



Serving The Mainland And All Points In Hawaii, Guam, And Alaska
Certified Freight Forwarder ICC FF 266

3623 Munster Avenue • Hayward, CA 94545 • Tel 510.783.6100 • Fax 510.782.5794

Credit Application / Direct Billing Application

All fields must be completed

Business Name _____ DBA _____

Street Address _____ City _____ State _____ Zip _____

Billing Address (if different) _____

If you have other shipping locations that this is the billing address for, please submit them on a separate page.

Phone _____ Fax _____ A/P Contact _____

Years in Business _____ Parent Company Name _____

Taxpayer Identification # _____

Bank Name _____ Account # _____

Owner's Name _____

Please list additional owners on a separate page

Owner's Address _____ City _____ State _____ Zip _____

Maximum Credit Requesting: \$ _____ (This amount will be taken into consideration during processing)

CREDIT REFERENCES

Company Name / Contact Name / Phone / Fax

1. _____

2. _____

I hereby authorize the Company, to whom this application is made, or any credit bureau or other investigative agency employed by such person, to investigate references herein listed or statements or other data obtained from me or from any other person pertaining to my credit and financial responsibility.

■ Billing Instructions: I.C.C. Regulations prescribe that all transportation charges must be paid within 30 days of receipt of Freight Bill. Accounts over 60 days past due may be placed on a C.O.D. basis. Additional fees may apply.

Authorized By:

Print Name _____ Title _____

Signature _____ Date _____

(Applications cannot be processed without authorized signature)

Name of Hawaiian Express Sales Representative _____

Thank You!

TERMS AND CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

1. Definitions.

- a. "Company" shall mean Hawaiian Express Service, Inc., its subsidiaries, related companies, agents and/or representatives;
- b. "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;
- c. "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;
- d. "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier"(NVOCC);
- e. "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".

2. **Company as agent** The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the transportation of goods, Company acts as an independent contractor.

3. **Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational and estimation purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

4. **No Liability for the Selection or Services of Third Parties and/or Routes.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

5. **Preparation and Issuance of Bills of Lading.** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer.

6. Reliance On Information Furnished.

Customer acknowledges that it is required to review all documents, and will immediately advise the Company of any errors discrepancies, incorrect statements, or omissions on any declaration filed on Customers behalf;

7. **Declaring Higher Value to Third Parties.** Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

8. **Insurance.** Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

9. **Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

10. Limitation of Actions.

- a. Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within (7) seven days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.
- b. All suits against Company must be filed and properly served on Company as follows:

- i. for claims arising out of ocean transportation, within thirty (30) days from the date of the loss;
- ii. for any and all other claims of any other type, within thirty (30) days from the date of the loss or damage.

11. Disclaimers; Limitation of Liability.

- a. Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;
- b. Subject to (c) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of third parties;
- c. In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefore, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).
- d. In the absence of additional coverage under (b) above, the Company's liability shall be limited to the following:
- e. In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages.

12. C.O.D. or Cash Collect Shipments. Company shall use reasonable care regarding written instructions relating to "Cash/Collect" or "Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have any liability if the bank or consignee refuses to pay for the shipment. Additional COD fees apply.

13. Credit Extension and Terms. All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company. Further, All shipments are subject to COD until this form is completed in its entirety, and accepted and approved by Hawaiian Express Service, Inc. Credit approval and terms will be forwarded by mail to the below signed officer(s).

In consideration of credit being extended by Hawaiian Express Service, Inc. to the above named applicant for services to be rendered, whether applicant is an Individual or Individuals, a proprietorship, a partnership, a corporation, or other entity, the undersigned guarantor or guarantors each hereby contract and guarantee to complete the faithful payment, when due, of all accounts of said applicant for the payment for services rendered within five years next after the date of this application. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guarantee, notice of extension of credit to applicant, presentment, and demand for payment on applicant, protest and notice to undersigned guarantor and guarantors of dishonor or default by applicant or with respect to any security held by Hawaiian Express Service, Inc. extension of time of payment to applicant, acceptance of partial payment or partial compromise, and all other notices to which the undersigned guarantor or guarantors might otherwise be entitled and demand for payment under this guarantee. Absent written permission by creditor, this personal guarantee may not be revoked.

14. Compensation of Company. The compensation of the Company for all its services shall be included with and is in addition to the rates and charges of all carriers and all other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers, and others in connection with the shipment. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including all reasonable attorney fees.

15. Collections. If invoice has not been paid within 30 days, you will be notified of its delinquency and of the additional 1 ½% interest rate fees attached to the invoice. If invoice goes beyond 60 days past due, you will be notified that in 7 days, the late invoice will proceed to collections and additional fees, as noted in #17 (below) will be imposed in addition to the additional interest fees and invoice amount. If customer has anything in Collections, they will be refused service until all due invoices are satisfied along with any and all additional fees due to the delinquency of payment.

16. Costs of Collection. In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company. If Customer is brought into collections, a 20% fee (20% of the total cost of the amount due) will be collected in addition to amount owed by the customer.

17. General Lien and Right to Sell Customer's Property

- a. Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;
- b. Customer agrees that any and all overdue balances past the agreed terms, and including all liens, are subject to 2% interest per month.
- c. Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.
- d. Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

18. No Modification or Amendment Unless Written. These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

19. Severability. In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

20. Controversy or Claims. Applicant agrees any controversy or claim arising from or relating to this contract or the breach thereof shall first be settled by arbitration in accordance with the Uniform Rules for Binding Arbitration of the Better Business Bureau and any judgment award rendered by arbitrator(s) may be entered in any court having jurisdiction thereof.

21. Governing Law; Consent to Jurisdiction and Venue. These terms and conditions of service and the relationship of the parties shall be construed according:

- a. to the laws of the States of Washington or Alaska without giving consideration to principals of conflict of law. Customer and Company:
- b. irrevocably consents to the jurisdiction of the United States District Court in the State courts of Washington; city of Sumner.
- c. agrees that any action relating to the services performed by Company shall only be brought in said courts;
- d. consent to the exercise of in personam jurisdiction by said courts over it, and further agrees that any action to enforce a judgment may be instituted in any jurisdiction.

I have read and understand the Terms and Conditions of Service

Name (printed) _____ Date _____

Signature _____ Title _____