

Ascent On-Demand

TERMS AND CONDITIONS FOR UTILIZATION OF ASCENT ON-DEMAND SERVICES

By utilizing any of the services, the client acknowledges and agrees that all transactions will be governed by these terms and conditions unless they are superseded by written contract between the parties.

I. Services and Providers

Ascent On-Demand is a registered assumed name (d/b/a) of Active Aero Group, Inc. ("AOD"), the parent company of Active PTM, LLC (d/b/a Ascent On-Demand) ("PTM") and Active Global Solutions, LLC (d/b/a Ascent On-Demand) ("AGS") and Active Aero Motor Carrier, LLC (d/b/a Ascent Expedite) ("AMC") and Active Aero Charter, LLC (d/b/a Ascent On-Demand) ("AAC"). Services provided by those entities include: Airfreight Forwarding – [Active Global Solutions](#). Surface Freight Forwarding - [Active Global Solutions](#). Expedited and Non-Expedited Freight Brokerage – [Active PTM](#). Common carrier of property (excluding household goods) – [Active Motor Carrier](#). Air Charter Management – [Active Aero Charter](#) (defined as "AOD Group").

Ascent On-Demand (AOD) through Active PTM will obtain shipment information from the client and transmit pertinent information to a network of subscribing providers, who will respond with information sufficient for the Client, or AOD staff on the client's behalf, to choose the best option to meet the client's shipment requirements. PTM will utilize the services of 3rd party providers as well as AOD-owned companies such as AGS and AAC, who hold the right to match the lowest qualifying transportation offer received from Active PTM's network of providers.

PTM will arrange for cargo transport in coordination with the parameters set by the Client to meet the Client's time requirement, cost requirement, or both. The selection of providers eligible to serve the Client's requirements will be determined by PTM at its sole discretion. However, the Client may recommend providers for their shipments and those providers will be added so long as they meet Regulatory and AOD qualification standards. Usually, PTM will select Motor Carriers/Ground Expedite Providers or Airfreight Forwarders to transport the Client's specific shipment – although the Client may choose to take over this function.

Carriage via Motor Carriers and Ground Expedite Providers

- PTM will "qualify" Motor Carriers and Ground Expedite providers – assessing the providers for applicable regulatory, equipment, safety and insurance requirements of either the company or the Federal agencies overseeing the mode, or both, as the case may be.
- In the event that Client advises that it requires transportation of hazardous material, PTM will require that the provider have excess insurance in place covering potential harm caused by such transportation.

- **Cargo Liability**
 - For shipments for which PTM has arranged for the transportation via Motor Carrier or Ground Expedite provider, liability for any cargo loss, damage or delay shall be solely and exclusively the responsibility of the provider involved with the subject shipment. PTM shall require each such provider to assume liability as a common carrier for loss, damage to or destruction of any and all Client's freight or any delay in transit while under the provider's care, custody or control. PTM shall endeavor to ensure that all claims shall be paid or settled by the Qualified Carrier within ninety (90) days of the receipt of a properly documented claim.
 - PTM shall be responsible for assisting in the resolution of the claim by assisting in the investigation, documentation and/or prosecution of all cargo loss, damage or destruction claims against its Qualified Carriers in accordance with this Section to the reasonable satisfaction of the Client. PTM will assure that all carriers maintain not less than \$100,000 in cargo liability insurance covering damage to the Client's cargo. That is the limit of PTM's responsibility or liability for cargo loss. PTM does not assume liability for cargo loss, damage or delay solely by virtue of carrying insurance or otherwise. Client agrees that it will not pursue any cargo loss, damage or delay claim against PTM.
 - **Application of Law**

All regulations applicable to brokers promulgated by the Secretary of Transportation for the protection of shippers as set out in 49 U.S.C. § 13904(c) are applicable under this Service Provider Contract, whether such regulations are currently in effect or are subsequently adopted. To the extent that any provision in this Contract conflicts with the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") as codified by 49 U.S.C. § 14101(b)(1) or related regulations, the provisions of this Contract shall control and the parties waive the application of such conflicting statutory provision or regulation.

Carriage via Air Freight Forwarders

1) Carriage via Third-Party Air Freight Forwarders Selected by PTM

- a) Concurrent with its broadcast of the Client's shipment requirements to its network of Motor Carriers and Ground Expedite providers, PTM will submit shipment criteria to its network of IAC/Air Freight Forwarders. The Client acknowledges that:



- i) For domestic shipments, IAC is responsible for not more than: \$.50 per pound of cargo, or \$50, whichever is greater.
- ii) For international shipments, IAC is responsible for not more than \$9.07 per pound of cargo.
- b) Client further agrees that in the event of any claim that arises by virtue of the transportation of the Client's cargo (or cargo shipped on behalf of and at the request of the client) via IAC/Air Freight Forwarder, the limit of liability of the Carrier is as set forth in Paragraph 1a i and ii, above. Client will not seek to recover damages for amounts greater than is stated in paragraph 1a, i or ii, above, from the provider, PTM, AGS or AOD.
- c) Client further acknowledges that any shipment traveling by aircraft may be subject to inspection by the Transportation Security Administration (TSA) or other agencies charged with the security of the air cargo supply chain.

2) Carriage via Active Global Solutions by award from PTM

For each shipment awarded to AGS by PTM (by virtue of having submitted the lowest bid to PTM), the following will apply:

- a) For airfreight forwarding, AGS will arrange for transportation of the Client's cargo on an air carrier and will arrange for the delivery and pickup at the respective airports, per the Client's direction. AGS' liability for cargo damage, loss or delay shall be limited to the lesser of:
 - i) The lesser of the amount of damages sustained, or \$.50 per pound multiplied by the number of pounds (or fraction thereof) of each piece of the shipment which may have been lost, delayed, damaged or destroyed (but not less than \$50.00 per shipment) unless a higher value is declared herein and applicable charges paid hereon, plus the amount of any transportation charges for which AGS may be liable.
 - ii) AGS' maximum liability for international shipments shall be in accordance with the rules of the Warsaw Convention as amended by Montreal Protocol No. 4.
 - iii) As a condition precedent to recovery, Client must have reported the loss or damage to AGS within 12 days of delivery, and the cargo must be secured for inspection for an additional 15 days after notice to AGS. So long as the preceding requirements have been met, claims for loss, damage or delay may be filed in writing with AGS up to but not exceeding 180 days after the shipment date. No claims for loss, damage or delay will be considered to have been filed with AGS until such time as all charges thereon have been paid.



- b) Client further acknowledges that any shipment traveling by aircraft may be subject to inspection by the Transportation Security Administration (TSA) or other agencies charged with the security of the air cargo supply chain.
- c) For ground movements via AGS, AGS will utilize only carriers that are insured to a level required by regulation (if applicable) or deemed sufficient in the judgment of AGS, and for which said carrier has agreed to participate in AGS' processes for monitoring compliance with insurance and driver safety record requirements.
- d) Each shipment will have a receipt or air waybill signed by an AGS provider. The origin receipt will be prima facie evidence of receipt of the shipment in good order and condition unless otherwise noted on the receipt. AGS shall require the provider to obtain a consignee signature to the receipt.

e) **Cargo Liability**

Cargo claims shall be filed in accordance with 49 CFR 370, and AGS' liability is limited to the Client's actual cost of articles lost, damaged or destroyed and shall not, under any circumstances, exceed \$200,000.00 per vehicle and freight charges up to the amount that was to be paid to AGS for the subject shipment.

3) **Carriage via Air Charter Operators – Active Aero Charter**

- Active Aero Charter will require that all air carriers providing service to AAC will, at all times, have a current operating certificate issued by the Federal Aviation Administration (FAA) under Parts 121, 135 or other applicable parts of the Federal Aviation Regulations, or such other certificate as required by any other governmental body in the country in which the Operator is authorized.
- Active Aero Charter will require that all air carriers providing service to AAC will, at all times, maintain on record with AAC proof of insurance.
- AAC shall be liable for the full actual loss, damage or injury to property or goods (except that loss, damage or injury caused by the inherent vice of the property or goods) tendered for the account of Client AAC agrees to acknowledge all claims within thirty (30) days from receipt and to endeavor to resolve all claims within ninety (90) days from receipt. Claims for loss or damage must be made in writing to AAC within one year after the date of acceptance of the shipment by AAC to: Ascent On-Demand 2068 E Street Belleville, MI 48111
- No claim will be entertained until all transportation charges thereon have been paid. Client may not deduct claims from other unrelated transportation charges. All claims will be subject to inspection rights of the AAC. Inspections, including inspections for concealed loss or damage, must be requested within 72 hours after notice of the claim



to AAC. All damaged cargo must be retained in the original shipping container until inspected by AAC or until the expiration of the time within which AAC is entitled to inspect. AAC will not be liable in any action brought to enforce a claim unless the applicable claims procedures have been complied with and unless such action is brought within one (1) year from the date written notice is given to the claimant that AAC has disallowed the claim in whole or in part unless otherwise required by a federal or state law, rule or regulation applicable to the shipment.

- **Insurance Requirements**

- AAC shall, at its sole expense, obtain and maintain in continuous force through the term of this Contract and any extension thereof, the following types of insurance:
 - **Aircraft Liability Insurance:** covering liability for bodily injury and property damage arising out of the ownership, maintenance or use of aircraft (including owned, non-owned and hired) and liability under contractual agreements: \$300,000,000 each occurrence.
 - **Cargo Legal Liability Insurance:** including loading and unloading and interim storage, covering liability assumed by AAC.
 - **Workers Compensation Insurance:** statutory limits for all states of operation.
- AAC shall cause each service provider to AAC to purchase and maintain insurance of the types and in the amounts that AAC deems appropriate.

II. Rates and Payment

The rates for the services rendered hereunder shall be based on the rates set forth in writing (including electronic communications). Absent a written agreement to the contrary, AOD will bill the Client directly. The Client is responsible for payment regardless of other arrangements between the Client, shipper, consignee or other third party. AOD will endeavor to invoice the Client within 15 days of the rendering of services hereunder and Client agrees to pay AOD the agreed-upon compensation for such services within 15 days of receipt of the invoice.

AOD warrants that to the extent any payments received contain amounts that are owing to any provider, AOD will accept such payment for the benefit of such provider and shall remit to the provider Carrier such amounts that are properly due and payable to the Qualified Carrier for services rendered related to the invoice on which payment is received from the Client.

III. Indemnification and Limitation of Liability

1.1. AOD

(a) Subject to the exclusions set forth below, AOD agrees to indemnify, defend and hold Client (including its directors, officers, shareholders, employees, agents and other representatives) harmless from and against any breach of AOD's obligations under this Agreement, and any and all claims, actions, damages (including reasonable attorney fees) and obligations asserted against Client by any third party that arise out of any negligent or intentional act or omission by AOD, or any member of the AOD Group, or their respective employees, agents, officers or directors, related to the Services rendered under this Agreement. Client's exclusive remedy for any and all claims arising out of AOD's performance hereunder shall be limited to that portion of AOD's fees as calculated in accordance with Appendix A. AOD's sole representation and warranty with regard to the Services is that AOD will endeavor in good faith in accordance with its customary business practices to support Client's logistics requirements. AOD shall not be liable for any failure by any Selected Carrier, transportation service provider or other logistics services provider to meet its obligations to Client or its obligations under any applicable law, rule or regulation. AOD makes no representation or warranty whatsoever about the level of transportation logistics costs that will be incurred by Client in any particular case or during the course of any period of time. Client shall be solely responsible for all shipping and other logistics-related charges incurred on its behalf in the performance of the arrangements set forth by this Agreement. In no event shall AOD be liable for any indirect, special, consequential, or exemplary losses or damages.

(b) The foregoing obligation to indemnify and defend Client specifically excludes (1) any claims or actions arising from the negligence or willful misconduct of Client, its employees, officers, directors or other representatives to the extent thereof, and (2) any claim for any special, incidental, punitive or consequential damages, including but not limited to loss of profits or income whatsoever, regardless of foreseeability or knowledge with respect to same.

(c) Client acknowledges that AOD does not assume liability for any acts or omissions of itself or any provider solely by virtue of carrying insurance, or otherwise, and Client agrees that it will not pursue any claim against AOD arising from any act or omission of any Selected Carrier unless it is also a failure of AOD's or the AOD Group's obligations under this Agreement.

(d) Any claim arising out of this Agreement must be initiated within one (1) year of the date the party knew or reasonably should have known of the existence of such claim against the other party.

1.2. **Client Indemnification.**

Client shall indemnify, defend and hold AOD, and to the extent applicable any member of the AOD Group (including their directors, officers, shareholders, employees, agents and other representatives) harmless from and against any breach of Client's obligations under this Agreement and any and all claims (including claims for personal injury, death or damage to property), liabilities, losses, damages (including reasonable attorney fees) and obligations asserted against AOD or any member of the AOD Group by any third party that arise out of any negligent or willful misconduct by Client, its employees, agents, or other representatives.

IV. Ownership and Licenses. Confidentiality.

1.1. Client acknowledges and agrees that AOD owns and shall retain all rights, title and interests, including all intellectual property rights, in and to AOD's software, documents and other materials created by it and by any member of the AOD Group, including, without limitation, all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, manuals and business plans), ideas, inventions (whether patentable or not), know-how, processes, compilations of information, trademarks and other intellectual property (collectively, "**Proprietary Materials**"). No Proprietary Materials created by AOD or any member of the AOD Group are or will be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act.

1.2. Each party shall use the other's Confidential Information only for the purposes of this Agreement. Each party shall maintain the confidentiality of the other party's Confidential Information in at least the same manner in which it protects its own Confidential Information, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure. Each party shall be and remain fully liable and responsible for its employees', agents', or contractors' unauthorized disclosure or use of the other party's Confidential Information.

1.3. The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or which a party can demonstrate by clear and convincing evidence, was created by a party independently of its access to or use of the other party's Confidential Information.

V. Other Terms

- **Force Majeure.** Any delay or failure by either AOD, the Client or any Provider to perform its obligations hereunder will be excused if, and to the extent that, such delay or failure is caused by an event or occurrence beyond the reasonable control of such party and without its fault or negligence, such as, by way of example, acts of God or the public enemy, fire, flood, labor disorder, (including lockouts, strikes and slowdowns), civil commotion, war or terrorism, closing of the public highways and actions of a government authority including acts or omission of customs officials (whether or not valid), environmental or dangerous goods incidents, unexpected mechanical failures to the aircraft or other equipment utilized to transport the Client's product, unexpected inability to operate the aircraft due to pilot fatigue or other safety reasons.
- **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the Laws of the State of Michigan (excepting Michigan's Conflict of Laws Rules) except as may be preempted by Federal law. Pursuant to applicable jurisdictional requirements, all controversies and claims arising herein, and all actions and proceedings, shall be brought in the State Court of Michigan in Oakland County or the United States Federal District Court in the Eastern District of Michigan. IN ANY JUDICIAL PROCEEDING, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY.
- **Notices.** Any notice must be given by sending the notice by certified mail, return receipt requested, or by a nationally recognized overnight courier service requiring a signature for delivery, addressed to:

Ascent On-Demand
Tom Kanka
2068 E Street
Belleville, MI 48111
- **Severability.** In the event that the operation of any portion of these Terms and Conditions results in a violation of any law, the parties agree that such portion shall be severable and that the remaining provisions shall continue in full force and effect.

APPENDIX A

PTM Rates/Charges

The total "TRANSPORTATION COST" is comprised of up to three components:

- **Mode Cost:** This is the cost of the providers' services. The "mode cost" is the "spot buy" cost of the mode, plus the costs incidental to that mode. All known costs additional to the spot buy cost will be made available to the Client at the time of booking or shortly thereafter. Providers include the Motor Carriers, Ground Express providers and the Airfreight forwarders, including AGS and AMC.
- **Accessorial Cost:** Include, but are not limited to: wait time, extra stop-off charges, fuel surcharge, hazmat fee, international fee.
- **PTM Transaction Fee:** The fee for mode management and implementation of the service is as agreed by the parties in writing, including electronic communications.

Active Aero Charter Rates/Charges

The rates for the services provided by AAC will be based solely on the price obtained by AAC through its utilization of the network of certified aircraft Operators described above, plus charges for services by other service providers necessary for the completion of the charter (e.g., ground handling) and the management fee detailed below:

Management Fee per trip for air charter transportation and related services: An amount or percentage to be agreed upon by the parties in writing, including electronic communication.

The parties understand that additional charges may be necessitated by the requirements or requests of the Client or by the circumstances of the individual charter. Air Charter Manager will endeavor to communicate these fees as they become applicable, but Client should nevertheless be aware that the charges may arise.

In addition to the Standard Charges, such as aircraft bid and management fee, there are most often ramp fees applicable. FET or other governmental transportation charges may apply as well as International fees for those types of trips. Pickup, build, load, unload, break and delivery fees may become applicable to a trip as circumstances warrant.

Deicing charges, overnight fees, wait time and after-hours fees may become applicable during the course of a trip and known only after the trip has begun.

