



# Terms and Conditions

Effective April 15<sup>th</sup>, 2019

**By using the Shipvine.com website and/or using our services, you are agreeing to the terms and conditions set forth in the following:**

This agreement is between you, the client, sometimes referred to as “your”, or “you”, and Shipvine, Inc., a corporation organized under the laws of the Commonwealth of Virginia, sometimes referred to as “us”, “our”, and “we”.

## **Security of Account:**

Shipvine provides tools to secure your account including 2-step authentication. You are strongly encouraged to take advantage of the 2-step authentication to secure your account from unauthorized use. Shipvine is not liable for items including shipping charges, loss of property, loss of business, business downtime, and other consequences of a compromised login. **You are ultimately responsible for securing your account and the accounts in your organization** and understanding the consequences of giving access to other employees, vendors, or customers.

## **Applicable Law and Interpretation:**

This agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without reference to its conflict laws. Wherever possible each provision of this agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this agreement.

## **Packaging:**

All selling units/SKUs/items must be shipped to Shipvine in individually-packaged units. Unless arrangements are made ahead of time, any items arriving “loose” or “flat” will be automatically packaged without notice using any in-stock bags and billed at the current applicable rates. We are not responsible for damage to goods resulting from manufacturer or seller packaging or from our use of in-stock bags to package goods that arrive at our facilities.

## **Inbound Shipments and Returns:**

Inbound shipments are typically processed and made available to you for use in fulfillment requests within 48 hours of receipt (excluding weekends and holidays); however, Shipvine makes no guaranteed commitment. Typical processing times usually increase by an additional 96 hours

(excluding weekends and holidays) during the months of November and December. All inbound shipments (including drop offs) must have the PO number clearly marked on the package(s). All inbound shipments (including drop offs) must have an “inbound shipment” entered into our system prior to the shipment arriving. You are responsible for entering the “inbound shipment” into our system. Shipments and drop offs received with no PO number or no “inbound shipment” entered into the system could be delayed.

Returns are typically processed within 48 hours of receipt (excluding weekends and holidays); however, Shipvine makes no guaranteed commitment. Typical processing times usually increase by an additional 48 hours (excluding weekends and holidays) during the months of November and December. Returned items not requiring repacking are typically made available for use in fulfillment requests immediately after processing. Returned items requiring repacking or refurbishment are typically made available for use in fulfillment requests within 1-5 business days from being processed.

### **Order Management:**

As fulfillment requests are submitted to Shipvine Logistics, either electronically via the Shipvine API or manually via the Shipvine Logistics website, certain requests may be flagged as failing validation (for reasons including but not limited to a malformed address or stock problem) and saved in the “candidate requests” section of the website. Unless prior arrangements have been made, Shipvine will not review and correct your candidate requests. It is ultimately your responsibility to fix any problems with such requests and ensure that they have been submitted for fulfillment. Overriding the USPS address validation check on candidate requests could result in either a cancellation fee if the address is rejected by USPS as invalid or a return fee if the package is returned to us as undeliverable.

### **Shipvine API:**

Shipvine provides an API for you to integrate your e-commerce platform or other services into Shipvine services. While Shipvine makes a reasonable effort to keep the API constantly and correctly running, you are responsible for coding your integration in a manner such that you will not suffer a loss of business or other damages should the API malfunction or become unavailable for any reason, including but not limited to hardware failures, network failures, or third party service failures.

### **Barcodes:**

All selling units/SKUs/items must be shipped with a barcode such as a UPC. Any items arriving with missing, damaged, unreadable, or difficult-to-scan barcodes will be barcoded without notice and billed at the current applicable rates. Shipvine at its sole discretion will determine the readability of barcodes.

Shipvine makes no guarantee that the correct barcode will be placed on the corresponding product. We make every effort to be as accurate as possible; however, we cannot be familiar with every single product.

If products arrive with incorrect or mislabeled barcodes, Shipvine attempts to find and correct these problems during the receiving process; however, we are not responsible if items ship out incorrectly due to such barcode problems. It is ultimately your responsibility to ensure that all of your selling units/SKUs/items are labeled with a correct barcode. It is ultimately your responsibility to ensure that each barcode is correctly entered into the Shipvine Logistics catalog.

Case quantity items must not have an individual product barcode unless that product is to be sold as a case. Shipvine cannot guarantee that case quantity items with an individual barcode will be shipped as a case; you must create a distinct ITF-14 case barcode in such instances and ensure that this is appropriately entered into the Shipvine Logistics catalog.

### **Hazardous and Dangerous Goods:**

You agree that any hazardous goods, including but not limited to batteries, will be fully disclosed prior to shipping to Shipvine. Shipvine may refuse any shipment we deem hazardous or unsafe to store.

### **Fragile Goods:**

Fragile items, including but not limited to glass, ceramics, electronics, and art, will be clearly marked as fragile and properly packaged to avoid damage. Shipvine is not responsible for broken or damaged goods.

Fragile items that arrive at our warehouse that require additional packaging to prepare them for e-commerce shipping will be billed to your account. Shipvine is not responsible for damage that may occur during such packaging processes. It is ultimately your responsibility to ensure that fragile items arrive appropriately packaged for reasonable handling in a warehouse environment.

### **Prohibited Items:**

Prohibited items include but are not limited to the following:

- Items requiring refrigeration
- Perishable foods or products, or products prohibited by the US Food and Drug Administration
- Wine, liquor, beer, and tobacco products
- Guns, gun parts, mace, knives, blades, & ammunition
- Medication or other products regulated by the US Drug Enforcement Agency
- Propane or other flammable gases and liquids
- Explosives, compressed gases or aerosols, oxidizers, poisons, liquid chemicals, or corrosive materials
- Live animals or plants, produce, or flowers of any kind
- Counterfeit or improperly licensed goods
- Anything that can be considered a biohazard

For items in the above list, Shipvine reserves the right to destroy them or surrender them to government authorities upon receipt and without notice to you.

Shipvine reserves the right to reject items, with reasonable notice to you, that are not in the above list that we deem, at our sole discretion, to be unsafe or unmanageable. We encourage you to contact us for clarification before sending new or unusual items.

#### **Items Requiring Pre-approval:**

- Art valued at more than \$150 per unit
- Anything containing a battery
- Non-perishable foods and other agricultural products
- Liquids or gels of any kind
- Dietary or nutritional supplements, shakes, or powders
- Anything that might be considered hazardous
- Fragile items including glass and ceramics
- Products that expire, need stock rotation, or require lot management
- Any items weighing over 20 pounds per unit
- Any items exceeding 1 cubic foot in volume per unit

#### **Country of Origin:**

You are responsible for clearly and individually marking all selling units/SKUs/items with the country of origin, and you are responsible for ensuring that the country of origin listed is true and correct. Items that are not marked cannot be exported or shipped until a certificate of origin is on file. For the purposes of inventory control, selling units/SKUs/items that are physically identical but have different countries of origin must be segregated into different SKUs/items at Shipvine Logistics and be marked with unique barcodes.

You agree to allow Shipvine to complete certain customs documentation and paperwork on your behalf as your exporting agent, including but not limited to CN22 (USPS 2976) forms, CP72 (USPS 2976-A) forms, certificates of origin, and commercial invoices. Shipments requiring a NAFTA certificate of origin will require that you send us either a completed NAFTA certificate of origin or a statement with preference criterion and producer information prior to the shipment leaving the warehouse.

#### **Duties and Taxes:**

**You are ultimately responsible for any duties and taxes for importing or exporting.**

If your customer refuses to pay duties and taxes on any international shipment, then the duties and taxes may still be due even if the shipment is returned or destroyed. You are also responsible for the return shipping charges for any refused shipment.

If Shipvine brokers your inbound international shipment, you will be charged a 10% fee for processing. Shipvine may bill your duties and taxes separately depending on the amount. These charges may be due on demand and billed outside of the usual weekly Shipvine invoice.

### **Shipvine Service Failures:**

If Shipvine fails to process and ship your fulfillment request correctly on the same day when placed by noon Eastern time, then you may send a request for a refund for the fulfillment fees only.

Requests for service failures can be sent via email to [support@shipvine.com](mailto:support@shipvine.com).

Fulfillment fees do not include shipping fees, value-added services, inserts, special packing material or any other additional charges. All of these conditions must be met before a refund will be issued:

- The fulfillment request was sent on a normal business day, not a weekend, holiday, or limited service day
- The fulfillment request was a valid request
- The ship to address was validated by USPS
- The fulfillment request was sent on a day that was no more than 4 times your average daily volume
- Shipvine was operating under normal conditions, and there was no natural disaster or other event such as a power outage that is out of Shipvine's control
- There was no extreme weather event causing Shipvine to close
- FedEx, Endicia, UPS, USPS, DHL and other third parties that Shipvine utilizes for fulfillment were operating normally
- Shipments billed to recipient or third party have valid bill to account information
- The request for refund was sent within 48 hours of the fulfillment request being submitted
- The fulfillment request was sent via our Web site or API and was not manually entered by a Shipvine employee
- The failure wasn't due to an incorrect UPC or other barcode or product issue
- The shipment wasn't held due to a special request
- The shipment was not a high volume order (30 units or more)
- You have not requested a shipment freeze within the last 96 hours

### **Third Party Service Failure:**

If a third party service failure occurs, including but not limited to late deliveries and lost or damaged packages, then you will be refunded ONLY after, and only to the extent that, Shipvine is refunded by the third party (examples include FedEx, UPS, and USPS). This refund will be reflected on your current invoice, posted within 5 business days of receipt at Shipvine. If the third party refuses to refund the shipment, then Shipvine will be unable to refund you.

Third party service failures include:

- Package not delivered on time
- Package damaged during transit
- Package lost during transit
- Package delivered to wrong address or wrong recipient
- Package left with unauthorized recipient

Shipvine shall not be held liable for any package lost, damaged, delayed, or delivered incorrectly by any carrier or third party.

**Cancellation:**

Services can be cancelled within the first 60 days at any time at no cost as long as written notice is delivered via email to support@shipvine.com or via postal mail or personal delivery at our current address, which can be located on our Web site at [www.shipvine.com](http://www.shipvine.com).

After 60 days, you must give 90 days' notice of cancellation. Written notice must be given via email to support@shipvine.com or via postal mail or personal delivery at our current address, which can be located on our web site at [www.shipvine.com](http://www.shipvine.com).

Any and all invoices and current charges must be paid in full before your remaining inventory can be fully shipped out and released to you.

**Creditworthiness:**

All international customers operating outside of the United States must have a prepaid account with Shipvine, regardless of creditworthiness.

Shipvine may determine, at its sole discretion, that a customer is a credit risk and must have a prepaid postage account and/or a prepaid account. This account, which is to be maintained by Shipvine, will draw postage and fees down until a minimum threshold is reached. At that point, the account must be replenished with guaranteed funds to a predetermined level. Until the account is replenished as such, Shipvine shall suspend all services provided to you.

Existing customers may be required to have such accounts for various reasons, including but not limited to the following:

- Low credit score or no credit for the business, or a change in credit score
- More than 2 late payments per quarter
- One or more bounced payments at any point during the account history
- More than 2 declined credit card payments per quarter

**Payment and Fees:**

Invoices are issued via email every Friday at 6:00 PM Eastern time unless delayed by software glitches or other unforeseen issues. Payment will be automatically collected the following Tuesday unless prior arrangements have been made. Invoices that are not paid in full within one week (in other words, by the close of business on the following Friday) are subject to a 2% late fee unless prior arrangements have been made.

Customers will be billed a 2% convenience fee for payments via credit card including Visa, MasterCard, and American Express. Customers may also prepay via check or wire transfer at no cost.

If a part of any invoice is paid by check or ACH and the check or ACH transaction is returned (“bounces”), then any applicable late fees will be assessed in addition to a \$25 returned payment fee.

By using our services, you are agreeing to the fees provided to you on our website. We may update our fees from time to time by notice to you, and your continued use of our services after such notice has been provided will constitute acceptance of the new fees. If we are required to return goods to you or your representative as a result of non-payment or other violation of these terms, you will be charged handling and/or shipping fees at the applicable rates.

### **Postage Accounts:**

Accounts established after January 1, 2016 must have a prepaid postage account. As USPS postage is used your account will be drawn down and automatically replenished via ACH or credit card. Using a credit card, a convenience fee will be assessed at the current rate.

### **Non-Payment:**

If any invoice is not paid in full within 7 days of issuance, Shipvine may suspend all shipping/services until all such invoices are paid in full. This suspension may include revoking online account access to Shipvine APIs and Web sites. Shipvine is not liable for loss of sales or other inconveniences that may be caused by suspension of Shipvine API or Web site access.

If any invoice is not paid in full within 30 days of issuance, Shipvine may seize inventory for liquidation to pay any and all such invoices. All proceeds from the inventory liquidation event shall become the property of Shipvine.

### **Collateral:**

Inventory value must always be greater than the total amount of charges on current and past invoices due to Shipvine. If total inventory value is less than the total value of money due, then Shipvine may refuse to ship until invoices are paid below the value of inventory unless prior arrangements have been made.

Inventory value is the value, as determined by Shipvine, of the liquidation value to pay for unpaid invoices. Shipvine may determine at our sole discretion the value of inventory. By delivering to us (or arranging to be delivered to us) any goods to be held and/or shipped on your behalf (inventory), you agree to, and hereby do, grant Shipvine a continuing security interest in any and all inventory and packaging that is delivered to us, which security interest secures all payments which may be or may become due to Shipvine. You represent and warrant to Shipvine that you have the right, title and authority to grant such security interest to Shipvine. You agree that we may exercise all rights of a secured party with respect to such items in the event that we are not paid for amounts due. This may include, without limitation, liquidation or sale of such items at a public or private sale on such terms as we determine reasonable under the circumstances. You waive to the fullest extent permitted under the law, any right or requirement that we marshal assets or sell inventory in a certain order or a certain manner, and any prior notice with regard to such sales. In the event we

are required to exercise these rights, any amounts over and above the amounts owed to us will be refunded reasonably promptly to you, provided that we may retain a reasonable reserve to cover anticipated continued costs of holding and/or shipping leftover inventory or other services to be provided to you. You authorize us to file a financing statement(s) with respect to this security interest and you agree to promptly provide us with full and correct information we may request in order to complete and file such financing statement(s). You agree to, and hereby do, indemnify and hold us harmless from costs, fees, expenses, reasonable attorneys' fees and damages arising out of or relating to our exercise of these rights, including, without limitation, claims by other creditors or other persons that they have superior security interests in the goods or that you have insufficient title to grant us the rights provided hereunder.

**Force Majeure:**

Neither party shall be liable to the other for any failure to perform any obligation under any agreement which is due to an event beyond the control of such party including but not limited to any Act of God, terrorism, war, political insurgence, insurrection, riot, civil unrest, act of civil or military authority, uprising, earthquake, flood or any other natural or manmade eventuality outside of our control, which causes the termination of an agreement or contract entered into, or which could not have been reasonably foreseen. Any party affected by such event shall forthwith inform the other party of the same and shall use all reasonable endeavors to comply with the terms and conditions of any agreement contained herein.

**Shrinkage:**

Shipvine provides no coverage from shrinkage.

**Insurance:**

SHIPVINE DOES NOT PROVIDE INSURANCE COVERAGE FOR ANY VALUE OF YOUR INVENTORY FOR FIRE OR ANY OTHER CASUALTY.

YOU ARE STRONGLY ENCOURAGED TO PURCHASE INSURANCE TO PROTECT YOUR BUSINESS FROM LOSS OF INVENTORY FOR ANY REASON.

TO THE EXTENT PERMITTED BY LAW, YOU HEREBY RELEASE SHIPVINE, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES OR VOLUNTEERS OR OTHERS WORKING WITH YOUR INVENTORY FROM ANY AND ALL LIABILITY AND RESPONSIBILITY TO YOU OR ANYONE CLAIMING THROUGH OR UNDER YOU BY WAY OF SUBROGATION OR OTHERWISE, FOR ANY LOSS OR DAMAGE TO PROPERTY CAUSED BY FIRE OR ANY CASUALTY, EVEN IF FIRE OR OTHER CASUALTY SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF SHIPVINE, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES OR VOLUNTEERS OR OTHERS WORKING ON BEHALF OF SHIPVINE. YOU AGREE THAT YOUR POLICIES OF INSURANCE SHALL CONTAIN A CLAUSE OR ENDORSEMENT TO THE EFFECT THAT SUCH RELEASE SHALL NOT ADVERSELY AFFECT OR IMPAIR SUCH POLICIES OR PREJUDICE YOUR RIGHT TO RECOVER THEREUNDER. YOU AGREE THAT YOUR POLICIES WILL INCLUDE SUCH A CLAUSE OR ENDORSEMENT.



## **Schedule and Operating Hours:**

Shipvine is open from 9 AM to 5 PM Eastern, Monday through Friday, except for certain holidays and scheduled closures as well as emergency closures. These holidays and scheduled closures are indicated on a yearly holiday schedule which may be obtained at the Shipvine Web site or via an email request to support@shipvine.com. Shipvine will prepare the holiday schedule for any given year by October 31st of the preceding year. Shipvine may close under the conditions described in the "Force Majeure" section of this document or other reasonable circumstances, such as extended power outages or for inclement weather conditions.

## **Operators Lien:**

Pursuant to Section 8.7-206 and 8.7-210 of the Code of Virginia Shipvine shall have a lien on the goods tendered by customer and upon any and all property belonging to customer in Shipvine's possession, custody or control for all charges, advances, or amounts of any kind due to Shipvine under receipt or under any prior or subsequent invoices issues to customer by Shipvine (including charges for storage, handling, transportation, insurance, labor, and any other charges incurred). Shipvine shall have a lien on the goods and may refuse to surrender possession of the goods until all charges or debts are paid in full. If such amount remains unpaid for thirty (30) days after Shipvine's demand for payment, Shipvine may sell the goods at public or private sell at any time or place and on any terms which are commercially reasonable and shall apply the proceeds to the amounts owed. Customer remains responsible for any deficiency outstanding to Shipvine.

## **Fees and Terms of Service Subject to Change:**

Fees and terms of service are subject to change. The current and upcoming terms of service documents are available at the Shipvine website. Changes to new terms and conditions become applicable even if you fail to receive notification of such changes.

## **Disclaimers and Exclusion of Warranty**

EXCEPT AS EXPRESSLY PROVIDED BY US HEREIN, OUR SERVICES AND PRODUCTS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **Limitation of Liability**

NEITHER WE NOR OUR SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES OR OTHER AGENTS OR REPRESENTATIVES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF INFORMATION ARISING OUT OF SERVICES PROVIDED BY US OR OTHER ACTIVITIES TAKEN BY US UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CUMULATIVE LIABILITY OF SHIPVINE, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS AND

REPRESENTATIVES FOR ALL CLAIMS OF ANY NATURE ARISING FROM OR RELATED TO YOUR USE OR ENJOYMENT OF OUR SERVICES OR OTHERWISE ARISING FROM THESE TERMS, INCLUDING ANY CAUSE OF ACTION BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY PATENT OR COPYRIGHT INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES THAT YOU HAVE ACTUALLY PAID SHIPVINE FOR THE PRIOR SIX (6) MONTHS. NEITHER WE NOR ANY OF OUR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR OTHER AGENTS OR REPRESENTATIVES SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES CLAIMED FOR LOST PROFITS, LOST REVENUE, LOST OPPORTUNITY OR SIMILAR CLAIMS), WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, LAW OR REGULATION, WHETHER OR NOT WE WERE INFORMED IN ADVANCE OF SUCH POTENTIAL DAMAGES.

FOR THE SAKE OF CLARITY AND WITHOUT LIMITING THE PROCEEDING PARAGRAPHS OF "LIMITATION OF LIABILITY," SHIPVINE'S LIABILITY FOR DAMAGES FOR LOSS OR INJURY TO THE GOODS SHALL BE LIMITED TO THE FULLEST EXTENT ALLOWED BY SECTION 8.2-204 OF THE CODE OF VIRGINIA.

### **General**

These terms shall be governed by the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws and shall inure to the benefit of Shipvine, its successors and assigns. Any disputes relating hereto or otherwise to your use of the Services or our actions or exercise of rights hereunder shall be adjudicated in the state courts of Hanover County, Virginia or the federal courts located in the city of Richmond, Virginia, and you hereby consent to the exclusive jurisdiction of said courts for any such disputes, and you hereby waive all objections to such forums in connection with any such disputes, including without limitation any objection based upon lack of personal or in rem jurisdiction or forum non conveniens. If for any reason a court of competent jurisdiction finds any provision of these terms, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of these terms shall continue in full force and effect.

No person other than an authorized officer of Shipvine is entitled to amend or waive the provisions of these terms. Any amendment, modification or waiver must be expressly agreed to by Shipvine. We are entitled to transfer its rights and/or obligations to any third party in connection with a sale of assets, business, shares or a merger without your prior written consent. However, you shall not be entitled to transfer your rights and obligations under these terms without our prior written consent. Nothing herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties.