



# DIMERCO EXPRESS GROUP

## DIMERCO EXPRESS GROUP INDIRECT AIR CARRIER AND AIR FREIGHT FORWARDER RULES TARIFF

### **RULE NO. 1 - GOVERNING TARIFF.**

All services that the indirect air carrier and/or air freight forwarder Dimerco Express Group ("Dimerco") provides to the Customer are subject to the rules of this Indirect Air Carrier and Air Freight Forwarder Rules Tariff ("Tariff"), Dimerco's international air waybill, and invoice terms and conditions of service, each of which are incorporated herein by reference. If the rules of this Tariff conflict with Dimerco's international air waybill or invoice terms and conditions of service, this Tariff shall govern. "Dimerco" as utilized herein refers to each of the Dimerco affiliates identified herein in Attachment 1 which issue their own corporate air waybills, and collectively are referred to herein as the Dimerco Express Group.

All rules in this Tariff apply to shipments that Customer tenders on or after 1<sup>st</sup> of January, 2013 and are subject to change at any time at the discretion of Dimerco. Dimerco reserves the right, with or without notice to the Customer, to unilaterally modify, amend, change, or supplement this Tariff, including, without limitation, the rules, rates, services, features of service, and terms of the Tariff. Only an officer of Dimerco may authorize a supplementation, modification, change, or amendment to this Tariff, which shall be in a writing signed by such officer.

Rate and service quotations are based upon information that the Customer provides to Dimerco. But final rates and service charges may vary based upon the characteristics of the shipment actually tendered and the application of this Tariff.

### **RULE NO. 2 - APPLICATION OF TARIFF.**

This Tariff applies to any international air shipment of cargo by Dimerco when it issues an IATA 600b form air waybill as the master and house air waybill for:

1. International air carriage of cargo between an airport in one country or territory and an airport in another country or territory;
2. Domestic surface transportation that precedes or is subsequent to international air carriage of cargo between an airport in one country or territory and a U.S. airport; an airport in another country or territory; and
3. Domestic surface transportation that is incidental to or a continuation of international air carriage of cargo between an airport in one country or territory and an airport in another country or territory.

### **RULE NO. 3 - DEFINITIONS.**

"Carrier" means Dimerco.

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“Customer” means the shipper, the sender, the person and/or company sending a shipment, the recipient, the consignee, and the person and/or company to which a shipment is being sent, as well as the agent of each of the foregoing.

“Air Waybill” means any shipping document, label, electronic entry or similar item used in international shipments.

“Cargo” means the goods that the Customer has tendered for carriage, as described on the front page of the Air Waybill, and includes any container not supplied by or on behalf of the Carrier.

“Day” and “days” mean calendar day and days, unless expressly stated to be otherwise.

“In good credit standing” means: (1) that payment on the account is current; (2) the account is not on a “cash only” status; and (3) for commercial or business accounts, the balance does not exceed the credit limit established by Dimerco.

## **RULE NO. 4 - THE CONDITIONS OF CONTRACT INCLUDED ON DIMERCO'S AIR WAYBILL.**

### I. NOTICE APPEARING ON THE FACE OF THE AIR WAYBILL

It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

Carrier's tariffs or general conditions of carriage are available at [www.dimerco.com](http://www.dimerco.com).

### II. CONDITIONS OF CONTRACT ON REVERSE SIDE OF THE AIR WAYBILL

#### NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention may be applicable to the liability of the Carrier in respect of loss of, damage or delay to cargo. Carrier's limitation of liability in accordance with those Conventions shall be as set forth in subparagraph 4 unless a higher value is declared.

#### CONDITIONS OF CONTRACT

1. In this contract and the Notices appearing hereon:

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CARRIER includes the air carrier issuing this air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage.

SPECIAL DRAWING RIGHT (SDR) is a Special Drawing Right as defined by the International Monetary Fund.

WARSAW CONVENTION means whichever of the following instruments is applicable to the contract of carriage:

the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929;

that Convention as amended at The Hague on 28 September 1955;

that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be.

MONTREAL CONVENTION means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.

2./2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not “international carriage” as defined by the applicable Conventions.

2.2 To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:

2.2.1 applicable laws and government regulations;

2.2.2 provisions contained in the air waybill, Carrier’s conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. When carriage is to/from the USA, the shipper and the consignee are entitled, upon request, to receive a free copy of the Carrier’s conditions of carriage. The Carrier’s conditions of carriage include, but are not limited to:

2.2.2.1 limits on the Carrier’s liability for loss, damage or delay of goods, including fragile or perishable goods;

2.2.2.2 claims restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the Carrier for its acts or omissions, or those of its agents;

2.2.2.3 rights, if any, of the Carrier to change the terms of the contract;

2.2.2.4 rules about Carrier’s right to refuse to carry;

2.2.2.5 rights of the Carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate Carrier or aircraft and rerouting.

3. The agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and place of destination, set forth on the face hereof or shown in Carrier’s timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive Carriers is regarded as a single operation.

4. For carriage to which the Montreal Convention does not apply, Carrier’s liability limitation for cargo lost, damaged or delayed shall be 19 SDRs per kilogram unless a greater per kilogram monetary limit is provided in any applicable Convention or in Carrier’s tariffs or general conditions of carriage.

5./5.1 Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with

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Carrier's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements.

5.2 When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.

6./6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

6.2 In carriage to which neither the Warsaw Convention nor the Montreal Convention applies Carrier shall, in accordance with the procedures set forth in its general conditions of carriage and applicable tariffs, permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if so required.

7./7.1 In cases of loss of, damage or delay to part of the cargo, the weight to be taken into account in determining Carrier's limit of liability shall be only the weight of the package or packages concerned.

7.2 Notwithstanding any other provisions, for international air carriage of cargo:

7.2.1 in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and

7.2.2 in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.

8. Any exclusion or limitation of liability applicable to Carrier shall apply to Carrier's agents, employees, and representatives and to any person whose aircraft or equipment is used by Carrier for carriage and such person's agents, employees and representatives.

9. Carrier undertakes to complete the carriage with reasonable dispatch. Where permitted by applicable laws, tariffs and government regulations, Carrier may use alternative carriers, aircraft or modes of transport without notice but with due regard to the interests of the shipper. Carrier is authorized by the shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.

10. Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good condition and in accordance with the contract of carriage.

10.1 In the case of loss of, damage or delay to cargo a written complaint must be made to Carrier by the person entitled to delivery. Such complaint must be made:

10.1.1 in the case of damage to the cargo, immediately after discovery of the damage and at the latest within 14 days from the date of receipt of the cargo;

10.1.2 in the case of delay, within 21 days from the date on which the cargo was placed at the disposal of the person entitled to delivery.

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10.1.3 in the case of non-delivery of the cargo, within 120 days from the date of issue of the air waybill, or if an air waybill has not been issued, within 120 days from the date of receipt of the cargo for transportation by the Carrier.

10.2 Such complaint may be made to the Carrier whose air waybill was used, or to the first Carrier or to the last Carrier or to the Carrier, which performed the carriage during which the loss, damage or delay took place.

10.3 Unless a written complaint is made within the time limits specified in 10.1 no action may be brought against Carrier.

10.4 Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. Notwithstanding the aforementioned, when the Montreal Convention or the Warsaw Convention do not apply, unless prohibited by any mandatory law, any rights to damages against Carrier shall be extinguished unless an action is brought within one year from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

11. Shipper shall comply with all applicable laws and government regulations of any country to or from which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws and regulations. Carrier is not liable to shipper and shipper shall indemnify Carrier for loss or expense due to shipper's failure to comply with this provision.

12. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.

### **RULE NO. 5 - LIMIT OF LIABILITY AND DECLARED VALUE.**

#### **NOTICE CONCERNING CARRIERS' LIMITATION OF LIABILITY**

For air carriage to which neither the Warsaw Convention nor the Montreal Convention applies:

- (1) If the Customer declares a value on the air waybill and pays the additional charge, the limit of the Carrier's liability shall be the lesser of:
  - (a) The amount of any damage actually sustained; or
  - (b) The declared value stated by the Customer on the Air Waybill or manifest.
  
- (2) In the absence of a declared value by the Customer, the limit of the Carrier's liability shall be the lesser of:
  - (a) The amount of any damages actually sustained; or
  - (b) The weight of the Cargo in kilos, in cases of lost or delayed Cargo, or in cases of damage, the weight in kilos of the damaged portion of the Cargo multiplied by 19 SDR per kilo.
  
- (3) If the Customer declares a value of more than 19 SDR per kilo, Carrier shall assess a valuation charge thereof on the amount of the declared value in excess of 19 SDR per

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kilo to be determined by Carrier depending on the particularities for each shipment and expressed to the Shipper in writing.

DIMERCO SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER SUCH WERE REASONABLY FORESEEABLE.

### **RULE NO. 6-EXCLUSIONS FROM LIABILITY**

- (1) Carrier will not be liable for loss, damage, delay or other result caused by,
  - (a) acts of God, perils of the air, public enemies, public authorities acting with actual or apparent authority in the premises, authority of law, quarantine, riots, strikes, civil commotions, or hazards or dangers incident to a state of war.
  - (b) the act or default of the shipper, consignee, or owner;
  - (c) the nature of the shipment, or any defect, characteristic or inherent vice thereof;
  - (d) violation by the shipper, or consignee, or any other party claiming an interest in the shipment, of any of the rules contained in this tariff or other applicable tariffs, including, but not confined to, improper or insufficient packing, securing, marking, or addressing, and failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions;
  - (e) acts or omissions of warehousemen, customs or quarantine officials or other persons, other than Carrier or its agents, gaining lawful or unlawful possession of the shipments under actual or apparent authority.
  - (f) compliance with delivery instructions from the shipper or consignee or noncompliance with special instructions from the shipper or consignee not authorized by applicable tariffs.
  
- (2) Carrier will not be liable for loss, damage, deterioration, destruction, theft, pilferage, delay, default, mis-delivery, non-delivery, or any other result not caused by the actual negligence of itself, its agent, or representative, acting within the scope of their authority, or not occurring on its own line or in its own service, or for any act, default, negligence, failure or omission of any other carrier or any other transportation organization.
  
- (3) Carrier will not be liable for any loss of money, bullion, bonds, coupons, jewelry, precious stones, valuable papers or other articles of extraordinary value unless such articles are specifically described on the Air waybill.
  
- (4) Carrier will not be liable in any event for any consequential or special damages arising from transportation subject to these tariff rules, whether or not Carrier had knowledge that such damages might be incurred.
  
- (5) Carrier will not be liable for any loss or damage to live animals, reptiles, birds, poultry, insects and fish, except for death (including breakage of limbs rendering death necessary) when caused by fire, lightning, windstorm, water damage, crash or collision.
  
- (6) Carrier will not be liable for any damage or deterioration to perishable shipments, including edible food products, unless such damage or deterioration is due to the gross negligence of Carrier.

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## **RULE NO. 7 - BILLING.**

Invoices for transportation charges are payable within 15 days of the invoice date. Invoices for duties and taxes, special handling fees, and the advancement fee are payable upon receipt.

Those persons within the definition of "Customer" shall be jointly and severally liable to Carrier for all unpaid charges, including, without limitation, the cost of collection, court costs and attorneys' fees. Customer agrees to pay or indemnify Carrier for all claims, fines, penalties, damages, costs, or other sums that Carrier may incur in the performance of the Carriage. All invoices not paid within 15 days of invoice date will be subject to a charge of 1.5 per cent, per month.

## **RULE NO. 8 - CLAIMS PROCESSING.**

Carrier shall process claims for damage, loss, or delay only when Customer presents the same in writing and on a timely basis, in accordance with this Rule.

Customer shall indemnify Carrier from any and all claims that a third party may file against Carrier, including, without limitation, from those by the shipper or consignee, or any other person claiming interest in the Cargo.

In the case of loss of, damage or delay to the Cargo, the person entitled to deliver must make a written complaint Carrier as follows:

In the case of damage to the Cargo, immediately after discovery of the damage, and at the latest, within 14 days from the date of receipt of the Cargo;

In the case of delay, within 21 days from the date on which the Cargo was placed at the disposal of the person entitled to delivery; or

In the case of non-delivery of the cargo, within 120 days from the date of issue of the Air Waybill, or if an Air Waybill has not been issued, within 120 days from the date of receipt of the Cargo for transportation by the Carrier.

Such complaint may be made to any carrier identified on the Air Waybill, to the first carrier to transport the Cargo, to the last carrier to transport the Cargo, or to the carrier that performed the carriage during which the loss, damage, or delay occurred.

Unless a written complaint is made within the time limits specified above in this Rule, no action may be brought against the Carrier.

Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. Notwithstanding the aforementioned, when the Montreal Convention or the Warsaw Convention do not apply, unless prohibited by any mandatory law, any rights to damages against Carrier shall be extinguished unless an action is brought within one year from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

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## **RULE NO. 9 - DIMENSIONAL WEIGHT AND OVERSIZED SHIPMENTS.**

Rates and charges for the Cargo shall be based on actual or dimensional weight, whichever is greater. Dimensional weight is calculated by dividing the cubic inches, i.e., length times width times height, by 194 for domestic shipments or by 166 for international shipments. All shipments are subject to re-weighing and measurement by Carrier.

Oversized charges are in addition to the applicable freight charge to be determined by Carrier depending on the particularities for each shipment and expressed to the Shipper in writing. . Any single piece that will not fit in a single aircraft pallet position will be subject to oversize charges.

All oversize shipments must be received 2 hours in advance of the published station cut-off time of the direct air carrier.

## **RULE NO. 10 - RESTRICTED SHIPMENTS.**

### **HAZARDOUS GOODS:**

(A) Prior to tendering Cargo that is “hazardous goods,” as defined under applicable federal and state law and regulations, the Customer shall, in compliance with the laws and regulations governing the transportation of such goods, have the same properly packed, distinctly marked and labeled, and notify the Carrier in writing of their proper description, nature, and the necessary precautions.

(B) Cargo that is “hazardous goods” or is otherwise of an inflammable, explosive or of a dangerous nature to the shipment whereof the Carrier, master or agent of the Carrier, has not consented with knowledge of their nature and character, may, at any time before discharge, be landed at any place and destroyed or rendered innocuous by the Carrier without compensation to the Customer, and it shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the transporting aircraft or other conveyance, or any cargo thereon, they may, in like manner, be landed in any place, or destroyed and rendered innocuous by the Carrier without liability to the Customer.

(C) The Customer shall indemnify and hold harmless the Carrier against any and all loss, damage, liability, and expense, including, without limitation, attorneys’ fees that the Carrier has incurred, arising out of or in any way connected with or caused by, in whole or in part, omission of full disclosure required by this Rule or by applicable treaties, conventions, laws, codes, or regulations.

## **RULE NO. 11- CARGO NOT ACCEPTED FOR TRANSPORT.**

Carrier shall not accept any of the following commodities for Carriage:

- (A) Corpses and cremated or disinterred remains;
- (B) Human blood and blood plasma or any derivative thereof, human tissues, human organs, and human body fluids of any kind;
- (C) Animals and plants, Animal blood and animal blood plasma or any derivative thereof, animal tissues animal organs, and animal body fluids of any kind;



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- (D) Dead animals, dead animal organs or dead animal parts of any kind;
- (E) Coins and coin collections of any kind;
- (F) Postage, trading, or revenue stamps and stamp collections;
- (G) Money, currency, bonds, bills of exchange, deeds, promissory notes, negotiable securities, stock certificates, and lottery tickets;
- (H) Personal effects, including used clothing or articles, trunks, suitcases, and other containers described as personal effects or as household goods;
- (I) Used furniture and other household goods - under no circumstances will Carrier accept any shipment consisting of household goods from anyone;
- (J) Shipments consigned "to order," "to order of" or "to order notify";
- (K) Shipments requiring special care or attention between origin and destination;
- (L) Furs, fur-trimmed, and fur clothing;
- (M) Pornographic materials;
- (N) Unaccompanied baggage;
- (O) Shipments consigned to U.S. or Canadian post office boxes or to APO or FPO addresses;
- (P) Any "highway route controlled radioactive material" as defined in Title 49 U.S. Code of Federal Regulations part 173.403 as revised and reissued;
- (Q) Hazardous waste materials;
- (R) Shipments of Class A and Class B explosives as classified in Title 49, U.S. Code of Federal Regulations part 173.52 as revised and reissued;
- (S) Shipments not accompanied by proper documentation or the necessary information required by applicable law, statute, regulation, convention, or treaty;
- (T) Shipments that by their nature or because of a defect in commodity or packaging Carrier believes could not be transported or handled without loss of or damage to the shipment;
- (U) Shipments that Carrier is prohibited from transporting or handling by law, statute, regulation, convention, or treaty;
- (V) Used hypodermic needles and syringes and medical waste;
- (W) Fireworks;

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- (X) Ammunition in all forms, regardless of hazard classification;
- (Y) Shipments that are wet or leaking, or that emit an odor of any kind;
- (Z) Alcoholic beverages;
- (AA) Dust Cyanides or Cyanides of any kind, and
- (BB) Controlled substances of Schedule I and II.
- (CC) Perishable goods.

### **RULE NO. 12- LIEN ON CARGO.**

(A) The Carrier shall have a general and continuing lien on any and all property of the Customer coming into the Carrier's actual or constructive possession or control for monies owed to the Carrier with regard to the shipment on which the lien is claimed, a prior shipment(s), and/or both, including without limitation, freight, dead freight demurrage, detention, any charges, and for any expenses the Carrier incurs for repacking, remarking, fumigation, or required disposal of faulty Cargo, for fines, dues, tolls, or commissions the Carrier has paid or advanced on behalf of the Cargo, for any sums, including, without limitation, for legal expenses the Carrier has incurred because of any attachment or other legal proceedings brought against the Cargo by governmental authorities or any person claiming an interest in the Cargo. The Carrier's lien shall survive discharge or delivery of the Cargo.

(B) The Carrier shall provide written notice to the Customer of the Carrier's intent to exercise its lien rights, which notice shall set forth the exact amount of monies due and owing. The Customer shall notify all parties having an interest in the shipment(s) of the Carrier's rights and/or the exercise of such lien rights.

(C) Unless, within thirty days of receiving notice of lien, the Customer posts cash or letter of credit at sight, or if the amount due is in dispute, an acceptable bond equal to 110 per cent of the value of the total amount due, in favor of Carrier, guaranteeing payment of all monies due and owing, plus all ongoing and accruing charges, such as storage, the Carrier shall have the right to sell such shipment(s) at public/private sale or auction and the Carrier shall refund to the Customer any net proceeds remaining after such sale.

### **RULE NO. 13- LAW AND JURISDICTION.**

Unless otherwise provided by Warsaw Convention or Montreal Convention, the Customer and Carrier agree that, for the carriage to or from the U.S., any suits by the Customer against the Carrier or by the Carrier against the Customer shall be brought in the United States District Court for the Northern District of Illinois or the Circuit Court of Cook County, Illinois, which shall have exclusive jurisdiction, and U.S. law shall apply. For carriage not to or from the U.S., any suits against the Carrier shall be brought in the jurisdiction where Dimerco's air waybills are issued, and the laws

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of that jurisdiction shall apply unless otherwise provided by the Warsaw Convention or Montreal Convention. The Customer further agrees that if the Company prevails in any action under these Terms and Conditions of Service, including actions to recover money due the Company from Customer, Customer shall pay all costs of collection including reasonable attorneys' fees, plus finance charges on all past due amounts due Company at the rate of 1 ½ percent per month or 18% annually. The Carrier shall be entitled to avail itself of all the terms and conditions of onward carriers, including such carriers' forum selection and limits of liability. Carrier reserves the right to bring suit against the Customer for collecting freight or other charges or enforcing a judgment in any venue having jurisdiction over the Customer.