



# Entertainment Logistics Services

## TERMS AND CONDITIONS OF SERVICE

### PART 1 - TERMS AND CONDITIONS

Pursuant to the terms of this agreement and in consideration of fees charged, the undersigned "Customer" retains Entertainment Logistics Services ("E.L.S.") as its agent to arrange transportation services and provide logistics assistance. These services include but are not limited to: preparing and/or processing export declarations and carnets; providing and/or arranging customs brokerage services; booking, arranging for, or confirming cargo space; preparing and/or processing delivery orders or dock receipts; preparing and/or processing bills of lading; arranging for and/or providing crating, packing, unpacking, and warehouse storage; arranging for cargo insurance; handling freight or monies advanced by shippers, or remitting or advancing freight or monies or credit in connection with the dispatching of shipments; and assisting with letters of credit, licenses, or inspections, or other documents or issues relating to the dispatch of cargo. Customer warrants that it is either the owner of the goods being shipped or represents the owner of the goods in all respects and is authorized to enter into this agreement on behalf of the owner of the goods.

Customer understands that E.L.S. is not a carrier, but that E.L.S. will use its best efforts to select and engage responsible carriers, warehousemen, and other transportation intermediaries on behalf of Customer. Customer understands that the terms and conditions of the storage receipts of warehousemen, and contracts of carriage of air, land and/or ocean carriers that E.L.S. retains will apply to Customer as if Customer had entered into those contracts itself. In certain circumstances, E.L.S. may provide warehouse services, ocean carriage in its capacity as a Non-Vessel Operating Common Carrier, air carriage in its capacity as an Indirect Air Carrier, and provide for the pickup, consolidation, line haul, break bulk, and distribution of less-than-truckload shipments as a licensed freight forwarder. In such instances, the terms of E.L.S. bill of lading or warehouse receipt will apply as if it had been issued to Customer. Customer is directed to copies of these documents posted on E.L.S. website.

Customer shall comply with all applicable laws and government regulations of any country to, from, through, or over which its goods may be carried, including those relating to the packing, carriage, or delivery of the goods, and shall furnish such information to E.L.S. as may be necessary to comply with such laws and regulations. Shipments covered by these terms and conditions are prohibited if diverted contrary to U.S. or other laws. Customer warrants that the goods are properly marked, addressed, and packaged to withstand any contemplated method of transport. Customer, or such person or entity that originates and tenders Customer's goods for handling or transport, hereby consents to an inspection of the cargo.

#### 1A) LIMITATION OF LIABILITY FOR LOSS, DAMAGE, OR DELAY

E.L.S. will not be liable for any loss, damage, or delay to goods caused by a carrier or warehouse. E.L.S. may provide a preliminary notice of claim on Customer's behalf for loss, damage, or delay against a carrier or warehouse on behalf of Customer, but recovery on such claims will be limited by the terms of the underlying contracts of carriage or storage. For domestic air transportation, truck transportation, and warehousing, liability for damage is limited to \$0.50 per pound or \$40 per article, or as stated by the contract of carriage or storage, whichever is less. For international air transportation, damage is limited to 19 Special Drawing Rights per kilogram or as is provided for in applicable international conventions. For carriage by water, damage is limited to \$500 per package or customary freight unit.

E.L.S. will not be liable for any loss, damage, or delay to goods caused by acts of God, public authorities, strikes, labor disputes, weather, mechanical failures, civil commotion, acts of terrorism, hazards incident to a state of war, acts or omissions of customs, or defects in the goods being shipped. E.L.S. will not be liable for any punitive or exemplary damages nor any special, incidental, or consequential damages including lost income, profits, interest, or loss of market, whether or not E.L.S. may have had knowledge that such damages might be incurred.

UNLESS OTHERWISE SPECIFIED, IT SHALL BE PRESUMED THAT THE VALUE OF CUSTOMER'S GOODS DOES NOT EXCEED \$0.50 PER POUND OR \$40 PER ARTICLE,WHICHEVER IS LESS, AND CUSTOMER AGREES THAT E.L.S. LIABILITY FOR ANY LOSS, DAMAGE, OR DELAY TO THE GOODS RESULTING FROM E.L.S. NEGLIGENCE OR OTHER FAULT, IF ANY, WILL BE LIMITED BY THIS PRESUMPTION. CUSTOMER HAS THE OPTION OF PAYING ADDITIONAL FEES TO PROCURE INSURANCE COVERAGE FOR PHYSICAL LOSS OR DAMAGE IN EXCESS OF THESE LIMITS BY INITIALING THE "I DO" SPACE IN 1B BELOW AND DECLARING THE ACTUAL REPLACEMENT VALUE OF THE GOODS IN ACCORDANCE WITH THE TERMS OF PARAGRAPH 1B BELOW. CUSTOMER IS ENCOURAGED TO PURCHASE FREIGHT INSURANCE OR TO INSTRUCT E.L.S. TO PURCHASE FREIGHT INSURANCE ON ITS BEHALF IF THE AFORESAID LIMITATIONS POSE UNACCEPTABLE RISKS TO THE CUSTOMER.

E.L.S. WILL ONLY HONOR INSURANCE CLAIMS WHEN FEES ARE CHARGED ON AN INVOICE AND PAID TO E.L.S. FOR INSURANCE COVERAGE ON THE SHIPMENT IN WHICH THE CLAIM OCCURRED.

#### 1B) SERVICE FEES DO NOT INCLUDE CARGO INSURANCE UNLESS REQUESTED (INSURANCE FEES PAID) AND INITIALED BELOW; DECLARATION OF VALUE FOR INSURANCE PURPOSE

This insurance will be procured by E.L.S. when requested by Customer and initialed below. In that event, E.L.S. fees will include fees for the insurance covering physical loss or damage with a deductible of 5% of shipment value but not less than \$750 or more than \$ 2,500. Note that the \$2,500 deductible will not apply for shipments valued above \$100,000 in which case E.L.S. reserves the right to increase deductible and will advise Customer. Customer understands that E.L.S. may decline Customer's request to procure insurance. Customer agrees, where E.L.S. accepts Customer's request to procure insurance, to pay the fees in order to procure insurance in excess of E.L.S. limit of liability for physical loss or damage to the actual replacement value of the goods and understands that failure to pay insurance fees shall result in no coverage. Customer shall inform E.L.S. in writing of the actual replacement value of each shipment it wishes to insure prior to the date of shipment; failure of Customer to so advise E.L.S. shall result in no insurance coverage. FAILURE TO INITIAL BELOW WILL RESULT IN NO INSURANCE BEING PROCURED BY E.L.S. FOR CUSTOMER.

I have reviewed and accepted the limitations on E.L.S. liability for loss, damage, or delay to goods moved under this agreement, and

I \_\_\_\_\_ DO want E.L.S. to procure insurance for Customer's benefit for physical loss or damage.

### **1C) CUSTOMER WARRANTIES; INSPECTION OF SHIPMENTS**

Customer warrants that it shall not tender to E.L.S. any shipment containing explosives, destructive devices, or hazardous material for transport, handling, or storage. Customer warrants that it shall consider E.L.S. Customer Supply Chain Security Recommendations as posted on E.L.S. website. Customer agrees that E.L.S. is allowed to inspect, through physical or any other means, any shipment tendered to E.L.S. for transport, handling, or storage, including shipments in sealed packaging. E.L.S. has the right to reject and return to Customer at Customer's expense, any shipment tendered to it in violation of Customer's warranties as set forth herein. Customer shall make no claim nor bring suit against E.L.S. or any person or entity acting on behalf of E.L.S. arising from any loss, damage, or delay caused by an inspection. Customer shall hold E.L.S. harmless from and shall defend and indemnify E.L.S. against any loss, damage, claim, or suit arising from any breach of the Customer's warranties as set forth herein.

### **1D) PROMPT NOTICE OF LOSS, DAMAGE, OR DELAY REQUIRED**

Customer agrees to inspect its shipment upon delivery and give prompt notice of any loss or damage within 5 days of delivery for air or ground shipments and within 3 days of delivery for ocean shipments. Any oral notice of claim must be followed by written notice of claim. Customer agrees that E.L.S. will not be held responsible for any loss or damage if written notice of damage is not provided to E.L.S. within 10 days of delivery or in the event of loss within 15 days of when the goods should have been delivered. Customer agrees to monitor its shipment and to immediately give notice in writing to E.L.S. of any delay. Any notice of delay must be made in writing no later than 5 days after the Customer's anticipated date of delivery. Customer agrees that notification of delay does not invalidate E.L.S. limitation of liability set forth in paragraph 1A above.

### **1E) PAYMENT OF INVOICES REQUIRED BEFORE CONSIDERATION OF CLAIMS**

Customer agrees that E.L.S. has no obligation to consider claims or to assist Customer in the filing of such claims against carriers or warehousemen on behalf of Customer if Customer has not paid E.L.S. fees for insurance coverage and E.L.S. invoices in full for the shipments in which claim arose.

### **1F) E.L.S. GIVEN A LIEN ON INSURANCE PROCEEDS**

Customer agrees that E.L.S. shall have a lien in the amount of any unpaid invoices on any insurance proceeds issuing as a result of loss, damage, or delay to Customer's goods.

### **1G) CLAIMS EXPIRE AFTER ONE YEAR**

Customer agrees that any suit brought against E.L.S. must be commenced within one year from the date of this agreement or after completion of the services performed, whichever is later. In the event of delay or non-delivery, the scheduled delivery date shall be deemed as the day on which services were completed for purposes of computing the one-year time limit.

### **1H) GENERAL CONDITIONS OF AIR CHARTER AGREEMENTS**

In the event E.L.S. arranges for air charter(s) for Customer, Customer acknowledges that it has reviewed and agreed to E.L.S. General Conditions of Air Charter Agreements which are attached in the E.L.S. Customer Application Package and available upon request. E.L.S. will provide a separate Charter Agreement setting out the specific charter arrangements and which incorporates the General Conditions of Air Charter Agreements by reference as if fully set forth therein.

## **PART 2 - PAYMENT TERMS AND CREDIT AGREEMENT**

### **2A) PAYMENT GUARANTEED BY CUSTOMER**

Customer guarantees payment for all services rendered and carriage arranged by E.L.S. on Customer's behalf.

### **2B) CUSTOMER BEARS RISK OF FOREIGN EXCHANGE FLUCTUATIONS**

Estimates of fees for E.L.S. services may have been provided using exchange rates then in effect. Actual charges will reflect the currency exchange rate at the time the invoice is issued.

### **2C) CREDIT TERMS; SERVICE FEES ACCRUE ON LATE PAYMENTS**

Customer agrees to pay E.L.S. invoice(s) in full prior to first shipment date or COD, whichever date comes first, unless otherwise agreed to in writing by E.L.S., and except where payment in advance is required by a carrier. For any payments not received within ten days of the payment due date, Customer agrees that E.L.S. will be entitled to late fees of 1 1/2% of the outstanding amount for each month or fraction thereof from the invoice date.

### **2D) E.L.S. ENTITLED TO ATTORNEY'S FEES INCURRED IN COLLECTION**

Customer agrees to pay E.L.S. reasonable attorney's fees, costs, and other expenses incurred in the event E.L.S. determines that consultation with or retention of an attorney is necessary for collection.

### **2E) E.L.S. GIVEN A LIEN ON GOODS FOR UNPAID CHARGES**

Customer and consignee, holder, or assignee on any bill of lading shall be jointly and severally liable for all unpaid fees for services provided under this Agreement. When E.L.S. is instructed to collect charges from any person or entity other than Customer, Customer shall remain liable for the charges and interest if E.L.S. is not paid. E.L.S. SHALL HAVE A LIEN ON ANY GOODS SHIPPED UNDER THIS AGREEMENT FOR FAILURE TO PAY FEES ON CURRENT AND PRIOR SHIPMENTS, REGARDLESS OF CREDIT ARRANGEMENTS, OWED BY THE CUSTOMER, CONSIGNEE, HOLDER, OR ASSIGNEE ON ANY BILL OF LADING. CUSTOMER AGREES THAT E.L.S. LIEN CONTINUES IN EFFECT AFTER THE GOODS ARE DELIVERED AND UNTIL ALL CHARGES ARE PAID. Customer agrees to sign any notice of a security interest whether in the form of a UCC-1 or other form requested by E.L.S.. Customer appoints E.L.S. as its attorney-in-fact to sign any such notice on Customer's behalf in the event Customer fails to sign it immediately upon E.L.S. request.

## **2F) CONSENT TO RECEIVE CREDIT INFORMATION**

Customer authorizes E.L.S. to obtain credit reports on Customer and any representatives listed in Customer's Customer Agreement for Services and Credit, and obtain credit and funding information from Customer's bank or other references. It is understood that any such credit information will be held in strict confidence and used only for E.L.S. business purposes. Customer further agrees to supply such additional information as may be required by E.L.S. to warrant future extensions of credit or to enable E.L.S. to perfect liens or to recover upon any bond issued.

## **2G) DUTIES AND TAXES**

Customer acknowledges that Customer is solely responsible for collecting, reporting, and paying any and all sales taxes, use taxes, excise taxes, customs duties, and all other assessments on Customer's goods, regardless of the role(s) undertaken by E.L.S. on behalf of Customer and as may be required by applicable laws or as imposed by any governmental authorities. In the event a governmental authority imposes a tax, customs duty, or other assessment against E.L.S. regarding Customer's goods, Customer shall promptly acknowledge and pay Customer's obligation hereunder to the governmental authority and shall defend, hold harmless and indemnify E.L.S. against such action and assessment.

## **PART 3 - SPECIAL POWER OF ATTORNEY**

In addition to the U.S. Customs Import Power of Attorney, Customer specifically grants the following export power of attorney: **POWER OF ATTORNEY GRANTED BY CUSTOMER AS U.S. PRINCIPAL PARTY IN INTEREST TO AUTHORIZED AGENT FOR EXPORT SHIPMENTS** - Know all persons by these presents, that Customer is the U.S. Principal Party in Interest organized and doing business under the laws of the U.S. and having an office and place of business as indicated below hereby authorizes Entertainment Logistics Services at (8649 Avenida de la Fuente - San Diego, CA 92154) to act for and on its behalf as a true and lawful agent and attorney of the U.S. Principal Party in Interest (USPPI) for, and in the name, place, and stead of the USPPI, from this date, in the U.S. either in writing, electronically, or by other authorized means to: act as authorized agent for export control, U.S. Census Bureau reporting, and U.S. Customs and Border Protection purposes; prepare and transmit any Electronic Export Information (EEI) or other documents or records required to be filed by the U.S. Census Bureau, U.S. Customs and Border Protection, U.S. Department Commerce-Bureau of Industry and Security, or any other U.S. Government agency; perform any other act that may be required by law or regulation in connection with the exportation or transportation of any goods shipped or consigned by or to the USPPI and receive or ship any goods on behalf of the USPPI. The USPPI hereby certifies that all statements and information contained in the documentation provided to the authorized agent and relating to exportation is and will be true and correct. The USPPI understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any U.S. laws or regulations on exportation. Customer shall hold E.L.S. harmless from and shall defend and indemnify E.L.S. against any action or assessment by a governmental authority arising from any breach by Customer of Customer's export compliance obligations. This power of attorney is to remain in full force and effect until revocation in writing is duly given by the USPPI and received by the authorized agent.

## **PART 4 - TERM OF AGREEMENT AND TERMINATION; LEGAL JURISDICTION**

### **4A) TERM OF AGREEMENT AND TERMINATION**

This Agreement shall be effective upon execution by both parties. Part 1, Part 2, and Part 4 shall survive termination of this Agreement for any reason. This Agreement shall remain in effect until canceled by either party upon thirty days' written notice to the other party. If Customer terminates this Agreement, Customer agrees to pay E.L.S. fees for all services and expenses incurred up to the point of termination forthwith upon issuance of E.L.S. invoice. E.L.S. has the right to immediately terminate this Agreement upon breach of the agreement by Customer for failure to pay E.L.S. fees.

The parties agree that a scanned, electronic, or faxed signature will be as equally binding as an original signature on these Terms and Conditions of Service and any other Entertainment Logistics Services documents.

Customer understands that the terms and conditions under which E.L.S. services are provided are subject to change. Customer is advised to take note of the most current terms and conditions which are posted on E.L.S. web site and which are also available to Customer upon request. Customer agrees that the posted terms and conditions on E.L.S. website on the date of a shipment will apply to that shipment and govern the parties' obligations.

### **4B) APPLICABLE LAW AND FORUM SELECTION**

To the extent not governed by applicable federal statutes, the laws of the state of California shall govern the validity, construction, and performance of this Agreement and all controversies and claims arising hereunder. Customer agrees that the forum for any litigation arising out of the performance of this Agreement, whether initiated by the Customer or E.L.S., shall be San Diego County, California.

### **4C) EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER**

E.L.S. provides equal employment opportunity to applicants and employees, without regard to race, color, religion, sex, national origin, disability, or veteran status, and takes affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, nation origin, disability, or veteran status; as a federal contractor, E.L.S. complies with applicable provisions requiring equal employment opportunity as required by law. For additional information, please access the federal Equal Employment Opportunity Clause at E.L.S. website.

### **4D) THIS FORM IS THE ENTIRE AGREEMENT AND SUPERSEDES CONTRARY ORDERS**

These terms comprise the entire agreement between Customer and E.L.S.. If the terms of this Agreement differ in any material way from the terms of Customer's order or other documents issued to E.L.S., the terms of this Agreement shall take precedence over the terms of any such order or documents.

**WARRANTY OF AUTHORITY AND CERTIFICATION**

The person signing this Agreement on behalf of the Customer represents and warrants that s/he has the authority to sign this agreement on behalf of Customer, including appointment of E.L.S. as Customer's attorney in fact, and to guarantee E.L.S. full and prompt payment. The person signing below further certifies that the information given in the Customer Agreement for Services and Credit is true, correct, and complete, and further understands that E.L.S. will rely on this information for credit purposes.

**On Behalf Of:**

**Accepted by Entertainment Logistics Services**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company or Artist**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, ZIP Code**

\_\_\_\_\_  
**Date**

