

## DELKA TRUCKING INC.'S STANDARD TERMS AND CONDITIONS

**ALL SERVICES PROVIDED BY DELKA TRUCKING INC. SHALL BE SUBJECT TO THESE TERMS AND CONDITIONS.**

**CUSTOMER'S TENDER OR CONSIGNMENT OF GOODS TO DELKA FOR SERVICES SHALL CONSTITUTE ITS AGREEMENT WITH AND ACCEPTANCE OF THESE TERMS AND CONDITIONS.**

- 1. Definitions.** Capitalized terms that are not defined in the body of these terms and conditions shall have the meanings ascribed to them as set forth below:
  - 1.1. "Delka" shall mean Delka Trucking Inc. and any of its past or present directors, officers, employees, agents, and representatives.
  - 1.2. "Claims" shall mean any claim, action, suit, demand, or proceeding.
  - 1.3. "Customer" shall mean the person or entity for whom Services are provided and any agent, representative, or contractor thereof, including, but not limited to, any shipper, consignor, consignee, exporter, importer, bailor, bailee, warehouseman, forwarder, carrier, broker, and insurer, as well as Customer's heirs, executors, successors, and assigns.
  - 1.4. "Damages" shall mean any damage, loss, judgment, debt, liability, penalty, fine, cost, and expense of any kind, including, but not limited to, injury, illness, disease, or death of any person; loss, damage, or delay to property of any kind; transportation, storage, or other handling charges; and reasonable attorney's fees.
  - 1.5. "Force Majeure Event" shall mean any acts of nature of any kind; wars (whether declared); invasions or hostilities; terrorist acts or threats; random acts of violence; acts of public enemy; riots or civil commotions; strikes; boycotts; lockouts or other labor disturbances; interruptions or discontinuances of services by utility providers; seizures under legal process; closures of public highways, railways, airways or shipping lanes; government or public interferences, orders, regulations, or other acts by governmental or public authorities; national, regional, or local emergencies; plagues, epidemics, pandemics, outbreaks for an infectious disease, or other public health crises; and any other reason that is beyond Delka's control or is excused by law.
  - 1.6. "Services" shall mean storage, distribution, and transportation services and all related services thereof, including, but not limited to, receiving, delivering, loading, unloading, cross-docking, transporting, storage, packing, repacking, unpacking, labelling, taking photographs, inventory management, consolidation, deconsolidation, other reconfigurations of shipments, and other related or similar services.
  - 1.7. "Warehouse" shall mean the warehouse facility where the goods are stored by Delka.
  - 1.8. The use of a disjunctive term ("or") incorporates the conjunctive ("and"), and vice versa, as necessary to bring them within the scope of these terms and conditions.
  - 1.9. The singular form of any term includes the plural, and vice versa, as necessary to bring them within the scope of these terms and conditions.
- 2. Goods.**
  - 2.1. Any goods accepted by or otherwise handled by Delka shall constitute goods under these terms and conditions.
  - 2.2. By tendering or consigning goods to Delka, Customer represents and warrants that it is the owner of and has lawful possession of the goods as well as the right and authority to tender or consign such goods to Delka and have Delka release or deliver any such goods to Customer or any other person or entity in accordance with Customer's instructions.
- 3. Services.** Subject to Delka's rates, charges, and terms and conditions, including, but not limited to, the limitations and restrictions contained in these terms and conditions, Delka shall provide Services pursuant to the following:
  - 3.1. All Services shall be provided during Delka's Hours of Operation. Delka's "Hours of Operation" are Monday through Friday from 8:00 a.m. until 3:30 p.m., except for any national or state recognized holidays. Delka, in its sole discretion, may change the Hours of Operation without notice. Services to be provided outside the Hours of Operation may be arranged with Delka with at least forty-eight (48) hours advance written notice, and Customer shall be charged for and shall pay an additional cost for any such Service. Customer shall provide at least forty-eight (48) hours of advance written notice for (i) intake of goods into the Warehouse, (ii) release of goods from the Warehouse, (iii) pickup of goods, (iv) transport of goods, (v) delivery of goods, and (vi) inspection of goods at the Warehouse. Access to the Warehouse and Customer's goods shall be subject to the *Denial of Access* section of these terms and conditions. Calculation of any of the foregoing periods shall not include weekends or holiday closures (national or state recognized holidays).

- 3.2. Customer shall not tender or consign to Delka any (i) items that it does not have title to, lawful possession of, or right of possession; (ii) contraband or illegal substances; (iii) firearms or ammunition; (iv) animals, plants, infested items, dangerous items, hazardous items, or any other items that may cause health, safety, or environmental hazards; (v) items that require refrigeration or any other temperature control; or (vii) items that require any climate control. To the extent that Customer tenders or consigns to Delka any such items, it shall be liable for and, to the fullest extent permitted by law, defend, indemnify, and hold Delka and any of its past or present affiliates, operating divisions, parent corporations, subsidiaries and their directors, officers, employees, agents, and representatives harmless from all Claims and Damages arising out of, proximately caused by, or related to any such goods.
- 3.3. Customer shall, prior to or at the time of tender or consignment of its goods to Delka, provide a manifest, packing slip, or other similar document, showing (i) the type and quantity of the goods; (ii) all known categories of goods, brands, or sizes to be accounted for separately (if applicable); and (iii) the type of storage or other Services requested.
- 3.4. All goods tendered or consigned to Delka must be clearly marked with Customer's name. Customer shall only use crates, boxes, cartons, and packing materials that are in good condition and are able to adequately protect the goods for storage, transportation, and other handling. All packages must be clearly labelled with stacking limitations or handling restrictions (if applicable).
- 3.5. Delka shall not open any closed or banded crates, boxes, cases, or cartons of any kind, and goods received in such a manner shall be deemed unverified and Delka shall not be responsible to confirm the type, quantity, or condition of any such goods.
- 3.6. A bill of lading, pickup or delivery receipt, transload list, warehouse receipt, or other similar document signed by Delka without any exception as to the quantity and condition of the goods shall not be conclusive evidence that the goods were received by them or were received by them in good order and condition.
- 3.7. Delka shall not be liable or held responsible in any way for any Claim or Damage if Delka is unable to carry out Customer's instructions due to a Force Majeure Event.
- 3.8. Storage. In addition to the above:
- 3.8.1. By tendering or consigning goods to Delka for storage, Customer represents and warrants that it has inspected the Warehouse, made its own inquiries as to the suitability and fitness of the Warehouse, and has not relied on any representations or warranties made by Delka or its representatives other than those set forth in these terms and conditions to confirm the Warehouse meets its requirements for storage and other handling of its goods.
- 3.8.2. The Warehouse is not temperature controlled or climate controlled.
- 3.8.3. Any goods tendered or consigned to Delka bare or not properly packaged shall be, within Delka's sole discretion, rejected or repacked by Delka. To the extent that Delka repacks any such goods, Customer shall be charged for and shall pay the cost for any such repacking by Delka.
- 3.8.4. If any goods in storage in the Warehouse are transferred from Customer to another person or entity, a new warehouse receipt shall be issued, and a new storage date shall be established as the date of the transfer. All charges incurred for Services up to and during the transfer are chargeable to Customer and Customer shall pay all such charges.
- 3.8.5. Delka reserves the right to move goods within the Warehouse without any notice. Delka further reserves the right to move, at its expense, any goods in storage from the Warehouse to any other warehouse after giving at least fourteen (14) days advance written notice to Customer. If Customer elects to remove or take delivery of its goods in lieu of transfer by Delka, in addition to all unpaid charges, Customer shall be responsible for the prorated monthly storage charge, beginning on the first day of the storage month until the date Customer removes or takes delivery of the goods. If Customer removes goods for any other reason, Customer remains responsible for the agreed monthly storage charge as set forth in the *Rates & Charges* section of these terms and conditions along with all unpaid charges.
- 3.8.6. In the event that Delka, in its sole discretion, determines that any goods require treatment, fumigation, cleanup, relocation, or disposal for the protection of other goods, the Warehouse, or persons, Delka may render such services. Delka shall in no way incur any liability arising out of, proximately caused by, or related to performance of such services and Customer shall be liable to Delka for those services and shall pay for those services.

**4. Release or Delivery.** In addition to the *Services* section of these terms and conditions:

- 4.1. Except as provided in this subsection, no goods shall be released or delivered from the Warehouse without receipt of complete, written instructions from Customer via fax, email, letter, or other similar form of written communication. Delka shall not be liable in any way for any typographical or clerical errors contained in instructions sent by Customer, whether by fax, email, letter, or other similar form of written communication. Where no negotiable receipt is outstanding, goods may be released or delivered from the Warehouse in accordance with telephone instructions, provided that Customer has issued prior written

authorization to Delka for this purpose. However, Delka shall not be liable in any way for any damage or loss occasioned by such release or delivery, except as provided in the *Delka's Liability* section of these terms and conditions.

- 4.2. Upon receipt of instructions from Customer to release or deliver goods, Delka shall be given a reasonable amount of time to carry out the applicable instructions. Any estimated date or time given by Delka for release or delivery shall be approximate in nature and not binding unless it is agreed in writing between Customer and Delka that time is of the essence.
  - 4.3. Upon release or delivery of goods to Customer or its agent, representative, contractor, or designated consignee, including, but not limited to, any carrier or bailee engaged separately by them, Delka shall have no further obligation or liability to Customer for the goods, except as provided in the *Delka's Liability* section of these terms and conditions.
  - 4.4. When goods are delivered by Delka and accepted by Customer or its agent, representative, contractor, or designated consignee, including any carrier or bailee engaged separately by them, Delka shall obtain a signature from said person, confirming his or her receipt of the goods. It is the responsibility of Customer or its agent, representative, contractor, or designated consignee, including any carrier or bailee engaged separately by them, to note in writing any loss or damage to goods at the time of release or delivery. A signed bill of lading, receipt, or other similar document without exception or notation as to loss or damage shall be prima facie evidence that the goods were not lost or damaged while in Delka's care, custody, or control.
- 5. Denial of Access.** If Customer fails to pay in full the charges when due, Delka, at any time and in its sole discretion, may deny Customer access in any way to the Warehouse and its goods until Customer pays those charges. Delka may, in its sole discretion, also refuse to accept any additional goods at the Warehouse.
- 6. Quotes.** All quotes provided by Delka to Customer are for informational purposes only and are subject to change without notice. Under no circumstance shall a quote be binding upon Delka unless Delka undertakes in writing to provide Services thereunder at a specific and fixed rate or charge prior to Customer's tender or consignment and Delka's acceptance of goods. These terms and conditions are incorporated in all quotes provided by Delka to Customer and made a part of the quote.
- 7. Rates & Charges.**
- 7.1. All Services provided by Delka for Customer are subject to the rates and charges set forth in this section and any other applicable rate or charge provided by Delka to Customer for Services. Delka may increase its rates and charges at the beginning of any month, unless otherwise agreed upon in writing by Delka and Customer. Delka shall give at least (30) days advance written notice of any increase of any rate or charge to Customer.
  - 7.2. Other than for monthly storage charges, Delka shall invoice Customer for performance of Services rendered at the time of service. Customer shall pay Delka's invoice within thirty (30) days of Customer's receipt of the invoice. Delka, however, reserves the right, and may, in its sole discretion, require payment from Customer for Services prior to performance of said Services.
  - 7.3. Customer shall pay interest at a rate of one and half percent (1.5%) per month on any overdue charges; fifty dollars (\$50.00) for any late payment over fifteen (15) days late; fifty dollars (\$50.00) for any payment returned uncollected; two hundred and fifty dollars (\$250.00) for any no shows or cancellations of Services requested by Customer; all costs of collection, including, but not limited to attorneys' fees; and any other charges incurred by Customer. Charges are exclusive of any sales tax. Customer shall be charged for and shall pay all applicable sales tax on charges for Services.
  - 7.4. Customer may not offset payment of invoices for any reason, including, but not limited to, any Claim for Damages, unless otherwise agreed in writing by Delka.
  - 7.5. Regardless of any completion or termination of Services or Force Majeure Event, Customer shall remain obligated to pay for all past, present, and future charges for Services provided by Delka.
  - 7.6. Storage.
    - 7.6.1. The storage month begins on the date the Warehouse accepts care, custody, and control of the goods, regardless of the unloading date or date of issuance of the warehouse receipt.
    - 7.6.2. Unless otherwise agreed in writing by Delka, Customer shall pay a minimum monthly recurring storage charge for goods in the Warehouse for each account of Customer at the rate or charge provided by Delka to Customer. Each account of Customer shall have separate records and billings. This minimum monthly recurring storage charge shall be for storage charges only; it shall not include or be for any other charge.
    - 7.6.3. The monthly storage charge shall include the minimum recurring storage charge plus any applicable additional monthly storage charge. For the initial month, a full month's storage charge shall apply to all goods tendered or consigned to the Warehouse between the first (1<sup>st</sup>) and the fifteenth (15<sup>th</sup>), inclusive, of a calendar month. One-half (1/2) month's storage charge shall apply to all goods tendered or consigned to the Warehouse between the sixteenth (16<sup>th</sup>) and the last day,

inclusive, of a calendar month. The initial full or partial monthly storage charge shall be due and payable at the Warehouse on the first day of storage. Following the initial month, a full month's storage charge shall apply to all goods in storage at the Warehouse on the first (1<sup>st</sup>) day of the next and succeeding calendar months and are due and payable in advance at the Warehouse on the first (1<sup>st</sup>) day of the calendar month.

7.6.4. Final payments for all past, present, and future charges shall be due and immediately paid prior to release or delivery of any goods by Delka from the Warehouse, including, but not limited to, storage charges up to and including the date of release or charges for delivery of the goods.

## **8. Shipment to Warehouse.**

8.1. To the extent that Customer engages a third-party to transport or deliver goods to Delka for warehousing or storage, Customer shall not ship goods to Delka as the named consignee or agent of Customer. Where goods are shipped to Delka as the named consignee or agent of Customer in violation of this section, Customer shall notify all third-party carriers, with a copy of each notice to Delka, that Delka is acting solely as a warehouseman and has no beneficial title or interest in the goods or authority as an agent of Customer. Should Customer fail to notify third-party carriers in accordance with this section, Delka shall have the right to refuse such goods and Delka shall not be liable for any Damage or Claim arising out of, proximately caused by, or related to thereof.

8.2. Delka shall also not be liable for any Claim for unpaid transportation, storage, or other handling charges, including, but not limited to, unpaid freight, demurrage, and detention charges, made by any such third-party. In addition, those third parties shall have no recourse against Delka for said charges. Customer shall be liable for and, to the fullest extent permitted by law, shall defend, indemnify, and hold Delka and any of its past or present affiliates, operating divisions, parent corporations, subsidiaries and their directors, officers, employees, agents, and representatives harmless from all Claims and Damages arising out of, proximately caused by, or related to any such unpaid transportation, storage, or other handling charges.

**9. Removal & Disposal.** Delka may, upon written notice to Customer and any other person known to claim an interest in the goods, require removal of goods within thirty (30) days after notice is given. If the goods are not removed within the time specified in the notice, which shall be a minimum of thirty (30) days after the date notice was given, they may be sold in accordance with N.J.S. § 12A:7-210 or any other applicable law. If Delka in good faith believes the goods are about to deteriorate or decline in value to less than the amount of its lien within the time set forth above, it may specify in the notice any reasonable shorter time for removal of the goods. If the goods are not removed, Delka may sell them at public sale held not less than one week after a single advertisement or posting as set forth in N.J.S. § 12A:7-206. If, as a result of a quality or condition of goods of which Delka did not have notice of at the time of deposit, the goods are a hazard to other goods, or to the Warehouse, or to persons, Delka may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If Delka, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and shall not incur any liability by reason of that disposition. Any removal, disposal, or sale as set forth above shall not relieve Customer of its obligation to pay for all past, present, and future charges for Services provided by Delka.

**10. Indemnification & Defense.** In addition to the defense, indemnification, and hold harmless obligations set forth in the *Services*, *Shipment to Warehouse*, *Recall*, and *Accurate Information* sections of these terms and conditions, Customer, to the fullest extent permitted by law, shall defend, indemnify, and hold Delka and any of its past or present affiliates, operating divisions, parent corporations, subsidiaries and their directors, officers, employees, agents, and representatives harmless from all Claims and Damages arising out of, proximately caused by, or related to (i) any negligent act or omission of Customer or its agent, representative, or contractor; (ii) any misrepresentation or breach of warranty made by Customer, including, but not limited to, the representations and warranties set forth in these terms and conditions; (iii) any breach of obligation on the part of Customer, including, but not limited to, the obligations set forth in these terms or conditions; or (iv) title to the goods, lawful possession of the goods, or right of possession of the goods; provided, however, that Customer's indemnification, defense, and hold harmless obligations under this section shall not apply to the prorated extent the Damages are attributable to the negligence of Delka.

**11. Liability of Customer.** In addition to the liabilities set forth in the *Services*, *Release or Delivery*, *Shipment to Warehouse*, *Removal & Disposal*, *Indemnification & Defense*, *Lien*, and *Accurate Information* sections of these terms and conditions, Customer shall be liable to Delka for all past, present, and future charges for Services and all Claims and Damages arising out of, proximately caused by, or related to (i) any negligent act or omission of Customer or its agent, representative, or contractor; (ii) any misrepresentation or breach of warranty made by Customer, including, but not limited to, the representations and warranties set forth in these terms and conditions; (iii) any breach of obligation on the part of Customer, including, but not limited to, the obligations set forth in these terms or conditions; or (iv) title to the goods, lawful possession of the goods, or right of possession of the goods.

**12. INSURANCE. DELKA IS NOT AN INSURER OF GOODS. CUSTOMER SHALL MAINTAIN ITS OWN INSURANCE ON THE GOODS FOR ANY LOSS, DAMAGE, OR DELAY SUFFERED WHILE THE GOODS ARE IN DELKA'S CARE, CUSTODY, OR CONTROL IN AN AMOUNT AT LEAST EQUAL TO THE VALUE OF THE GOODS.**

**13. DELKA'S LIABILITY.**

13.1. Delka shall only be liable for its failure to exercise reasonable care in the performance of Services that directly and proximately cause injury to Customer, including, but not limited to, any lost, damaged, or delayed goods.

## 13.2. LIABILITY LIMITATION

13.2.1. **IN CONSIDERATION OF THE RATES CHARGED BY DELKA, DELKA'S LIABILITY, IF ANY, FOR ANY LOST, DAMAGED, OR DELAYED GOODS SHALL BE LIMITED TO THE AMOUNT OF ACTUAL LOSS OR DAMAGE, REPAIR COSTS, OR FIVE HUNDRED DOLLARS (\$500.00) PER APPLICABLE BILL OF LADING, WAREHOUSE RECEIPT, OR TRANSLOAD LIST, WHICHEVER IS LESS (THE "STANDARD LIABILITY LIMITATION").** If Customer wants Delka to accept a liability limitation higher than the STANDARD LIABILITY LIMITATION for any goods, Customer must request "Valuation Protection" for such goods by making a written request on Delka's pre-addressed request form, which is available upon request, that: (i) identifies the goods (the "Declared Goods"); (ii) declares the requested amount of valuation for the Declared Goods (the "Declared Value"); (iii) represents and warrants that the Declared Value does not exceed the actual market value of the Declared Goods at the time of tender or consignment to Delka or at the time of request, whichever is higher; and (iv) states that Customer agrees to pay all costs for Valuation Protection. The cost for Valuation Protection shall be provided by Delka to Customer upon request. For goods in storage, the cost of Valuation Protection is not included as a part of the minimum monthly charge.

13.2.2. Any request for, or modification of, the Valuation Protection on Delka's pre-addressed request form must be given to Delka (i) prior to any loss, damage, or delay to the Declared Goods and (ii) prior to Customer's tender or consignment of the Declared Goods to Delka, and for goods in storage at the Warehouse, by the fifteenth (15<sup>th</sup>) of the preceding month of the month that Customer wants the requested Valuation Protection or modification of the Valuation Protection to be effective for the Declared Goods. Full payment for the requested or modified Valuation Protection for the Declared Goods must also be received by Delka within the foregoing periods.

13.2.3. To the extent that (i) Delka accepts Customer's request for, or modification of, the Valuation Protection and (ii) Customer timely pays in full for the requested Valuation Protection, Delka's liability, if any, for any lost, damaged, or delayed Declared Goods shall be limited to the amount of actual loss or damage, repair costs, or the Declared Value, whichever is less.

13.2.4. Valuation Protection shall not be effective, and the STANDARD LIABILITY LIMITATION shall apply, unless (i) Delka accepts Customer's request for Valuation Protection and (ii) full payment for the requested Valuation Protection is timely made. **IN THE ABSENCE OF STRICT COMPLIANCE WITH THIS SECTION FOR VALUATION PROTECTION, THE STANDARD LIABILITY LIMITATION SHALL APPLY TO DELKA'S LIABILITY, IF ANY, FOR ANY LOST, DAMAGED, OR DELAYED GOODS.**

13.3. It is the responsibility and duty of Customer to know and comply with all applicable laws, statutes, regulations, treaties, and conventions. Delka shall in no way be responsible or liable for any action taken or any fine or penalty assessed by any government agency against Customer on account of Delka's failure to comply with such laws, statutes, treaties, and conventions, except as provided in this section.

13.4. Notwithstanding anything to the contrary, Delka shall be free from any liability as set forth in the *Services, Release or Delivery, Shipment to Warehouse, Removal & Disposal, Mis-shipped Property, Unexplained or Mysterious Disappearance, Recall, Services by Third Parties, and Accurate Information* sections of these terms and conditions and shall also be free from any liability for any Claim or Damage arising out of, proximately caused by, or related to (i) any Force Majeure Event; (ii) any government inspection or seizure; (iii) any fragile item not packed by Delka; (iv) any of the goods identified in the *Goods* section of these terms and conditions; and (v) any wear and tear, inherent vice, infestation, rust, lack or failure of refrigeration, change in temperature, change in climate, fumigation, deterioration, inherent defect of the goods, defect in or failure of any packing material, or mold, mildew, or fungus.

13.5. **IN NO EVENT SHALL DELKA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR MULTIPLIED DAMAGES OF ANY KIND NOR ANY INDIRECT COSTS, FEES, OR CHARGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFIT, REVENUE, DATA, OR USE, REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR OTHERWISE, ARISING OUT OF OR UNDER OR RELATED TO THE SERVICES PROVIDED BY DELKA OR THESE TERMS AND CONDITIONS, AND REGARDLESS OF WHETHER DELKA WAS ADVISED OR WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.**

14. **Mis-Shipped Property.** If Delka negligently mis-ships goods through the sole fault of Delka, Delka shall pay the reasonable transportation charges incurred to return the mis-shipped goods to the Warehouse or redeliver the goods, up to a maximum amount of five hundred dollars (\$500.00). If the consignee fails to return the goods, Delka's maximum liability shall be for the lost or damaged goods as specified in the *Delka's Liability* section of these terms and conditions. In no event shall Delka be liable for any associated cost, damages, chargebacks, or expenses or damages due to the consignee's acceptance or use of the goods.

- 15. Unexplained or Mysterious Disappearance.** Delka shall not be liable for loss of goods due to an inventory shortage or unexplained or mysterious disappearance of goods unless Customer establishes that such loss occurred because of Delka's failure to exercise reasonable care and the shortage of goods is more than ten percent (10%) of goods received by Delka. Delka shall be entitled to offset any overage on other items which are held for the account of Customer. No shortage shall constitute conversion in the absence of physical evidence that the goods were actually converted by Delka. Such evidence must be more than the physical disappearance of the goods.
- 16. Recall.** In the event a recall, field alert, product withdrawal, or field correction (collectively, "Recall") may be necessary with respect to any goods tendered or consigned by Customer to Delka, Customer shall immediately notify Delka in writing of any such Recall. Delka shall not act to initiate a Recall without the express prior written approval of Customer. Customer shall be liable for and shall pay all costs and expenses for a Recall. Delka shall not be liable for any Claim or Damage arising out of, proximately caused by, or related to a Recall, except as provided in the *Delka's Liability* section of these terms and conditions. Customer shall be liable for and, to the fullest extent permitted by law, defend, indemnify, and hold Delka and any of its past or present affiliates, operating divisions, parent corporations, subsidiaries and their directors, officers, employees, agents, and representatives harmless from all Claims and Damages arising out of, proximately caused by, or related to the Recall.
- 17. Waiver.** Where Customer's goods are transported by interstate motor carriage, to the extent permitted by law, Customer shall expressly waive all rights and remedies under Title 49, Subtitle IV, Part B of the U.S. Code, pursuant to 49 U.S.C. § 14101, to the extent they conflict with these terms and conditions. Customer's exclusive remedy for breach of these terms and conditions shall be an action filed in accordance with the *Dispute Resolution* section of these terms and conditions.

**18. Claims & Actions.**

- 18.1. Any claim for lost, damaged, or delayed goods transported by interstate motor carriage must be submitted to Delka in writing within nine (9) months from (i) the date of delivery or (ii) the date on which delivery should have occurred. Any other claim for lost, damaged, or delayed goods must be submitted in writing to Delka within ninety (90) days from (i) the date of release or delivery or the date the Service was completed, (ii) the date on which release or delivery should have occurred or the date the Service should have been completed, or (iii) the date on which Customer received written or oral notice from Delka of the loss, damage, or delay, whichever occurs first. Failure to submit a claim to Delka in writing within the applicable period set forth in this subsection shall bar any such claim against Delka.
- 18.2. Subject to Delka's receipt of a timely written notice of claim as set forth in the subsection above, any suit, action, or proceeding against Delka must be filed or commenced within the following periods: for goods transported by ocean carriage to or from the United States, within one (1) year from (i) the date of delivery or (ii) the date on which delivery should have occurred; for goods transported by interstate motor carriage, within two (2) years from the declination or disallowance, in whole or in part, of the written claim submission to Delka; for goods transported by international air carriage, within two (2) years from the date of arrival, the date on which arrival should have occurred, or the date on which carriage stopped; and for all other movements, storage, warehousing, and other Services, within one (1) year from (i) the date of release or delivery or the date the Service was completed, (ii) the date on which release or delivery should have occurred or the date the Service should have been completed, or (iii) the date on which Customer received written or oral notice from Delka of the loss, damage, or delay, whichever occurs first. Failure to file or commence a suit, action, or other proceeding against Delka within the applicable period set forth in this subsection shall bar any such suit, action, or other proceeding against Delka.
- 18.3. In the event that any limitation period set forth in the subsections above violates the compulsory or restrictive provisions of any applicable law, statute, regulation, treaty, or convention, written claims must be submitted to Delka and suits, actions, or proceedings must be filed or commenced against Delka within the shortest allowable period set forth therein.

**19. LIEN.**

- 19.1. DELKA SHALL HAVE A LIEN ON ALL GOODS COVERED BY A WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON THE PROCEEDS THEREOF IN ITS POSSESSION FOR CHARGES FOR STORAGE OR TRANSPORTATION, INCLUDING DEMURRAGE AND TERMINAL CHARGES, INSURANCE, LABOR, OR OTHER CHARGES, PRESENT OR FUTURE, IN RELATION TO THE GOODS, AND FOR EXPENSES NECESSARY FOR PRESERVATION OF THE GOODS OR REASONABLY INCURRED IN THEIR SALE PURSUANT TO LAW, PURSUANT TO N.J.S. § 12A:7-209 AND ANY OTHER APPLICABLE LAW. IF CUSTOMER IS LIABLE FOR SIMILAR CHARGES OR EXPENSE IN RELATION TO OTHER GOODS WHENEVER DEPOSITED, DELKA SHALL ALSO HAVE A LIEN FOR CHARGES AND EXPENSES IN RELATION TO THOSE GOODS COVERED BY THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON THE PROCEEDS THEREOF IN ITS POSSESSION FOR THOSE CHARGES AND EXPENSES, WHETHER OR NOT THE OTHER GOODS HAS BEEN DELIVERED BY THE WAREHOUSE, PURSUANT TO N.J.S. § 12A:7-209 AND ANY OTHER APPLICABLE LAW. UPON NOTIFYING ALL PERSONS KNOWN TO CLAIM AN INTEREST IN THE GOODS IN ACCORDANCE WITH N.J.S. § 12A:7-210, THIS LIEN MAY BE ENFORCED BY PUBLIC OR PRIVATE SALE OF THE GOODS IN BULK OR IN PACKAGES, AT ANY TIME OR PLACE AND ON ANY TERMS WHICH ARE COMMERCIALY REASONABLE WITHOUT JUDICIAL HEARING, PURSUANT TO N.J.S. § 12A:7-209 AND ANY OTHER APPLICABLE LAW.**

**19.2. DELKA SHALL HAVE A LIEN ON ALL GOODS COVERED BY A BILL OF LADING OR ON THE PROCEEDS THEREOF IN ITS POSSESSION FOR CHARGES AFTER THE DATE OF DELKA'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION, INCLUDING DEMURRAGE AND TERMINAL CHARGES, AND FOR EXPENSES NECESSARY FOR PRESERVATION OF THE GOODS INCIDENT TO THEIR TRANSPORTATION OR REASONABLY INCURRED IN THEIR SALE PURSUANT TO LAW, PURSUANT TO N.J.S. § 12A:7-307 AND ANY OTHER APPLICABLE LAW. UPON NOTIFYING ALL PERSON KNOWN TO CLAIM AN INTEREST IN THE GOODS IN ACCORDANCE WITH N.J.S. § 12A:7-308 OR N.J.S. § 12A:7-210(B), WHICHEVER MAY BE APPLICABLE, THIS LIEN MAY BE ENFORCED BY PUBLIC OR PRIVATE SALE OF THE GOODS, IN BULK OR IN PACKAGES, AT ANY TIME OR PLACE AND ON ANY TERMS WHICH ARE COMMERCIALY REASONABLE WITHOUT JUDICIAL HEARING, PURSUANT TO N.J.S. § 12A:7-307 AND ANY OTHER APPLICABLE LAW.**

**20. Services By Third Parties.** Unless otherwise agreed in writing between Delka and Customer, Delka may subcontract the whole or any part of any Service subject to these terms and conditions to third parties. Delka assumes no liability for any Claim or Damage caused by their actions or omissions, except as provided in the *Delka's Liability* section of these terms and conditions. Third-party subcontractors providing Services subject to these terms and conditions shall be intended beneficiaries of these terms and conditions, but nothing in these terms and conditions shall be construed as limiting or relieving such third parties of liability to Delka or Customer for any Claim or Damage resulting from their acts or omissions.

**21. Dispute Resolution.**

21.1. These terms and conditions shall be governed by the laws of the State of New Jersey without regard to its conflicts of law principles. Any suit, action, or proceeding arising out of or under or related to the Services or these terms and conditions shall be commenced in any court (state or federal) located in Middlesex County, New Jersey, to the exclusion of all other venues, and it irrevocably consents and submits to the jurisdiction of such courts to the exclusion of all others.

**21.2. ANY CONTROVERSY THAT MAY ARISE OUT OF OR UNDER OR RELATED TO THE SERVICES OR THESE TERMS AND CONDITIONS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, CUSTOMER SHALL IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR UNDER OR RELATED TO THE SERVICES OR THESE TERMS AND CONDITIONS.**

**22. Accurate Information.** Customer shall provide Delka with accurate, complete, and sufficient information to allow Delka to comply with all laws and regulations governing the Services provided by or on behalf of Delka. It is the responsibility and duty of Customer to ensure that all addresses, including, but not limited to, billing and delivery addresses, are accurately conveyed to Delka. Delka shall not be responsible or liable for any Claim or Damage arising out of, proximately caused by, or relating to inaccurate, incomplete, or insufficient information provided by Customer to Delka. Customer shall be liable for and, to the fullest extent permitted by law, shall defend, indemnify, and hold Delka and any of its past or present affiliates, operating divisions, parent corporations, subsidiaries and their directors, officers, employees, agents, and representatives harmless from all Claims and Damages arising out of, proximately caused by, or related to Customer's failure to fully comply with this obligation.

**23. Termination & Survival.**

23.1. Delka may terminate any agreement to provide storage Services for any reason by giving at least thirty (30) days written advance notice that states the date of termination. Upon termination of any such agreement for any cause whatsoever, Customer shall pay Delka all past, present, and future charges for Services in full before removal, release, or delivery of any goods from the Warehouse, including, but not limited to, storage and delivery charges up to and including the date of removal, release, or delivery of the goods.

23.2. Delka's and Customer's rights, obligations, restrictions, and limitations under these terms and conditions shall survive completion or termination of any Services, including, but not limited to, those set forth in the following sections of these terms and conditions: *Denial of Access, Rates & Charges, Removal & Disposal, Indemnification & Defense, Liability of Customer, Delka's Liability, Waiver, Claims & Actions, Lien, Services by Third Parties, Dispute Resolution, Accurate Information, and Records & Documents.*

**24. Notices.** All notices or other communications required by these terms and conditions must be in writing and either (i) electronically transmitted by email with confirmation by the other party of receipt of notice, (ii) personally delivered, (iii) mailed by registered or certified mail, return receipt requested, or (iv) by other delivery that provides proof of delivery. All notices for Delka shall be mailed to: Madelka Nuñez Osiecki, Delka Trucking Inc., 35 National Road, Edison NJ 08817. All notices for Customer shall be mailed or emailed to the address and email provided by Customer to Delka. Customer shall notify Delka of any change to Customer's contact information (address, telephone number, and email) in accordance with this section. Any notice of change to Customer's contact information shall not be valid if not made in accordance with this section and acknowledged in writing by Delka.

- 25. No Agency Relationship.** Subject to any applicable law, statute, regulation, treaty, or convention, these terms and conditions shall not be construed as creating an agency relationship between Delka and Customer. Delka shall act at all times as an independent contractor, even if providing services pursuant to a duly authorized power of attorney issued by Customer. Customer does not have any right, power, or authority to act on behalf of Delka or to legally bind Delka.
- 26. No Waiver.** If Delka does not take action for non-compliance of these terms and conditions by Customer, such inaction shall not prevent Delka from taking action in response to future non-compliance by Customer. Acceptance by Delka for charges with knowledge of non-compliance by Customer shall not be a waiver of non-compliance and shall not estop Delka from demanding compliance by Customer. Delka's acceptance of one or more partial payments shall not be a waiver of the balance of charges, a waiver of the full payment of any future charges, or a waiver of any of Delka's rights or remedies for Customer's failure to make full payment, even if the payment is made with a memo that states "payment in full," "full and final settlement," "paid in full," or other similar language. Delka's acceptance of one or more partial payments shall not constitute as "accord and satisfaction" of any unpaid charges, even if the payment is made with a memo that states "payment in full," "full and final settlement," "paid in full," or other similar language. No waiver, benefit, privilege, or Services voluntary given or performed by Delka shall give Customer any contractual right by custom, estoppel, or otherwise.
- 27. Records & Documents.**
- 27.1. It is the sole responsibility and duty of Customer to maintain all records required by any applicable laws, statutes, regulations, treaties, and conventions. Unless otherwise agreed in writing between Delka and Customer, Delka shall only keep those records that it is required to maintain by law, statute, regulation, treaty, or convention, but not as a "record-keeper" or "record-keeping agent" for Customer.
- 27.2. Unless otherwise agreed in writing by Delka, these terms and conditions are applicable to all of Delka's invoices, bills of lading, pickup or delivery receipts, transload lists, warehouse receipts, and any other similar documents, and are incorporated therein and made a part of those documents. To the extent that any of the terms and conditions in those documents conflict with the terms and conditions herein, those conflicting terms and conditions are void, invalid, or otherwise unenforceable and are superseded by and replaced with these terms and conditions.
- 27.3. Customer shall be responsible for providing notice and a copy of these terms and conditions to all its agents, representatives, and contractors.
- 28. Invalidity.** If any provision of these terms and conditions, or any application thereof, is determined to be void, invalid, or otherwise unenforceable, the remaining provisions shall remain unaffected, valid, and enforceable in full force and effect. If a court finds that any provision of these terms and conditions is invalid or unenforceable, but by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 29. Heading.** Headings and sections in these terms and conditions are inserted for convenience only and shall not govern or change any of these terms and conditions.
- 30. Final Understanding.** By tendering or consigning goods to Delka, Customer agrees with and accepts these terms and conditions. However, to the extent that Delka and Customer have entered into a written agreement signed by an authorized representative of Delka and Customer, then only the terms and conditions that are not contrary to that agreement shall apply. Any representations, promises, agreements, understandings, or waivers not contained in these terms and conditions shall not be effective.