



Contract Terms and Conditions

ABSOLUTELY NO CLAIM FOR LOST OR DAMAGED ITEMS CAN PROCEED UNTIL THE BILL HAS BEEN PAID IN FULL.
THE COMPANY'S LIABILITY FOR LOSS OR DAMAGE WILL BE DETERMINED BY THE NOTATIONS MADE AT DELIVERY

TONKA MOVING CO

The terms and conditions below are applicable to moves arranged by the transferee for which the transferee is to pay the freight charges due the carrier. The terms and conditions for moves arranged by an entity other than the transferee and for which such entity is to pay the freight charges due may be contained in a separate agreement into by such entity and the carrier pursuant to 49 U.S.C. § 14101 (b). Where the terms and conditions of such separate agreement conflict with the terms and conditions below, the terms and conditions of such separate agreement are controlling. This contract is subject to all the rules, regulations, rates, and charges in the carrier's currently effective applicable tariffs including without limitation to the following terms and conditions.

1. LIABILITY OF CARRIER: Subject to the exemptions, exclusions, and limitations set forth in this contract, the carrier or party-in-possession shall be liable for physical loss of or damage to any articles from external cause while being carried or held in storage-in-transit.

2. EXCEPTIONS: The carrier or a party-in-possession shall not be liable for loss, damage, or delay caused by or resulting from: **A.** An act, omission, or order of the shipper, the owner (as used herein, the owner shall include but is not limited to the transferee), or the consignee; **B.** Insects, moth, vermin, deterioration, and ordinary wear and tear; **C.** Defects or inherent vice of the article, including susceptibility to damage because of atmospheric conditions such as rain, snow, temperature and humidity or changes therein; **D.** (1) Hostile or warlike action: time of peace or war, including action in hindering, combating, or defending an actual, impending or expected attack, (a) By any government or sovereign power, or by any authority maintaining or using military, naval or air forces or (b) By military, naval or air forces, (c) By an agent of such government, power, authority or forces, it being understood that any discharge, explosion or sure of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be a hostile or warlike action by such a government, power, authority or forces, (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating, or defending against such an occurrence; seizure or destruction under quarantine or custom's regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade; **E.** Nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril; **F.** Acts of God; or **G.** Loss or damage when the carrier, after notice to the shipper, the owner, or the consignee of a potential risk of loss or damage to the shipment from any of the following causes, is instructed by the shipper, the owner, or the consignee to proceed with such transportation and/or delivery, notwithstanding such risk.

3. EXCLUSIONS: The carrier or party-in-possession shall not be liable for: **A.** Loss or damage caused by or resulting from: (1) Damages caused by normal use and aging of the property; (2) Damages caused by spillage of chemicals, cleaning solutions, flammables, lubricants and other similar materials; (3) Damages sustained during disconnection / reconnecting of any appliances / electronics; (4) Damages sustained during disassembling / reassembling of any furniture. **B.** Loss or damage to cash, currency, documents, notes, bills, securities accounts, deeds, personal documents, family albums / videos / photographs, stamps, coins, jewelry, furs, sports cars, watches, precious stones, plants etc. **D.** Waterbed mattresses; particleboard furniture. **E.** Loss of or damage to computer data or media. **F.** Damage to packed articles unless directly caused by damage to the outside of the carton or unless professionally packed and unpacked by the carrier. **G.** The mechanical or electrical derangement of mechanical, electrical, or electromechanical devices unless there are physical signs such damage resulted from negligence of the carrier. **H.** Missing items, unless exceptions are noted on delivery documents.

4. LIMITATIONS: The maximum liability of the carrier or a party-in-possession pursuant to the Section 1 above and the sole and exclusive remedy of the shipper, the owner, and the consignee shall be not more than the lesser amounts: **A.** For the shipments declared at \$0.30 (for intrastate moves) or \$0.60 (for interstate moves) per pound per article: (1) The amount of the actual cash value of the property at the time of loss, allowing for depreciation and/or obsolescence, or (2) an amount equal to \$0.30 (for intrastate moves) and \$0.60 (for interstate moves) for each pound of the weight of the damaged article, or (3) the actual cost to repair the damaged property; **B.** For the shipments declared at "full replacement cost": (1) the replacement cost of the property at the time of loss, or (2) the maximum limit of liability stated in the schedule, or (3) the actual cost to repair the damaged property.

5. PAIR OR SET: In the event of loss or damage to any article or articles which are part of a set, the measure of loss or damage to such article or articles shall apply only to the value of the piece or part lost or damaged giving consideration to the importance of said article or articles but in no event shall such loss or damage be construed to mean total loss of the pair or set.

6. NOTICE AND PROOF OF LOSS: A claim for any loss or damage must be filed in writing with the carrier and accompanied by the original paid bill of lading within thirty (30) days from the date of delivery, a detailed sworn proof of loss. Failure of the shipper to report said loss or damage or to file such sworn proof of loss shall invalidate any and all claims for such loss.

7. SHIPPER'S RESPONSIBILITY: It is the shipper's responsibility to check the Household Goods Descriptive Inventory for correctness before signing. All goods must be listed on the inventory and the condition at origin must accurately reflect the condition of the goods at origin. The shipper shall upon delivery check the items against the inventory and note any missing items and/or changes in condition of the goods delivered. The carrier's liability for loss or damage will be determined by the notations made at delivery. In the event an inventory is not prepared by the mover, exceptions and notations must be made on the bill of lading and/or delivery receipt.

8. COMPANY'S OPTIONS: The shipper shall not do any repair, replace, or dispose the damaged property unless arrangements in writing are made with the carrier. For shipments declared at "full replacement value" it shall be optional with the carrier to take all, or any part, of the property at the agreed or appraised value, or to repair, rebuild or replace such property destroyed or damaged with other of like kind and quality within a reasonable time, or giving notice of its intention to do so within sixty (60) days after the receipt of the proof of loss herein required.

9. INDEMNIFICATION: The shipper, the owner, and the consignee (the "interested parties") hereby agree: **A.** To be liable, jointly and severally, for and to indemnify, hold harmless, and defend the carrier and its directors, officers, employees, agents, and representatives from and against any and all damages, liability, claims, losses, and expenses (including reasonable attorney's fees) resulting from any claims brought against the carrier by any third party which is an owner of any of the goods contained in the shipment; and **B.** Explosives or dangerous articles or goods will not be accepted for shipment. The shipper and the owner shall indemnify, hold harmless, and defend the carrier against any damages, liability, claims losses and expenses (including reasonable attorney's fees) resulting from or caused by inclusion of explosives or dangerous articles or goods in the shipment.

10. MODE AND MEANS OF TRANSPORTATION: The carrier or party-in-possession shall not be liable for delay caused by highway obstruction, faulty or impassable highways, lack of capacity of any highway, bridge, or ferry, or breakdown or mechanical defect of vehicles or equipment, or from any cause other than negligence of the carrier; nor shall the carrier be bound to transport by any particular schedule, means, vehicle, or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination.

11. INSURANCE AND SUBROGATION: Any carrier or other party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected on account of said property, so far as this shall not avoid the policies or contracts of insurance; provided, however, that the carrier reimburse the insured(s) a reasonable amount for the premium(s) paid thereon. In such event, the carrier shall be subrogated to any rights of the interested parties with respect to such insurance.

12. LIABILITY FOR CHARGES: The shipper and the owner, upon tender of the shipment to the carrier, and the consignee, upon acceptance of delivery of the shipment from the carrier, shall each be liable, jointly and severally, for all unpaid charges payable on account of the shipment and any storage thereof in accordance with the carrier's applicable tariffs including without limitation sums advanced or disbursed by the carrier on account of such shipment and storage. The extension of credit to any one or more of the interested parties for such unpaid charges shall not thereby discharge the obligation of any other party to pay such charges in the event that any party to whom credit has been extended shall fail to pay such charges.

13. STORAGE: If, for any reason other than the fault of the carrier, delivery cannot be made at the address shown on the service order, the carrier (A) may keep articles contained in the shipment in the carrier's vehicle, warehouse, or place of business, subject to the charge for storage and the carrier's liability as warehouseman only, or, at its option, (B) may cause articles contained in the shipment to be stored in a warehouse selected by the carrier at the point of delivery or at any other available points, and there held without liability on the part of the carrier, at the cost of the interested parties, and, in either event, subject to a lien for accrued tariffs and other lawful charges, including the tariff charges for storage.

14. SALE OF PROPERTY BY CARRIER: If the shipment is refused by the consignee at destination, or if the interested parties fail to receive or claim it within fifteen (15) days after written notice by to the interested parties at post office shown on the service order, or if the interested parties fail or refuse to pay lawfully applicable charges in accordance with the carrier's applicable tariff's, the carrier may sell the property as its option, either (A) upon the notice and in the manner authorized by law, or (B) at public auction to the highest bidder for cash at a public sale to be held at a time and place named by the carrier, thirty (30) days notice of which sale shall have been given in writing to the interested parties and there shall have been published at least once a week for two consecutive weeks in a newspaper of general circulation at or near the place of sale, a notice thereof containing a description of the property as described in the bill of lading, and the names of the interested parties. The proceeds of any sale shall be applied toward payment of lawful charges applicable to the shipment and toward expenses of notice, advertising, and sale, and of storing, caring for, and maintaining the property prior to sale, and the balance, if any, shall be paid to the owner of the property, provided, however, that any perishable articles contained in the shipment may be sold at public or private sale without such notices, if, in the opinion of the carrier, such action is necessary to prevent deterioration or further deterioration.

15. SUIT: As a condition precedent to recovery, any claim under this contract shall be sustainable in any court of law or equity unless the same be commenced within nine (9) months after (a) the date of delivery to the consignee or (b) in case of failure to make delivery, a reasonable time for delivery has elapsed. Any controversy or claim arising out of or relating to this contract, the breach thereof, or the goods affected thereby, whether such claims be founded in contract, shall be settled by arbitration under the Arbitration Law of the C a r r i e r ' s State and under the rules of the American Arbitration Association, provided however, that upon such arbitration the arbitrator or arbitrators may not vary or modify any of the foregoing provisions.