

TERMS AND CONDITIONS FOR TRANSPORTATION LOGISTICS SERVICES
WITH FLY-AWAY POLE PROTECTION, LLC

Customer is in need of transportation logistics and insurance coverage services, including the use of motorized carriers, in order to meet its distinct needs. Fly-Away Pole Protection is engaged as a third party logistics provider in the business of arranging and providing for the transportation and insurance of pole-vaulting poles for compensation and has agreed to provide such services to Customer on the terms and conditions hereinafter set forth.

ACCORDINGLY, Customer and Fly-Away Pole Protection agree, as follows:

1. DEFINITIONS.

For all purposes of this Agreement, the following terms shall have the following meanings. Such meanings to be equally applicable to both the singular and plural forms of the terms defined, even if not so noted below.

“Address of Origin” is the place of business where the pole-vaulting poles will be picked up.

“Carrier” means an owner/operator of motor vehicle that is engaged by Fly-Away Pole Protection to transport Products pursuant to this Agreement.

“Destination” is the place of business where the pole-vaulting poles will be dropped off.

“Goods” means: Pole-vaulting poles and javelins

“Transportation Logistics Services” means arranging for Transportation and Insurance Coverage Services and otherwise providing the services called for by Section 2.

“Transportation Representative” shall be the person designated by Customer from time to time to receive notices pursuant to Section 9 and Exhibit A Section 1.5.

“Transportation Services” means the physical carriage of Products.

2. SERVICES TO BE PROVIDED BY FLY-AWAY POLE PROTECTION.

2.1 Fly-Away Pole Protection hereby agrees to provide to Customer during the term of this Agreement the Transportation Logistics Services more fully specified in the following paragraphs of this Section 2 and Exhibit E. Fly-Away Pole Protection shall provide such services in accordance with the specifications set forth in Exhibit A, and any additional obligations as set forth in Exhibit E for the compensation agreed to in Section 3. In fulfillment of its obligations to Customer hereunder, Fly-Away Pole Protection shall:

- (a) Arrange for and carry out the Transportation Services associated with the shipment of Goods.
- (b) As time is of the essence with respect to shipment of Goods, provide all equipment necessary to effect the timely and safe shipment of Goods from origin to destination.
- (c) Provide direct service from origin to destination for the Goods tendered to it in accordance with this Agreement.
- (d) Perform specialized services for Customer, that may include, but are not limited to, expedited transit, expedited claim processing and/or the use of specialized equipment as provided for in Exhibit E.

2.2 Fly-Away Pole Protection shall have the right to subcontract the Transportation Services required hereunder to other Carriers, provided any such Carrier shall be qualified to perform the required Transportation Services. All subcontractors appointed by Fly-Away Pole Protection shall be subject to the terms and conditions set forth herein. In no event shall Fly-Away Pole Protection subcontract any of its Transportation Logistics Services, including its services as a Transportation Services broker.

2.3 Fly-Away Pole Protection shall at all times during the course of this Agreement, subcontract Transportation Services only to Carriers who demonstrate that they have, appropriate licenses to carry and ship Goods as may from time to time be required by any applicable governmental or regulatory bodies.

2.4 Fly-Away Pole Protection agrees to comply with all rules and regulations established by the Interstate Commerce Commission and other Federal or state agencies having jurisdiction over the Transportation Services to be performed pursuant to this Agreement.

3. RATES, CHARGES AND PAYMENTS.

Fly-Away Pole Protection will be compensated on the basis of the provisions, rates, and charges as per the schedules provided to you and/or listed on flyawaypoles.com. Except as expressly provided for in this Agreement or in Exhibit E, the provisions, rates, and charges shall include all costs associated with the services provided by Fly-Away Pole Protection, its agents and designated subcontractors, under this Agreement.

4. PERFORMANCE REQUIREMENTS.

Fly-Away Pole Protection shall provide the services described in Section 2 of this Agreement. In the event that Fly-Away Pole Protection fails to meet a scheduled out-bound shipment sent with a guaranteed service, Fly-Away Pole Protection shall have twenty-four (24) hours from notification electronically or via facsimile by Customer to remedy such failure. If Fly-Away Pole Protection does not remedy its failure to perform within the allowed time, Fly-

Away Pole Protection shall not be entitled to any compensation with respect to the failed shipment. If payment has already been made, a refund will be provided.

5. TERM; TERMINATION.

5.1 This Agreement shall commence on SHIPPING DATE, and shall continue in effect until ARRIVAL OF POLES AT DESTINATION.

5.2 Either party may terminate this Agreement without cause by providing written notice to the other party.

6. BILL OF LADING.

Carrier shall issue a bill of lading for each shipment, and the terms therein are to be incorporated herein, except to the extent that such terms are contrary to the provisions of this Agreement. In the event of any such conflict, the terms of this Agreement shall prevail. Fly-Away Pole Protection shall retain Bills of Lading and delivery receipts for a period of at least 6 months.

7. INSURANCE.

At all times during the term of this Agreement, Fly-Away Pole Protection shall procure and maintain, at the sole cost and expense of Fly-Away Pole Protection or the Carrier, as applicable, the following:

- (a) General comprehensive liability insurance insuring against any and all liability for injury to or death of a person or persons and for damage or destruction of property occasioned by or arising out of or in connection with the Transportation Services to be provided hereunder, including coverage for losses due to theft, hijacking, damage in transit.
- (b) Insurance protecting against loss or damage to Goods (domestic shipments).

The insurance afforded by these policies shall apply to Customer as an additional insured but only to the extent of the obligations of Fly-Away Pole Protection as provided under this Agreement.

8. RISK OF LOSS; LIABILITY.

8.1 Customer and Fly-Away Pole Protection acknowledge and agree that the risk of loss of Goods during transit shall be borne by Fly-Away Pole Protection once the Carrier's truck leaves address of origin or Goods are surrendered to Commercial Carriers. The driver shall have the right to inspect each shipment for damage prior to leaving the address of origin, and shall have the right to refuse damaged Goods tendered for delivery. In addition, Carrier's driver shall note and bring to the attention of the appropriate personnel at the Location any damage detected prior to leaving the loading dock where it is receiving goods on behalf of Customer. In the event that

damage occurs to Goods prior to delivery at the ultimate destination, the driver shall note such damage on the bill of lading and further shall immediately advise Fly-Away Pole Protection.

8.2 As Fly-Away Pole Protection bears the risk of loss for Goods while in transit, Fly-Away Pole Protection shall arrange for appropriate insurance for such Goods in transit, the cost of which shall be deemed to be included in the rates set forth in Section 3.

8.3 Fly-Away Pole Protection shall be liable to Customer for any damage, loss or theft of Goods caused by the negligence or omissions or failure to act of Fly-Away Pole Protection.

8.4 Fly-Away Pole Protection's liability under this Agreement shall be limited to \$12,000. In no event will Fly-Away Pole Protection be liable for special, incidental or consequential damages regardless of its knowledge of the potential for such. Fly-Away Pole Protection reserves the right to use discretion on a case-by-case basis for all claims submitted as to deter from fraudulent claims. Fly-Away Pole Protection shall not be liable for any loss or damage to the extent such is due to a force majeure event, as defined in Section 14 of this Agreement, or an act or default of Customer.

8.5 Fly-Away Pole Protection shall not be liable to Customer for any loss of income due to delayed shipment or loss of goods.

8.6 Fly-Away Pole Protection shall not be liable to Customer for damaged Goods caused by the negligence of the shipper including, but not limited too the improper packaging of poles as defined in Section 20 of this Agreement.

8.7 Fly-Away Pole Protection shall not be liable to Customer for damaged Goods, if the damages weren't immediately reported to Fly-Away Pole Protection, or if the Customer used the poles in any way prior to notifying Fly-Away Pole Protection of any damages.

9. INDEMNIFICATION BY FLY-AWAY POLE PROTECTION.

Fly-Away Pole Protection agrees that it shall protect, defend, indemnify and hold harmless Customer, from and against all liabilities, losses, costs, damages, expenses, claims, attorneys' fees, and disbursements of any kind or of any nature whatsoever imposed upon Customer, whether incurred directly or indirectly by Customer, by virtue of, or in connection with, or arising out of any:

- (a) failure of Fly-Away Pole Protection or any Carrier to maintain appropriate licenses to carry out the purposes of this Agreement, resulting in the inability to, among other things, ship products for Customer;
- (b) claims made by any employees or agents of Fly-Away Pole Protection or by any operations of Fly-Away Pole Protection related to Fly-Away Pole Protection's Transportation Logistics Services to Customer under the terms of this Agreement;

- (c) claims arising from the negligence of Fly-Away Pole Protection in performing Transportation Logistics Services or a Carrier in performing Transportation Services pursuant to the terms of this Agreement; or
- (d) other claims arising directly or indirectly out of the transportation of Goods on behalf of Customer by Carriers selected by Fly-Away Pole Protection, including but not limited to claims arising from accidents involving equipment used to transport Goods.

The foregoing indemnities shall not apply to the extent that such liability arises from or as a result of any negligent act or omission of Customer. Customer shall protect, defend, indemnify and hold harmless Fly-Away Pole Protection, from and against all liabilities, losses, costs, damages, expenses, claims, attorneys' fees, and disbursements of any kind or of any nature whatsoever imposed upon Fly-Away Pole Protection, whether incurred directly or indirectly by Fly-Away Pole Protection, by virtue of negligent acts or omissions of the Customer or its agents.

10. SEVERABILITY.

If any clause or provision of this Agreement is illegal or unenforceable under present or future laws, then such clause or provision shall be deemed separable and shall not affect the validity of any other provision.

11. APPLICABLE LAW.

This Agreement shall be subject to and governed by and interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

12. ARBITRATION.

Any disagreement, dispute, controversy or claim with respect to the validity of this Agreement or arising out of or in relation to the Agreement, or breach hereof, shall be finally settled by arbitration in Cumberland County, Pennsylvania in accordance with articles of the American Arbitration Association for Commercial Arbitration. Customer and Fly-Away Pole Protection shall each select one arbitrator, and the two arbitrators so selected shall mutually agree to the selection of a third arbitrator, or, failing such mutual agreement, the third arbitrator shall be selected by the American Arbitration Association.

13. ASSIGNMENT.

This Agreement shall be binding on and inure to the benefit of the parties thereto, their successors and their legal representatives. Neither of the parties shall assign this Agreement, nor any interest or right therein, without the prior written consent of the other party, except that (i) Fly-Away Pole Protection shall have the right to assign the Agreement to an affiliated party and (ii) Fly-Away Pole Protection shall have the right to subcontract Transportation Services, as contemplated by this Agreement.

14. FORCE MAJEURE.

If, and to the extent that either party may be precluded by a circumstance of force majeure, authority of laws, strikes, lockouts or other causes beyond its control from performing hereunder, such failure or non-performance shall be excused to the extent that it is necessitated by such cause. The party affected by the force majeure event shall use due diligence to remedy such default.

15. ENTIRE AGREEMENT.

This Agreement constitutes the complete and entire agreement between the parties. If any provisions shall be declared invalid by a court of competent jurisdiction, the remainder thereof shall remain in full force and effect. This Agreement supersedes all prior agreements and/or understandings, whether written or oral, between the parties.

16. AMENDMENTS.

No amendment, change, or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed on behalf of the parties hereto by their duly authorized representatives.

17. AUTHORIZATION.

It is agreed and warranted by the parties that the individuals signing this document on behalf of the respective parties are duly authorized to execute such an Agreement. No further proof of authorization is or shall be required.

18. NON-WAIVER.

The mention in this Agreement of any particular remedy shall not preclude Customer or Fly-Away Pole Protection from any other remedy Customer or Fly-Away Pole Protection might have, either in law or in equity. The failure of Customer or Fly-Away Pole Protection to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. The receipt and acceptance by Fly-Away Pole Protection of fees, or the payment of same by Customer, with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such breach.

19. NOTICES.

All notices given, or that may be required, shall be in writing, and shall be sent to the parties hereto, by registered or certified mail, return receipt requested, or by courier service and shall be deemed to have been given when received by the party to whom addressed. Notices shall be addressed to the parties at the addresses provided, as the same may be amended from time to time. Either party may change its address for notice by delivering notice of such change to the

other party in accordance with the foregoing, which change of address shall be effective five (5) days after notice is received.

20. PACKAGING OF POLES

All poles must be packaged in a fully enclosed hard container. A container may be defined as irrigation tubing, pvc tubing, OEM cardboard tubing, or deluxe pole vault pole bags, or other method approved by Fly-Away Pole Protection.

Exhibit A

Service Specifications

- 1.1 Fly-Away Pole Protection shall provide trailer trucks appropriate for the safe and timely shipment of Product.
- 1.2 Shipment of Product requires special handling. Carriers' shipping methods should be consistent with special handling requirements.
- 1.3 Trailers used must be sanitary and suitable for transporting Goods. Equipment used in the transportation of hazardous materials, garbage, or waste products shall not be used to provide service to Customer under this Agreement.
- 1.4 Fly-Away Pole Protection shall contact Customer to determine reasonably acceptable delivery times.
- 1.5 Fly-Away Pole Protection shall immediately inform the Transportation Representative of any delays, accidents, or other unanticipated events that may prevent scheduled pickup or that occur while Goods are in transit.

Exhibit B

Rate Schedule

- 1.1 Shipping rates are a variable and are provided on request.

Exhibit C

Confidentiality Agreement

- 1.1 All customer information collected is kept in strictest confidence and will not be distributed or released in any case.

Exhibit D

Additional Obligations