
**SERVICE PROVIDER -- LOGISTICS
GENERAL TERMS AND CONDITIONS**

v.2009





1. PROVISION OF SERVICES

Provider agrees to provide, on a non-exclusive basis, services, including transportation-related services, to Buyer in accordance with the terms of this contract and the Statement of Requirements or Statement of Work (as may be amended by the parties from time to time) which has been provided to Provider and is incorporated into this contract by reference (“Services”). In the event of a conflict between any provision of these General Terms and Conditions and the Statement of Requirements or Statement of Work, these General Terms and Conditions will apply with respect to the Services covered by such Statement of Requirements or Statement of Work.

Nothing contained herein shall be deemed to constitute a representation regarding minimum levels of Services or assured levels of compensation by Buyer. Service volumes are subject to change and Provider accepts the risk of such volume fluctuations. Provider acknowledges that the Services may be a part of a global network of service providers providing the same or complementary services and Provider will be expected to perform the Services in cooperation and collaboration with such other service providers.

2. ACCEPTANCE

Provider has read and understands this contract and agrees that Provider’s written acceptance or commencement of any work or services under this contract shall constitute Provider’s acceptance of these terms and conditions (including those incorporated by reference) only.

3. SERVICES SPECIAL TERMS; APPENDICES

The terms and conditions specifically applying to Provider’s Service mode may be set forth in the applicable Services Special Terms, which have been separately provided to Provider and are incorporated into this contract by reference. Routes, charges, and operational details related to the Services may be set forth in one or more appendices to this contract (“Appendices”), which are hereby incorporated by reference into this contract. In the event of a conflict between any provision of this contract and an Appendix, the most recent Appendix will apply with respect to Services covered by such Appendix.

4. NONRECOURSE

Provider agrees to look solely to Buyer for any payment of freight or other charges owed to it, and agrees that its sole recourse in the event of nonpayment shall be against Buyer, and not against any customer of Buyer. Provider waives any and all claims Provider may have against Buyer’s customer for payment of charges for services rendered by Provider.



5. BEST EFFORTS; STANDARD OF WORKMANSHIP

Provider will use its best skills and judgment to perform the Services in furtherance of the interests of Buyer, and in a safe, timely, diligent, efficient, and economic manner. At Provider's sole expense, Provider will provide all facilities, equipment, and properly trained and licensed operators and other personnel necessary to carry out the Services. Services will be performed by competent personnel, and will be of professional quality, consistent with generally accepted industry standards for the performance of such services. Conveyances and other equipment necessary to perform Services will be maintained in good working condition and operated in a safe, efficient, and economic manner.

6. CONTROL OF SERVICES

Buyer will not request, and Provider shall not perform, Services that would require Provider or any of its representatives, employees, subcontractors or others to exceed or violate any applicable laws, rules, or regulations. Provider has sole and exclusive control over the manner in which Provider and its employees and/or subcontractors perform Services. Such individuals shall be considered employees or subcontractors of Provider only and shall be subject to employment, discharge, discipline and control solely and exclusively by Provider, which shall be fully responsible for their acts.

7. ASSIGNMENT

Unless otherwise specifically prohibited by applicable law, Provider may not assign or delegate its rights or obligations under this contract without Buyer's prior written consent. Buyer may assign this agreement at any time, and shall provide Provider with prior written notice of such assignment.

8. CONTINUOUS IMPROVEMENT

Provider will have in place a continuous improvement process which focuses on achieving customer satisfaction. Provider will make available to Buyer upon request its continuous improvement plan describing the process Provider uses to implement continuous improvement and the documentation used to monitor and evaluate the process.

9. SHIPPING DOCUMENTS

Commitments for specific Services may be made through the issuance of a shipping document, as applicable (e.g., bill of lading, shipping notice, shipping order) in either written or electronic form, in accordance with all applicable laws and Buyer's established procedures. Shipping documents will include the correct identification of all goods shipped in accordance with Buyer's instructions and Provider's requirements. Identification of the goods on bills of lading, invoices, and similar documents will be sufficient to enable Buyer to easily identify the goods. Invoices that may be issued for the purpose of customs clearance are not intended as routing instructions. Provider shall carry all shipping documents required by the applicable laws and in force in the territory in which Provider provides Services. In the event there is a conflict between the provisions of this contract and any terms and conditions on a bill of lading, invoice, or other shipping document, the provision of this contract will take precedence. All shipping documents issued will be subject to the terms and conditions of this contract.



10. RATES AND CHARGES

Rates and charges for the Services between specified points are set forth in the Appendices. All such rates and charges are exclusive of any value added or similar tax. When such value added or similar tax is charged by Provider, Provider must provide an original invoice issued to Buyer, itemizing such tax as a separate line item. Provider agrees that there are no other rates, charges, additional costs, or surcharges except those established in the Appendices and/or exhibits thereto. Unless otherwise mutually agreed in writing, the rates and charges set forth in an Appendix shall remain fixed throughout the term of the applicable Appendix, and are not subject to any new surcharges that may be implemented during the term of this contract.

11. PAYMENT FOR SERVICES

Time for payment will commence upon receipt by Buyer of a correct and complete invoice for Services rendered, and any cash discount privileges will be extended until such time as payment is due hereunder. Unless otherwise agreed in an Appendix, payment shall only be made upon the completion of the Services. Buyer may separately specify to Provider the required format, content, and timing of submissions of invoices for Services.

Unless otherwise mutually agreed in writing, the payment date will be "47/Weekly," which provides, subject to banking and Buyer holidays, that:

- a. If Buyer receives a correct and complete invoice from Provider on a Monday, Tuesday or Wednesday, payment will be made on the 1st Tuesday after the 47th day following receipt of the invoice.
- b. If Buyer receives a correct and complete invoice from Provider on a Thursday, Friday, Saturday or Sunday, payment will be made on the 1st Tuesday before or on the 47th day following receipt of the invoice.
- c. If the payment date is a bank or Buyer holiday, then payment will be on the next business day thereafter.

Provider agrees to accept payment by check or by electronic funds transfer, in U.S. dollars or such other currency as is mutually agreed by Provider and Buyer. If payment is to be made by electronic funds transfer, Provider shall provide Buyer with appropriate bank details to affect such transfer, and Provider is responsible for all its own costs associated with electronic funds transfer.

Invoices which are received by Buyer more than 90 days after Services are performed will not be accepted for payment. Inquiries or claims for non-payment received by Buyer more than 30 days after such invoices are due and payable will not be investigated, researched, or paid. Each of Buyer and Provider retains the right for 18 months following payment to identify any erroneous under-, over-, or duplicate payment of the individual rates and charges identified in this contract, and to file a claim accordingly.



12. FINANCIAL RECORDS; RIGHT TO AUDIT

At the request of Buyer, Provider will provide Buyer with true and correct information as to its financial condition and copies, audited if available, of its current financial statements. Provider further grants to Buyer access to all pertinent ledgers, books, records, electronic files, correspondence, written instructions, drawings, receipts and allocations related to the Services, and agrees to maintain the records for at least 5 years (or such longer period as may be required by the law applicable in the jurisdiction in which Services are provided) and in a manner to facilitate an audit. Provider agrees that such audit may be used as a basis for settlement of charges for Services. Buyer understands and acknowledges that such records secured from Provider during the course of a review are the confidential and proprietary information of Provider. All information derived from any such review shall be used by Buyer solely for purposes consistent with the terms and conditions of this contract and shall not be disclosed to any third party. Buyer shall have the right to enter, at all reasonable times, Provider's premises on which Services are being performed.

13. INSURANCE

Provider shall obtain and maintain, pursuant to the terms of this contract and at its sole expense, insurance coverage of the types and with the minimum limits set forth in the applicable Services Special Terms. By requiring Provider to obtain insurance coverage, Buyer does not represent that coverage and limits will be adequate to protect Provider. The purchase of the required insurance coverage by Provider or the furnishing of certificate(s) of insurance will not release Provider from its respective obligations or liabilities.

All such coverage shall apply worldwide regardless of where a claim may occur. If required in a particular country where Services will be performed, Provider will obtain the same or similar coverages through insurers admitted or licensed to underwrite in such country. Provider shall provide Buyer with a certificate of insurance evidencing Buyer as an additional insured for all coverage except [*delete in Mexico: Workers Compensation*], Cargo Legal Liability and Employers Liability (if applicable) for all activities connected with this contract, and stating that the above-listed insurance is primary to any coverage that may be available to Buyer. Provider shall cause its insurance company to provide in such certificates for at least 30 days prior written notice to Buyer of cancellation, modification, or material change to any policy.

Such certificate shall be in a form acceptable to, and underwritten by insurance company(ies) satisfactory to Buyer. By requiring insurance herein, Buyer does not represent that coverage and limits will necessarily be adequate to protect Provider. The purchase of appropriate insurance coverage by Provider or the furnishing of certificate(s) of insurance shall not release Provider from its obligations or liabilities under this contract.

14. LOSS AND DAMAGE

Provider's responsibility for loss or damage to goods being transported or stored under this contract is set forth in the Services Special Terms.



15. CLAIMS PROCEDURE

The process for administering claims, including any limits upon the time to file such claims, for loss or damage to goods being transported or stored under this contract are set forth in the Services Special Terms.

16. INDEMNIFICATION

Provider shall indemnify and hold Buyer harmless from and against the following liabilities:

- a. Any liability, claims, demands or expenses (including attorney's and other professional fees) for damages to the property of or injuries (including death) to Buyer, its employees or any other person, arising from or in connection with Provider's performance of Services or use of Buyer's property, except for such liability, claim, or demand arising out of the sole negligence of Buyer.
- b. Any and all claims made against Buyer by or on behalf of Provider's employees, agents or subcontractors for salary or other compensation or payments resulting or claimed to have resulted, in whole or in part, from services Provider or its agents or subcontractors perform for Buyer.
- c. Any and all penalties for fines of any character which may be sought to be enforced against Buyer by reason of an alleged violation by Provider, its agents or subcontractors of any federal, state, provincial, or local law, rule or regulation.
- d. Any and all claims made by or on behalf of Buyer's customer against Buyer, if such claim arises from services rendered by Provider, its agents or subcontractors.

17. FORCE MAJEURE

Any delay or failure of Provider or Buyer to perform its obligations shall be excused if, and to the extent that, such delay or failure is the result of an event or occurrence beyond the reasonable control of such party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay and a recovery plan) shall be given by the affected party to the other party as soon as possible after the event or occurrence. During the period of such delay or failure to perform by Provider, Buyer, at its option, may obtain the Services from other sources, without liability to Provider. In addition, Provider at its expense shall take such actions as are necessary to ensure the uninterrupted supply of Services to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Provider's labor contract(s). If requested by Buyer, Provider shall, within 10 days, provide adequate assurances that the delay shall not exceed 30 days. If the delay lasts more than 30 days or Provider does not provide adequate assurance that the delay will cease within 30 days, Buyer may immediately terminate the relevant Appendix(ces) without liability.



18. TERM

This contract shall be effective as of the date on which Provider commences Services, or as otherwise specified in the first effective Appendix, and shall remain in effect for so long as any Appendix is still in effect. Each Appendix shall be effective and continue in effect for the term specified therein.

19. INSOLVENCY

Buyer may immediately terminate this contract without liability to Provider in any of the following or other comparable events: (a) insolvency of Provider; (b) filing of a voluntary petition in bankruptcy or business reorganization by Provider; (c) filing of any involuntary petition in bankruptcy or business reorganization against Provider; (d) appointment of a receiver or trustee for Provider; or (e) execution of an assignment for the benefit of creditors by Provider, provided that such petition, appointment, or assignment is not vacated or nullified within 15 days of such event. Provider shall reimburse Buyer for all costs incurred by Buyer in connection with any of the foregoing, including, but not limited to, all attorney's or other professional fees.

20. TERMINATION FOR BREACH OR NONPERFORMANCE; SALE OF ASSETS OR CHANGE IN CONTROL

Buyer reserves the right to terminate all or any part of this contract, without liability to Provider, if Provider: (a) repudiates or breaches any of the terms of this contract; (b) fails to perform Services as specified by Buyer; (c) fails to make progress so as to endanger timely and proper completion of Services; and does not correct such failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such failure or breach. In addition, Buyer may terminate this contract upon giving at least 60 days notice to Provider, without liability to Provider, if Provider (i) sells, or offers to sell, a material portion of its assets, or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock that effects a change in the control of Provider.

21. CONFIDENTIALITY

For purposes of this Paragraph, Buyer's Information means all information (oral or written) and documents (in any medium) that have been furnished to Provider by Buyer, or that has been developed by Provider in connection with the Services. Buyer is willing to disclose Buyer's Information only with the understanding that Provider will maintain its confidentiality. Provider acknowledges that Buyer's Information is being disclosed to Provider for the sole purpose of permitting Provider to perform the Services, and agrees that it will not use Buyer's Information for any other purpose. In addition, Provider agrees that it will not disclose, disseminate or otherwise make available Buyer's Information to anyone, other than to those employees who have a need to know it in order for Provider to fulfill its obligations under this contract, without the prior written agreement of Buyer. Provider's employees, and any other person consented to by Buyer, to whom Buyer's Information is made available, shall sign an agreement containing obligations similar to those contained in this Paragraph.



Provider shall provide for the physical, managerial and electronic security of Buyer's Information such that Buyer's Information is reasonably maintained and secured, ensuring it is safe from unauthorized access or use during utilization, transmission and storage. Should any unauthorized breach occur, Provider shall notify Buyer as soon as reasonably practicable, but not later than 24 hours after Provider becomes aware of such breach.

At Buyer's request or upon completion of Provider's use of Buyer's Information, Provider will return all copies of Buyer's Information to Buyer or, at Buyer's request, will destroy Buyer's Information and certify such destruction to Buyer. Provider may retain a copy of Buyer's Information, for archival purposes only, subject to Provider's continuing obligations under this Paragraph.

Provider further agrees to indemnify and hold Buyer harmless from any all liabilities, damages, fines, penalties, costs, claims, demands and expenses (including costs of defense, settlement and reasonable attorney's fees), arising out of the disclosure or improper use of Buyer's Information by Provider, Provider's employees, or any other person to whom Provider disclosed Buyer's Information. Provider will immediately notify Buyer upon learning of any unauthorized use or disclosure of any Buyer's Information.

Provider recognizes that the disclosure of Buyer's Information may give rise to irreparable injury and acknowledges that remedies other than injunctive relief may not be adequate. Accordingly, Buyer has the right to seek equitable and injunctive relief to prevent the unauthorized disclosure of any Buyer's Information, as well as such damages or other relief as is occasioned by such unauthorized use or disclosure.

In the event Provider is required to disclose Buyer's Information in connection with any judicial proceeding or government investigation, then Provider shall promptly notify Buyer and allow a reasonable time for Buyer to seek a protective order from the appropriate court or government agency. Thereafter, Provider may disclose Buyer's Information to the extent required by law, subject to any applicable protective order.

In addition, Provider recognizes that its close association with Buyer's personnel and access to Buyer's Information in the course of performing this contract may enable Provider to evaluate publicly available information about Buyer from an insider's perspective and that Buyer's proprietary information would be revealed if such evaluations were published. Therefore, Provider agrees not to publish, or help anyone publish, anything whatsoever about Buyer concerning the subject matter of this contract, except with the prior written consent of Buyer.

22. NO ADVERTISING

Provider shall not, and shall be responsible to ensure that its parents, subsidiaries, affiliates, and subcontractors do not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Provider has contracted to furnish Buyer the Services, or use any trademarks, logos, slogans or trade names of Buyer in Provider's advertising or promotional materials.



23. COMPLIANCE WITH LAWS; FORCED LABOR

Provider, and any Services supplied by Provider, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country(ies) where Services are provided or that relate to the provision, licensing, approval, or certification of the Services, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety[in Europe, add: , and including any certification required in connection with domestic or cross-border transport of goods within the European Union]. Provider shall be responsible for obtaining and maintaining any approvals, permits and licenses required under national, state and local laws, ordinances, regulations and rules that are applicable to the performance of Services. [In Europe, add: Provider represents that it and any carrier, freight forwarder or other third party hired by Provider as a subcontractor will only use employees in possession of either the necessary work permit or, to the extent required by law, an official negative certification. Any employees performing transport services under this contract will carry the originals of the relevant documentation with the transport at all times.] Provider represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor or engage in abusive employment practices or corrupt business practices in the provision of Services. At Buyer's request, Provider shall certify in writing its compliance with the foregoing [in Europe, add: and/or immediately submit all original licences, permits or other required documentation at any time to Buyer for inspection]. Provider shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Provider's noncompliance.

24. IMPORT AND EXPORT CONTROL

This contract shall be subject to, and Provider shall comply with, all import and export control laws, statutes, regulations, rules, orders, licenses, requirements, and governmental requests applicable to imports, exports, and/or transactions pursuant to or in connection with this contract.

25. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM

For shipments with origins or destinations in North America, Provider will ensure compliance by all personnel, contractors, and subcontractors, including provision of electronic or paper data if required, to programs offered by U.S. Bureau of Customs and Border Protection, the U.S. Transportation Security Administration, U.S. Department of Homeland Security, Canada Customs and Revenue Agency, and Mexican Customs that facilitate the expeditious crossing of borders while preventing the unauthorized movement of materials. The referenced programs include, but are not limited to:

United States

C-TPAT (Customs Trade Partnership Against Terrorism)

FAST (Free and Secure Trade)

NCAP (National Customs Automated Program)



ACE (Automated Commercial Environment)
Unannounced programs between the USA and other countries

Canada

FAST (Free and Secure Trade)
CSA (Canada Self Assessment)
PIP (Partners in Protection)
Unannounced programs between Canada and other countries

Mexico

FAST (Free and Secure Trade)
Unannounced programs between Mexico and other countries

Provider will ensure that any personnel, contractor, or subcontractor governed by its Operating Plan, and modifications thereto, are in full compliance including the execution of any required Memoranda of Understanding (MOUs) and applications.

Provider will ensure that electronic data is provided if required in the above programs.

26. HAZARDOUS MATERIALS

The consignor of the goods shall identify the content of the shipment and properly pack, package, label, and mark the goods in accordance with all applicable dangerous goods and hazardous materials laws before tendering to Provider. Provider shall not release hazardous materials for transport unless shipping papers, packaging, marking, labeling, permits, and placarding are in conformance with the appropriate governing regulations. Provider shall maintain updated copies of applicable regulations and ensure employees are adequately trained with respect to the requirement of such regulations.

27. SETOFF/RECOUPMENT

In addition to any right of setoff or recoupment provided by law, all amounts due to Provider shall be considered net of indebtedness of Provider and its affiliates/subsidiaries to Buyer and its affiliates/subsidiaries; and Buyer shall have the right to setoff against or to recoup from any amounts due to Provider and its affiliates/subsidiaries from Buyer and its affiliates/subsidiaries.

28. NO IMPLIED WAIVER

The failure of either Provider or Buyer at any time to require performance by the other party of any provision of this contract shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this contract constitute a waiver of any succeeding breach of the same or any other provision.

29. RELATIONSHIP OF PARTIES

Provider and Buyer are independent contracting parties and nothing in this contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.



30. GOVERNING LAW; JURISDICTION

This contract is to be construed according to the laws of the country (and state/province, if applicable) from which this contract is issued as shown by the address of Buyer, excluding any conflict of law provisions that would require application of another choice of law. Any action or proceedings by Buyer against Provider may be brought by Buyer in any court(s) having jurisdiction over Provider or, at Buyer's option, in the court(s) having jurisdiction over Buyer's location, in which event Provider consents to jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Provider against Buyer may be brought by Provider only in the court(s) having jurisdiction over the location of Buyer from which this contract is issued.

[*In Singapore, add: The Singapore Contracts (Rights of Third Parties) Act (Cap. 53B) ("CRTP Act") shall not apply to this contract and any person who is not party to this contract shall have no rights under the CRTP Act to enforce any of its terms.*]

[*In Indonesia, add: In the event of termination of this contract for any reason, both parties agree to waive the provisions of Articles 1266 and 1267 of the Indonesian Civil Code.*]

[*In [Colombia, Ecuador, _____], add: [arbitration provision]*]

31. SEVERABILITY

If any term(s) of this contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this contract shall remain in full force and effect.

32. ENTIRE AGREEMENT

This contract, together with the Appendices, attachments, exhibits, supplements, or other terms of Buyer specifically referenced in this contract, constitutes the entire agreement between Provider and Buyer with respect to the matters contained in this contract and supersedes all prior oral or written representations and agreements. [*in Europe, add: No other General Terms and Conditions shall apply, even if the application of such general terms and conditions is customary by any trade or business practice.*]

33. MODIFICATION

No waiver, alteration, or modification of any of the provisions of this contract will be binding upon either party unless in writing signed by a duly authorized representative of both parties.



34. NOTICES

Any notice, notification, approval, election or other communication delivered, given or made by one party hereto to another under this contract shall be in writing and shall be delivered personally; sent by special courier service (such as DHL, Federal Express, etc.), postage prepaid; or sent by facsimile to that party's address set out in this contract or to such other address as may be requested by either party in writing. A notice or other communication is deemed to be given if: (i) personally delivered, on the date of delivery; (ii) sent by special courier service, on the expiration of 5 business days after posting; or (iii) sent by facsimile, a successful transmission report is received by the sender.

35. BUYER'S GOODS

Unless otherwise agreed in writing between Buyer and Provider, at no time and in no circumstances shall Provider acquire any interest in the goods handled by Provider in its provision of Services hereunder. Notwithstanding any other clause to the contrary, Provider agrees to immediately release the goods to Buyer upon demand.

[In Mexico, Chile, and _____, add:

36. LANGUAGE*]* This contract (including any exhibits or appendices hereto) shall be entered into in the Spanish language. In the event that this contract is signed in Spanish and English, the Spanish version shall govern.]

[In Mexico, add:

37. LABOR CLAUSE*]* Provider accepts and recognizes that the workers or employees that take part in the performance of this contract, are Provider's own and will depend exclusively on Provider. Provider recognizes that none of these people have any contractual relation with Buyer, and that Provider assumes all the liabilities derived from the Federal Law of Labor, general laws, regulations, and other connected dispositions, as well as all types of labor claims. Provider is solely liable for registering its workers and employees with the Mexican Institute of Social Insurance and any other agency with jurisdiction in Mexico, and any other obligations which arise from accident, disease, or illness of Provider's employees during the term of this contract. In addition, Provider must register its employees with the federal registry of contributors, payments corresponding to the payment of utilities, as well as all other benefits and payments originated in the laws and other relative dispositions related to social security, tax on rent, and the inscription with the afore.

If Provider decides to hire foreign personnel, Provider will be solely liable for ensuring that their workers, employees, or their suppliers, comply with immigration documents and requirements necessary to work in Mexico. Provider shall hold Buyer harmless from and against any liability claims, demands of any claim arising from Provider's noncompliance, either total or partial of these obligations.



Provider will be responsible for any liability, claims or demands by its employees against Provider or Buyer and/or its affiliates and/or subsidiaries before any authority, and Provider shall hold Buyer harmless from any claim against Buyer and/or anyone of its directors, managers or employees in connection with such liability, claims, or demands by employees. In addition to being liable to pay to Buyer the costs, damages and attorneys' fees or other professional fees or any other costs incurred by Buyer for its defense, Buyer will have the right to discount the following payments to Provider: the total amount of the attorneys' or other professional fees or any other according to the before mentioned. If the amount owed to Buyer under this clause is more than the sum of outstanding payments due, or if there are not outstanding payments due, then Provider must deposit the difference or the total amount of the reimbursement into an account designated to Buyer within 15 days of written notice to Provider.]