



# LAST MILE DIRECT NETWORK SOLUTIONS TERMS & CONDITIONS

Governs transactions and services related solely to the Last Mile Direct Network Solutions offering.

June 20, 2016

**1.1 This Agreement is made and entered into on the date the Manifestation of Assent** was made (“Effective Date”) by and between XPO Last Mile, Inc., a Georgia corporation (“XPO Last Mile”), and the Shipper, whom indicates the Manifestation of Assent below.

1.2 These terms and conditions and any applicable bill of lading governs the transportation of Goods from the point of their pickup at which XPO Last Mile arranges for physical possession of all or any part of the Goods as shown in this Bill of Lading to the last point of delivery (the “Services”).

1.3 XPO Last Mile agrees to provide the Services promptly and efficiently and in accordance with the Shipper’s delivery requirements.

1.4 This shipment shall be evidenced by a bill of lading, signed by both XPO Last Mile or a motor carrier under contract with XPO Last Mile and the Consignee or Consignees designated by Shipper; showing the kind and quantities of commodities that XPO Last Mile received and delivered at each loading and unloading point. XPO Last Mile does not haul, transport or handle hazardous materials in its normal course of business.

1.5 These terms and conditions only apply to the transaction(s) described herein (i.e., the specific shipment or shipments of goods entered and described by the Shipper in the “Shipping Details” section of this website).

1.6 Shipper agrees to pay XPO Last Mile in accordance with the rates, charges, and provisions contained on Schedule A, subject to the rules and regulations as published in that Schedule. These rates are subject to change by XPO Last Mile at any time.

1.7 XPO Last Mile shall render to Shipper invoices for services provided to Shipper. Shipper shall pay XPO Last Mile within fifteen (15) days from the date of the invoice Any invoice not paid within thirty (30) days from invoice date shall accrue interest at a rate of 1.5% per month.

1.8 Shipper shall ensure that the Goods are adequately packed and in accordance with XPO Last Mile's "Packaging & Shipping Instructions & Guidelines." In the event that packing of the Goods is deemed by XPO Last Mile to be unsuitable for transportation, XPO Last Mile reserves the right, in its sole discretion, to refuse any shipment at any time.

1.9 Notwithstanding anything herein to the contrary, XPO Last Mile shall have the right to withhold any delivery services involving Shipper based upon Shipper's failure to remit timely payment for services rendered by XPO Last Mile. Shipper waives all claims to damages which may be alleged by Shipper due to XPO Last Mile's refusal to provide delivery services pursuant to this paragraph.

## **2.1 The following words and phrases shall have the following meanings:**

2.1.1 Consignee: The person named in the Bill of Lading to whom the Goods may lawfully be delivered.

2.1.2 Goods or Freight: Subject to Section 5 and excluding any pallets/dunnage, Goods or Freight shall mean :

a. Personal effects and personal property used or to be used in a dwelling as a part of the equipment or supply of such dwelling;

b. Furniture, fixtures, and/or equipment of stores, offices, museums, hospitals and similar;  
or

c. Articles, including objects of art, displays and exhibits, which because of their unusual nature or value, require specialized handling and equipment usually employed in moving such goods.

2.1.3 Person: For purposes of these definitions, "Person" includes individuals, corporations, partnerships or other business entities recognized by law in the country in which they are organized.

2.1.4 Shipper: The person who enters into the contract of carriage with XPO Last Mile as evidenced by a manifestation of assent and/or a bill of lading.

2.1.5 Writing: includes, but is not limited to, a written document, a telegram, telex, telephonic facsimile (fax), electronic data interchange or a document created or transferred by electronic means.

2.2 XPO Last Mile, Shipper, and Consignee shall be liable for the acts or omissions of their respective agents, representatives, or any other person of whose services they make use for the performance of their obligations or the exercise of their rights under this Bill of Lading, subject to the terms and conditions contained herein.

**3.1 Shipper or Consignee shall be liable for the payment of the freight** and all other lawful charges, except that collect shipments may move without recourse to Shipper when Shipper so stipulates by signature or endorsement in the space provided for that purpose on the face of a bill of lading. Nevertheless, Shipper shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed based upon incomplete or incorrect information provided by Shipper.

3.2 Nothing herein shall limit the right of XPO Last Mile either to extend credit or to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery. If the description of Goods shipped or other information on the bill of lading is found to be incorrect or incomplete, the freight charges must be paid based upon the Goods actually shipped.

3.3 Notwithstanding the provisions of subsection 3.1 above, the consignee's liability for payment of additional charges that may be found to be due after delivery shall be as specified by 49 U.S.C. § 13706, except that the Consignee need not provide the specified written notice to XPO Last Mile if the Consignee is a for-hire carrier.

**4.1 XPO Last Mile agrees to arrange for the transport of the Goods to the designated place(s)** of delivery using contract carriers (excluding carriers by water) as necessary for interline and/or interchange purposes.

**5.1 XPO Last Mile shall be liable to SHIPPER, for cargo claims arising** from the provision of Services in accordance with the provisions of the Carmack Amendment as currently codified at 49 U.S.C. § 14706.

XPO Last Mile shall be directly liable to SHIPPER regardless of whether such loss or damage occurs while the Freight is in the possession of a XPO Last Mile designated contract carrier, warehousemen or in the possession of XPO Last Mile; however, where Freight hereunder is interrupted from due course of transit and is held in storage, and a storage charge is made, XPO Last Mile shall cease to be responsible for such Freight for the time of such interruption unless due and prompt notification be given to XPO Last Mile, XPO Last Mile verification is provided and additional charges are paid for such additional coverage.

5.2 XPO Last Mile's liability for loss or damage to Freight subject to this Agreement or any applicable bill of lading shall be limited to \$.50 per pound per package at no additional cost

and not subject to a deductible. The foregoing limitation notwithstanding, SHIPPER may elect to have XPO Last Mile accept a declared value for loss or damage to Freight covered by this shipment. Such election shall be referred to as "Declared Value Election," and shall be made either in writing, via electronic communication, or via such other medium of communication as is standard practice between the XPO Last Mile and SHIPPER. Declared Value Election must be made by SHIPPER at least 24 hours prior to scheduled pick-up and shall only be valid if acknowledged by XPO Last Mile in the same medium in which the election was communicated by SHIPPER.

In exchange for its agreement to accept Declared Value Election liability, XPO Last Mile shall be entitled to charge, in addition to all other fees and charges owing, additional freight charges of \$1.75 per \$100 of Declared Value. Notwithstanding any Declared Value Election, in no event shall XPO Last Mile's liability exceed \$10,000 for any measure of Freight subject to any Declared Value Election. A Declared Value Election with respect to any particular shipment shall not entitle SHIPPER to such protection with respect to any other shipment.

XPO Last Mile shall not be liable to SHIPPER for any economic or consequential damages. SHIPPER shall not deduct or offset any cargo claims from the freight charges owed to XPO Last Mile herein.

5.3 XPO Last Mile shall be liable to all persons entitled to recover under the applicable bill of lading regardless of the place in which the loss of or damage to the Goods or the failure to deliver the Goods occurs or is caused. XPO Last Mile is entitled to recover from any other carrier that was in physical possession of the Goods at the time of their loss, damage, delay or non-delivery, for the amount required to be paid for the loss, damage, or non-delivery, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending the claim.

5.4 XPO Last Mile's agreement to assume liability for loss or damage to goods shall be subject to XPO Last Mile's insurance policy and the following provisions:

5.4.1 XPO Last Mile shall not be liable for an amount more than the Declared Value Election bears to 100% of the value of the property at the time of loss or damage.

5.4.2 In the event of any loss or injury to any Freight consisting of several parts, XPO Last Mile shall only be liable for the value of the part lost or damaged.

5.4.3 XPO Last Mile shall not be responsible for the following and is not considered to be "Freight":

5.4.3.1 Jewels, jewelry, watches, precious or semi-precious stones, gold, silver, platinum or other precious metals or alloys, pearls, furs or garments trimmed with fur, or articles of

extraordinary value which are not specifically listed on this bill of lading;

5.4.3.2 Currency, money, bullion, notes, securities, accounts, bills, deeds, evidence of debt, letters of credit, stock certificates, and credit cards, documents, tickets, manuscripts, blueprints, plans, specifications or other valuable papers, including stamp collections, letters or packets of letters when those items are a part of a customer s/shipper s storage lot or shipment consisting of household goods which carrier/warehouseman has accepted under a shipping document or storage document;

1. Perishable property which requires refrigeration or an artificially controlled temperature;
2. Contraband or property in the course of illegal transportation or trade;
3. Live animals and plants; and
4. Property while waterborne.

5.4.4 XPO Last Mile shall not be responsible for any loss or damage resulting from the following:

5.4.4.1 Property of others at the specified location or at a temporary location when your relationship to the customer is that of a lessor of a storage place;

5.4.4.2 Caused by or resulting from delay, loss of market or use, interruption of business or any other consequential loss extending beyond the direct physical loss of or damage to property;

5.4.4.3 Caused by or resulting from inherent vice, wear and tear, rust, corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

5.4.4.4 Caused by or resulting from fungus, mold(s), mildew or yeast or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast;

1. Fungus includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including mold(s), rusts, mildews, smuts and mushrooms.
2. Mold(s) includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce mold(s).
3. Spores mean any dormant or reproductive body produced by or arising or emanating out of any fungus, mold(s), mildew, plants, organisms or microorganisms.

5.4.4.5 Caused by or resulting from nesting or infestation, or discharge or release of waste products or secretions by insects, birds, rodents or other animals;

5.4.4.6 Caused by or resulting from dampness or dryness of atmosphere; changes in or extremes of temperature; shrinkage; evaporation; loss of weight; contamination; or change in flavor, color, texture or finish;

5.4.4.7 Caused by or resulting from the seizure or destruction of property by order of governmental authority. But XPO Last Mile will be responsible for the acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered by XPO Last Mile's insurance.

5.4.4.8 Caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion, or smoke.

5.4.4.9 Caused by or resulting from:

1. War, including undeclared or civil war; Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
3. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

5.4.4.10 Caused by or resulting from the payment of fines, assessments, attorneys' fees, court costs or any other penalties which you shall be required to pay as a result of your violation of any law or regulation relating to any delay in the payment, denial, or settlement of any claim or loss.

5.4.4.11 Caused by or resulting from any act or omission, or direction of SHIPPER including damage or breakage resulting from improper packing by SHIPPER.

5.4.4.12 Loss or damage discovered after the property has left carrier/warehouseman physical custody and control unless due exceptions have been noted in carrier/warehouseman inventory sheets by carrier/warehouseman and the customer/owner taking custody or unless there is visible evidence presented that such loss or damage occurred during the time the lost or damaged property was in your physical custody or control.

5.4.4.13 Mechanical or electrical derangement of television sets, radios, refrigerators, deep freezers, washing machines, dryers, sound recording or playing equipment & parts thereof,

electronic or mechanical games, or like articles, unless evidenced by external damage to such items.

5.4.4.14 Spoilage of the contents of deep freezers, however caused.

5.4.5 In the event of disagreement as to the amount of loss, the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the SHIPPER and XPO Last Mile each selecting one and notifying the other of the appraiser's identity within 20 days of receipt of the written demand, and the two so chosen shall first select a competent and disinterested umpire, if the two appraisers are unable to agree upon an umpire within 15 days, the SHIPPER or XPO Last Mile can ask a judge of a court of record in the state where the property is located to select an umpire; the appraisers together shall then estimate and appraisal the loss, stating separately the sound value and damage, and failing to agree shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraisers respectively selected by them, and shall bear equally the expense of the appraisal and umpire.

5.4.6 It shall be optional with this SHIPPER to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild, or replace the property cost or damaged with other of like kind and quality within reasonable time, on giving notice of its intention so to do within thirty days after receipt of the proof of loss herein required; but there can be no abandonment to any property.

**6.1 As a condition precedent to recovery, SHIPPER shall give immediate written notice** to XPO Last Mile upon the occurrence of any loss or damage to any Freight. SHIPPER shall submit to XPO Last Mile written notice of any cargo claim regarding any shipment, no later than nine (9) months of the delivery date of the shipment or, if no delivery, the date of the occurrence resulting in the claim. Any civil action filed by SHIPPER must be filed no later than two (2) years from the date of denial of any such claim. The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. § 370 et seq.

6.2 Signs of damage at delivery must be noted by the Consignee on the delivery receipt.

6.3 Consignee may not refuse a damaged shipment unless the damage has made the shipment worthless. In all other cases, Consignee must accept shipment and determine whether the shipment can be repaired or retained with an allowance.

6.4 Concealed loss or damage not noted on the delivery receipt at the time of delivery must be reported in writing within fifteen (15) days along with a request for inspection. Containers and packing materials should be left as they were when the concealed loss or damage was

discovered until an inspection is completed or waived by XPO Last Mile. Good cause must be shown to XPO Last Mile's satisfaction as to why damage was not noted or discovered at delivery.

6.5 Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, XPO Last Mile shall not be liable, and such claims will not be paid.

6.6 Prima facie evidence that a shipment was delivered in good condition is a delivery receipt signed by the Consignee without written exceptions and notice of loss or damage.

6.7 Filing a lawsuit does not constitute compliance with the above notice provisions.

**7.1 If the Consignee refuses the shipment arranged and tendered for delivery by XPO Last Mile** or if XPO Last Mile is unable to arrange for delivery of the shipment, because of fault or mistake of the Shipper or Consignee, the XPO Last Mile's liability shall then become that of a warehouseman. XPO Last Mile shall promptly attempt to provide notice, by telephonic or electronic communication as provided on the fact of the bill of lading, if so indicated, to the shipper or the party, if any, designated to receive notice on this bill of lading. Storage charges, based on any applicable or as charged by a public warehouseman, shall start no sooner than the next business day following the attempted notification. Storage may be, at XPO Last Mile's option, in any location that provides reasonable protection against loss or damage. XPO Last Mile may arrange for the shipment in public storage at the owner's expense and without liability to the XPO Last Mile.

7.2 If XPO Last Mile does not receive disposition instructions within 48 hours of the time of XPO Last Mile's attempted first notification, XPO Last Mile will attempt to issue a second and final confirmed notification. Such notice shall advise that if XPO Last Mile does not receive disposition instructions within 10 days of that notification, XPO Last Mile may offer the shipment for sale at a public auction and XPO Last Mile has the right to offer the shipment for sale. The amount of sale will be applied to XPO Last Mile's invoice for the arrangement of transportation, storage and other lawful charges. The owner will be responsible for the balance of charges not covered by the sale of the goods. If there is a balance remaining after all charges and expenses are paid, such balance will be paid to the owner of the property sold hereunder, upon claim and proof of ownership.

7.3 Where XPO Last Mile has attempted to follow the procedures set forth above and the procedure provided in this section is not possible, nothing in this section shall be construed to abridge the right of the XPO Last Mile at its option to sell the property under such circumstances and in such manner as may be authorized by law. When perishable goods cannot be delivered and disposition is not given within a reasonable time, XPO Last Mile may dispose of property to the best advantage.

7.4 Where XPO Last Mile is directed by Consignee or Consignor to arrange for the unload or delivery of property at a particular location where Consignor, Consignee, or the agent of either, is not regularly located, the risk after unloading or delivery shall not be that of XPO Last Mile.

7.5 In the event a shipment moves from storage in transit and stored for more than ninety (90) days, this bill of lading shall be considered a warehouse receipt for the purposes of valuation.

**8.1 In all cases not prohibited by law, where a lower value than the actual value** of the said property has been stated in writing by the Shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum recoverable amount for loss or damage, whether or not such loss or damage occurs from negligence.

8.2 XPO Last Mile shall not be liable in any way for any documents, coin money, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed on this bill of lading.

**9.1 If an offer of compromise or a claim is paid by XPO Last Mile to the claimant,** the acceptance of such payment constitutes the release and discharge of XPO Last Mile, Inc. and its respective agents, representatives, assigns, subsidiaries, affiliates, officers, directors, employees and contract carriers and their subsidiaries and affiliated companies from any and all claims, demands, damages, actions, causes of action or obligations of any kind arising out of the claim, whether under 49 USC 14706 et seq., contract or otherwise. Claimant understands that by accepting the payment or offer of compromise claimant accepts such payment as payment in full and waives any further rights and remedies claimant may have with respect to its claim.

**10.1 In the event that any provision of this Agreement or a bill of lading** conflicts with any Transportation Services Agreement between the parties, those terms and conditions of the Transportation Services Agreement shall govern.

**11.1 XPO Last Mile's acceptance of liability shall be void if the SHIPPER,** or his agent, has concealed or misrepresented or shall conceal or misrepresent in writing, or otherwise, any material fact or circumstance concerning the subject hereof.

**11.2 Failure to comply with any of the above can result** in the denial of a claim and XPO Last Mile will have no further liability or obligation.

**11.3 XPO Last Mile shall indemnify and hold harmless Shipper** from and against all loss, damage, fines, expense, actions and claims for injury to person (including injury resulting in death) and damage to property, where such loss, damage, or injury is caused by acts or omissions of XPO Last Mile, its agents or employees, arising out of or is in connection with XPO Last Mile's discharge of duties and responsibilities under this Agreement. This indemnity shall not apply to losses adjudicated to be caused solely or in part by the negligence of the Shipper, its employees, representatives or agents, but shall be assessed as to comparative negligence and cost shared accordingly.

© 2016 XPO Logistics, Inc. All rights reserved.