

STANDARD TERMS AND CONDITIONS

I. Standard Terms and Conditions Applicable to All Agreements

1. Unless otherwise stated in the Contractor's Proposal, the following standard terms and conditions shall apply:
2. Contractor's quotation is subject to acceptance within thirty 30 days and is conditional upon satisfactory arrangements being made with respect to payment and/or security.
3. Terms – Net 30 days. Interest at 1.5% per month charged on all overdue accounts. All quotes are in US Dollars unless otherwise stated.
4. This quotation will be limited to the scope of work detailed in Contractor's Proposal.
5. Contractor shall not be responsible for any direct or indirect damages whatsoever caused by delays, and without limiting the generality of the foregoing, Contractor shall not be responsible for any damages or loss due to delays caused by fires, strikes, adverse weather conditions, labor disputes, material procurement difficulties, governmental regulations, accidents (without regard to cause), transportation delays, or any other delay beyond Contractor's control.
6. In the event that Contractor is delayed in the performance of the work due to the fault of Customer, its employees, servants, agents or contractors of the purchaser other than Contractor, Contractor shall be entitled to be reimbursed for any costs it incurs as a result of any such delay. Time and Material rates for labor and equipment shall apply. This quotation shall be subject to availability of appropriate equipment.
7. In no event shall Contractor be liable for consequential damages of any nature whatsoever suffered by Customer, including but not limited to loss of use or profits due to damages to Customer's property (real or personal) directly or indirectly arising out of Contractor's negligent or non-negligent acts, errors or omissions.
8. Contractor's liability for loss or damage to Customer's property (real or personal) due to Contractor's negligent acts, errors or omissions shall be **limited to the lesser of Customer's actual damages or One Million Dollars (\$1,000,000)**. Further, Customer agrees to indemnify and hold harmless Contractor for any damages or loss suffered by Contractor or claimed by any other person, entity or insurer in excess of any available insurance applicable to Contractor for Customer's losses or damages due to Contractor's acts, errors or omissions.
9. At Customer's sole cost and expense and upon written request by Customer, Contractor shall attempt to obtain additional insurance coverage for the Scope of Work in excess of the above stated limit of liability provided:
 - a. the request is signed by an authorized representative of Customer;
 - b. the request confirms Customer's agreement to pay for such insurance;
 - c. the requested insurance is at least equal to the Declared Value;
 - d. the request is made at least ten (10) days prior to commencement of performance of the work set forth herein;
 - e. the insurance requested is reasonably obtainable by Contractor; and
 - f. unless specifically requested by Customer in writing, any such insurance shall not cover Customer's consequential damages in the event of loss or "loss due to environmental hazard," nor will it supersede Contractor's **LIMITATION OF LIABILITY** or Customer's duty to indemnify stated above except to the extent of available additional insurance.
10. Prices are subject to the Customer providing Contractor with access, ample room and suitable ground conditions to perform the work agreed to in the Scope of Work. Access shall include removal of any obstacles and/or utilities as required by Contractor.
11. Contractor's bid is based upon working straight-time hours only, except where dictated by tidal conditions, DOT restrictions, etc. Where work is required to be performed because of conditions beyond the control of Contractor, after normal working hours, and any time on Saturday or Sunday, and holidays, an additional charge will be made to cover the cost of overtime paid to workers and/or cost for travel time and layover for legal holidays and weekends.
12. Contractor's price is based on a designated number of hours for loading and unloading of equipment. Any demurrage charges (through no fault of Contractor) shall be the responsibility of the Customer.
13. All federal, state or municipal taxes or licenses or any taxes or licenses imposed on or applicable to the transaction herein by any taxing authority are extra and chargeable to Customer.



14. Contractor's price is based on the weight(s) and dimensions provided by Customer. The price is subject to change should any of the dimensions or weight(s) vary from those provided by Customer.
15. All third party charges that Contractor is required to pay will be charged at Contractor's negotiated cost plus rate.
16. Free and clear access to all work areas must be provided by Customer. Time spent by Contractor to clear the work area or to gain access to install or remove equipment will constitute additional labor and material above the bid price.
17. All surfaces over which Contractor's equipment must pass, either loaded or unloaded, must accommodate projected weights. Customer has been consulted on such weights, has verified bearing capacity of all surfaces for Contractor's work. Any damage to surfaces, sub-surfaces or utilities due to a failure to accommodate loaded or unloaded weights of Contractor's equipment shall be solely the customer's responsibility.
18. Quotes based on the US Department of Energy (DOE) West Coast Average weekly price per gallon of diesel fuel. Should this index increase by \$0.05 or more, from time of the quote, all quotes are subject to change.
19. Others will provide the following (unless otherwise noted on Proposal):
 - 19.1 Charges incurred from the region's State Patrol for weighing and measuring loads. Note: Not all loads are weighed and measured. The DOT selects loads at random. It is State Patrol policy to now charge the trucking company for their labor and benefits to weigh and measure loads for the DOT.
 - 19.2 Clear access to all work areas and adequate staging areas.
 - 19.3 Security.
 - 19.4 Any necessary civil work.
 - 19.5 Road plate, gravel, etc., for adequate ground loading.
 - 19.6 Ocean Freight, Water Crane/Barge and/or Rail including rail siding usage fees.
 - 19.7 Vessel discharging, Port Fees, Heavy Lift Charges, Customs Clearance, Shadow Labor, Etc.
 - 19.8 Project site clearance and/or Badging.
 - 19.9 Structural (Bridge) Analysis or Surveys (Engineering) required by local jurisdictions for route clearance.
 - 19.10 Lifting and/or removal and reinstallation of utility wires for route clearance.
 - 19.11 Accurate layout for equipment positioning.
 - 19.12 All electrical work.
 - 19.13 Removal, disposal and refilling of all fluids and/or hazardous materials.
 - 19.14 All foundation work and associated hardware, anchoring, leveling and/or alignments.19.15 Handling of all items not listed in the "scope of work."
 - 19.16 Any necessary modifications and/or upgrades.
 - 19.17 All overtime and shift differential.
 - 19.18 Additional insurance over our standard \$1,000,000 coverage.
 - 19.19 All applicable taxes.
 - 19.20 Any necessary permits associated with land use, construction, electrical, etc.
20. All Estimates are based on the following conditions (unless otherwise noted on Proposal):
 - 20.1 Site unseen conditions.
 - 20.2 Adequate weather conditions.
 - 20.3 Weights and dimensions provided.
 - 20.4 Pending Route Survey.
 - 20.5 Route clearance and permit approval by all county, city and state agencies.
 - 20.6 Current Highway restrictions (DOT, Construction, Weather, etc.)
 - 20.7 The estimate provided makes no guarantees of acceptance or permit approval by the county, city and/or state agencies (Bridge Department / Pavement Department, etc.).
 - 20.8 Any standby time and/or fees accrued due to causes beyond Omega Morgan's control will be invoiced at our current Time & Material rates. This includes delays caused by weather, transportation by others, vessel/rail car delivery and/or schedule changes that impact other scheduled projects.



20.9 Subject to Equipment and Manpower availability.

II. Standard Terms and Conditions Applicable to Brokered Loads

21. Customer acknowledges that the Contractor at times may act as a freight broker between the Customer and Carrier. Contractor ensures that the Carriers are properly licensed and bonded. The Freight Carrier(s) is/are subject to all state and federal laws and regulations applicable to the transportation of the shipment.
22. The Customer represents and warrants that at all times it will be in compliance with all applicable laws, rules, and regulations including applicable Laws relating to customs, import and export required by county to, from, through or over which the shipment may be carried. The Customer agrees to furnish such information, and complete and attach to the BOL such documents as are necessary to comply with such Laws. Any individual or entity acting on behalf of the Customer in scheduling shipments or undertaking any other performance hereunder warrants and represents that it has the right to act on behalf of and legally bind the Customer. Omega Morgan assumes no liability for any loss or expense due to the failure of the Customer to comply with this paragraph and Customer shall indemnify and hold Omega Morgan harmless for any claims or damages resulting from violation of this paragraph.
23. Rates are based on equipment type, state to state/mileage, weight (actual or density) and commodity/product type. Transit times are estimates only.
24. The Customer will look solely to insurance provided by the carrier for damage to goods in transit. The Customer acknowledges a claim for damages does not relieve it for payment under these Terms and Conditions. Timely payment is a condition precedent to the processing of a damage or insurance claim. All freight cargo claims should be submitted immediately to Omega Morgan to help ensure timely resolution. Omega Morgan will attempt to assist in the resolution of freight claims, but has no responsibility or liability therefore.

III. Standard Terms and Conditions Applicable to Storage of Customer Property

25. Tender for Storage. All goods for storage shall be delivered at the Warehouse properly marked and packed for handling. Customer or Customer's agent shall furnish at or prior to such delivery a manifest showing marks, brands or sizes to be kept and accounted for separately, and the class of storage desired.
26. Storage Period and Charges. All goods are stored on a month-to-month basis. Unless otherwise provided, a storage month shall extend from a date in one calendar month to but not including the same date of the next and all succeeding calendar months. All charges for storage are per package or other agreed unit per month. Unless otherwise agreed upon, storage for a period of less than thirty (30) days shall result in a charge of not less than \$100. Storage will then be charged by square footage, multiplied by the square footage rate per month, plus 20% aisle space. Storage shipped after the first (1st) of the month will be invoiced to the fifteenth (15th) of the month. Storage shipped after the fifteenth (15th) of the month will invoice to the end of the month. Interest calculated at a rate of 1.5% per month shall be added to all late and/or unpaid charges.
27. Transfer, Termination of Storage, Removal of Goods. Instruction to transfer goods on the books of Contractor are not effective until delivered to and accepted by Contractor, and all charges up to the time transfer is made are chargeable to Customer. If a transfer involves re-handling the goods, it will be subject to a charge. When goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer. Contractor reserves the right to move, at Contractor's own expense any goods in storage from the Warehouse in which they may be stored to any other of Contractor's Warehouses; but if Customer or holder takes delivery of such goods in lieu of transfer, no storage charge shall be made for the current storage month. Contractor may, without notice, move goods within the Warehouse in which they are stored. Except as otherwise provided in the receipt for goods accepted into storage, Contractor may, upon written notice to Customer and to any other person known by Contractor to claim an interest in the goods, require the removal of any goods thirty (30) days from the date the notice is received. Such notice shall be given by delivery in person or by registered letter addressed to the last known



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place of business or abode of the person to be notified. In the event goods may be about to deteriorate or may constitute a hazard to other property or to the Warehouse or persons, the time for removal may be any reasonable period less than thirty (30) days. Notices under this section shall be deemed received on the fifth (5th) day after the date the notice is mailed by certified or registered mail, return receipt requested.

28. **Handling.** The handling charge covers the ordinary labor involved in receiving goods at the Warehouse door, placing goods in storage, and returning of goods to the Warehouse door. Labor for unloading goods will be charged to Customer. Any additional expenses incurred by Contractor in unloading damaged goods will be charged to Customer. Unless Contractor has failed to exercise due care and diligence, Contractor shall not be responsible for demurrage, nor for delays in unloading inbound cars, nor for delays in obtaining cars for outbound shipments. When goods are ordered out in quantities less than in which received, Contractor may make an additional charge for each order or each item of an order.
29. **Delivery Requirements.** No goods shall be delivered or transferred except upon receipt by Contractor of complete instructions properly signed by Customer. However, when no negotiable receipt is outstanding, goods may be delivered upon instructions by telephone 24 hours prior to date of delivery, but Contractor shall not be held responsible for loss or error occasioned thereby. When a negotiable receipt has been issued, no goods covered by that receipt shall be delivered or transformed on the books of Contractor, unless the receipt, properly endorsed, is surrendered for cancellation, or for endorsement of partial delivery thereon. If a negotiable receipt is lost or destroyed, delivery of goods may be made only upon order of a court of competent jurisdiction and the giving of a bond with sufficient sureties to be approved by the court. When goods are ordered out, a reasonable time shall be given Contractor to carry out instructions, and if Contractor is unable because of fire, acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions or causes beyond Contractor's control to effect delivery before expired storage dates, the goods will continue to be subject to regular storage charges.
30. **Extra Services (Special Services).** Warehouse labor required for services other than ordinary handling and storage will be charged to Customer. Clerical labor for compiling of special stock statements, for reporting marked weights, serial numbers or other data from packages in store, or for the physical check of goods in store, or for handling transit billing, or other similar services, will be charged to Customer. Dunnage, bracing, packing materials, or other special supplies may be provided for Customer at a charge in addition to Contractor's cost. By prior arrangement made 2-3 business days in advance, goods may be received or delivered during other than usual business hours, subject to a charge. Customer shall be solely responsible for damages or other losses occurring while Customer's goods or equipment are in transit and for obtaining any and all necessary insurance coverage for any such damages and losses.
31. **Bonded Stores.** A charge in addition to regular rates will be made for merchandise in bond. Where a warehouse receipt covers goods in U.S. Customs Bond, such receipt shall be void upon the termination of the storage period fixed by law.
32. **Minimum Charges.** A minimum handling charge per lot and a minimum storage charge per lot per month shall be assessed. A minimum monthly charge to one account for storage and/or handling will be made. This charge will apply also to each account in the event Customer has several accounts, each requiring separate records and billing.
33. **Liability.** Contractor assumes no liability for any loss or injury to the goods stored that could not have been avoided by the exercise of reasonable care required by law or a reasonably careful man. Goods are stored at Customer's risk of loss for damage by acts of God, seizure or other acts of civil or military authority, insurrection, riot, strike, or enemies of the government, for loss or damage resulting from inadequate packaging or wear and tear, or from any cause not originating in the Warehouse or from any cause beyond Contractor's control. Goods that are subject to damage through temperature or humidity changes or other causes incident to general storage will be received in general storage only at Customer's risk for such damage as might result from general storage conditions. Goods are not insured by Contractor for the benefit of the Customer against fire or any other casualty.
34. **Indemnity. CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR, ITS DIRECTORS, OFFICERS, AGENTS, CONSULTANTS, EMPLOYEES AND OTHER AFFILIATES, FROM AND AGAINST ANY AND ALL CLAIMS, INCLUDING CLAIMS ASSERTED BY ANOTHER CUSTOMER OR A THIRD PARTY SUCH AS AN INSURER THROUGH SUBROGATION OR**



OTHERWISE, WHETHER ARISING IN TORT OR IN CONTRACT AND INCLUDING CLAIMS FOR QUANTUM MERUIT, THAT RESULT FROM THE CONDITION, WHETHER HAZARDOUS OR OTHERWISE, OF CUSTOMER'S GOODS OR EQUIPMENT STORED WITH CONTRACTOR OR OCCURRING DURING TRANSIT OF CUSTOMER'S GOODS OR EQUIPMENT. AS A CONDITION OF DEPOSIT, IT IS CUSTOMER'S SOLE RESPONSIBILITY TO STABILIZE AND SECURE THE GOODS OR EQUIPMENT PRIOR TO DEPOSIT WITH CONTRACTOR. CUSTOMER'S OBLIGATIONS UNDER THIS PROVISION INCLUDE, BUT ARE NOT LIMITED TO, PAYMENT OF DAMAGES, CLEANING COSTS AND ATTORNEY FEES INCURRED IN ORDER TO ENFORCE THIS PROVISION OR IN DEFENDING A CLAIM CONTEMPLATED UNDER THIS PROVISION.

35. Limitation of Damages and Claims. **CONTRACTOR'S LIABILITY FOR DAMAGES TO WAREHOUSED GOODS AND EQUIPMENT SHALL NOT INCLUDE ANY LIABILITY FOR CONSEQUENTIAL DAMAGES AND IS LIMITED TO THE LESSER OF: (1) THE COST OF REPAIR OR REPLACEMENT OF THE GOODS AND EQUIPMENT; (2) \$ _100,000_ ; OR (3) ACTUAL STORAGE CHARGES, HOWEVER LIABILITY MAY BE INCREASED ON ADVANCE WRITTEN REQUEST OF CUSTOMER ON PART OR ALL OF THE GOODS OR EQUIPMENT HEREUNDER, IN WHICH EVENT A MONTHLY CHARGE FOR SUCH ADDITIONAL INSURANCE WILL BE AGREED UPON IN WRITING BY THE PARTIES BEFORE INCEPTION AND MUST BE PAID IN ADDITION TO THE REGULAR MONTHLY STORAGE CHARGE. UNLESS OTHERWISE AGREED TO IN WRITING, THE LIMITATION ON LIABILITY APPLIES TO ALL GOODS AND EQUIPMENT STORED BY CUSTOMER WITH CONTRACTOR, WHETHER A SINGLE ITEM OR MULTIPLE ITEMS; CLAIMS BY CUSTOMER MUST BE PRESENTED IN WRITING WITHIN A REASONABLE TIME AND IN NO EVENT LONGER THAN SIXTY (60) DAYS AFTER DELIVERY OF THE GOODS. NO ACTION MAY BE MAINTAINED BY CUSTOMER AGAINST CONTRACTOR FOR LOSS OR DAMAGE TO GOODS COVERED HEREUNDER UNLESS COMMENCED WITHIN 12 MONTHS FOLLOWING DATE OF DELIVERY BY CONTRACTOR. CUSTOMER SHALL FULLY ENSURE GOODS AGAINST LOSS INCLUDING LOSS OF USE. SUCH COVERAGE SHALL BE ON A PRIMARY AND NON-CONTRIBUTORY BASIS WITH A WAIVER OF SUBROGATION RIGHTS IN CONTRACTOR'S FAVOR.**
36. Changes in terms & conditions. **CONTRACTOR SHALL HAVE THE RIGHT AT ANY TIME TO CHANGE OR MODIFY THESE TERMS AND CONDITIONS, OR ANY PART THEREOF, OR TO IMPOSE NEW CONDITIONS, INCLUDING BUT NOT LIMITED TO ADDING FEES OR CHARGES. SUCH CHANGES, MODIFICATIONS, ADDITIONS OR DELETIONS SHALL BE EFFECTIVE IMMEDIATELY UPON NOTICE THEREOF, WHICH MAY BE GIVEN BY MEANS INCLUDING BUT NOT LIMITED TO POSTING ON OMEGAMORGAN.COM, THROUGH ELECTRONIC OR CONVENTIONAL MAIL, OR BY ANY OTHER MEANS BY WHICH CUSTOMER OBTAINS NOTICE THEREOF. ANY USE OF CONTRACTOR BY CUSTOMER AFTER SUCH NOTICE SHALL BE DEEMED TO CONSTITUTE ACCEPTANCE BY CUSTOMER OF SUCH CHANGES, MODIFICATIONS, OR ADDITIONS.**

