

OVERLAND DISTRIBUTION INC. TERMS & CONDITIONS

The term "Overland" referenced in these Terms and Conditions refers to Overland Distribution Inc. Overland Distribution Inc. is a licensed freight forwarder, and Overland Distribution Inc. also provides warehousing services. When Overland Distribution Inc. stores goods at its facility, issues a warehouse receipt, or otherwise acts as a warehouseman, the Warehouse Terms and Conditions herein shall apply, and Overland Distribution Inc.'s liability shall be that of a warehouseman. The Freight Forwarder Terms and Conditions herein shall apply when Overland Distribution Inc. provides other freight forwarding services under its freight forwarding authority, MC-12506. Overland Express Company performs services by transporting cargo on equipment owned or leased to Overland Express Company under MC-148105; when Overland Express Company performs services, Overland Express Company's Terms & Conditions shall apply. When cargo is brokered by Overland Logistics LLC under MC-866753, Overland Logistics LLC's Terms and Conditions shall apply.

Overland Distribution, Inc., Overland Express Company, and Overland Logistics, LLC, are Texas business organizations, each of which (i) is solely responsible for its own debts and obligations, (ii) is not responsible for the debts and obligations of any other entity unless expressly agreed in writing, and (iii) is separate and distinct from, and not to be confused with, any other entity bearing a similar name or logo. Customer agrees that Overland shall not be liable, and Customer will not attempt to hold Overland liable, for the conduct of Overland's affiliates or third parties. Similarly, Overland's affiliates shall not be liable for Overland's conduct, and Customer agrees that Overland and its affiliates are not engaged in a partnership, joint venture, joint enterprise, or similar venture.

OVERLAND DISTRIBUTION INC. WAREHOUSE TERMS & CONDITIONS

1. Definitions:

- 1.1. "Customer" shall refer to the person or entity tendering the goods, the person or entity holding title to the goods, and the owner of the goods and their employees, contractors, invitees, and agents.
- 1.2. "Warehouse" shall refer to any warehouse or storage facility owned, leased by or operated by Overland where Customer's goods are stored pursuant to an agreement between Customer and Overland.
- 1.3. "Terms and Conditions" shall refer to this agreement.

2. Application: These Terms and Conditions shall apply to all of Customer's goods tendered to Overland and stored at Overland's Warehouses. If Customer is not the owner of the goods or does not have title to the goods, Customer agrees that it acts as the owner's and title holder's agent and also agrees to these Terms and Conditions on behalf of the owner and title holder of the goods and other interested parties.

3. Shipment of Goods to Warehouse.

3.1. Customer shall identify Customer as the named consignee on all goods shipped to the Warehouse. Customer shall not ship goods to or from the Warehouse naming Overland as the consignee on a bill of lading or other shipment document. Overland has no beneficial title or interest in Customer's goods, and Customer agrees to notify motor carriers that Overland is providing warehousing services and to notify motor carriers of the actual consignee.

3.2. If goods which name Overland as consignee are inadvertently shipped and accepted, Customer shall immediately notify Overland and the motor carrier in writing that Overland is the "in care of party" only and has no beneficial title or interest in Customer's goods.

3.3. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OVERLAND; ITS AFFILIATES ("AFFILIATES" AND "AFFILIATE" IS DEFINED AS ANOTHER ORGANIZATION OR PARTNERSHIP WITH COMMON OWNERSHIP, MANAGEMENT, FACILITIES, EMPLOYEES, EQUIPMENT OR INTERESTS) ITS OTHER CUSTOMERS; AND OVERLAND'S, ITS AFFILIATES', AND ITS OTHER CUSTOMERS' TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, (OVERLAND GROUP) OF THE ABOVE-MENTIONED ENTITIES FROM ANY AND ALL CLAIMS FOR UNPAID TRANSPORTATION CHARGES RELATED TO CUSTOMER'S GOODS, OF ANY KIND WHATSOEVER AND TO WHOMEVER OWED, INCLUDING DETENTION, DEMURRAGE, AND ALL OTHER CHARGES, WITHOUT REGARD TO WHETHER OVERLAND WAS NAMED CONSIGNEE OR WHETHER OVERLAND KNEW OR SHOULD HAVE KNOWN IT WAS THE NAMED CONSIGNEE ON A BILL OF LADING OR OTHER SHIPPING DOCUMENT.

4. Tender of Goods for Storage.

- 4.1. Customer shall deliver all goods for storage at the Warehouse properly marked and packaged for handling.
- 4.2. Customer shall furnish at or prior to such delivery, a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired. Otherwise the goods may be stored in bulk or assorted lots in general storage at the discretion of Overland and charges for such storage will be made at the applicable storage rate.
- 4.3. Receipt and delivery of all or any unit of a lot shall be made without subsequent sorting except as agreed and subject to a charge.
- 4.4. Overland shall store and deliver goods only in the packages in which they are originally received unless otherwise agreed to in writing.

4.5. Overland shall not be responsible for segregating goods by production code date unless specifically agreed to in writing.

4.6. Copper, explosives, goods requiring "protective security service or armed guard surveillance," human remains, precious metals, currency, object d'art, collection, antiques or precious stones, jewelry, manufactured tobacco products, ammunition, or any items of unusual value shall not be stored on Overland's premises without Overland's express written consent.

5. Storage Charges.

5.1. Overland shall invoice Customer according to the Rate Confirmation or as otherwise quoted by Overland or agreed in writing. Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where Overland has billed the rate and Customer has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference.

5.2. Customer shall pay Overland storage charges and the charges for any additional services within 30 days of the invoice date without deduction or setoff.

5.3. Dunnage, bracing, packing materials or other special supplies may be provided by Overland for Customer at a charge in addition to Overland's cost.

5.4. Storage charges include the ordinary labor involved in receiving goods at the door of the warehouse. Any additional labor requested will be charged by Overland to Customer.

5.5. Storage charges do not include bonded storage. An additional charge may apply if Overland agrees to store any goods in bond. If a warehouse receipt covers goods in U.S. Customs bond, such receipt shall be void upon the termination of the storage period fixed by law.

5.6. Customer may not offset claims for loss or damage to goods against amount owed to Overland unless otherwise agreed to in writing.

5.7. Overland reserves the right to adjust rates for warehousing, storage and affiliated services in its discretion, with 30 days' advance notice.

5.8. Should Customer stop doing business or reduce its business with Overland below levels agreed upon between the parties, Customer shall be liable for all unrecoverable contractually obligated charges for the agreed upon term.

5.9. Overland may submit invoices through its affiliate and such administrative functions shall not alter the services outlined in these Terms and Conditions, make Overland liable for its affiliates' conduct, or establish any kind of joint liability between Overland and its Affiliates.

6. Transfer. Instructions to transfer goods on the books of Overland are not effective until delivered to and received by Overland, and all charges up to the time transfer is made are chargeable to the Customer of record. If a transfer involves re-handling the goods, such re-handling will be subject to charges at Overland's standard rates.

7. Termination of Storage. Overland may at any time require the removal of any goods by the end of the next succeeding calendar month by providing written notice to Customer. If goods are not removed before the end of the next succeeding calendar month, Overland may dispose of the goods in accordance with applicable law.

8. Handling of Goods.

8.1. Overland shall provide the ordinary labor involved in receiving goods at the door of the warehouse, placing goods in storage, and releasing the goods at the door of the warehouse. Customer shall pay Overland for services requested other than ordinary handling and storage.

8.2. Customer shall pay Overland for Overland's additional expenses in receiving and returning damaged goods and loading or unloading goods at a place other than the warehouse door.

8.3. Overland shall not be required to store goods in a humidity-controlled or temperature-controlled environment.

8.4. Customer may be subject to an escort fee if Customer's access to Overland's premises requires that Overland personnel escort Customer.

8.5. CUSTOMER SHALL NOT USE OVERLAND'S EQUIPMENT (INCLUDING, BUT NOT LIMITED TO, LOADING, UNLOADING, HANDLING, CRATING, PACKAGING, AND CONSTRUCTION EQUIPMENT) WITHOUT WRITTEN PERMISSION FROM OVERLAND. IF OVERLAND ALLOWS CUSTOMER TO USE ANY OF OVERLAND GROUP'S EQUIPMENT FOR ANY REASON, CUSTOMER ACKNOWLEDGES THAT CUSTOMER ACCEPTS ALL RISK AND RESPONSIBILITY OF DAMAGE TO PROPERTY AND INJURY AND/OR DEATH TO ANY PERSON(S) ARISING FROM SUCH USE. CUSTOMER SHALL ENSURE THAT ANY PERSON USING OVERLAND GROUP'S EQUIPMENT SHALL BE QUALIFIED AND CERTIFIED IN ACCORDANCE WITH OSHA REQUIREMENTS AND ALL APPLICABLE STATUTES AND REGULATIONS TO OPERATE THE EQUIPMENT IN THE CONDITIONS PRESENTED. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OVERLAND GROUP FROM ANY CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE ARISING FROM CUSTOMER'S USE OF OVERLAND'S EQUIPMENT, EVEN IF SUCH CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSES (INCLUDING WITHOUT LIMITATION, ALL COSTS, EXPENSES AND ATTORNEYS' FEES), IS CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT IN SAID EQUIPMENT.

8.6. Overland Group shall not be liable for damages to Customer's and Customer's contractors' loading, unloading, packaging and related equipment and materials or damages to person or property arising from use of such equipment and materials, except to the extent of Overland's proportionate fault. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OVERLAND GROUP FROM ANY CLAIM ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE ARISING FROM SUCH EQUIPMENT OR MATERIALS OR THE USE THEREOF, EXCEPT TO THE EXTENT OF OVERLAND GROUP'S PROPORTIONATE FAULT.**

9. Release.

9.1. No goods shall be released or transferred except upon receipt by Overland of complete written instructions. However, when no negotiable receipt is outstanding, goods may be released upon instruction by telephone, but Overland shall not be responsible for loss or error occasioned thereby.

9.2. Customer shall afford Overland a reasonable time to release goods and shall afford Overland at least 10 business days after receipt of a delivery order to locate any misplaced goods. If Overland has exercised reasonable care and is unable, due to causes beyond its control, to release goods before expiration of the current storage period, the goods will be subject to storage charges for each succeeding storage period. If Overland is unable to release goods because of acts of God, flood, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, other force majeure causes, or any reason beyond Overland's control, or because of loss or destruction of goods for which Overland is not liable, or because of any other excuse provided by law, Overland shall not be liable for failure to release the goods and the goods remaining in storage will continue to be subject to regular storage charges.

9.3. All instructions and requests for release or transfer of title are received subject to satisfaction of all charges, liens and security interests of Overland with respect to the goods whether for accrued charges, advances, or otherwise.

9.4. Overland may require, as a condition precedent to release, a statement from Customer holding Overland harmless from claims of others asserting a superior right to Customer to possession of the goods. Nothing herein shall prevent Overland from exercising any other remedy available to it under the law to resolve conflicting claims to possession of the goods. All costs, including attorney's fees, incurred by Overland relating to Overland's activities referred to in this subsection may be charged to Customer and shall be subject to Overland's lien described herein.

10. Overland Group's Limited Liability.

10.1. OVERLAND GROUP SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS STORED HOWEVER CAUSED UNLESS SUCH LOSS OR INJURY RESULTED FROM THE FAILURE BY OVERLAND GROUP TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL WAREHOUSE WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND OVERLAND IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE. OVERLAND GROUP AND CUSTOMER AGREE THAT OVERLAND GROUP'S DUTY OF CARE DOES NOT EXTEND TO PROVIDING A SPRINKLER SYSTEM AT THE WAREHOUSE OR ANY PORTION THEREOF.

10.2. OVERLAND GROUP SHALL NOT BE LIABLE IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES IN CONNECTION WITH ITS PERFORMANCE UNDER THESE TERMS, INCLUDING WITHOUT LIMITATION, LOST PROFITS AND LOST OPPORTUNITY, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND EVEN IF OVERLAND GROUP WAS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSES IS CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF OVERLAND GROUP (OR ANY SUCH INDEMNITEE).

10.3. IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH OVERLAND IS LEGALLY LIABLE, CUSTOMER AGREES THAT OVERLAND'S MAXIMUM LIABILITY SHALL NOT EXCEED \$100,000.00 CUSTOMER MAY, HOWEVER, REQUEST AN INCREASE TO THE MAXIMUM LIABILITY OF OVERLAND BY: A.) SUBMITTING A WRITTEN REQUEST FOR A HIGHER MAXIMUM LIABILITY BEFORE THE GOODS ARE TENDERED TO OVERLAND, B.) PAYING AN ADDITIONAL CHARGE BASED ON THE INCREASED MAXIMUM LIABILITY, AND C.) OBTAINING WRITTEN CONFIRMATION OF THE HIGHER MAXIMUM LIABILITY FROM AN OFFICER OF OVERLAND. THIS MAXIMUM LIABILITY APPLIES TO THE AGGREGATE OF ALL OF CUSTOMER'S GOODS STORED BY OVERLAND AT ANY GIVEN TIME. UNDER NO CIRCUMSTANCES SHALL OVERLAND'S LIABILITY FOR LOSS OR DAMAGE TO GOODS EXCEED THE GREATER OF 1) THE AMOUNT AVAILABLE TO COVER THE LOSS OR DAMAGE UNDER OVERLAND'S INSURANCE, WHICH IS SUBJECT TO THE POLICY CONDITIONS, THEN EXISTING COVERAGE LIMITS, AND AMOUNT REMAINING UNDER THE POLICY FOR COVERAGE, OR 2) \$500 FOR ALL OF CUSTOMER'S GOODS IN THE POSSESSION OF OVERLAND; UNLESS CUSTOMER 1) SUBMITS A WRITTEN REQUEST FOR OVERLAND TO BE LIABLE IN EXCESS OF OVERLAND'S INSURANCE COVERAGE, 2) PAYS AN ADDITIONAL CHARGE, AS APPLICABLE, BASED ON THE INCREASED LIABILITY, AND 3) RECEIVES WRITTEN CONFIRMATION FROM AN OFFICER OF OVERLAND OF ACCEPTANCE OF LIABILITY ABOVE INSURANCE COVERAGE. THIS LIMITATION OF LIABILITY SHALL NOT ALTER OR AFFECT OVERLAND'S RELEASE VALUE AND THE PROCEDURES CONTAINED HEREIN TO INCREASE OVERLAND'S RELEASE VALUE.

10.4. OVERLAND GROUP'S MAXIMUM LIABILITY REFERRED TO ABOVE SHALL BE CUSTOMER'S EXCLUSIVE REMEDY AGAINST OVERLAND GROUP OR ANY OF ITS AFFILIATES, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES AND INSURERS FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS, DAMAGE AND/OR DESTRUCTION OF GOODS AND SHALL APPLY TO ALL CLAIMS INCLUDING INVENTORY SHORTAGE AND MYSTERIOUS DISAPPEARANCE CLAIMS. CUSTOMER WAIVES ANY RIGHTS TO RELY UPON ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW.

10.5. WHERE LOSS OR INJURY OCCURS TO STORED GOODS, FOR WHICH OVERLAND GROUP IS NOT LIABLE, CUSTOMER SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR INJURY TO THE GOODS.

11. Indemnification by Customer. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OVERLAND GROUP, OVERLAND'S AFFILIATES, LIENHOLDER, AND THEIR RESPECTIVE AGENTS FROM: ANY INJURY TO OR DEATH OF ANY PERSON; ANY DAMAGE TO OR LOSS OF PROPERTY; ANY ENVIRONMENTAL DAMAGE INCLUDING SPILLS AND POLLUTION; AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS ARISING FROM CUSTOMER'S ACTS OR OMISSIONS RELATED TO THESE TERMS, EXCEPT TO THE EXTENT OF OVERLAND GROUP'S PROPORTIONATE FAULT. THE INDEMNITY CONTAINED IN THIS PARAGRAPH: (A) IS INDEPENDENT OF CUSTOMER'S INSURANCE OBLIGATIONS UNDER THESE TERMS AND CONDITIONS; (B) WILL SURVIVE THE TERMINATION OF THESE TERMS & CONDITIONS, AND (C) SHALL APPLY IN INSTANCES WHERE OVERLAND GROUP, CUSTOMER, AND/OR THIRD PARTIES ARE AT FAULT (EXCEPT TO THE EXTENT OF OVERLAND GROUP'S PROPORTIONATE FAULT).

12. Insurance.

12.1. Customer shall maintain the following insurance policies, at Customer's sole cost and expense, with at least the coverages described below:

12.1.1. Comprehensive General Liability Insurance, including contractual liability coverage, and bodily injury and property damage coverage, with limits of no less than \$2,000,000.00 per occurrence, or the amount required by law, whichever is higher;

12.1.2. Worker's Compensation Insurance or Occupational Disease Insurance, and Employer's Liability Insurance with limits of no less than \$1,000,000.00, or the amount required by law, whichever is higher, for accidents or occupational disease covering all work related to Customer's business; and

12.1.3. Commercial Auto Liability Insurance, with a combined single limit of no less than \$1,000,000.00 to injuries to any person or for damages to property in any one occurrence.

12.2. Customer shall furnish to Overland Certificates of Insurance, signed by its insurance carriers, evidencing the insurance required by these Terms & Conditions, and endorsements to confirm the additional insured and waiver of subrogation terms contained herein. Each certificate must provide:

12.2.1. Inclusion of Overland and its Affiliates, as additional insured in Customer's General Liability, and all other applicable third party liability insurance;

12.2.2. Waiver of subrogation in favor of Overland Group in Customer's Workers' Compensation, Employers' Liability, General Liability;

12.2.3. The policies and insurance coverage referenced above shall be primary and non-contributory to any other coverage in favor of Overland;

12.2.4. The policies and insurance certificates shall provide coverage in those territories as may be applicable to the location where the services will be performed; and

12.3. 30 days' prior written notice will be given to Overland in the event of cancellation, suspension, or material change in the policy to which it relates.

12.4. The insurance requirements contained herein shall in no way limit Customer's liability or responsibility under these Terms and Conditions nor shall they be construed to be the ultimate types and amounts of insurance Customer should maintain to adequately insure itself.

13. Overland's Lien and Security Interest. To secure Customer's performance under these Terms & Conditions, Customer grants to Overland a lien and security interest against all of Customer's non-exempt personal property that is in or on the Warehouse. This is a security agreement for the purposes of the Uniform Commercial Code and Overland may file a financing statement to perfect Overland's security interest under the Uniform Commercial Code. In addition to the charges described herein, Customer shall be liable for any and all expenses Overland incurs to sell or dispose of the goods, including, but not limited to, attorney fees, transportation costs, administrative costs, and expenses necessary for the preservation of the goods. Overland shall have the right to pay another service providers, whether hired by Overland or not, for services provided with relation to transportation, handling, warehousing, or related services, including instances where Overland provides such services, Overland hires a third party to provide the services, or otherwise. Customer consents to such costs being included in Overland's lien and sale of the goods to satisfy such costs.

14. Overland's Access Requirements. Customer shall comply with and cause each of Customer's employees, contractors, and invitees to comply with and execute the Overland Access Requirements and furnish the executed the Overland Access Requirements to Overland before Customer's employees, contractors, or invitees access the premises. Customer understands and agrees that no employee, contractor, or invitee of Customer will be allowed to access the property until and unless the Overland Access Requirements have been executed and it is a condition precedent to the access of the premises that Customer's employees, contractors, and invitees execute the Overland Access Requirements. **CUSTOMER'S FAILURE TO REQUIRE AND CAUSE EACH OF CUSTOMER'S EMPLOYEES, CONTRACTORS, OR INVITEES THAT ENTER OVERLAND GROUP'S PROPERTY TO EXECUTE THE OVERLAND ACCESS REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER BY OVERLAND GROUP OF THE RIGHTS AND REMEDIES CONTAINED IN THESE TERMS AND CONDITIONS AND THE OVERLAND ACCESS REQUIREMENTS. CUSTOMER SHALL DEFEND AND INDEMNIFY OVERLAND GROUP FOR ANY CLAIMS OR DAMAGES INCURRED BY OVERLAND GROUP THAT OVERLAND GROUP WOULD NOT HAVE OTHERWISE INCURRED HAD CUSTOMER FULFILLED THE TERMS IN THIS SECTION.** The indemnity obligations under these Terms and Conditions are effective to the maximum extent permitted by law. If a law is applied in a jurisdiction which prohibits or limits Customer's ability to indemnify Overland Group, then Customer's liability and indemnification obligation shall exist to the fullest extent allowed by the law of the relevant jurisdiction.

15. Notice of Claims.

15.1. It is a condition precedent to recovery on any claim against Overland that Customer shall present all claims for loss or damage to goods to Overland in writing within 91 days after delivery or the expected delivery date of the goods underlying the claims. Customer agrees that any claims for which notice is not provided to Overland within 91 days are waived.

15.2. Customer may only maintain an action by Customer or others against Overland for loss or damage to goods if said action is commenced within 2 years after delivery or the expected delivery date of the goods underlying the action.

15.3. As a condition precedent to making any claim and/or filing any suit, Customer shall provide Overland a reasonable opportunity to inspect the goods which form the basis of Customer's claim and/or suit.

16. Customer's Representations.

16.1. Customer represents and warrants that Customer has lawful possession of the goods and has the right and authority to tender those goods to Overland. Customer agrees to indemnify and hold harmless Overland Group from all loss, cost and expense (including reasonable attorneys' fees) which Overland Group pays or incurs as a result of any dispute or litigation, whether instituted by Overland Group or others, respecting Customer's right, title or interest in the goods. Such amounts shall be charges in relation to the goods and subject to Overland's lien.

16.2. Customer represents and warrants that the information concerning the goods it provides Overland will be accurate, complete and sufficient to comply with all laws and regulations concerning the storage, handling, and transporting of the goods, and Customer shall indemnify, defend, and hold Overland Group harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Overland Group pays or incurs as a result of Customer's failure to comply with this provision.

17. Warehouse Receipt. Any warehouse receipt issued by Overland in connection with these Terms and Conditions will be non-negotiable. A warehouse receipt, if issued by Overland, may be issued in either physical or electronic form at Overland's option.

18. Abandoned Property. Overland may retain, destroy, or dispose of any property left on the Premises after termination of these Terms and Conditions by providing 60 days' written notice to Customer by certified mail at Customer's last known address.

19. Force Majeure. Overland shall not be liable for failure to perform any of its obligations during any time in which such performance is prevented by fire, flood, hurricane, storm, weather-related incidents, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of Overland.

20. Governing Law; Venue. These Terms and Conditions shall be subject to and governed by the laws of the State of Texas, without regard to choice-of-law principles and irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The parties agree that any and all disputes under these Terms and Conditions shall be filed in the appropriate county, state and federal courts located within Montgomery County, Texas or Harris County, Texas.

21. Non-Waiver. The failure or refusal of either party to insist upon the strict performance of any provision of these Terms and Conditions, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a customary practice contrary to such provision or right.

22. Severability. If any provision in these Terms and Conditions is held to be unenforceable the parties intend and request that the provisions be reformed and replaced with a provision as close the parties' original intent as permitted by law, and that as much of these Terms and Conditions remain in effect as permitted by law.

FREIGHT FORWARDER TERMS & CONDITIONS

1. Definitions:

1.1. **“Customer”** shall refer to the person or entity desiring to have the goods transported, sending the goods, or who is otherwise liable as a shipper under law. This definition includes the exporter, importer, sender, receiver, owner, consignor, consignee, transferor, transferee, forwarder, broker and/or any other agents or representatives of Customer (not to include Overland).

1.2. **“Freight Forwarder Terms and Conditions”** shall refer to the terms and conditions in this Freight Forwarder Terms & Conditions Section.

2. Application. These Terms and Conditions are applicable when Overland Distribution Inc. provides freight forwarding services (other than warehousing, which is subject to the Warehouse Terms & Conditions herein) under its freight forwarding authority, MC-12506. These Terms and Conditions supersede all previous conditions of transportation and other prior statements concerning the rates and conditions of Overland's services. These Terms and Conditions control in the event of any discrepancy or conflict between these Terms and Conditions and those of any Customer, unless changes have been made by obtaining prior written approval by an Officer of Overland. Overland reserves the right from time to time to modify, amend or supplement these Terms and Conditions without notice. Copies of Overland's most recent terms and conditions are available upon request. Overland's terms and conditions in effect on the date of shipment shall apply. In the event that Overland and the Customer have entered into a signed, written contract containing terms and conditions different than those set forth in these Terms and Conditions, the signed, written contract will control to the extent that such terms conflict with these Terms and Conditions. These Terms and Conditions apply to Overland, not the carrier actually providing the transportation services. In the event one of the Overland's affiliates actually transports a load, such transportation shall be subject to the affiliate's terms and conditions, which are available upon request.

3. Service. Overland will provide freight forwarder services pursuant to these Terms and Conditions. Overland reserves the right, in its sole discretion, to refuse any shipment at any time. The relationship between Overland and Customer is that of an independent contractor with another, and nothing herein is intended to create a joint venture, partnership, agency, or any employment relationship. Overland reserves the right to refer shipments to, and Customer approves such use of, Overland's affiliates and third parties to provide transportation services for any shipment.

4. Rates and Fees. Quotes are based on information provided by the Customer. Unless indicated, the price excludes charges for detention time, per diem and additional stops. Customer will be liable for all additional charges incurred relating to the transportation and handling of Customer's freight. The quoted rate depends on the weight, dimension and released value of the property described. Any changes to the actual released value, dimension, description or weight of the load may result in revisions to the quoted price.

5. Limitation of Liability per Shipment. Overland's rates are based on a limited liability for loss or damage to cargo. All shipments are released to a maximum value and maximum liability of \$100,000 per shipment. In no event shall liability be greater than the actual value of lost or damaged articles less salvage. Overland's liability for cargo loss or damage will not exceed \$100,000 per shipment unless Customer requests an increase in legal liability by a.) Submitting a written request for a higher Release Value, b.) Paying an additional charge based on the increased Release Value, and c.) Obtaining written confirmation of the higher Release Value from an Officer of Overland.

UNDER NO CIRCUMSTANCES SHALL OVERLAND'S LIABILITY FOR LOSS OR DAMAGE TO GOODS EXCEED THE GREATER OF 1) THE AMOUNT AVAILABLE TO COVER THE LOSS OR DAMAGE UNDER OVERLAND'S INSURANCE, WHICH IS SUBJECT TO THE POLICY CONDITIONS, THEN EXISTING COVERAGE LIMITS, AND AMOUNT REMAINING UNDER THE POLICY FOR COVERAGE, OR 2) \$500 PER SHIPMENT; UNLESS CUSTOMER 1) SUBMITS A WRITTEN REQUEST FOR OVERLAND TO BE LIABLE IN EXCESS OF OVERLAND'S INSURANCE COVERAGE, 2) PAYS AN ADDITIONAL CHARGE, AS APPLICABLE, BASED ON THE INCREASED LIABILITY, AND 3) RECEIVES WRITTEN CONFIRMATION FROM AN OFFICER OF OVERLAND OF ACCEPTANCE OF LIABILITY ABOVE INSURANCE COVERAGE. THIS LIMITATION OF LIABILITY SHALL NOT ALTER OR AFFECT OVERLAND'S RELEASE VALUE AND THE PROCEDURES CONTAINED HEREIN TO INCREASE OVERLAND'S RELEASE VALUE.

6. Inadvertence Clause. If a Customer declares or fails to declare a value exceeding \$100,000 per truckload, without obtaining written approval from Overland, the shipment will not be accepted, but if the shipment is inadvertently accepted, it will be considered as being released to a maximum value of \$100,000 per shipment, and the shipment will move subject to such limitation of liability.

7. No Liability for Special or Consequential Damages. OVERLAND WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS, OR BUSINESS OPPORTUNITY, ATTORNEY FEES OR PUNITIVE AND EXEMPLARY DAMAGES) INCURRED OR SUFFERED BY THE CUSTOMER AS A RESULT OF SHORTAGE, DAMAGE OR DELAY, EVEN IF OVERLAND IS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. OVERLAND WILL NOT BE LIABLE FOR PENALTIES OR CHARGES CLAIMED BY CUSTOMER, OTHER PARTIES SHIPPER HAS CONTRACTED WITH, OR THIRD PARTIES.

8. Payments. Overland or Overland's affiliate will invoice Customer for Overland's services in accordance with the rates, charges and provisions negotiated and agreed to between Customer and Overland. Customer agrees to pay Overland's invoice within 30 days of the invoice date without deduction or setoff. As a convenience to Customer, invoices may be processed by Overland's affiliated entity and such administrative support in issuing invoices will not alter Overland's role in connection with a particular shipment, as the act of invoicing is a purely administrative function performed independent of arranging for transportation services.

9. Force Majeure. Overland will not be liable for failure to perform any of its obligations under these Terms and Conditions during any time in which such performance is prevented by circumstances beyond Overland's control, including but not limited to an act of God, fire, flood, or other natural disaster, war, embargo, riot, strike, lock-out, labor disturbance, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of Overland.

10. Delayed Delivery. Notwithstanding the fact that an estimated delivery date may be provided or that a specific delivery date and time may be requested, Overland shall not be liable for delayed delivery of goods.

11. Notice of Claims.

11.1. Claims for loss, damage, or delay to cargo shall be filed according to 49 C.F.R. § 370. All cargo claims filed with Overland are waived if not filed in writing within 9 months from the date of delivery or a reasonable time at which delivery should have been accomplished. Written notice of any patent damage to cargo shall be provided to Overland immediately, and not later than 3 days after delivery. Written notice of latent damage shall be provided to Overland upon discovery, and, in any event, not later than 15 days after delivery. All cargo claims against Overland are waived if a civil suit is not filed within 2 years from the date Overland gives a person written notice that Overland has denied any part of the claim specified in the notice. All other claims against Overland must be brought within 2 years from the date the claim accrues. ALL CLAIMS FOR WHICH PROPER AND TIMELY NOTICE IS NOT GIVEN ARE DEEMED AUTOMATICALLY WAIVED.

11.2. Unless the parties agree to voluntary alternative dispute resolution, disputed claims will be subject to 49 U.S.C. §14706 (the Carmack Amendment) subject to any applicable released evaluation. Claimant waives any right to set-off or offset of contested and unliquidated cargo claims against freight charges otherwise due to Overland as a precondition of service. Claimants agree to forfeiture of any contested claim asserted by it as a set-off after notice and demand for freight charges. If payment of claim is made by Overland to Customer, Customer automatically assigns its rights and interest in the claim to Overland and agrees to execute any documents that may be necessary in connection with such assignment.

12. Loss and Damage - Salvage. If goods are rejected, including overage, Overland reserves the right to sell or dispose such goods. In any event, salvage value of the cargo shall be deducted from claims for loss or damage to cargo.

13. Customer Responsibilities. Customer shall be responsible to Overland for timely and accurate delivery instructions and description of the cargo, including any high value, special value, special handling or security requirements, for any shipment.

14. Customer's Duty to Furnish Information.

14.1. On an import, at a reasonable time prior to entry of the goods to U.S. Customs, Customer shall furnish to Overland invoices in proper form together with other documents necessary or useful in the preparation of the U.S. Customs entry, and such further information as may be sufficient to establish the dutiable value, classification and admissibility of the goods pursuant to U.S. law, or regulation or ruling. If Customer fails to timely furnish all of such information or documents, as may be required to complete U.S. Customs entry. Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, Customer shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by Overland as Principal, it being understood that Overland entered into such undertaking at the request and on behalf of Customer and Customer shall INDEMNIFY and DEFEND Overland for the consequences of any breach of the terms of the bond.

14.2. On an export, at a reasonable time prior to the exportation of the shipment, Customer shall furnish to Overland the commercial invoice in proper form and number, a 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.

14.3. On an export or import, Overland will not in any way be liable for increased duty, penalty, fine, or expense unless caused by the gross negligence or other fault of Overland, in which event its liability to Customer will be limited in accordance with, and as further described in Overland's Terms and Conditions in effect on the date of service. Customer shall be bound by and warrant the accuracy of all invoices, documents and information furnished to Overland by Customer or its agent for export, entry or other purposes and shipper agrees to INDEMNIFY and DEFEND Overland against any increased duty, penalty, liquidated damage, fine or expense, including attorney's fees, resulting from any act, inaccuracy or omission or any failure to make timely presentation, even if not due to any negligence or fault of shipper.

14.4. The following notice is required to be given pursuant to 19 CFR part 111.29(b)(1): If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to "U.S. Customs Service" which shall be delivered to Customs by the broker.

All customs penalties, storage charges, or related expenses incurred as a result of an action by a governmental agency, or failure by the Customer, consignee or consignor to provide proper documentation or to obtain a required license or permit will be borne by Customer and Customer shall DEFEND and INDEMNIFY Overland for such penalties, storage charges, and related expenses.

15. No liability for SOLAS. In no event shall Overland be liable for fines, penalties, costs, expenses or other damages resulting from Customer's failure to comply with the terms of SOLAS.

16. No Responsibility for Governmental Requirements. It is Customer's responsibility to know and comply with all the classification, valuation, marking and other Custom's requirements, laws, regulations and ruling enforced by the U.S. and any country having jurisdiction over a shipment, the laws and regulations of any applicable governmental agency, including but not limited to the U.S. Food and Drug Administration, and all other requirements, laws and regulations of any applicable country or governmental agency. Overland will not be responsible for action taken or fines, liquidated damages or penalties assessed by any governmental agency against the shipment because of the failure of Customer to comply with any such laws, rulings, requirements or regulations of any country or governmental agency or with notification issued to Customer by any such agency.

17. Advancing Charges. Overland may advance for collection from Customer, owner, or consignee any lawful charges that may be associated with the transportation of the freight. Charges paid by Overland will be billed to the Customer or consignee at actual cost plus a handling fee.

18. Shipments not Accepted. Customer shall not tender for transportation or handling: explosives, shipments requiring "protective security service or armed guard surveillance," human remains, precious metals, currency, object d'art, collection, antiques or precious stones, jewelry, manufactured tobacco products, ammunition, or any items of unusual value.

19. HAZARDOUS MATERIALS. Customer shall comply with all applicable laws and regulations relating to the transportation and handling of hazardous materials as defined in 49 CFR §172.800, §173, and §397 et seq. to the extent that any shipments constitute hazardous materials. Customer is obligated to inform Overland immediately if any such shipments constitute hazardous materials. Customer agrees to indemnify, defend, and hold harmless Overland and its officers, employees, agents and insurers, against all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out of or related to the release of any hazardous material, including without limitation, fines or expenses related to the removal or treatment of hazardous material or other remedial action pertaining to the hazardous material under federal or state law, if Customer fails to provide advanced notice prior to tendering hazardous material to Overland; the contact, exposure or release resulted from the improper packaging or loading or other acts or omissions of the Customer, its employees or agents; and the contact, exposure or release occurred subsequent to the transport of the hazardous material.

20. Payment of Charges and Collection. Payment will be due within 30 days of invoice. If charges are to be paid by a third party other than the Customer or consignee and such third party fails to pay the charges within 30 days of invoice, the Customer and consignee shall be liable for the charges. Nonrecourse provisions, prepaid designations, collect designations, and related terms on bills of lading shall not be given effect against Overland; Overland shall be entitled, at all times, to seek payment from the Customer, consignee, and their customers. Amounts not received within 30 days of invoice date are subject to 1.5% interest per month or the maximum amount allowed by law, whichever is less, beginning on the 31st day after payment was due. In the event Overland finds it necessary to retain the services of legal counsel to collect any outstanding indebtedness, Customer or Consignee shall pay all attorney fees, collection service fees, court filing fees and related expenses to collect such outstanding debt.

21. Payment without offset. Customer, consignor and/or consignee must pay all freight charges when due without offset for any cause. All claims for loss or damage shall be governed by these terms and conditions and neither Customer, consignor nor consignee shall deprive Overland of proper cargo insurance adjustment by unilateral deduction of claims from payment of freight charges due. In the event that Customer or its agents "short pay" freight charges or deduct charges from freight bills without Overland's authorization to do so in writing, prior to the deduction, Customer and its agents waive their right to any contested cargo claim that is set-off against freight charges.

22. Default. Both Overland and Customer will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes. However, if either party materially fails to perform its duties under these Terms and Conditions, the party claiming default may terminate its duties upon written notice to the other party. Customer shall be responsible to pay Overland for any services performed prior to the termination of duties and for shipments not yet completed and/or not yet invoiced to Customer.

23. Attorney's Fees. In the event any litigation arises from breach of these Terms and Conditions or to collect for the services provided under these Terms and Conditions, Overland will be entitled to recover all reasonable costs incurred including court costs, attorney fees, and all other related expenses incurred in such litigation.

24. Severability. If any provision of these Terms and Conditions is invalid for any reason whatsoever, these Terms and Conditions will be void only as to such provision, and the remaining terms and conditions will remain binding between the parties. Any provision voided will be replaced with provisions which are as close to Overland and Customer's original intent as permitted under applicable law.

25. Non-Waiver. The failure or refusal of either party to insist upon the strict performance of any provision of these Terms and Conditions or to exercise any right in any one or more instances or circumstances will not be construed as a waiver or relinquishment of such provision or right, nor will such failure or refusal be deemed a customary practice contrary to such provision or right.

26. Lien on Goods. Customer hereby grants Overland a lien on the goods tendered to Overland by Customer or consignor (including proceeds of such goods tendered to Overland), which shall survive delivery, to secure payment of all charges owed by Customer to Overland, including, but not limited to, freight, demurrage, detention, damages, loss, charges, expenses, collection costs, and any other sums (including costs, customs fees, attorney fees, and other fees for recovery of the sums) chargeable to Overland or Customer in connection with such goods or Overland's services with respect to such goods, regardless of whether the charges relate to goods that are presently in the possession of Overland or goods that are not presently in the possession of Overland, including both prior and subsequent shipments. Overland shall have the right to sell the goods by public auction or private sale in order to enforce the lien, upon giving the notice required by the Texas UCC then in effect at the time. If on sale of the goods, the proceeds are insufficient to cover the amount owed, Overland shall be entitled to recover the balance from Customer. Customer agrees that any sale by Overland shall be commercially reasonable, and Customer waives all claims that a sale of goods is not commercially reasonable. Customer further agrees to execute any other document necessary for Overland to perfect its lien.

27. Governing Law; Venue. These Terms and Conditions have been drawn in accordance with the statutes and laws of the State of Texas. In the event of any disagreement or litigation, the laws of the State of Texas shall apply, without regard to conflict of laws principles. Customer and Overland agree that any and all disputes under these Terms and Conditions shall be filed in the appropriate state and federal courts located in Montgomery County, Texas or Harris County, Texas irrespective of the fact that one or more of the parties may be or may become a resident of a different state, or that any aspect of the service may have been performed wholly or in part in another county, unless otherwise agreed to by both parties.

28. Waiver. To the extent that terms and conditions herein are inconsistent with the Carmack Amendment, 49 U.S.C. 14706 or Part (b), Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the parties expressly waive such rights and remedies that they may have under such laws.