

Number	QCWIFSI-329	Title	GKN Freight Services Terms and Conditions	
Approved		Owner	Release date	Revision date
GKN Legal Department		Mark Shaddick	30 April 2010	06 June 2011

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1. **Definitions and General.** The following terms are defined as set forth below:
 - (a) **Company:** GKN Freight Services, Inc. trading under these terms and conditions.
 - (b) **Customer:** Any person at whose request or on whose behalf the Company undertakes any business or provides advice, information, or services.
 - (c) **Goods:** Anything carried or to be carried by the Company.
 - (d) **Carriage:** Carriage of Goods by air, water, rail, or road.

2. **Choosing Routes or Agents.** Unless express instructions in writing are received from the Customer, the Company has complete freedom in choosing the means, route, and procedure to be followed in the handling, transportation, delivery or importing/exporting of the Goods including determining the use of any third party. Advice by the Company to the Customer that a particular person, firm or third party has been selected to render services with respect to the goods shall not be construed to mean that the Company warrants or represents that such person or firm will render such services. Company retains, at its discretion, the right to make any and all changes at any time as it sees fit for the handling, transportation, delivering or importing/exporting the Goods.

3. **Services by Third Parties.** Unless the Company carries, stores, or otherwise physically handles the shipment, and the loss, damage, expense or delay occurs during such activity, the Company assumes no liability as a carrier and is not to be held responsible for any loss, damage, expense or delay to the goods to be forwarded or imported except as provided in paragraph 13 and subject to the limitations of paragraph 13 below. Company undertakes to use reasonable care in the selection of carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen and others to whom it may entrust the goods for transportation, cartage, handling, and/or delivery and/or storage otherwise. When the Company carries, stores, or otherwise physically handles the shipment, it does so subject to the limitation of liability set forth in paragraph 13 below unless a separate bill of lading, air waybill or other contract of carriage is issued by the Company, in which event the terms thereof shall govern.

4. **Liability Limitations of Third Parties.** The Company is authorized to select and engage carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen, and others, as required, to transport, store, deal with and deliver the goods, all of whom shall be considered as the agents of the Customer, and the goods may be entrusted to such agents subject to all conditions as to limitation of liability for loss, damage, expense, or delay and to all rules, regulations, requirements and conditions whether printed, written (via facsimile or electronic communications i.e. e-mails), or stamped, appearing in bills of lading, receipts or tariffs issued by such carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen and others. The Company shall under no circumstances be liable for any loss, damage, expense, or delay to the goods for any reason whatsoever when said goods are in Custody, possession or control of third parties selected by the Company to forward, enter and clear, transport or render other services with respect to such goods.

5. **Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums, or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice and shall not, under any circumstances be binding upon the Company unless the Company in writing specifically undertakes the handling or transportation of the shipment at a specific rate.

6. **General Lien on Any Property.** The Company shall have a general lien on any and all Goods and/or property (and documents relating thereto) of the Customer, in its possession, custody, or control or en route, for all claims for charges, expenses, or advances incurred by the Company in connection with any shipments of the Customer. If any claim remains unsatisfied for thirty (30) days after demand for its payment is made, the Company may sell at public auction or private sale, upon twenty eight (28) days written notice, registered mail, return receipt requested, to the Customer, the Goods, wares, and/or merchandise, or so much thereof as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of the amount due to the Company. Any surplus from such sale shall be transmitted to the Customer, and the Customer shall be liable for any deficiency in the sale. By engaging in a public auction or private sale, Company does not waive any rights it may have against Customer under these term and

conditions or those of a separate agreement. In the event Customer shall file for bankruptcy, regardless of form, or if Company requests that Customer verify that it can pay its debts as they become due and Customer is unable to satisfy Company, Company may, in its sole discretion, dispose of any of Customer's goods, after giving notice to Customer, but Customer hereby waives the right to 28 days notice prior to the sale of the goods as provided in Paragraph 9(c).

7. Insurance. Customer shall be responsible for obtaining all prudent insurance coverage, including third party liability and cover against loss or damage to the goods or equipment. The Customer shall produce on demand to Company a copy of the policy or policies. Claims against Company's insurance policy shall be secondary to that of Customer's own insurance policies and that of any third party's insurance policy including, but not limited to, insurance policies held by carriers, truckmen, lightermen, agents or warehousemen. Customer expressly agrees that it waives all rights to subrogation of any claim it, or its insurance company may have against Company, and the Customer expressly agrees that its policies will permit such waiver of subrogation.

8. Customer Charges: Customer understands that certain assessorial costs, such as fuel, insurance, peak season surcharges and currency exchange rates, are not within the control of Company. Customer hereby agrees to reimburse Company for the increase in such charges if the increase is imposed upon or is out of control of the Company. Customer and Company agree to negotiate in good faith any such additional charge.

9. Company. (a). The Company reserves the right without notice to cancel, terminate, divert, postpone, or advance any means of transportation, or the further carriage of any goods, or to proceed with any means of transportation without all or any part of the goods, if it considers that it would be advisable to do so because of any fact beyond its control or not reasonably to be foreseen, anticipated, or predicted at the time the goods were accepted or if it considers that any other circumstances so require.

(b). In the event any means of transportation is so cancelled, diverted, postponed, delayed, or advanced or is terminated at a place other than the place of destination or in the event the Carriage is so cancelled, diverted, postponed, delayed, advanced, or terminated, the Company shall not be under any liability so long as it acted in good faith. In the event the Carriage of the Goods or any part of it is terminated, delivery of it by the Company to any transfer agent or delivery or the placing of such Goods in storage shall be deemed to be complete delivery under the contract of carriage, and the Company shall be without further liability with respect to it, except to give notice of the disposition of the Goods to the Customer. The Company may, but is not obliged to, forward the Goods by any other route or forward the Goods as agent for the Customer for onward Carriage by any transportation service on behalf of the Customer. The cost of doing so shall be borne by Customer.

(c). The Company shall be entitled at the expense of the Customer to dispose of the Goods (by sale or otherwise as may be reasonable in all the circumstances);

(i). on 28 days notice in writing, except when 28 days notice is not required as specified in Paragraph 6 above, to the Customer, (where the Customer cannot be traced and reasonable efforts have been made to contact the parties who may reasonably have an interest in the Goods), any Goods which have been held by the Company for 30 days which cannot be delivered as instructed; and

(ii). without prior notice, Goods that have perished, deteriorated, or altered or are in immediate prospect of doing so in a manner, which has caused or may reasonably be expected to cause loss or damage to the Company or third parties or to violate any applicable laws or regulations.

(iii). However, Company shall have no obligation under neither (i) or (ii) above to dispose of such goods nor shall it be responsible to Customer for any liability if Company does not dispose of such goods. Customer agrees to be responsible for all costs incurred by Company or third parties associated with disposing or holding or storage of such Goods.

10. Cancellation. Customer reserves the right to cancel the carriage of any goods upon notice to Company. Customer will be charged a minimum of \$250 dollars for the cancellation of any shipment less than 2 hours prior to any pick-up and in addition, Customer shall be responsible for all of Company's costs associated with the cancellation of any shipment. Cancellation is not guaranteed if the shipment has already been dispatched for pick-up at the time the cancellation request was made.

11. Duty To Furnish Information. (a) On an import at a reasonable time prior to entering of the goods for U.S. Customs, the Customer shall furnish to the Company invoices in proper form and other documents necessary or useful in the preparation of the U.S. Customs entry and, also, such further information as may be sufficient to establish the dutiable value, the classification and admissibility pursuant to U.S. law or regulation. If the Customer fails in a timely manner to furnish such information or documents in whole or in part as may be required to complete U.S. Customs entry or if the information or documents furnished are inaccurate or incomplete, the Company shall be obligated only to use its best judgment in connection with the shipment. Where a bond is required by U.S. Customs to be given for the

production of any document or the performance of any act, the Customer shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by the Company as principal, it being understood that the Company entered into such undertaking at the instance and on behalf of the Customer and the Customer shall indemnify and hold the Company harmless for the consequences of any breach of the terms of the bond. Alternatively, Company may at its sole discretion contact the Customer and advise of the status of such shipment and shall have no further obligation to handle, transport, import or deliver such Goods.

(b) On an export at a reasonable time prior to the exportation of the shipment, the Customer shall furnish to the Company the commercial invoice in proper form and number proper consular declaration, weights, measures, values, and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods;

(c) On an export or import the Company shall not in any way be responsible or liable for increased duty, penalty, fine or expense unless caused by the gross negligence of the Company, in which event its liability to the Customer shall be governed by the provisions of paragraph 12. The Customer shall be bound by and warrant the accuracy of all invoices, documents, and information furnished to the Company by the Customer or its agent for export, entry, or other purposes and the Customer agrees to indemnify and hold harmless the Company against any increased duty, penalty, fine, or expense, including attorneys fees resulting from any inaccuracy or omission or any failure to make timely presentation, even if not due to any negligence of the Customer.

12. Presenting Claims. In no event shall the company be liable for any act, omission, or default by it in connection with an exportation, importation or domestic shipment, unless a claim therefore shall be presented to it at its office either within ninety (90) days from the date of exportation or importation of the goods or domestic shipment date, or any such shorter period of time stated within the rules of the bill of lading that cover the carriage of the consignment in dispute. The claim must be presented in a written statement to which a notarized proof of claim shall be attached. No suit to recover for any claim or demand hereunder shall in any event be maintained against the Company unless instituted within twelve (12) months after presentation of the said claim as above provided. No agent or employee of the Company shall have authority to alter or waive any of the provisions of this clause. All civil liability claims must be brought against the Company by Customer within two (2) years from the date the Customer first became aware of the facts of such civil liability claim or should have become aware of the facts surrounding any such civil liability claim.

13. Liability of Company. (a) It is agreed that any claim or demand for loss, damage, expense, or delay shall be only against the carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen, or others in whose actual custody or control the goods may be at the time of such loss, damage, expense, or delay, and that the Company shall not be liable or responsible for any claim or demand from any cause whatsoever unless in each case the goods were in the physical custody or control of the Company and the damages alleged to have been suffered be proven to be caused by the gross negligence of the Company, its officers, or employees, in which event the limitation of liability set forth in paragraph 13 (b) herein shall apply.

(b) The Customer agrees that the Company shall in no event be liable for any loss, damage, expense, or delay to the Goods except for that resulting from the gross negligence of the Company. Company shall not be responsible for any amount in excess of two times the amount of the Company's freight charges to Customer for the shipment giving rise to the claim. A "shipment giving rise to the claim" is limited to the carriage of Goods which gives rise to a claim and as evidenced by the bill of lading for the Goods which gives rise to a claim and is neither the total amount of all freight charges under a purchase order nor the total amount of freight charges for multiple shipments of Goods placed into Company's hands at one time.

(c) In no event shall the Company be liable for special, indirect, consequential or incidental damages whether in contract, tort, negligence, strict liability or otherwise, including without limitation damages for injury to person or property, lost profits or revenue, lost sales, loss of goodwill, loss of customers or loss of use of any equipment or Goods except to the extent set forth above.

(d) The Company shall be relieved of any liability for any loss or damage if and to the extent that such loss or damage is caused by strike, lock-out, stoppage or restraint of labor, fire, accidents, governmental acts, Acts of God, or other conditions beyond the Company's control.

(e) The Company reserves the right without assuming any liability to refuse Carriage of goods or storage of Goods for any reason or no reason at all.

14. Indemnification. (a) The Customer agrees to and shall indemnify and save harmless the Company, its employees, officers and agents, from and against all claims, suits, causes of actions, liability, costs, damages, or whatever kind or nature, including attorneys' fees, incurred or alleged to have been incurred by or caused to any persons, entity, or things resulting, directly or indirectly, out of this Agreement or the Goods covered by this

agreement except for claims against Company arising from Company's own gross negligence.

(b). In the event that a carrier, other person, or any government agency makes a claim or institutes legal action against the Company for ocean or other freight, duties, fines, penalties, liquidated damages or other money due arising from a shipment of Goods of the Customer, the Customer agrees to indemnify and hold harmless the Company for any amount the Company may be required to pay such carrier, other person, or governmental agency together with reasonable expense, including attorney fees, incurred by the Company in connection with defending such claim or legal action and obtaining reimbursement from the Customer. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to the Company to pay all charges or other money due promptly on demand.

15. The Customer. The Customer warrants;

(a). that the description of all Goods furnished by or on behalf of the Customer are full and accurate;

(b). that the Carriage or storage of the Goods is not prohibited by the laws or regulations of any relevant country;

(c) (i). That all the Goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparations, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods;

(ii). That, where the Company is employed to carry out any product packaging and/or package labeling, all the necessary supplies of packaging and/or labels have been delivered to company in a timely manner and that such packaging and/or labeling fully comply with all consumer protection or other relevant law and legislation without obligation on the Company to check the same;

(d). that where the Company receives the Goods from the Customer already stowed in or in a container, trailer, tanker, or any other device specifically constructed for the carriage of goods by land, sea, or air, (referred to collectively as the "transfer unit") the transfer unit is in good condition, and is suitable for the storage or carriage to the intended destination of the Goods loaded therein or thereon;

(e). that the Goods are accompanied by the relevant shipping/forwarding documents;

(f). that the Customer has title to the Goods or has the authority to contract with the Company for the handling, transportation, cartage, delivery, storage or otherwise of the Goods;

(g). that if the Goods, by their nature, containers, storage or otherwise are not suitable to handling, transportation, cartage delivery, storage or otherwise, or if the Goods cause any damage during the term of the Agreement, Customer shall be responsible for all costs associated with the damage so long as the damage does not result from Company's gross negligence.

(h). that although Company may agree, at Customer's request, to collect duty, freight, charges or other expenses from a Consignee or any other person, the Customer shall remain responsible for such freight, duty, charges or other expenses upon demand by Company if such payment for duty, freight, charges or other expenses is not made by Consignee in its entirety.

16. Terms of Payment. Full payment is due upon receipt of invoice without set-off, unless other arrangements have been made and signed in writing by both parties. With respect to all payments that are overdue, Customer shall be responsible for the payment of interest calculated at 8% or the maximum allowable by law. Company reserves the right to use a collection agency to collect any unpaid balances. Customer will be responsible for all costs associated with unpaid balances, including but not limited to legal and/or attorney fees and collection fees.

17. Additional Terms and Conditions. No other Customer term or condition, including those on Customer's Purchase Order or in their quotation, shall apply to Company unless expressly agreed upon by Company or as set forth herein.

18. Advancing Money. The Company shall not be obliged to incur any expense, guarantee payment, or advance any money in connection with the importing, forwarding, transporting, insuring, or storing of the Goods, unless the same is previously provided to the Company by the Customer on demand. The Company shall be under no obligation to advance freight charges, customs duties, or taxes on any shipment, nor shall any advance by the Company be construed as a waiver of the provisions hereof.

19. **Government Regulations.** The Company shall not be responsible for action taken or fines or penalties or delay caused by or assessed by any government agency against the shipment because of the failure of the Customer to comply with the law or requirements of any government agency or with a notification issued to the Customer by any such agency.

20. **Severability.** If any section, subsection, sentence, paragraph, or clause of this contract shall be adjudged illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not effect the legality, validity, or enforceability of the contract as a whole, or of any section, subsection, sentence, paragraph, or clause hereof not so adjudged. Any provision adjudged illegal, invalid, or unenforceable shall be modified to the extent required to conform with the law, if possible, and otherwise shall be deleted.

21. **Waiver.** Any waiver by either party of any term, provision, or a condition of the contract shall not be construed or deemed to be a waiver of any other term, provision, or condition of this contract, nor a waiver of a subsequent breach of the same or different term, provision, or condition, unless the waiver is in writing and signed by both parties.

22. **Assignment.** Neither Customer nor Company shall assign any of its rights or obligations under this Contract without the other's party's prior written consent except to successor companies.

23. **Applicable Law, Venue and Dispute Resolution.** The foregoing terms and conditions shall be construed according to the laws of the State of Michigan. In the event of a dispute between Company and Customer as to any matter arising from these terms and conditions or any contract incorporating these terms and conditions, either party may cause the dispute to be submitted to binding arbitration to be conducted by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association and the locale for such arbitration shall be Southfield, Michigan, United States of America. In arriving at his or her decision, the arbitrator is expressly required to attempt to bring about a resolution most in keeping with ordinarily accepted transportation and business practices in Southeast Michigan. A judgment may be entered on the award in any court of competent jurisdiction.

24. **Entire Agreement; Headings.** This contract, including all attachments, exhibits, and other items incorporated herein by reference, contains the final and entire contract between customer and Company, and no other agreement or other understanding purporting to add to or to modify the terms and conditions hereof shall be binding upon Company unless agreed to by Company in writing. No course of prior dealings, no usage of the trade, and no course of performance shall be used to modify, supplement, or explain any terms used in this Contract. Paragraph headings are used herein for convenience and shall not be used to interpret or change the provisions of the Contract in any way.

25. **Notices.** In the event any notice is required to be given to the other party under these terms and conditions, notice shall be given by personal delivery, certified mail return receipt requested or by any major courier with signature required upon delivery. If notice is sent to the Company, the notice shall be sent to: GKN Freight Services, Inc., 1202 Industrial Drive, Van Wert, Ohio 45891. If notice is sent to the Customer, it shall be sent to the address written on Customer's Purchase Order or contract unless Customer sends notice to Company advising of a different address.

26. **Acceptance.** Customer shall have accepted these terms and conditions when it does any of the following, (1) executes and returns the acknowledgment copy of a Purchase Order or contract, or (2) when it delivers to Company any of the items required under these terms and conditions, or (3) accepts any services here under, whichever shall first occur.