be incurred.
10. All shipments are subject to inspection by Forwarder at Forwarder's discretion, including, but not limited to, opening the shipment. Forwarder is not, however, obligated to perform such inspection of goods.
11. Transportation of shipments is subject to availability of equipment and space thereon. Forwarder shall have the right to substitute alternate means of transportation, including surface transportation, and select the routing or deviate from a routing shown on the Bill of Lading. Charges for transportation will be based on the applicable tariff rate for the type of service requested by the Shipper as specified in the Forwarder's Rate Tariff on the date of shipment; however, Forwarder will transport the shipment within the terms as specified on the Bill of Lading by Shipper subject to, but not limited to, normal delays in transportation such as backlogs, weather conditions, and the like. Forwarder does not guarantee commencement or completion of shipment within a specified term.
12. Claims: Non-Delivery: Written notice of loss due to non-delivery must be reported by Shipper within 180 days after acceptance of the shipment for carriage. Apparent Damage: Written notice of loss due to apparent damage, shortage or delay must be reported in writing within 15 days after delivery of the shipment and claims for such loss/damage must be made within 180 days from date of tender of shipment. Concealed Damage: Written notice of loss due to concealed damage after clear receipt of goods has been given, must be reported in writing within 7 days after date of delivery, with privilege of Forwarder to inspect the shipping container and its contents within 15 days from date such notification is received by Forwarder. Goods must be retained in original container until inspection has been completed. Claims for concealed damage must be made within 180 days from date of shipping. Overcharge and Refund Claims: Written claims for overcharges and refunds must be made within 180 days from date of tender. No claims of any type above will be entertained until all transportation charges have been paid in full. The amount of the claim may not be deducted from the transportation charges. Forwarder shall not be liable unless an action is brought within 365 days after the date written notice is given to the claimant that Forwarder has disallowed the claim in whole or in part or within two (2) years of date of tender, whichever is earlier.
13. This Contract will be governed by and construed in accordance with the laws of the state of New York, and any action brought against the Forwarder must be brought in the appropriate state or federal court in New York City, New York.