

# SHIPPER'S LETTER OF INSTRUCTIONS

OP-289-WEB 8/03

<b>1a. U.S. PRINCIPAL PARTY IN INTEREST (USPPI) (Complete name and address)</b>  ZIP CODE _____		<b>2. DATE OF EXPORTATION</b>  _____	<b>3. TRANSPORTATION REFERENCE NO.</b>  _____
<b>b. USPPI EIN (IRS) NO. OR ID NO.</b>  _____	<b>c. PARTIES TO TRANSACTION</b> <input type="checkbox"/> Related <input type="checkbox"/> Non-related		<b>4. ROADWAY EXPRESS, INC. - FMC LIC. # 9650NF</b>  SHIPPER MUST CHECK DESTINATION SERVICE REQUESTED TO: <input type="checkbox"/> DOOR <input type="checkbox"/> PORT  <input type="checkbox"/> PREPAID <input type="checkbox"/> COLLECT <input type="checkbox"/> C.O.D. \$ _____ <input type="checkbox"/> Prepaid to U.S. port, collect beyond <input type="checkbox"/> Prepaid to Overseas port, collect beyond <input type="checkbox"/> AIR <input type="checkbox"/> OCEAN <input type="checkbox"/> CONSOLIDATE <input type="checkbox"/> DIRECT SHIPPER'S INSTRUCTIONS IN CASE OF INABILITY TO DELIVER CONSIGNMENT AS ASSIGNED <input type="checkbox"/> ABANDON <input type="checkbox"/> RETURN TO SHIPPER <input type="checkbox"/> DELIVER TO
<b>5a. ULTIMATE CONSIGNEE (Complete name and address)</b>  _____  ----- <b>b. INTERMEDIATE CONSIGNEE (Complete name and address)</b>  _____  _____			<b>7. POINT (STATE) OF ORIGIN OR FTZ NO.</b>  _____
<b>6. FORWARDING AGENT (Complete name and address)</b> <b>ROADWAY EXPRESS, INC.</b>			<b>8. COUNTRY OF ULTIMATE DESTINATION</b>  _____
<b>9. LOADING PIER (Vessel only)</b>  _____	<b>10. METHOD OF TRANSPORTATION (Specify)</b>  _____	<b>15. CARRIER IDENTIFICATION CODE</b>  _____	<b>16. SHIPMENT REFERENCE NO.</b>  _____
<b>11. EXPORTING CARRIER</b>  _____	<b>12. PORT OF EXPORT</b>  _____	<b>17. ENTRY NUMBER</b>  _____	<b>18. HAZARDOUS MATERIALS</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>13. PORT OF UNLOADING (Vessel and air only)</b>  _____	<b>14. CONTAINERIZED (Vessel only)</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>19. IN BOND NUMBER</b>  _____	<b>20. ROUTED EXPORT TRANSACTION</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>21. SHIPPER REQUESTS INSURANCE</b> <input type="checkbox"/> No <input type="checkbox"/> Yes \$ _____		SHIPPER NOTE: IF YOU ARE UNCERTAIN OF THE SCHEDULE B COMMODITY NO., CONTACT YOUR ROADWAY OCEAN SERVICE CENTER FOR HELP.  ROADWAY OTI WILL NOT BE LIABLE OR RESPONSIBLE FOR LOSS, DAMAGE AND/OR DELAY OF GOODS; THE CUSTOMER MAY INCREASE THE OCEAN CARRIER'S LIABILITY BY DECLARING A HIGHER VALUE IN THE CARRIAGE BOX AND PAYING AN ADDITIONAL CHARGE. INSURANCE: THE CUSTOMER MAY ALSO PURCHASE INSURANCE ON THE GOODS COVERED BY THIS LETTER OF INSTRUCTION. CUSTOMER MUST INDICATE THE GOOD(S) MONETARY VALUE IN THE INSURANCE BOX (#21) AND PAY THE ADDITIONAL PREMIUM.	

22. SCHEDULE B DESCRIPTION OF COMMODITIES. (Use columns 23-29)						
H.M. (23)	D/F or M (24)	SCHEDULE B NUMBER (25)	QUANTITY SCHEDULE B UNIT(S) (26)	SHIPPING WEIGHT (lbs/kgs) (27)	VIN / PRODUCT NUMBER VEHICLE TITLE NUMBER (28)	VALUE (U.S. dollars, omit cents) (Selling price or cost if not sold) (29)

<b>30. DOCUMENTS FOR ROADWAY TO PREPARE</b> <input type="checkbox"/> PROFORMA INVOICE <input type="checkbox"/> BANKING (SIGHT DRAFT) <input type="checkbox"/> CONSULAR INVOICE <input type="checkbox"/> OTHERS: <input type="checkbox"/> CERTIFICATE OF ORIGIN <input type="checkbox"/> INSURANCE CERTIFICATE	<b>31. DOCUMENTS ATTACHED</b> <input type="checkbox"/> COMMERCIAL INVOICE <input type="checkbox"/> EXPORT LICENSE <input type="checkbox"/> R.A. STATEMENT <input type="checkbox"/> CERTIFICATE OF ORIGIN <input type="checkbox"/> LETTER OF CREDIT <input type="checkbox"/> IMPORT LICENSE <input type="checkbox"/> PACKING LIST <input type="checkbox"/> GBL (GBL NO.) <input type="checkbox"/> BANKING SIGHT DRAFT <input type="checkbox"/> OTHERS:	
<b>32. LICENSE NO. / LICENSE EXCEPTION SYMBOL / AUTHORIZATION</b>  _____	<b>33. ECCN (When required)</b>  _____	<b>34. DULY AUTHORIZED OFFICER OR EMPLOYEE</b>  _____

**NOTE:** Customer or its Authorized Agent(s) hereby authorizes Roadway OTI to prepare and file with the appropriate government agency any export documents, to sign and accept any documents relating to the shipment of Customer's goods, to perform any act or condition which may be required or authorized by law or regulation of the United States in connection with the shipment, and to handle and forward the goods in accordance with the terms and conditions of service on the reverse side of this document. If Customer is a "Foreign Principal Party in Interest" as defined by U.S. export regulations, it undertakes to determine any export license requirement, to obtain any export license or official authorization, and to carry out any Customs' formalities for the export of the goods.

<b>35. SIGNATURE</b> X _____	<b>36. DATE</b>  _____
<b>37. SIGNATURE</b> X _____	<b>38. TRUCK LINE NAME:</b> _____ PER _____ DATE _____

MARK "X" IN H.M. COLUMN FOR HAZARDOUS MATERIALS.

PART 1 IS ROADWAY COPY - FOLLOW PREVIEW INSTRUCTIONS

## TERMS AND CONDITIONS OF SERVICE ROADWAY EXPRESS, INC.

The terms and conditions of service set forth herein will constitute a legally binding contract between Customer and Roadway Express, Inc., in its capacities as an OTI/freight forwarder, duly licensed pursuant to the Federal Maritime Commission License Number 9650-NF, and/or a motor carrier registered with the United States Department of Transportation (USDOT Number 071821). In the event Roadway Express, Inc., does render any of the services described herein in either or both of these capacities all such services will be governed by the following terms and conditions:

### 1. Definitions.

- (a) "RDWY-OTI" will mean Roadway Express, Inc., its subsidiaries, related companies, agents and/or representatives acting in their capacity as an OTI and ocean freight forwarder whereby they will: (i) dispatch ocean carriage shipments from or to the United States of America via an NVOCC; (ii) book or otherwise arrange space for ocean carriage shipments on behalf of customers; (iii) process all necessary import and/or export documentation for ocean carriage shipments; (iv) perform any other related activities incidental to the import or export of ocean carriage shipments; and (v) not issue an ocean bill of lading in its own capacity;
- (b) "REX" will mean Roadway Express, Inc. (ICC No. MC-2202/US DOT No. 071821), its agents and/or representatives rendering services in the capacity of a Third Party motor carrier;
- (c) "Customer" will mean the person, company or entity for which RDWY-OTI is rendering the services described herein. It is Customer's responsibility to provide notice and a copy of these terms and conditions of service to all such agents and/or representatives of Customer;
- (d) "Documentation" will mean all information received directly and/or indirectly from Customer in paper or electronic form;
- (e) "Ocean Transportation Intermediaries" or "OTI" will mean ocean freight forwarder as defined at 46 CFR § 515.2(o)(1);
- (f) "Ocean Common Carrier" or "OCC" will mean an ocean carrier as defined at 46 CFR § 515.2(m) and that issues a bill of lading in its own capacity;
- (g) "Non-Vessel Operating Common Carrier" or "NVOCC" is a carrier as defined at 46 CFR § 515.2(o)(2) and that issues a bill of lading in its own capacity; and
- (h) "Third Party" or "Third Parties" will include, but not be limited to, the following: drayage carriers, for-hire motor carriers, forwarders, OTI, OCC, NVOCC, customs brokers, agents, warehousemen, cartage companies and any other entity or individual to which the goods are entrusted for transportation and storage.

**2. RDWY-OTI as Customer's Agent and Services Performed.** RDWY-OTI will act as the lawful agent of Customer for the purpose of performing import and/or export duties that include but are not limited to: the entry and release of goods, preparing bills of lading (as further defined in Section 7 hereunder), arranging for transportation services, post entry services, the securing of export licenses, the filing of export documentation on behalf of the Customer and any dealings with government agencies. Any services that RDWY-OTI may perform for Customer will be performed by RDWY-OTI solely as an independent contractor.

**3. Power of Attorney** Prior to RDWY-OTI acting as a lawful agent on behalf of Customer, a written Power of Attorney ("POA") must be executed by Customer authorizing RDWY-OTI to perform any services (A power of attorney form is available by request or on RDWY-OTI's internet web site at [www.roadway.com](http://www.roadway.com)). If Customer does not complete a POA prior to RDWY-OTI performing such services described herein, a signature by Customer on the Shipper's Letter of Instruction thereby authorizes RDWY-OTI to act on Customer's behalf for that individual transaction.

**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 Customer, RDWY-OTI will use reasonable care in its selection of Third Parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment. Information provided by RDWY-OTI that a particular person or firm has been selected to render services, with respect to the goods, will not be construed to mean that RDWY-OTI represents, warrants or guarantees that said person or firm will render such services. In addition, RDWY-OTI does not assume responsibility or liability for any actions(s) and/or inaction(s) of any Third Parties, and/or their agents, and will not be liable for any loss, damage, delay or expenses of any kind to Customer's goods that occur while a shipment is in the custody or control of a Third Party and/or their agents. All claims in connection with the act(s) of a Third Party will be brought solely against such Third Party and/or its agents.

**5. Disclaimers and Limitation of Liability.** Except as specifically set forth herein, RDWY-OTI makes no express or implied warranties in connection with its services. Customer agrees that in connection with any and all services performed by RDWY-OTI, RDWY-OTI will only be liable for its negligent acts that are the direct and proximate cause of injury to Customer in its capacity solely as an OTI and freight forwarder. RDWY-OTI will not be liable for loss, damage, and/or delay of Customer's goods. Lastly, RDWY-OTI will in no event be liable for the acts of Third Parties.

In connection with all services performed by RDWY-OTI, RDWY-OTI's liability will be limited to the following:

- (a) \$50.00 per shipment or transaction where the claim arises from activities other than those relating to customs brokerage; or
- (b) \$50.00 per entry or the amount of fees paid to RDWY-OTI for the entry, whichever is less, where the claim arises from activities relating to "Customs business."

In no event will RDWY-OTI be liable or responsible for special, consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages.

**6. Limitation of Action.** RDWY-OTI hereby expressly disclaims any and all responsibility, as well as liability, for cargo loss, damage and/or delay. Therefore, all claims for loss, damage and/or delay must be filed directly with the NVOCC or OCC, as is applicable. However, in the event that Customer inadvertently files a claim with RDWY-OTI all such claims for a potential or actual loss, damage and/or delay must be made in writing and received by RDWY-OTI within ninety (90) days from the date of the event giving rise to such a claim. The failure of Customer to adhere to this filing requirement will be a complete defense to any legal suit or action commenced by Customer against RDWY-OTI or any Third Party.

All claims, other than cargo loss and/or damage, initiated against RDWY-OTI must be filed as follows:

- (a) Within ninety (90) days of the event giving rise to any claim against RDWY-OTI acting in its capacity as an OTI and freight forwarder; or
- (b) Within seventy-five (75) days from the date of liquidation of the entry(s) for claims arising out of the preparation and/or submission of an import entry(ies).

All legal suits initiated against RDWY-OTI acting in its capacity as an OTI and freight forwarder must be filed and properly served within eighteen months (18) from the date of the event giving rise to such a claim. The failure to file suit within this period will be a complete defense to any legal suit or action commenced by Customer.

**7. Preparation of Bills of Lading and Inland Motor Carriage.** Should RDWY-OTI prepare an ocean bill of lading, through bill of lading or any other documentation it will do so only as an OTI and freight forwarder as previously defined herein. If RDWY-OTI does undertake such preparation it will rely solely and strictly upon the commodity descriptions, as well as all other information, provided by Customer. At no time will RDWY-OTI be considered a NVOCC.

In the event REX performs any inland motor carriage transportation services of Customer's goods, it is expressly agreed that such inland motor carriage transportation services will be performed by REX solely as a Third Party. As a Third Party, REX will be the beneficiary of the terms and conditions of the issued ocean bill of lading by the NVOCC or OCC. In addition, REX will be entitled to all exemptions and limitations of liability incorporated within the ocean bill of lading. Lastly, REX will not be responsible or liable for any acts or omissions of any other Third Party.

In the event that REX inadvertently issues, or Customer prepares, a motor freight Uniform Bill of Lading ("UBOL") for any inland United States motor carriage transportation services such services will be performed by REX only in its capacity as a motor common carrier pursuant to 49 U.S.C. § 14101 (a). Under no circumstances will the UBOL terms and conditions be applicable to the motor or ocean carriage transportation services. Specifically, the Carmack cargo liability regime, codified at 49 U.S.C. § 14706, will not be applicable. Consequently, REX's limitation of liability regarding any loss and/or damage of Customer's goods will be limited to Five Hundred Dollars (\$500.00) per package or shipping unit.

**8. Declaring Higher Value to Third Parties and Insurance.** Third Parties to whom the goods are entrusted may limit their liability for loss or damage. RDWY-OTI will request excess liability coverage (not insurance) from a Third Party only upon specific written instructions from Customer. Customer must pay any charges for such excess liability coverage. In the absence of written instructions, or the refusal of the Third Party to agree to a higher declared value, at RDWY-OTI's discretion the goods may be tendered to the Third Party subject to the terms and conditions of the Third Party's limitations of liability contained within the Third Party's bill of lading and/or tariffs.

Unless specifically requested to do so in writing by Customer, and confirmed in writing to Customer, RDWY-OTI is under no obligation to procure any type of insurance on Customer's behalf. In all cases where insurance is obtained on Customer's behalf, Customer will pay all premiums and costs in connection with procuring the requested insurance.

**9. Quotations Not Binding.** Quotations by RDWY-OTI as to fees, rates of duty, freight charges or other charges given by RDWY-OTI to Customer are for informational purposes only and are subject to change without notice.

In the event that RDWY-OTI establishes an individual pricing program for Customer, such individual pricing program will be established by RDWY-OTI solely for the purpose of administering pricing between RDWY-OTI and Customer. The pricing program will be binding on both RDWY-OTI and Customer for all rates and charges except as described hereunder. The invoice by RDWY-OTI to Customer will include all charges to transport and process Customer's goods. Upon request, RDWY-OTI will provide an itemization of all charges assessed and a true copy of each pertinent document relating to such charges.

The actual rates and charges for all shipments that are required by law to be published by a NVOCC or OCC, pursuant to the Ocean Shipping Reform Act of 1998 or any other Federal statutes or regulations, will be lawfully published individually by either the NVOCC or OCC, as may be applicable. Customer is bound to pay such lawfully published rates and charges. Therefore, all rates and charges that are invoiced to Customer and collected by RDWY-OTI will be held in trust and forwarded to any NVOCC or OCC as may be applicable.

**10. Reliance on Information Furnished.** Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the U.S. Customs Service, other Government Agency and/or Third Parties. Customer will immediately advise RDWY-OTI of any errors, discrepancies, incorrect statements or omissions on any declaration filed on Customer's behalf.

In preparing and submitting customs entries, export declarations, applications, documentation and/or export data to the United States Government and/or a Third Party, RDWY-OTI will rely on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer. Customer shall use reasonable care to insure the correctness of all such information. Customer will indemnify and hold RDWY-OTI harmless from any and all liability and asserted claims for losses suffered by reason of the Customer's failure to disclose information, any incorrect or false statement or any negligent misrepresentation made by Customer upon which RDWY-OTI reasonably relied. The Customer agrees that it has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

**11. Advancing Money.** Customer must pay all charges in advance unless RDWY-OTI agrees in writing to Customer to extend credit. The granting of credit to Customer, in connection with a particular transaction, will not be considered in any way a waiver by RDWY-OTI of this provision.

**12. Indemnification & Hold Harmless.** Customer agrees to indemnify, defend and hold RDWY-OTI harmless from any claims and/or liability arising from the importation or exportation of Customer's merchandise and/or any conduct of the Customer, including such conduct as stated in Section 10, that violates any Federal, State, Municipal and/or other laws. Customer further agrees to indemnify and hold RDWY-OTI harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, that RDWY-OTI 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 RDWY-OTI, it shall give notice in writing to the Customer by mail at the address on file with RDWY-OTI.

**13. C.O.D. or Cash Collect Shipments.** RDWY-OTI shall use reasonable care regarding all written instructions relating to Cash on Delivery ("C.O.D.") or Cash Collect shipments. If such instructions are provided by Customer, RDWY-OTI will convey said instructions to the Third Party responsible for collecting any bank drafts, cashier's and/or certified checks, letter(s) of credit and any other similar payment documents. RDWY-OTI will not be liable or responsible to Customer if any bank or consignee refuses to pay for the shipment.

**14. Costs of Collection.** In any past due money owed by Customer, RDWY-OTI will be entitled to all reasonable costs for collection, including reasonable attorney's fees, and per annum interest at the highest rate allowed by law.

### 15. General Lien and Right To Sell Customer's Property.

(a) RDWY-OTI will have a general and continuing lien on any and all property of Customer in RDWY-OTI's control or actual or constructive possession for money owed to RDWY-OTI with regard to: (i) the property on which the lien is claimed; (ii) any prior shipment(s); or (iii) both the property on which the lien is claimed and for any past due amounts owed for prior shipments.

(b) RDWY-OTI will provide written notice to Customer of its intent to exercise such lien, the exact amount of money due and owing as well as any on-going storage or other charges. Customer shall notify all parties having an interest in any and all property of RDWY-OTI's lien rights and/or the exercise of such lien rights.

**16. No Duty to Maintain Records for Customer.** Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act as amended as well as 19 U.S.C. § 1508 and 1509, Customer has a duty and is solely liable for maintaining all records required under the Customs and/or other laws and regulations of the United States. Unless otherwise agreed to in writing, RDWY-OTI will only keep such records that it is required to maintain by Statute(s) and/or Regulation(s). RDWY-OTI will not act as a "recordkeeper" or "recordkeeping agent" for Customer.

**17. Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by Customer in writing, and agreed to by RDWY-OTI in writing, RDWY-OTI will be under no obligation to undertake any pre or post Customs release action. This will include but not be limited to: (i) obtaining binding rulings; (ii) advising of liquidations; (iii) filing of petition(s); and/or (iv) filing of protests.

**18. No Modification or Amendment Unless Written.** The Terms and Conditions of Service may only be modified, altered or amended in writing signed by both Customer and RDWY-OTI. Any attempt to unilaterally modify, alter or amend these Terms and Conditions of Service will be null and void.

**19. Severability.** In the event any Section(s), paragraph(s) and/or portion(s) of the Terms and Conditions of Service is found to be invalid, and/or unenforceable, the remainder will remain in full force and effect.

**20. Governing Law; Consent to Jurisdiction and Venue.** The Terms and Conditions of Service as well as the relationship of the parties will be construed according to the laws of the State of Ohio without giving consideration to principals of conflict of law. Customer and RDWY-OTI:

- (a) irrevocably consent to the jurisdiction of the United States Federal District Court of the Northern District of Ohio, Eastern Division, and the State Courts of Ohio;
- (b) agree that any action relating to the services performed by the Terms and Conditions of Service will only be brought in said courts;
- (c) consent to the exercise of in personam jurisdiction by said courts; and
- (d) further agree that any action to enforce a judgement may be instituted in any jurisdiction.