

# Action Freight Service, Inc. Expedited LTL Service Conditions

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ACTION FREIGHT SERVICE, INC. ("ACTION FREIGHT"), is a licensed motor carrier operating pursuant to FMCSA Docket No. MC-558640. The following Service Conditions are applicable to any expedited or air cargo shipment tendered in non-exclusive use to ACTION FREIGHT for pickup and delivery unless otherwise expressly agreed in writing.

## Application of Service Conditions

If there is a conflict between these Service Conditions and the terms and conditions on any ACTION FREIGHT freight Waybill, the ACTION FREIGHT freight Waybill will control. These Service Conditions supersede all previous Service Conditions and other prior statements concerning the rates and conditions of service. ACTION FREIGHT reserves the right, from time to time, to modify, amend or supplement its rates, features of service, products and Service Conditions without notice. Copies of current Service Conditions may be obtained by contacting ACTION FREIGHT. Rates and service quotations by our employees and agents will be based upon information provided by you, but final rates and service may vary based upon the shipment actually tendered and the application of the Service Conditions herein. Any conflict or inconsistency between any other written or oral statements concerning the rates, features of service, products and Service Conditions applicable to ACTION FREIGHT service will be controlled by the ACTION FREIGHT freight Waybill and these Service Conditions, as modified, amended or supplemented by ACTION FREIGHT from time to time. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED. Monetary amounts stated in these Service Conditions refer to U.S. dollars.

## Action Freight Service Freight Waybill

The terms and conditions of the ACTION FREIGHT waybill or bill of lading tendered by it at time of pickup shall constitute a receipt for goods and the contract of carriage incorporating the terms and conditions set forth herein.

## **Other Bills of Lading or Shipping Documents**

Any bill of lading or shipping document which is inconsistent with the transportation contract and receipt for goods published in these Service Terms and Conditions shall be executed for convenience only and shall be invalid to the extent it conflicts with the terms and conditions. Driver employees of ACTION FREIGHT are not authorized to bind ACTION FREIGHT to different terms and conditions and sign non-conforming bills of lading or air waybills as receipt of goods only. These service conditions and limitations shall apply notwithstanding the issuance of any other air waybill or bill of lading by any party tendering a shipment to carrier. The party tendering shipments to ACTION FREIGHT shall indemnify and hold ACTION FREIGHT and its carriers harmless from any demand or obligation that exceeds those set forth herein.

## **Definition of Parties**

“Shipper” means any and all entities tendering shipment to ACTION FREIGHT for carriage, including entities physically tendering shipment and entities on whose account shipment is to be made. "Shipper" means the person or entity with whom the shipment originates, and whose name is listed on the freight Waybill as the Shipper, and includes the Shipper, Consignor and their agents, servants and employees, and any other person or entity having or claiming an interest in or beneficial ownership in a shipment. As used herein, “shipper” shall include, but is not limited to, air freight forwarders, property brokers, surface forwarders / consolidators, customs brokers, and other logistics providers who tender shipments to ACTION FREIGHT. Regarding all shipments tendered by any Shipper as defined above, the shipper represents that it has the authority to enter into this agreement on behalf of its customer and warrants that it is the disclosed agent of its customer. The term “Customer” has used herein shall include any shipper, airfreight forwarder, property broker, surface forwarder/ consolidators, customs brokers, or other third party tendering shipments to ACTION FREIGHT. Where any intermediary, other than the beneficial owner of the freight, tenders shipments to ACTION FREIGHT, such intermediaries shall be the disclosed agent of the beneficial owner of the goods and the term “Customer” shall include its principal.

## **Customer and Shipper Warranties**

Any party tendering shipments to ACTION FREIGHT which is not the beneficial owner of the goods represents and warrants to ACTION FREIGHT that it is authorized by the beneficial owner, shipper or consignee to be named on the bill to tender the shipment to ACTION FREIGHT and to bind its principal to the terms and conditions of these Service Conditions. Any such customer, when tendering cargo to ACTION FREIGHT, further agrees to indemnify and hold harmless ACTION FREIGHT and any subcontractor retained by it from any claim that it lacked authority to bind its principal to the terms and conditions set forth herein, including limitations of liability.

## **Hazardous Material Warranties**

Shipper and customer certify that all shipments shall be acceptable for transport under U.S. DOT and FAA regulations based upon mode selected and reflected on the shipping documents. The hazardous nature of any shipment tendered to ACTION FREIGHT shall be properly identified as time of booking and shall be properly reflected on the shipping documents at time of pickup by Action Freight. Customer and Shipper agree to indemnify and hold harmless Action Freight from all claims, fines, and liabilities arising out of their individual and collective failure to properly tender, label, identify or tender hazardous material for transport.

## **Air Cargo Compliance**

We will only accept shipments having a prior or subsequent movement by air from direct and indirect air carriers, subject to regulation by the Transportation Security Administration. All customers tendering airfreight to us warrant compliance with TSA safety protocols and agree to indemnify and hold us and our subcontractors harmless from any breach in such compliance. We submit to a standard safety protocol designed to feasibly meet the security requirements of the multiple customers we serve. Prior to utilizing our service for ex-air moves, customers are advised to contact our Director of TSA Compliance at (512) 476-6415 to obtain information concerning our security protocols and to ensure that the supply chain is not compromised. Customers shall be solely responsible for screening compliance with CCSP requirements.

## **Liability for Freight Charges**

Subject to its sole discretion, ACTION FREIGHT shall extend credit to qualified customers and may by agreement initially bill an intermediary, the named consignor, or the named consignee on the air waybill. All freight charges shall be paid within twenty (20) days of invoice without offset. Invoices not paid within thirty (30) days shall be subject to interest at the rate of one and a half percent (1 1/2%) per month until paid. If collection efforts are required by ACTION FREIGHT to collect any amount due, collection fees at the rate of one-third or three hundred USD (\$300), whichever is less, shall apply. ACTION FREIGHT does not employ other intermediaries as its agents to solicit shipments and bills such parties as a disclosed agent of the shipper who guarantees payment upon default of its disclosed agent, ACTION FREIGHT acquires recourse to the consignor and consignee under the shipping documents in the event freight charges are not paid. ACTION FREIGHT reserves the right to demand prepayment of charges. ACTION FREIGHT reserves the right to demand prepayment of charges by bank check or money order or credit card on any shipment. A fifty dollar USD (\$50) fee will be applied for any check dishonored due to insufficient funds or incorrect or insufficient signature of the drawer.

Send remittance to:

(Via U.S. Postal Service)  
ACTION FREIGHT SERVICE, INC.  
P.O. Box 140005  
Austin, Texas 78714

(Via overnight letter, etc.)  
ACTION FREIGHT SERVICE, INC.  
2903 Ferguson Road.  
Austin, Texas 78754

ACTION FREIGHT shall have a lien on all shipments in its possession, whether actual or constructive, tendered to it by the shipper for any and all amounts due it by the shipper. This shall be a general lien on all shipments in its possession tendered by the shipper, and not limited to a specific lien on shipments for which charges are due. Enforcement of liens may be on any commercially reasonable terms.

ACTION FREIGHT reserves recourse to the shipper and the beneficial owner of goods for payment of freight charges in the event of default by the party tendering the shipment to ACTION FREIGHT for transport.

## **Action Freight Service Warranties**

Carrier warrants that it maintains bodily injury and property damage insurance as required by federal statute (Form BMC-91X on file). Subject to an agreed release rate, it maintains all risk cargo insurance in an amount of not less than \$100,000 per truckload. Carrier warrants that at all times it will conduct operations as an independent contractor and not as an employer or joint venturer with customer. With respect to air cargo, Action subscribes to a uniform safety and security protocol.

## **Weights and Measures**

Unless specifically otherwise agreed to in writing, ACTION FREIGHT retains the right to re-weigh and/or measure, for the purpose of applying correct charges, any shipment(s) at any time while in ACTION FREIGHT's custody and control, and to collect the appropriate charges without first advising, reporting back to, pre-alerting, or otherwise notifying the Shipper, Consignee or other interested party. ACTION FREIGHT reserves the right to assess transportation charges based on volumetric standards. Dimensional weight pricing is applicable on all shipments with a total volume of more than 194 cubic inches.

Dimensional weight is calculated by multiplying length by width by height of each package (all in inches) and dividing by 194. The dimensional weight of each package in the shipment is added, and the total dimensional weight of the shipment is then compared to the actual weight of the shipment. If the dimensional weight exceeds the actual weight, transportation charges for the shipment are based on the dimensional weight.

## **Cargo Loss or Damage**

All shipments handled via truck from origin to destination shall be governed by 49 U.S.C. '14706 and movements having a prior or subsequent movement by air shall be exempt from federal statute. As is customary in the expedited freight industry, ACTION FREIGHT follows simplified rating procedures predicated upon a release rate evaluation of 50 cents per pound per article. Unless otherwise noted and agreed to in writing, this

limit of liability shall apply to all shipments tendered to ACTION FREIGHT and shall limit not only ACTION FREIGHT's liability, but also the liability of the motor carriers and other transportation service providers in care, custody and control of shipments pursuant to arrangements made by ACTION FREIGHT. In order to ensure strict compliance with surface transportation statutes, ACTION FREIGHT's customers are allowed to choose an alternative higher limit of liability. In the absence of declared value, the liability of Action Freight and its transportation service providers shall be 50 cents per pound for that part of the shipment damaged or lost, but not less than fifty USD (\$50) per shipment. The weight used to determine the limit of liability shall be the same that is used to determine the freight charges of the shipment. In the event that the weight of a lost or damaged article cannot be determined and the lost article was part of a larger shipment, an average weight of each piece may be used in the settlement of the claim. Such average will be determined by dividing the weight by the total number of pieces in the shipment. Shipments with a declared value in excess of fifty cents (\$0.50) per pound or fifty USD (\$50) per shipment, whichever is greater, shall be subject to increased freight charges. To arrange for higher released valuation, contact 512-476-6415 before tender.

Any shipment with a declared value of in excess of \$25,000 which is inadvertently accepted without prior written approval of an Action Freight corporate officer will be released to a maximum of two dollars fifty cents USD (\$2.50) per pound and subject to the surcharge provided for herein. In the event the party tendering shipment to Action Freight is obligated for greater limits of liability pursuant to a through air bill by contract or otherwise, it shall assume sole responsibility for the liability to the extent it exceeds the agreed release rate and shall indemnify Action Freight and its carriers, and shall waive subrogation with respect to any insurance purchased to provide excess liability coverage.

### **Commodities Not Accepted for Transport**

Action Freight Services does not hold out to transport shipments requiring placarding for transportation by surface or for shipments for air which are restricted by federal regulations. Hazardous materials shall not be accepted for carriage under any circumstances. Items of a fragile nature that may be inadvertently accepted without the written approval of an ACTION FREIGHT corporate officer shall still be subject to all terms and conditions, including but not limited to limitation of liability, whether or not any declared value is made.

### **Reasonable Dispatch**

No time is fixed for the completion of carriage, and ACTION FREIGHT shall not be liable for any loss or damage caused by failure to commence or complete carriage within a certain time. ACTION FREIGHT assumes no obligation to carry goods over any particular route. ACTION FREIGHT assumes no obligation to carry the goods in any particular vehicle, and are authorized to select alternate means of transportation and deviation from route without liability.

### **No Special Damages**

ACTION FREIGHT shall have no liability for any special or consequential damages. All terms and conditions of the standard waybill attached hereto as Appendix A shall apply. Shipments which do not have a prior or subsequent shipment by air shall be governed by the Carmack Amendment, 49 U.S.C. '14706 and the released rate provisions contained herein shall be construed as complying with the notice, election of rates and other requirements.

### **Claims Handling-Time Limits and Procedures**

Cargo claims for loss or damage of surface transportation moves must be filed within 9 months in accordance with 49 C.F.R. 370. The statute of limitation for filing suit shall be 2 years and 1 day after issuance of written denial. For shipments having a prior or subsequent movement by air, the deadline for instituting suit shall be 1 year after the claim is denied in whole or in part. All claims should be sent to ACTION FREIGHT in writing via certified mail or the like at 2903 Ferguson Road Austin, Texas 78754. No claims shall be considered and no claims shall be paid unless and until all transportation charges have been paid and customer agrees that cargo claims cannot be offset against freight charges. General principles of federal transportation law shall apply and any action against ACTION FREIGHT shall only be brought on State Court or Federal Court (where applicable) having jurisdiction in Travis County, Texas. In addition to the released evaluation agreed to pursuant

to these terms and conditions, Customer agrees that any lower limit of liability agreed to between the Shipper and the logistics provider which retains ACTION FREIGHT shall apply and that no party shall seek to recover from ACTION FREIGHT a greater sum than any limitation agreed to pursuant to a through bill of lading.

Where a forwarder, broker, or logistics provider tendering traffic to ACTION FREIGHT has agreed to higher limits of liability with its shipper, in tendering shipments to ACTION FREIGHT, it agrees that the maximum liability of ACTION FREIGHT and its carriers shall not exceed the released rate limitation set forth herein and that it will indemnify and hold harmless ACTION FREIGHT and its carriers from all claims, including attorney's fees in the event that amounts greater than agreed to herein are sought.

## **Exceptions from Liability**

Without waiver of any other provision of these terms and conditions, ACTION FREIGHT and its carriers shall not be liable for any damage or loss of any nature caused by:

- (a) acts of God, public enemy, or public danger incident to a state of war;
- (b) any default of the shipper or consignee;
- (c) the nature of the shipment, or any defect, characteristic or inherent vice of the shipment;
- (d) violations by the shipper or consignee of any conditions of these terms and conditions;
- (e) compliance with laws, governmental regulations, orders or requirements of any jurisdiction; or
- (f) any other cause beyond the control of ACTION FREIGHT.
- (g) any liability discovered after delivery to and inspection by screening facilities.

## **Miscellaneous Terms**

If any provision or provisions of these terms and conditions shall be unenforceable, all remaining provisions shall remain, and the parties bound to them. These terms and conditions may be changed without notice, and the effective version of these terms and conditions shall be as posted at [www.actionfreightservice.com](http://www.actionfreightservice.com), and shall also be available upon request. The version of these terms and conditions in effect as of the date the shipment is tendered to ACTION FREIGHT shall be the applicable version.

The ACTION FREIGHT website at [www.actionfreight.com](http://www.actionfreight.com) is for the convenience of ACTION FREIGHT customers, and shall be subject to its terms of use, and shall not affect these terms and conditions.

## **Assembly and Set-Up Services**

In addition to point-to-point transportation to be provided pursuant to the rates and schedules set forth herein or as otherwise agreed in writing, ACTION FREIGHT service provider, upon shipper's request and for charges to be determined, may provide inside delivery and setup of cargo. When such service is rendered, the consignee shall first sign carrier's bill of lading, noting any damage to external packaging prior to unpacking. Signature without notification or exception shall constitute prima facie evidence that the shipment was not damaged in transit. Then, if during the unpacking of goods, concealed damages are found, the consignee shall note such concealed damages on the house waybill and shall contact the shipper immediately. Shipper acknowledges that neither ACTION FREIGHT nor its carrier pack goods for transportation or inspect shipments prior to acceptance of goods into the carrier's care, custody and control. Accordingly, shipper shall have the burden of proof to demonstrate that any concealed damages were caused by shipper negligence.

## **Air Cargo Rules and Security Protocol**

Neither ACTION FREIGHT nor its network carriers are entities subject to direct regulation by the Transportation Security Administration. All shipments having a subsequent movement by air cargo must be tendered to ACTION FREIGHT by direct air carriers or indirect air carriers (IACs) who accept TSA responsibility for the shipment. Each carrier in the ACTION FREIGHT network subscribes to a uniform security protocol which has been approved by existing customers. A copy of this protocol is available for review and incorporation by qualified IACs and other regulated parties. In tendering air cargo shipments to Action Freight, the customer certifies that it is in compliance with TSA security requirements and that the services of Action Freight's network of carriers are those of a non-exclusive ground service agent.

Acting as a disclosed agent of its customers, ACTION FREIGHT agrees to arrange for transportation using its network of qualified service providers under contract with it (hereinafter referred to as “Carriers”). The service terms and conditions set forth the entire agreement between the customers on the one hand and, on the other, ACTION FREIGHT and its network of carriers.

## **Refused and Abandoned Shipments**

- (a) Property not accepted by the consignee after notice of the arrival of the property at destination has been fully sent or given, may be kept subject to the tariff charge for storage and to carrier’s responsibility as a warehouseman, only, or at the option of the carrier, may be stored in Action’s warehouse or another licensed warehouse at the cost of the owner, and there held without liability on the part of the carrier and subject to a lien for all freight and other lawful charges including reasonable charge for storage.
- (b) Where nonperishable property is refused at destination by the consignee or where the consignee fails to receive it within 15 days after notice of the arrival shall have been duly sent or given, the carrier may sell same at public auction to the highest bidder, at such place as may be designated by the carrier.
- (c) Where perishable property which has been transported to destination and the consignee or party entitled to receive it has failed to receive it promptly, the carrier may, at its discretion to prevent deterioration, sell same to the best advantage at private or public sale.
- (d) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, any other lawful charges and the expense of notice, advertisement, sale and/or other necessary expense and of caring for and maintaining the property. If proper care of same requires special expense, and should there be a balance, it shall be paid to the owner of the property sold hereunder.”