

BILL OF LADING TERMS AND CONDITIONS
OF V. VAN DYKE, INC.

The provisions herein apply to the extent consistent with all applicable laws, which may include but is not limited to 49 USC, Section 13703, Section 14706, Section 13703 (f)(1)(A), Section 13710, Section 13707 (b)(1), 49 CFR 377.203, 49 U.S.C 14706, 49 C.F.R part 370, and 49 USC §§ 101-80504.

- 1. Services.** V. Van Dyke, Inc. ("Carrier") shall provide to the consignee named on the Bill of Lading (the "Consignee") transportation, delivery, handling, and related services (collectively, the "Services") for the goods described on the Bill of Lading (collectively, the "Goods"). The Services shall be rendered on behalf of the shipper named on the Bill of Lading (the "Shipper"), and subject to the following:
- (a) **Timing.** All transportation contemplated for shall be effectuated by Carrier with reasonable dispatch (as such term is commonly understood in the carrier transportation industry) and as such, shall not be subject to specific delivery dates or times. Carrier does not agree to stipulate to late delivery damages under any circumstances unless specifically stated in the Bill of Lading.
 - (b) **Delivery.** Carrier shall deliver the Goods solely to Consignee and to no other party. The Services shall be rendered pursuant to these terms and conditions, as well as the terms and conditions contained in the Bill of Lading.
 - (c) **Services Not Provided.**
 - (i) Carrier is not responsible for the loading or unloading of equipment or Goods unless specified in the Bill of Lading.
 - (d) **Pricing.** The agreed upon price of the Services provided by Carrier is as listed on the Bill of Lading or upon a mutually agreed upon rate confirmation or purchase order.
 - (i) Commencement of shipment is subject to prior credit approval.
 - (ii) Shipments with a declared value more than \$500,000 are subject to additional charges for cargo liability insurance.
 - (iii) Payments are due within 30 days from receipt of an invoice. In the event of a late payment, a finance charge of 1.5% per month may occur.

2. Carrier Liability.

- (a) **Carrier's Liability.** Carrier's liability for cargo loss, damage and/or delay shall be governed by the Carmack Amendment as currently codified at 49 U.S.C. § 14706 and as amended from time to time.
- (b) **Limitation of Liability.** Carrier's liability for damages in connection with the Services shall be the Shipper's declared value amount, if any; if no declared value amount, Carrier's limitation of liability shall not be greater than the amount of Carrier's cargo insurance applicable on the shipment. Unless otherwise explicitly stated and without prejudice to applicable law, shall have no right to claim damages against Carrier (or any natural or legal person acting on its behalf). Subject to the terms hereof, Carrier shall also not be liable for any loss, damage, or destruction (individually and collectively an "Injury") to the Goods to the extent any such injury arises from:
 - (i) force majeure event, being activities or factors beyond Carrier's reasonable control, including without limitation, war, weather, strikes, riots, floods, lockouts, fires, acts of

God, terrorism, blocked or malfunctioning roadways, acts of a public enemy, legal actions taken by a governmental agency, or an act or default of Shipper or Consignee; or

- (ii) the Goods being held up in transit on the request of Shipper or another authorized third party (unless such hold up is due to Carrier's negligence); or
- (iii) defect of any kind or nature in the Goods, including but not limited to defects caused by insufficient packaging or protection (unless such defect is caused by Carrier's negligence).

(c) Indemnification.

- (A) Shipper and Consignee agree to indemnify and hold Carrier and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners and employees harmless from and against any claim or demand — including but not limited to attorneys fees and costs — made by any third party due to or in relation with any violation of these terms, third-party rights or statutory provisions connected to the use of the Service to the extent allowed by applicable law. This also applies to any claims exercised by third parties (including but not limited to Carrier's clients or customers) against Carrier.
- (B) Notwithstanding anything set forth herein to the contrary, Shipper and/or Consignee shall be liable for, and shall fully indemnify, defend, and hold Carrier harmless from any loss, cost, or damage of any kind or nature caused by Carrier's authorized transportation and/or storage of explosive, dangerous, or otherwise hazardous Goods at Shipper's request.
- (C) Notwithstanding anything set forth herein to the contrary, Carrier shall not be required to transport and/or store Goods of particular high value without Carrier and Shipper first agreeing, in writing, to a specific limitation of liability in connection with such Goods; such agreement may be withheld by either Carrier or Shipper in their sole discretion.

3. Subcontracting. With respect to the Services, Carrier shall be entitled to engage the services of subcontractors at any time pursuant to its usual business practices in connection therewith. Carrier shall be primarily liable to Shipper at all times with respect to the actions and inactions of any such subcontractor acting on Carrier's behalf hereunder.

4. Filing Claims. Any claim made hereunder by a Shipper must be made in writing to Carrier and within nine (9) months of Carrier's delivery of the Goods (or failure to so deliver) or forever be barred. Additionally, any civil action based thereon must be commenced within two (2) years following Carrier's provision of written notice to Shipper that it is disallowing, in whole or in part, Shipper's claim or forever be barred. Offers of compromise by Carrier shall not be deemed a disallowance hereunder unless such offer specifically includes language to the contrary.

- (a) To establish a claim against Carrier, a Shipper must establish:
 - (i) that the goods in question were in suitable condition when provided to Carrier;
 - (ii) that the goods were lost, damaged, or destroyed during delivery while in Carrier's possession; and
 - (iii) objective monetary damages and full documentation in support thereof.

5. Failure to Deliver.

- (a) **Carrier's Failure to Deliver/Liability.** If Carrier fails to deliver the Goods and such failure is due to either: (i) the mistake or misconduct of Shipper and/or Consignee; or (ii) a refusal by Consignee to accept the Goods tendered by Carrier, Carrier's liability with respect to the Goods

shall then become that of a warehouseman. As such, Carrier shall not be liable for any loss, damage, or destruction to the Goods, no matter the cause, other than to the extent that such loss, damage, or destruction resulted from Carrier's failure to exercise the level of care with respect to the Goods that a person acting reasonably would have exercised under the circumstances.

(b) **Carrier Responsibilities Following Non-Delivery.** Carrier shall promptly provide Shipper with written notice of any failure to deliver the Goods as set forth in Section 5(a) Carrier shall also promptly store the Goods in a reasonably safe location of Carrier's choosing (such location which may include, without limitation, a public storage facility). Storage shall be at Shipper's sole cost and expense.

(i) **Carrier's Right to Sell the Goods.** Carrier agrees that, if it does not receive disposition instructions from Shipper within 48 hours following Carrier's first notification, Carrier will issue a second and final notice to Shipper. Such notice shall inform Shipper that it has ten (10) days to provide Carrier with reasonable instructions respecting the disposition of the stored Goods. Failure to provide such instructions shall give rise to Carrier's right to sell the Goods and apply the proceeds to those amounts owed to Carrier by Shipper. Notwithstanding the foregoing, if the Goods are perishable, Carrier shall have the right to sell them without having to provide Shipper with the aforementioned ten (10) days to provide disposition instructions. Regardless of when the Goods are sold, the amount recovered from the sale, if any, will be applied to Carrier's invoice for transportation, storage and other lawful charges. The Shipper will be responsible for the balance of the charges not covered by the sale of the goods.

6. **Bill of Lading and Freight Charges.** The Bill of Lading is subject to these terms and conditions incorporated herein by this reference. The amounts listed therein shall be added to Carrier's transportation charges as set forth on the Bill of Lading and shall include, without limitation, freight charges, which shall be borne exclusively by Shipper or Consignee (as set forth therein) and not by Carrier. Additionally, liability for payment of additional charges found due after delivery shall be as specified by 49 U. S. C. §13706(a). Carrier may request pre-payment of any such amounts in its sole discretion.

7. **Miscellaneous.** The Bill of Lading shall be governed by the laws of the State of Washington without regard to its conflict of laws principles. Any dispute hereunder that cannot be resolved amicably between the parties shall be resolved in either state or federal court in Pierce County Washington and all parties consent to such jurisdiction. In the case of any conflict or inconsistency between these terms and conditions of the Bill of Lading and Carrier's purchase orders or rate confirmations, it is agreed that these terms and conditions of the Bill of Lading shall prevail as to such conflict. The terms of the Bill of Lading shall be separable and, if any term or provision hereof or any part of any term or provision shall be invalid to any extent, it shall be invalid to that extent, but no further and such circumstance shall not affect the validity or enforceability of any other term or provision hereof. The Bill of Lading and its terms and conditions may not be changed orally; any change or modification must be in writing and signed by authorized representatives of Carrier and the Shipper.