

FEDEX SMARTPOST® TERMS AND CONDITIONS

Effective Jan. 3, 2011

FedEx SmartPost Service

1. Customer agrees to ship all packages in their correct postal class. In the event that FedEx discovers that a shipment is incorrectly classified, FedEx reserves the right to re-bill Customer for the correct transportation costs and any additional costs and surcharges associated with such shipment. Further, Customer agrees to be responsible for any fines or penalties levied by the United States Postal Service ("USPS") on such shipment.
2. FedEx shall sort and deliver Customer's packages to the appropriate postal facilities for ultimate delivery to the consumer by either the USPS or Canada Post Corporation ("CPC") as applicable.
3. In the event that any international Canada shipment is returned to Customer for any reason, CPC will process the return from one of its return facilities and tender the return to the USPS for final delivery. The recipient must tender any FedEx SmartPost® International Canada-to-U.S. returns packages to a Canada Post Return Distribution Center. The return will be billed to Customer as a FedEx SmartPost® International Returns shipment. Any associated duties and taxes will be reimbursed as set forth in the terms below. Notwithstanding the foregoing, in the event Customer has designated a package threshold value, and such package is below that value, it will be destroyed.
4. Any domestic U.S. package that is deemed undeliverable will be the responsibility of Customer. Notwithstanding the foregoing, in the event Customer has designated a package threshold value, and such package is below that value, it will be destroyed.
5. Customer agrees, through its website, within the Merchant Privacy Policy and/or on the order confirmation page, to maintain an agency chain permitting a licensed Canadian customs broker to transact business with the Canada Border Services Agency (CBSA) on behalf of Addressees, the Customer's Canadian customers. The text to be placed on Customer's website shall be substantially in the form below:
By ordering goods on this website, you hereby authorize a licensed Canadian customs broker chosen on your behalf to act as your agent, and to transact business with Canada Border Services Agency (CBSA) to clear your merchandise, to account for applicable duties and taxes and, if required, to return the merchandise to the merchant and to prepare and submit refund claims on your behalf for any merchandise that is returned. In the event of a return, CBSA will send any refund of duties and taxes that were paid on the returned merchandise to the broker and you will obtain the refund directly from us. In this connection, you also authorize the customs broker to endorse any refund cheque issued by CBSA in your name, so that we may process the reimbursement.
6. All pricing is based on regional distribution and other shipping characteristics (such as weight, ZIP code distribution, postal code distribution, box size and volume) of Customer's packages. Customer's package distribution and such shipping characteristics will be reviewed quarterly by FedEx. All pricing may be subject to adjustments based on the results of such quarterly reviews.
7. U.S. pricing may be adjusted to pass-through increases in USPS rates based upon USPS Exigent Rate Case, USPS service recategorization or any other increase implemented by USPS.
8. Duties and taxes, including but not limited to goods and services tax (GST), provincial sales tax (PST), harmonized sales tax (HST) and Quebec sales tax (QST), may be assessed by CBSA on the contents of the international Canada shipments, and Customer agrees to be responsible for any and all such charges. Any such duties and taxes advanced and remitted to CBSA by FedEx will be billed to and collected from the Customer in U.S. dollars.
9. FedEx will reimburse Customer for any duties and taxes refunded by CBSA or CPC on Customer's international Canada shipments.
10. FedEx shall pick up FedEx SmartPost® Returns shipments from the USPS and deliver the return packages to the Customer's fulfillment centers.
11. In the event a Customer ships with FedEx SmartPost before an executed agreement for FedEx SmartPost services is received by FedEx, Customer agrees to pay list rates for the transportation of such shipments.
12. Shipper may request an invoice adjustment in writing or via our telephone invoice adjustment system at 1.800.GoFedEx 1.800.463.3339 (say "SmartPost," then "Billing"). If you choose to submit your request via the telephone invoice adjustment system, the request must state the reason you believe an adjustment or refund is warranted and must provide the following: the FedEx account number (if any), the FedEx tracking number, and the date of shipment. A partial payment against an invoice is not considered a request for invoice adjustment or notice of a refund request.

13. Requests for invoice adjustment due to an overcharge must be received within 180 days after the date of shipment. If you choose to send the invoice adjustment request separately from the remittance statement, please send to:

16555 West Rogers Drive
New Berlin, WI 53151
Attn: FedEx Solution

14. FedEx is not obligated to refund any overcharge or pay any other obligation owed when your FedEx account is, or has been in the past, more than 60 days past due.
15. If your account is more than 60 days past due, FedEx may, at its sole discretion, apply any overcharge amounts or other overpayments it agrees are owed to you against the oldest invoices.

Package Sortation and Data Transmission

1. FedEx will sort Customer's packages provided that they are properly electronically transmitted by Customer.
2. Provided pickup is included, FedEx shall pick up packages from Customer's fulfillment center at such times as mutually agreed between FedEx and Customer. Customer's discounts are based on the zone of the distribution center ZIP code if pickup is included. If Customer manages the transportation, discounts will be based on the ZIP code zone of the FedEx sorting facility that receives the packages.
3. Prior to the shipment of international Canada packages, Customer agrees to provide to FedEx all required information and documentation required to ship international Canada packages as set forth in the FedEx SmartPost Specification Guides and incorporated herein by reference. In the event that Customer fails to provide the required data in the appropriate format, any resulting delay in clearance, duties and taxes, or incorrect processing charges will be the responsibility of Customer.
4. Customer shall provide an electronic shipment transmission prior to the arrival of the Customer's packages at the FedEx facility. The transmission must identify all packages shipped with appropriate recipient's information for the international Canada shipments, as specified in the FedEx SmartPost Specification Guides, and be in such format and provide such additional information as specified by FedEx.
5. Customer agrees that the Mailer Identification numbers ("MID") assigned to Customer by the USPS for use with FedEx SmartPost shipping shall not be used for any other purpose. If such an MID is used for any packages traveling by another shipping method, FedEx may terminate Customer's pricing agreement immediately, and Customer agrees to reimburse FedEx for all improperly assessed USPS postage and any costs incurred by FedEx associated with such packages.
6. In the event that any package which bears the MID was not scanned by FedEx, FedEx shall have the right to invoice Customer for such package at the average rate per package billed to Customer during the prior week in which FedEx SmartPost last received packages from Customer.

Package Specifications

1. In no event shall any package fall outside of the following specifications:
 - Minimum 4" x 6" x 3/4".
 - Maximum 130" combined length and girth and 70 lbs.
 - No one dimension exceeding 60".
2. Customer shall barcode and label all packages to specifications set forth in the FedEx SmartPost Implementation Guide provided by FedEx. Customer agrees to indemnify and hold harmless FedEx from any and all third-party claims arising out of Customer's non-conforming labels and any third-party claims arising out of any additional information included by Customer on its labels.
3. To be eligible to receive delivery confirmation, the barcode and label must meet applicable specifications.
4. The packaging materials and methods used with respect to Customer's packages must be appropriate for the materials shipped to facilitate safe transportation with ordinary care in handling in accordance with the applicable USPS and CPC regulations and any CBSA regulations then in effect.
5. Customer shall not tender for transportation (i) any non-mailable package as defined by the USPS or the CPC; (ii) any item prohibited by the CBSA importation restrictions; or (iii) any item which is prohibited by law or regulation, or any hazardous materials, dangerous goods or other items which are subject to regulation by Title 49 of the

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U.S. Code of Federal Regulations and the Canadian Transportation of Dangerous Goods Act, 1992 (1992, c.34) (and the Transportation of Dangerous Goods Regulations [SOR/2001-286] under such Act).

- Customer agrees to instruct its return shippers to use packaging materials and methods appropriate for the materials shipped to facilitate safe transportation with ordinary care in handling in accordance with the applicable USPS regulations then in effect.
- Customer agrees to instruct its return shippers to not tender for transportation (i) any non-mailable package as defined by the USPS or (ii) any item which is prohibited by law or regulation, or any hazardous materials, dangerous goods or other items which are subject to regulation by Title 49 of the U.S. Code of Federal Regulations.
- Customer agrees to instruct its return shippers to barcode and label all packages to specifications provided by FedEx. A per-package surcharge and a hand-key surcharge will be assessed on packages that do not conform to such specifications.
- FedEx reserves the right to refuse any packages which may soil, taint or otherwise damage other packages or equipment, or which does not conform to the specifications set forth in Section 1 of Package Specifications, or which is improperly packaged or wrapped. FedEx reserves the right to open and inspect any package. Customer acknowledges that either the USPS, CPC or CBSA may also open and inspect any package and agrees to hold FedEx harmless from any liability associated with such inspection.
- FedEx will, at its expense, repackage packages damaged during sorting in Customer-supplied boxes or with other packaging materials reasonably acceptable to Customer.

Liability for Damaged Packages; Insurance

- On domestic U.S. shipments, FedEx shall be responsible, up to a maximum replacement value per package of \$100 (USD), plus transportation costs, for damage to packages from the time packages are first scanned by FedEx until such packages have been tendered for delivery to a USPS facility.
- On FedEx SmartPost Returns shipments, FedEx shall be responsible, up to a maximum replacement value per package of \$100 (USD), plus transportation costs, for damage to packages from the time packages are first scanned by FedEx until such packages have been delivered to Customer.
- On international Canada shipments, FedEx shall be responsible, up to a maximum per package (including duty) of \$100 (USD), plus transportation costs and any refunded taxes, for damage to packages from the time packages are scanned by FedEx until such packages have been delivered to the Canadian recipient.
- Customer claims for damages to packages must be in writing and must include documentation sufficient to identify the package(s) involved, must make a claim for payment of a specified amount, and must be accompanied by evidence of the value of the package(s) and the extent of the damage. Such claims must be filed with FedEx within three (3) months after receipt of the related package by FedEx, or such claims shall be deemed waived.
- In consideration for the pricing and other terms and conditions in Customer's pricing agreement, Customer waives the right to file claims for lost or damaged packages for an amount exceeding the maximum replacement value identified in Section 1 of Liability for Damaged Packages; Insurance. Nothing in these terms and conditions shall be construed to prevent Customer from obtaining package insurance coverage independently.
- In no event shall FedEx be responsible for packages lost or damaged after they have been tendered for delivery to either a USPS facility or a Canada Post/Border Free facility.
- In no event shall FedEx be responsible for FedEx SmartPost Returns packages lost or damaged before they have been first scanned by FedEx at pickup at a USPS facility.

Damage Limitation

Except as provided in the Liability for Damaged Packages; Insurance section, FedEx liability for any claim arising out of or connected with a FedEx SmartPost shipment, whether arising from FedEx negligence or other tort, breach of warranty or contract, or any other claim at law or equity, shall not exceed FedEx pricing allocable to that portion of the Services giving rise to the liability, and *in no event shall FedEx be liable for any special, incidental or consequential damages*. Any such claims must be in writing and must be filed with FedEx within three (3) months after the incident giving rise to the claims, or such claims shall be deemed waived.

Force Majeure

Neither Customer nor FedEx shall incur any liability for any delay or failure to perform hereunder due to perils of the air; public enemies; criminal acts of any person(s) or entities, including but not limited to acts of terrorism; public authorities acting with actual or apparent authority; authority of law; local disputes; civil commotions; hazards incident to a state of war; local, national or international weather conditions (as determined solely by FedEx); local, national or international disruptions in ground transportation networks (as determined solely by FedEx); strikes or anticipated strikes (of any entity, including but not limited to other carriers, vendors or suppliers); natural disasters (i.e., earthquakes, floods and hurricanes) and disruptions or failure of communication and information systems (including, but not limited to FedEx systems); impossibility of obtaining shipping space; delays of carrier (including mechanical breakdown); or any other cause beyond the reasonable control of Customer or FedEx. Neither Customer's nor FedEx's delay or failure to perform due to any such force majeure event shall be construed as a breach of contract, and these terms and conditions shall continue in full force and effect during any such period of interruption.

Governing Law

FedEx SmartPost terms and conditions shall be governed by and construed in accordance with the internal laws of the state in which the shipments were tendered to FedEx to the extent that any court finds that state rather than federal law applies to any provision.