

Givens Inc. Transloading Terms and Conditions

1. **APPLICABILITY.** These Transloading Terms and Conditions ("Terms and Conditions") govern handling related to the consolidation or deconsolidation, or the arrangement of such handling, with respect to goods remaining in-transit at the time such handling is performed ("Services") by Givens Inc. ("GIVENS"). Services will be rendered at facilities owned or operated by GIVENS or its contractors (each a "Facility"). Unless expressly superseded by a written contract signed by an officer GIVENS and the shipper, consignor, consignee, or any other entity claiming an interest in goods for which GIVENS arranges transportation ("CUSTOMER") these Terms and Conditions shall govern the Services. Any terms and conditions in any document exchanged between the parties other than these Terms and Conditions, as revised from time to time, shall not apply to any Services and shall not be binding on or applicable to GIVENS. GIVENS and CUSTOMER represent and warrant that their relationship is that of independent contractors and that the respective employees are under their respective exclusive management and control. Nothing in these Terms and Conditions shall be deemed to require GIVENS to provide Services upon request of CUSTOMER and GIVENS reserves the right to accept or decline, in its sole discretion, any particular request for Services. GIVENS and CUSTOMER represent and warrant that their relationship is that of independent contractors and that the respective employees are under their respective exclusive management and control. Nothing in these Terms and Conditions shall be deemed to require GIVENS to provide Services upon request of CUSTOMER and GIVENS reserves the right to accept or decline, in its sole discretion, any particular request for Services.

2. **OBLIGATIONS OF CUSTOMER.** CUSTOMER warrants and represents that it is lawfully possessed of the goods and is authorized to arrange for GIVENS to provide the Services. CUSTOMER will advise GIVENS of its service needs (including scheduling of inbound and outbound conveyances) in sufficient time so as to allow GIVENS to make necessary preparations. CUSTOMER will provide GIVENS with information that is accurate, complete and sufficient to allow GIVENS to comply with its obligations, CUSTOMER's instructions and all laws and regulations concerning the handling and transportation of goods. All goods tendered for transloading will be delivered at the Facility in a segregated manner, properly marked and packaged for handling, and adequately protected or covered for further transport via the means selected by CUSTOMER. CUSTOMER warrants that none of the goods are classified as hazardous or as waste, and that none of the goods otherwise require specialized handling including, but not limited to, protection from temperature variance or humidity.

3. **TRANSPORTATION.** Unless otherwise agreed by the parties, CUSTOMER will be solely responsible for arranging transportation to and from the facility and shall be solely responsible for all charges related thereto. CUSTOMER agrees not to ship goods to GIVENS as a named consignee. If, in violation of this Agreement, goods are shipped to GIVENS as named consignee, CUSTOMER agrees to notify the delivering carrier in writing prior to such shipment, with a copy of such notice to the GIVENS, that GIVENS named as consignee is a service provider and has no beneficial title or interest in such property. GIVENS will not be liable for demurrage, detention, or delays in unloading or unloading or for any charges associated therewith.

4. **PAYMENT AND CHARGES.** GIVENS will charge and CUSTOMER will pay the rates and charges set forth in a quote provided by GIVENS or as otherwise agreed for services provided by GIVENS without offset. CUSTOMER agrees to pay GIVENS without offset and within fifteen (15) days of receiving the invoice, with interest accruing monthly at a rate of one percent (1%) per month on any unpaid balance. CUSTOMER shall also be liable for any expenses, including attorney fees, GIVENS incurs in collecting its rates and charges. CUSTOMER acknowledges and agrees that GIVENS' charges may be invoiced by an affiliate of GIVENS, acting as agent of GIVENS, which such fact will not impact the applicability of these Terms and Conditions to the Services. TO THE EXTENT PERMITTED BY APPLICABLE LAW, GIVENS WILL HAVE A GENERAL LIEN ON ANY GOODS THAT HAVE COME OR WILL COME INTO ITS POSSESSION, OR THE POSSESSION OF ANY THIRD PARTY ENGAGED BY GIVENS TO PROVIDE SERVICES, AND ON ANY PROCEEDS THEREOF, FOR ANY AND ALL CHARGES DUE AND OWING TO GIVENS REGARDLESS OF WHETHER THOSE CHARGES RELATED TO THE GOODS OR PROCEEDS AGAINST WHICH THE GENERAL LIEN IS ENFORCED.

5. **HANDLING.** Rates and charges include unloading of palletized goods from inbound conveyances at the Facility docks, sequencing palletized goods for outbound transloading, and loading of palletized goods onto outbound trailers from Facility docks. CUSTOMER shall be solely responsible for communicating to GIVENS, prior to the arrival of goods, the outbound order sequencing so as to allow GIVENS to properly sequence outbound pallets of goods. Additional handling will be subject to additional charges. If dunnage, bracing, packing material or other special supplies are not supplied by CUSTOMER, such materials will be provided on a cost-plus basis at CUSTOMER's expense and associated invoices will be paid in the same manner as any other GIVENS invoice. GIVENS will assess, and CUSTOMER will pay, additional storage charges on any goods which remain at a Facility for more than

5 days from the date of receipt. At any time, GIVENS may order removal of the goods and if CUSTOMER fails to arrange for such removal, GIVENS may do so at CUSTOMER's expense, which charges shall be subject to GIVENS's lien.

6. **LIABILITY.** GIVENS will not be liable for any loss or injury to goods however caused except to the extent such loss or injury results from GIVENS's negligence or intentional misconduct. GIVENS will have no liability for loss or damage to goods caused by any third party, including any carrier. If it is unclear whether loss or damage occurred at the Facility, or at some other point in the supply chain, it will be presumed that such loss or damage occurred elsewhere unless CUSTOMER can prove by clear and convincing evidence that GIVENS caused such damage. GIVENS is not responsible for mysterious or unexplained disappearance of goods unless CUSTOMER establishes that such loss occurred due to GIVENS's failure to exercise reasonable care with respect to the goods. CUSTOMER acknowledges and agrees that GIVENS is not responsible for any loss caused by improper loading unless GIVENS loads a trailer when no representative of the outbound carrier is available to monitor loading, GIVENS seals the trailer prior to a representative of the outbound carrier having an opportunity to inspect the load, and the outbound carrier designates on the relevant paperwork that the shipment was loaded as "shipper load and count" or some similar designation. CUSTOMER acknowledges that under the standard set forth above, GIVENS will not be responsible for loss in weight nor for loss or damage to goods resulting from improper packing, insufficient coeprage, boxing or crating, breakage, wear and tear or inherent characteristics or qualities of the goods. Nor under such standard shall GIVENS be responsible or liable for loss of goods by leakage or through failure to detect leakage or for latent or concealed damage. All goods are tendered at the owner's risk of loss, damage, destruction or delay caused by acts of God, civil or military authority, enemies of the government, insurrections, riots, strikes, civil commotions, acts of terrorism, seizure under legal process, labor disputes, lockouts, or intentional, criminal or malicious acts of third persons or any other organized opposition, by water sprinkler and other pipeline or plumbing leakage or malfunction, fire, flood, windstorm, cyclone, moths, vermin, insect, corruption, earthquakes, tidal waves, tornadoes, or depredation or any cause beyond the reasonable control of GIVENS.

7. **LIMITATION OF LIABILITY.** In the case of goods lost, damaged or destroyed for which GIVENS is liable hereunder, in no instance will GIVENS's liability exceed \$0.50 cents per pound per involved package unless a greater value has been stated by CUSTOMER and accepted in writing by GIVENS. Notwithstanding the foregoing, liability for loss or damage while transloading on port property is limited to \$0.50 cents per pound per involved package, not to exceed a maximum liability of \$500 per bill of lading. If GIVENS pays any claim, GIVENS or its insurer shall take title to the goods and/or obtain credit for the salvage value as mutually agreed. The foregoing notwithstanding, if GIVENS negligently misships goods, GIVENS will pay the reasonable transportation charges incurred to return such goods to GIVENS's facility. If the consignee refuses, GIVENS maximum liability for the lost or damaged goods shall be capped at the amount set forth above. NOTWITHSTANDING ANY OTHER LIMITATION OF LIABILITY OR PROVISION GOVERNING CALCULATION OF DAMAGES UNDER THESE TERMS AND CONDITIONS, IN NO EVENT WILL CUSTOMER'S RECOVERY AGAINST GIVENS FOR ANY SINGLE OCCURRENCE, NO MATTER THE CAUSE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO GIVENS DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING SUCH LOSS.

8. **LIABILITIES DISCLAIMED.** UNDER NO CIRCUMSTANCES WILL GIVENS BE LIABLE TO CUSTOMER, ANY PERSON CLAIMING BY OR THROUGH CUSTOMER, ANY SUCCESSOR IN INTEREST TO CUSTOMER, OR ANY OTHER PERSON FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THESE TERMS AND CONDITIONS OR OPERATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR DAMAGES ALLEGED TO ARISE FROM BUSINESS INTERRUPTION, FOR ANY REASON WHATSOEVER WHETHER OR NOT THE LIKELIHOOD OR CERTAINTY OF SUCH DAMAGES WAS KNOWN OR SHOULD HAVE BEEN KNOWN TO GIVENS.

9. **INDEMNIFICATION.** CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS GIVENS FROM AND AGAINST, AND SHALL PAY AND REIMBURSE GIVENS FOR, ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY CUSTOMER OF THESE TERMS AND CONDITIONS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULE OR REGULATION; OR (iv) CUSTOMER'S FAILURE TO PROVIDE, OR GIVENS' COMPLIANCE WITH OR RELIANCE ON, INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER. THE FOREGOING NOTWITHSTANDING, CUSTOMER'S OBLIGATION TO HOLD HARMLESS, DEFEND, INDEMNIFY, PAY AND REIMBURSE SHALL NOT

APPLY TO THE EXTENT ANY CLAIM IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF GIVENS.

10. **FORCE MAJEURE**. In no event will GIVENS be liable for delay or other default in the performance or discharge of any duty or obligation under these Terms and Conditions when caused by circumstances beyond the reasonable control of GIVENS.

11. **GOVERNING LAW AND DISPUTE RESOLUTION**. These Terms and Conditions shall be deemed to have been drawn in accordance with the statutes and laws of the state of Virginia and in the event of any disagreement or dispute regarding services subject to these Terms and Conditions, to the extent not otherwise governed by federal law, the laws of Virginia shall apply and suit must be brought in Virginia as each party specifically submits to the exclusive personal jurisdiction of such courts for disputes involving Services rendered pursuant to these Terms and Conditions.