

NATIONAL LOGISTICS SERVICE LLC
STANDARD TERMS & CONDITIONS FOR MOTOR CARRIERS

These Standard Terms and Conditions for Motor Carriers (the “Terms and Conditions”) shall apply to (i) all transportation services performed by the Carrier on behalf of Broker and its Affiliates, and (ii) any and all shipments or loads of freight tendered to the Carrier by Broker and its Affiliates, unless and until these Terms and Conditions are altered or amended by the Broker as provided herein.

For purposes of these Terms and Conditions, “Broker” shall mean National Logistics Service, LLC, an Ohio liability company and any and all Broker Affiliates.

For purposes of these Terms and Conditions, “Carrier” shall mean each and every motor carrier engaged by the Broker and its Affiliates to perform transportation Services on behalf of Broker, its Affiliates and/or Customers, in connection herewith.

Each Motor Carrier hereby expressly agrees to these Terms and Conditions, which no agent or employee of Carrier may alter. These Terms and Conditions shall supersede all prior oral or written statements or documents made with respect to (i) the subject matter contained herein, (ii) all transportation Services performed by each Carrier in connection herewith, and (iii) any and all shipments or loads tendered by Broker and/or its Affiliates to each Carrier. The terms and conditions contained herein shall also supersede any terms or conditions contained in any proposal, quotation, invoice, bill of lading or other communication provided by Carrier to Broker and its Affiliates as well as any tariff(s) or other shipping documentation adopted or utilized by Carrier in connection with loads transported in connection herewith. Any terms or conditions not specifically contained herein shall be inapplicable to any load of freight transported by Carrier in connection herewith.

1. DEFINITIONS: For purposes of these Terms and Conditions, the following terms shall have the meanings set forth below:

1.1 “Broker Affiliates” shall mean any and all of Broker’s parent companies, subsidiary companies, affiliates, contractors, representatives, agents, successors and assigns.

1.2 “Cargo Claimant” shall mean collectively, (i), Broker, (ii) Broker Affiliates, (iii) all Customers, (iv) all shippers, (v) all consignors, (vi) all consignees, (vii) all receivers, (viii) all cargo owners, and/or (ix) or any third party holding claim rights with respect to goods, commodities, cargo or freight transported in connection with these Terms and Conditions.

1.3 “Customer” is any business entity or individual which is the owner of cargo, property or other items transported by Carrier under these Terms and Conditions and identified as such in any Bill of Lading or other shipping document associated with transportation services provided by Carrier hereunder.

1.4 “Full Actual Loss ” shall mean: (i) the full, retail invoice price charged by the shipper or cargo owner to the receiver or purchaser for the kind and quantity of product lost, damaged or destroyed, plus, in the event that the cargo is not being sold, the full replacement costs of the kind and quantity of the product, lost, damaged or destroyed which is documented by the Cargo Claimant; (ii) plus any and all damages, costs, expenses (including, without limitation, reasonable attorneys’ fees, if applicable) or other losses suffered or incurred by the Cargo Claimant of any nature with respect to the load, including, without limitation, lost profits, plant shutdown fees, equipment rental fees, transloading or cross-docking fees, crane costs, penalties, fines, freight costs associated with continued delivery, re-delivery or replacement shipments, and other consequential damages, incidental damages, or other damages of any kind; (iii) plus any amounts charged to Broker or suffered by the Cargo Claimant as a result of any delays in delivery; (iv) plus any and all freight charges (unless included in the invoice price) included in the claim by the Cargo Claimant; (v) plus any and all costs or expenses incurred by the Cargo Claimant in connection with salvaging cargo which are outlined in Section 5.5; and (vi) less any net salvage value proceeds actually received, if any.

1.5 “Motor Carrier” shall have the meaning set forth in 49 USC Section 13102.

2. GENERAL DESCRIPTION OF SERVICES : With respect to all loads of freight or cargo transported by Carrier in connection with these Terms and Conditions, Carrier will perform the following (collectively, the "Services"): (i) using due care, Carrier shall pick-up, as and when requested, and transport in a timely manner, and deliver in good order and condition, the shipments which are brokered by Broker to Carrier, all in accordance with the terms set forth in these Terms and Conditions; and (ii) Carrier shall otherwise comply with all terms and conditions contained herein. Every shipment offered to Carrier by Broker on or after the date of these Terms and Conditions will be deemed to be a shipment brokered to Carrier as a motor contract carrier and will be subject only to the provisions contained herein and applicable law.

3. RATES; INVOICES:

3.1 For each load tendered by Broker and its Affiliates to Carrier hereunder, Broker shall pay Carrier for said services in accordance with the rates set forth in the particular rate confirmation sheet ("Rate Confirmation Sheet") sent by Broker and/or its Affiliates to Carrier associated with each particular load, which will become part of these Terms and Conditions. Carrier shall sign all Ate Confirmation Sheets associated with the services to be provided by Carrier hereunder. However, upon Carrier picking up any load to be transported hereunder, Carrier shall automatically be deemed to have accepted the rate listed in the associated Rate Confirmation Sheet as well as all of these Terms and Conditions regardless of whether Carrier shall have signed the same and Carrier shall be bound to transport the associated load for the rate listed thereon and subject to these Terms and Conditions. Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where Carrier has billed the agreed rate and Broker and/or its Affiliates have paid it. Said rates may only be amended, modified, or added to from time to time upon the mutual written agreement of both Carrier and Broker or one of its Affiliates which shall be effective as of the date such rate is mutually agreed to in writing and signed or acknowledged by both parties. Under no circumstances shall Broker or its Affiliates be liable for detention, accessorial, or other additional charges of Carrier which are not contained in any particular rate confirmation sheet or otherwise mutually agreed to in writing by the parties.

3.2 Carrier authorizes Broker to invoice all shippers, consignors, receivers, consignees and other third parties for freight fees with respect to services provided by Carrier and hereby assigns to Broker any and all of Carrier's rights to collect freight charges from such responsible third parties. Carrier agrees to invoice Broker, and only Broker, and acknowledges that Broker is the sole party responsible for payment of its invoices. Carrier automatically assigns to Broker all Carrier's rights to collect freight charges from all Customers or any responsible third party on receipt of payment from Broker. Under no circumstance, shall Carrier seek payment from Broker's Customers, the consignor, any consignee, the shipper, receiver, or any third party other than Broker. Additionally, Carrier shall be prohibited from contacting Customers, shippers, consignors, consignees, receivers, or other third parties whatsoever regarding payment for services performed or loads transported in connection with these Terms and Conditions.

3.3 Carrier will submit an invoice and signed delivery document to Broker within ten (10) days of delivery date, or the date by which the shipment should have reasonably been expected to deliver, whichever is earlier, unless a shorter time period is listed on the Rate Confirmation Sheet. Broker is under no obligation to pay any Carrier invoices that are not submitted within that time period. Carrier agrees that no penalties or interest will be assessed to Broker for past due amounts. Broker may request Carrier to submit the original shipping paperwork at any time. If Carrier fails to submit the original shipping paperwork upon Broker's request, payment may be withheld until such time it is received by Broker. Except as otherwise agreed to by Broker and Carrier in writing or otherwise stated in these Terms and Conditions, and subject to Section 3.4 below, Broker agrees to pay Carrier for the transportation of shipments under these Terms and Conditions in accordance with the rates described herein, within thirty (30) days of receipt of Carrier's invoice and signed delivery document covering such transportation. Carrier agrees to file any undercharge claims within one hundred eighty (180) days of the initial invoice date. Overcharge, undercharge, and duplicate payment claims will be processed in accordance with 49 CFR Part 378.

3.4 Notwithstanding anything to the contrary contained elsewhere in these Terms and Conditions, Broker shall have the right to set-off against the amounts payable to Carrier hereunder or against other amounts owed by Broker to Carrier, any and all claims amounts (even if alleged claims amounts), freight claims amounts (even if alleged), damages, losses, costs, interest (statutory or common law), liabilities of any kind, and/or expenses (including reasonable attorneys' fees) incurred or sustained by Broker, Broker Affiliates and all Cargo

Claimants and which arise out of or are related to: (i) any breach of any representation or warranty of Carrier set forth in these Terms and Conditions, (ii) any breach of these Terms and Conditions by Carrier, (iii) any indemnification obligations of Carrier set forth in these Terms and Conditions, (iv) the negligence or intentional acts of Carrier and its drivers, employees, agents, contractors, successors, and assigns, (v) the failure by Carrier to deliver any freight transported hereunder in accordance with the delivery schedule provided by Broker or listed in any associated Rate Confirmation Sheet, (vi) delays in shipment or losses to goods caused by Carrier's services hereunder or any breach of these Terms and Conditions by Carrier, and (vii) freight claims or other claims which relate to freight transported hereunder. Without limiting the foregoing, Broker shall be entitled to exercise Broker's set-off rights outlined in this Section 3.4 and to withhold freight fees and other amounts payable to Carrier for any and all loads of freight transported by Carrier hereunder, or assigned/brokered by Carrier in violation hereof, to the extent that Broker is notified by a Cargo Claimant that a freight claim is pending or to the extent that Broker has other reason to believe a freight claim will be filed for damages to cargo or delay in delivery, regardless of whether Broker has actually verified the validity or invalidity of any said claim. Broker's right of set-off shall be in addition to, and not in substitution of, any other right Broker shall have under these Terms and Conditions, or at law or in equity.

3.5 In addition to any other provisions contained herein, once Carrier accepts a load offered by Broker, if Carrier then fails to pick up the load or otherwise fails to cover the load, Carrier agrees to reimburse Broker such amounts as are necessary to compensate Broker for its loss of revenue and/or the expense of covering the load by alternative means.

4. SHIPPING DOCUMENTS: All freight offered to Carrier by Broker pursuant to these Terms and Conditions shall be picked up at origin by Carrier and transported, without delay, to the point of destination at the date and time specified by Broker, Broker's Affiliate, or any applicable Customer. There shall be a bill of lading (the "Bill of Lading"), in compliance with 49 U.S.C. §80101 et seq., 49 C.F.R. §373.101 (and any amendments thereto), for each load transported by Carrier hereunder, and the Bill of Lading shall be signed by the Customer/shipper and consignee. Carrier shall be named as "carrier of record" on each Bill of Lading. Delivery shall be made by Carrier as specified in each Bill of Lading or other shipping document. Any terms of the Bill of Lading (including but not limited to payment terms) inconsistent with the terms of these Terms and Conditions shall in applicable for all purposes and shall be controlled by these Terms and Conditions. Carrier shall deliver a copy of a completed Bill of Lading, signed delivery receipt, and such other documentation as may be agreed to by the Parties within ten (10) days of the delivery date for each shipment. Notwithstanding the foregoing, failure to issue a Bill of Lading, or sign a Bill of Lading acknowledging receipt of the freight by Carrier, shall not affect the liability of Carrier.

5. LIABILITY; CARGO LOSS; DELAY; AND/OR DAMAGE:

5.1 Carrier shall be liable to all Cargo Claimants as a carrier under 49 USC 14706, et seq., (the "Carmack Amendment") for the Full Actual Loss resulting from the transportation of all goods, commodities, cargo or freight in connection with these Terms and Conditions while under the Carrier's care, custody, or control, or while such goods, commodities, cargo or freight are in the care, custody, or control of any third party engaged by Carrier to transport the same in violation of these Terms and Conditions. Whether Carrier is liable under this Section 5 shall be determined under in 49 U.S.C. Section 14706, et seq. (the "Carmack Amendment"), but damages for any cargo claims shall be for the Full Actual Loss which results. Without limiting the foregoing, the liability standard under this Section 5.1 shall be determined under the Carmack Amendment in all instances, regardless of whether the goods being transported are considered "exempt" or "non-exempt" commodities under the law.

5.2 To the extent that any Cargo Claimant agrees to a limitation of liability for losses to cargo, such limitation shall be applicable to Carrier. No limitation of liability will apply as to delay.

5.3 Carrier will have no lien upon and hereby waives any and all rights to assess any lien upon any cargo, or portion thereof, transported in connection with these Terms and Conditions, whether under common law, or federal, state or local laws or regulations. Carrier hereby grants to Broker a non-rescindable right to execute any lien waivers on behalf of Carrier as may be required by Broker's Customers and any and all Cargo Claimants, shippers, receivers, consignors, consignees or other cargo owners.

5.4 Except as set forth below in this Section 5.4 below, Carrier agrees that the provisions contained in 49 CFR Part 370, shall govern the processing of claims for loss, damage, theft, delay or other loss with respect to property and the processing of salvage.

(i) Without limiting the foregoing, Carrier has thirty (30) days from the date any claim is received to acknowledge such claim, and following acknowledgement, Carrier has an additional ninety (90) days to either pay, decline or make settlement offer in writing on all claims. Failure of Carrier to pay, decline or offer settlement within the period listed above shall be deemed admission by Carrier of full liability for the amount claimed and a material breach of these Terms and Conditions.

(ii) Notwithstanding the terms of the Carmack Amendment, or any laws, rules, or regulations promulgated in connection therewith, including, without limitation 49 CFR Part 370, Carrier agrees to promptly handle and resolve all claims which are submitted either by a Cargo Claimant or Broker. Carrier acknowledges that Broker may file or process cargo claims against Carrier on behalf of other Cargo Claimants, and Carrier agrees to process any and all cargo claims filed by Broker on behalf of a third-party Cargo Claimant as if Broker were the party holding any and all cargo claims rights, except that any release or settlement agreements shall be signed by and the payment of any applicable Full Actual Loss amounts shall be made to the applicable party holding cargo claims rights. This shall include the right of Broker to file the applicable cargo claims with Carrier and its insurance providers, the right of Broker to facilitate communications with Carrier and its insurance, to direct the salvage process, and to otherwise direct the processing of the claim on behalf of the Cargo Claimant. Carrier agrees to require its insurance company to communicate with Broker, its attorneys and other representatives, on all claims filed by Broker on behalf of a third-party Cargo Claimant to the same extent as if Broker were the party holding the applicable claims rights, but subject to the payor's rights to require that the party holding the claims rights sign a settlement or release agreement and accept the payment.

(iii) Carrier shall immediately notify Broker of any cargo damage, shortage/loss, theft or delay. Failure to comply with this notice provision shall void any limitation of liability and cause Carrier to be responsible for the Full Actual Loss resulting from shipments in connection herewith, without regard to a Cargo Claimant's ability to mitigate damages.

(iv) The determination regarding the salvageability of any damaged cargo shall be determined by the Cargo Claimant, or Broker if Broker is facilitating the claim under Section 5.4(ii) above, in its sole discretion, and Carrier shall be liable for all costs and expenses associated with the mitigation of damages, including, without limitation, any inspection costs; storage or warehousing costs; preparation of the cargo for reshipping; and the reshipping, if applicable. Carrier shall not sell, or attempt to sell, any cargo, goods or other freight for salvage, or otherwise without, the prior written authorization of the Cargo Claimant, or Broker if Broker is facilitating the claim under Section 5.4(ii) above, which may be withheld in the Cargo Claimant's or Broker's sole discretion. For any damaged product which the Cargo Claimant, or Broker if Broker is facilitating the claim under Section 5.4(ii) above, permits Carrier to resell, the Cargo Claimant, or Broker under Section 5.4(ii), will have the right to require that Carrier remove all identifying marks and labels on such product. In the event that Broker's Customer, the shipper, consignor, consignee, receiver, cargo owner, or any other Cargo Claimant other than Broker has required Broker to waive rights of salvage or resale, Carrier hereby expressly waives any and all rights of salvage or resale of the subject freight to the same extent as waived by Broker.

(v) Claims based on concealed loss/damage reported to Carrier by Broker within ten (10) business days of the date of delivery will be treated as though an exception notation had been made on the delivery receipt at the time of delivery.

(vi) It is the obligation of Carrier to properly inspect cargo upon the discovery of damage. In the event Carrier fails to inspect the cargo within five (5) business days of the date Carrier becomes aware of the damage, or upon receipt of the goods to be returned to the consignor or shipper because of the damage, whichever is earlier, Carrier waives its rights to inspect the goods and agrees to be bound by the facts presented by claimant.

(vii) If the cargo is able to be repaired and restored to good marketable condition, Carrier will be liable for the costs of repairs including the costs of all labor and other necessary expenses, not to exceed the actual value of the kind and quality of product damage.

5.5 Broker shall have no liability for any loss or damage to any goods transported by Carrier on shipments offered by Broker. Carrier shall be solely and exclusively responsible for loss or damage to, or delay in delivery of, goods and shipments transported by Carrier in connection with these Terms and Conditions. Despite the fact that Broker is not liable for cargo loss, damage or delay claims, Broker shall have the right to pay such claim(s) to the party holding cargo claims rights, in which case Carrier shall then be responsible to make payment to Broker for the Full Actual Loss as though Broker (i) were the party holding the cargo claims rights or (ii) had received an assignment of such claim(s) from the party holding such rights.

6. COVENANTS: Carrier agrees to the following covenants and makes the following representations and warranties in favor of Broker, Broker Affiliates and all Customers:

6.1 At all times while in the possession of cargo and/or freight being transported in connection with these Terms and Conditions, Carrier is and shall be registered as a Motor Carrier with the FMCSA and is and shall be authorized to provide transportation of general commodities and any other freight items tendered by Broker in connection with these Terms and Conditions.

6.2 At all times while in the possession of cargo and/or freight being transported in connection with these Terms and Conditions, Carrier shall (i) maintain proper authority, licenses and permits to provide the Services contemplated herein, (ii) maintain a satisfactory U.S. DOT safety rating, or no rating, (iii) utilize only fully qualified personnel who have all of the appropriate licenses and certificates, including but not limited to a commercial driver's license, and (iv) maintain its equipment in good order and in compliance with all applicable laws. Carrier will notify Broker immediately if its Federal Operating Authority is revoked, suspended, or rendered inactive by the FMCSA for any reason. Carrier agrees to notify Broker immediately if the safety ratings change, or if it is found by any governing authority to have violated any law or regulation related to safety or insurance coverage. The provisions of this paragraph are intended to include safety rating designations which may replace those above, which are subject to change by the FMCSA at any time.

6.3 At all times while in the possession of cargo and/or freight being transported in connection with these Terms and Conditions, Carrier shall comply, with all federal, state, and local laws, codes, regulations, rules and orders applicable to the performance of the Services hereunder, including, without limitation, (i) 49 C.F.R. §370.1 et seq. and any amendments and/or any other applicable regulations adopted by the FMCSA, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvage, and (ii) any laws and regulations relating to the operation of commercial vehicles and transportation of Hazardous Materials (including the licensing and training of Haz Mat qualified drivers) as defined in 49 C.F.R. §172.800, §173, and §397 et seq., to the extent that any shipments hereunder constitute Hazardous Materials.

6.4 Without limiting Section 6.3 above, To the extent that shipments to which these Terms and Conditions applies contain food that will ultimately be consumed by humans or animals ("Food Products"), the following provisions apply:

(i) Carrier must comply with its legal obligations concerning the safe and secure transportation of food that will ultimately be consumed by humans or animals required by local, provincial, state and federal laws, regulations, ordinances and rules including, but not limited to, (1) the Food Safety Modernization Act (21 U.S.C. § 2201, et seq.), (2) the Sanitary Transportation of Human and Animal Food Rule ("STF Rule") (21 CFA Parts 1 and 11, as amended, supplemented or superseded from time to time), (3) the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 341, et seq.) ("FD&C Act"), (4) the Sanitary Food Transportation Act (49 U.S.C. 5701 et seq.), (5) the U.S. Food and Drug Administration's Final Rule on the Sanitary Transportation of Human and Animal Food (21 C.F.R. § 1.900 et seq.), and (6) any and all other federal, state, and local laws, codes, regulations, rules and orders applicable to the safe and secure transportation of food (collectively, the "Food Safety Laws").

(ii) Carrier must ensure that vehicles and transportation equipment meet the specifications and/or temperature requirements in the shipper's instructions. If there is a discrepancy between the Rate Confirmation Sheet and the Bill of Lading, Carrier will contact Broker immediately.

(iii) When required by, and as specified in the shipper's instructions, Carrier shall ensure that any and all food items requiring temperature control are transported in compliance with such temperature requirements, which will include, without limitation, checking bills of lading, rate confirmation sheets, and/or shipping instructions to determine any temperature requirements, discussing and verifying whether a temperature requirement exists with the Customer and/or shipper/loader/dispatcher at origin, pre-cooling any and all equipment if necessary, setting any reefer or temperature control equipment to the proper temperature and setting, venting if needed, maintaining and servicing any and all temperature control equipment, and taking other appropriate measures to ensure temperature requirements are met.

(iv) Carrier shall implement written procedures regarding temperature control, equipment, and sanitation. Carrier shall adequately train any and all drivers, employees and other transportation personnel regarding the handling and transporting of food products, produce and other perishable items.

(v) Carrier shall notify Broker of any failure of temperature control equipment or another condition that would cause food items to become unsafe or adulterated (as defined below).

(vi) Carrier shall take measures to isolate, segregate and use packaging to prevent contamination of food products.

(vii) Carrier will, upon Broker's request, provide evidence of the following: (1) the operating temperature for the Food Products, and that the shipper's temperature conditions were maintained during transportation of the Food Products, by presenting ambient temperature measurements upon loading and unloading, time and temperature data taken during the shipment, or as otherwise specified by the shipper's instructions; (2) documented written processes to maintain product food safety, including those for: maintaining requisite temperature controls during transport for Food Products subject to the shipper's temperature control requirements; cleaning, sanitizing (as applicable), and inspecting vehicles and transportation equipment used to transport the Food Products; and tracing Food Products that are transported in bulk vehicles; (3) transportation traceability, including information regarding: (A) previous cargos hauled in bulk or other vehicles offered for transportation of the Food Products; (B) maintenance and intervening cleaning procedures for docks, vehicles and other equipment; and (4) the appropriate training process for each person under Carrier's supervision or control, involved in the supply chain, and transporting shipments governed by this Section 6.4; and (5) for each shipment, evidence that the Food Products have not been adulterated, as defined in the FD&C Act, and have been transported under sanitary conditions that will protect the product against any temperature abuse or great temperature fluctuations and any physical, chemical, and microbial contamination of the Food Products or the packaging materials, case or container in which they are being transported.

(viii) Carrier agrees to implement ongoing measures to ensure Carrier is fully and strictly complying with all Food Safety Laws.

(ix) Carrier agrees to maintain all documentation and records related to the transport of shipments governed by this Section 6.4, including those documenting the safe and sanitary transport of food, for a period of two (2) years following the latter of pickup or delivery of each shipment.

(x) Carrier agrees that food that has been transported or offered for transport, pursuant to this Section 6.4, under conditions that are not in compliance with the shipper's instructions as provided to Carrier by the shipper, through Broker, or otherwise, shall be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 342(a)(i)(4), 342(i). Carrier understands that adulterated shipments may be refused by the consignee or receiver, upon their delivery, at destination.

(xi) Carrier agrees that Broker is not responsible for and shall in no way be held liable to Carrier for Carrier's or any shipper's, consignee's, receiver's or loader's obligations or their failure to

adhere to their respective obligations under the laws and regulations governing the safe and sanitary transport of food for human consumption, including the Food Safety Laws referenced, above, in this Section 6.4.

6.5 Carrier shall place a certified, registered Electronic Logging Device (each an “ELD”) in each vehicle it utilizes to transport freight hereunder which is in compliance with applicable law. For the avoidance of confusion, Carrier’s obligations to place an ELD device in each vehicle it utilizes in connection herewith shall apply even if Carrier would be exempt from utilizing an ELD device under applicable law.

6.6 Additionally, Carrier warrants that the Carrier will inspect or hire a service representative to inspect and maintain any and all refrigeration or heating units utilized by Carrier and its drivers/employees/personnel at least once each month. Carrier warrants that Carrier shall maintain a record of each inspection of refrigeration or heating units and retain the records of the inspections for a least three (3) years. Carrier shall provide Broker and its insurance company with copies of these records must be provided upon request made by the Carrier’s insurance company and/or Broker. Carrier warrants that Carrier will maintain adequate fuel levels for the refrigeration or heating unit on each shipment utilizing such unit and assumes full liability for claims and expenses incurred by the Broker or the Shipper for failure to do so. Carrier must provide Carrier’s cargo insurance provider and Broker with all records that relate to a loss and permit copies and abstracts to be made from them upon request.

6.7 Carrier is solely responsible for any and all management, governing, discipline, supervision direction and control of its employees, owner/operators with respect to all Services hereunder. Carrier will be responsible for the procurement and operation of the vehicles it uses and the employment, training, supervision and control of the drivers and any helpers. Carrier will be responsible for safe and lawful operation of the vehicles and equipment used in the performance of the Services and will assume all costs, expenses, and liabilities incident to or arising out of furnishing, maintaining, repairing, or operating motor vehicles and other equipment. At all times while Carrier in in possession of freight or cargo being transported in connection with these Terms and Conditions, Carrier shall, at its expense, furnish all equipment, fuel, supplies, insurance, maintenance, and properly qualified personnel necessary to perform the Services hereunder. Carrier will notify Broker promptly by telephone of any accident, theft or other occurrence that impairs the safety of or delays the delivery of cargo in connection herewith.

6.8 Carrier shall perform the Services hereunder itself and shall not “trip lease”, broker, interline, subcontract, or otherwise assign any Services or the transportation of any cargo to another motor carrier or property broker without the express written consent of Broker, regardless of whether Carrier maintains transportation brokerage authority or not. Carrier’s breach of the foregoing shall be a material breach of these Terms and Conditions and, notwithstanding anything to the contrary contained herein, Carrier shall remain liable to Broker and all Cargo Claimants under these Terms and Conditions as though the Carrier performed the Services. Carrier shall not have any right to, in any way, negate, eliminate, circumvent or alleviate Carrier’s liability to Broker or any other Cargo Claimant which may be inconsistent with the provisions of these Terms and Conditions. Carrier will not allow the diversion or reconsignment of any shipment except upon written instructions by Broker or Broker’s Customer. Carrier will not accept instructions for diversion or reconsignment of any consignee or third party without the written consent of Broker or Broker’s Customer. In the event Carrier breaches this Section 6.8, Broker may, in its sole discretion, make payment for such shipment or load to the performing motor carrier only and such payment shall relieve Broker of any payment obligation to Carrier.

6.9 Carrier has no knowledge of any threatened or pending interventions by the FMCSA under CSA 2010; nor is Carrier subject to any investigation or disciplinary action by any state agency related to enforcement of safety laws and regulations, and the representation and warranty in this Section 6.9 shall be deemed made each time that Carrier picks up cargo.

6.10 In the event Carrier accepts a load transporting any goods to, from, or through California, CARRIER CERTIFIES, REPRESENTS AND WARRANTS THAT IT HAS REPORTED ITS COMPLIANCE WITH THE TRUCK AND BUS REGULATION OF THE CALIFORNIA AIR RESOURCES BOARD (“CARB”) AND/OR IS, TOGETHER WITH ITS OWNER(S), AWARE OF THE TRUCK AND BUS REGULATION OF THE CARB AND IS IN COMPLIANCE WITH SUCH REGULATION BY USING THE ENGINE MODEL YEAR SCHEDULE. In the event perishable goods are transported under such load to, from, or through California,

CARRIER CERTIFIES, REPRESENTS AND WARRANTS THAT ANY TRANSPORTATION REFRIGERATION UNIT (“TRU”) EQUIPMENT FURNISHED WILL BE IN COMPLIANCE WITH THE IN-USE REQUIREMENTS OF CALIFORNIA’S TRU REGULATIONS. Carrier shall look to the Rate Confirmation Sheet for the necessary Broker information to be furnished under California’s TRU regulations. Additionally, To the extent any shipments are transported within the State of California, Carrier warrants and certifies that: (i) All 53 foot trailers it operates and the Heavy-Duty Tractors that haul them within California under these Terms and Conditions are in compliance with the California Air Resources Board (ARB) Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations; and (ii) All refrigerated equipment it operates within California under these Terms and Conditions shall be in full compliance with the California ARB TRU ACTM in-use regulations.

6.11 Carrier shall transport all shipments without delay and immediately notify Broker of any actual or potential delay or of any incident or circumstances that will prevent or delay delivery to the consignee or shipping destination.

6.12 Carrier shall not withhold delivery of any freight in its possession due to any dispute with Broker, any Broker Affiliates, any Customers or any other Cargo Claimant regarding freight charges or any other reason.

6.13 In transporting freight in connection with these Terms and Conditions, Carrier shall comply with any and all laws related to the number of hours of driving or service per day or week as mandated by federal, state and relevant local laws. Broker shall not be liable in any event for Carrier failing to comply with such driving or service hour restrictions.

6.14 Trailers are sealed at time of shipment and will arrive at their destination with seals intact unless such seal is required to be broken by governmental authority. Unless a shipment is loaded and sealed prior to arrival of Carrier’s personnel, the manner of loading and securing freight upon equipment shall be the Carrier’s sole responsibility. For any unsealed loads that were loaded prior to Carrier’s arrival, Carrier will inspect such loading prior to departing and such inspection shall be evidenced by its signature on the Bill of Lading. For multi-stop shipments, Broker will cause the shipper to provide the appropriate number of trailer seals for all stop locations on such shipment and Carrier will log a “Continuous Seal Report” of all seals for each stop. Carrier shall be responsible at all times for maintaining seal integrity during transportation of the shipment. Except as allowed in multi-stop shipment or as required by a statutorily authorized official (e.g., a law enforcement personnel, USDA, DOT, etc.) under no circumstances shall Carrier break any seal without the express written consent of Broker. Carrier shall immediately notify Carrier to report a missing or broken seal and shall log the same on the Continuous Seal Report. When a trailer is delivered with a broken or improper seal, other than any seal broken by governmental authorities, the entire load shall be deemed adulterated or contaminated and unfit for human consumption, and thereafter Carrier it shall be liable for the Full Actual Loss of the shipment and any subsequent damage therefrom. Carrier shall report to Broker and Customer immediately by telephone any accident, spill, material delay in delivery, theft, breakage of seal, and any other incident which might have caused the cargo to be deemed adulterated.

7. **INSURANCE REQUIREMENTS:** At all times while in the possession of cargo and/or freight being transported in connection with these Terms and Conditions, Carrier shall procure and maintain, at its sole cost and expense, with reputable and financially responsible insurance carriers with an AM Best rating of A- or better, the following insurance in not less than the amount specified:

7.1 Commercial General Liability Insurance including contractual liability and protective liability coverage (consistent with Carrier’s indemnity obligations herein) insuring Carrier against liability in connection with its rendering the Services in connection with these Terms and Conditions in a combined single limit of not less than \$1,000,000.00 per occurrence;

7.2 Commercial Auto Liability Insurance insuring against liability for injury to persons, including injuries resulting in death, environmental restoration and loss or destruction of or physical damage to property, including any vehicle or other equipment furnished by the shipper for and in connection with the transportation Services the Carrier renders, in a combined single limit of not less than \$1,000,000.00 per occurrence

(If Carrier transports Hazardous Materials that require \$5,000,000.00 of auto liability insurance by federal or state regulations, the insurance required pursuant to this Section 7.2 will be \$5,000,000.00 per occurrence;

7.3 All Risk Broad Form Cargo Insurance insuring Carrier against liability for loss or damage to commodities while in the custody, possession or control of Carrier in an amount not less than \$100,000.00 per shipment. In the event that a cargo loss, damage or delay claim, or any portion thereof, is excluded from coverage by Carrier's insurance, Carrier shall assume complete sole liability and responsibility for the Full Actual Loss not covered by its insurance, and shall indemnify, defend and hold Broker and all other Cargo Claimants harmless for any the Full Actual Loss with respect to any loss, damage or delay claim incurred by or asserted against Broker or a Cargo Claimant. The insurance required under this Section 7.5 shall not limit Carrier's liability for cargo loss, damage, and delay as set forth in Section 5 above; and

7.4 Workers' compensation insurance for Carrier's employees in accordance with statutory requirements for all applicable jurisdictions.

7.5 At all times while in the possession of cargo and/or freight being transported in connection with these Terms and Conditions, Broker will be named an additional insured on the insurance policies above, except for workers' compensation insurance. Carrier's insurance coverages must waive the insurer's right to subrogation against Broker or any other Cargo Claimant. The failure of Carrier to secure an appropriate clause in, or endorsement to, Carrier's respective insurance coverages, which waives the right of subrogation as provided above, shall not in any manner affect the intended waiver hereunder, and if Carrier's insurer(s) seeks subrogation against Broker or any other Cargo Claimant because of the absence of such a waiver and release, then Carrier shall defend, indemnify, and hold Broker and all Cargo Claimants harmless from and against any such subrogation claim. Carrier will not have exclusions within any of the above insurance policies for unattended vehicles and unattached vehicles, theft, abandonment, or breakdown or malfunctioning of cooling or heating equipment. If Carrier's insurance is threatened to be, or is, terminated, cancelled, suspended, reduced, or revoked, Carrier must immediately notify Broker. In connection with naming Broker as an additional insured on the insurance policies referenced above (other than worker's compensation), Carrier shall cause the underlying insurance companies to agree to notify Broker not less than thirty (30) days prior to the cancellation of any insurance hereunder. Carrier shall promptly notify Broker in the event any insurance company providing any insurance required by these Terms and Conditions is downgraded to an AM Best rating below A-. Carrier shall provide Broker certificates or other evidence of the foregoing insurance coverages and additional insured endorsement, along with full copies of the policies if requested by Broker at any time.

8. INDEMNIFICATION: Carrier shall indemnify and hold harmless Broker, Broker's Affiliates, all Customers as well as all other Cargo Claimants, and their respective officers, directors, employees, agents, representatives, vendors and Customers (collectively, the "Broker Indemnitees") from any and all causes of action, claims (including, without limitation, claims made by third parties and/or claims for personal injuries or death), suits (including, without limitation suits by third parties and/or claims for personal injuries or death), judgments, compensation, demands, damages, punitive damages, penalties, orders, decrees, awards, losses, costs, interest (statutory or common law), other liabilities (actual, potential, threatened or pending) of any other kind, expenses (including reasonable attorneys' fees), settlements and other compensation on account of:

8.1 Loss or damage to property, or personal injury, including death, which may be sustained by any Broker Indemnitees arising out of or in connection with (i) Carrier's performance of the Services set forth herein or (ii) the transportation of any cargo, freight, shipments or loads by Carrier and its drivers, employees, agents, contractors, successors and assigns, including, without limitation, any third parties to whom Carrier has assigned the transportation in violation of these Terms and Conditions;

8.2 (i) Any breach by Carrier of these Terms and Conditions or any of Carrier's representations, warranties and/or covenants contained herein, and (ii) the performance or non-performance of any obligations set forth in these Terms and Conditions by Carrier and its drivers, employees, agents, contractors, successors and assigns, including, without limitation, any third parties to whom Carrier has assigned the transportation in violation of these Terms and Conditions;

8.3 The Full Actual Loss incurred by any Broker Indemnitees with respect to loss, damage, delay, or other cargo claims in connection with shipments transported by Carrier, its drivers, employees, agents, contractors, successors, and assigns, or any third party to whom Carrier has assigned the transportation in violation of these Terms and Conditions;

8.4 Carrier's failure to comply with insurance or worker's compensation requirements or any claim for worker's compensation asserted against any Broker Indemnitees by Carrier's employees, agents, contractors, successors or assigns, or any employees, agents, contractors, successors, and/or assign of third parties to whom Carrier has assigned the transportation in violation of these Terms and Conditions, or their personal representatives;

8.5 The release or threatened release by Carrier, its drivers, employees, agents, contractors, successors, and assigns, or any third party to whom Carrier has assigned the transportation in violation of these Terms and Conditions, of any hazardous waste, toxic or hazardous substance or pollutant, as those terms are defined in any federal, state, and local law, regulation, ordinance, and rules applicable to the services set forth herein; and

8.6 The failure by Carrier or any of its drivers, employees, agents, contractors, successors and assigns to deliver any freight transported hereunder in accordance with the delivery schedule provided by any Broker Indemnitee or listed in any associated Rate Confirmation Sheet.

Exclusions in Carrier's insurance coverage(s) shall not exonerate Carrier from this liability. Carrier agrees that Carrier's indemnification obligations will survive the delivery of any and all applicable cargo or freight.

9. INDEPENDENT CONTRACTORS: It is understood and agreed that the relationship between Broker and Carrier is that of independent contractor. None of these Terms and Conditions or any act or omission of either party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, employer/employee relationship between the parties. Carrier shall provide the sole supervision and shall have exclusive control over the operations of its employees, contractors, subcontractors, agents, as well as all vehicles and equipment used to perform its transportation services hereunder. Broker has no right to discipline or direct the performance of any driver and/or employee, contractors, subcontractors, or agents of Carrier. Carrier represents and agrees that at no time and for no purpose shall it represent to any part that it is anything other than an independent contractor in its relationship to Broker.

10. WAIVER OF RIGHTS: Pursuant to 49 USC 14101(b), to the extent that such rights or remedies conflict with these Terms and Conditions, Carrier hereby expressly waives any rights and remedies available to Carrier under (1) state, (2) federal or (3) common law or (4) under 49 U.S.C, Subtitle IV, Part B.

11. CONSEQUENTIAL DAMAGES: Notwithstanding anything contained herein to the contrary, Broker shall not be liable to Carrier for incidental, special or consequential damages without Broker receiving written notification of the risk of loss and the approximate financial amount and Broker's express written and signed agreement to assume such responsibility.

12. CONFIDENTIALITY: In connection with the Services provided hereunder, Carrier may be in or come into possession of information or data which constitutes trade secrets, know-how, confidential information, marketing plans, pricing of Broker or anything else otherwise considered proprietary or secret by Broker ("Confidential Information"). In consideration of receiving shipments from Broker in connection with these Terms and Conditions, Carrier agrees to protect and maintain such Confidential Information in the utmost confidence, to use such Confidential Information solely in connection with performing Services hereunder, and to take all measures reasonably necessary to protect the Confidential Information. Carrier agrees that Broker's charges to its Customers are confidential and need not be disclosed to Carrier. Carrier specifically waives any rights it may have under 49 CFR § 371.3. Except as may be required by law, the terms and conditions of the Terms and Conditions and information pertaining to any Services will not be disclosed by Carrier to any other persons, entities or third parties, except to the directors, officers, employees, authorized contractors, attorneys, and accountants of Carrier. This obligation of confidentiality will remain in effect for a period of two years following delivery of each load of cargo transported by Carrier in connection with these Terms and Conditions.

13. **NON-SOLICITATION:** Carrier agrees that at all times while performing Services and for a period of two (2) years following delivery of the last load of cargo transported by Carrier in connection with these Terms and Conditions, that neither Carrier nor any employee, officer, director, agent or otherwise of Carrier, shall directly or indirectly solicit traffic from any Broker, consignor, consignee, or Customer of the Broker where (i) the availability of such shipments first became known to Carrier as a result of Broker's efforts; or (ii) the shipments of the consignor, consignee, or Customer of the Broker was first offered to the Carrier by the Broker. In the event Carrier violates the terms of this Section 13 and back-solicits Broker's Customers and obtains traffic from such Customers, Broker is then entitled, for a period of twelve (12) months after the traffic first begins to move, to a commission from the Carrier of fifteen percent (15%) of the transportation or revenue received on the movement of traffic. Carrier understands and agrees that the provisions of the aforementioned covenant not to solicit are reasonable as to scope, duration, and geographic area, in light of the mutual promises and other valuable consideration the parties have agreed to in these Terms and Conditions.

14. **IRREPARABLE HARM:** In the event of violation of Sections 12 or 13, Carrier intends and agrees that the remedy at law, including monetary damages, may be inadequate and that Broker shall be entitled, in addition to any other remedy they may have, to an injunction restraining Carrier from further violation of Sections 12 or 13 above. Additionally, in the event of a violation of Sections 12 or 13 by Carrier, Carrier shall be liable to Broker for all costs and expenses incurred by Broker to enforce its rights, including, but not limited to, reasonable attorney's fees.

15. **GOVERNING LAW:** These Terms and Conditions shall be construed in accordance with the laws of the State of Ohio, except where such laws are preempted by federal law. Any claim brought under these Terms and Conditions, as well as any claim arising out of the services performed Carrier in connection herewith shall be brought in the courts of the State of Ohio located in Hamilton County or in the Federal Courts located in Hamilton County, Ohio, and by accepting and transporting loads of freight in connection herewith, Carrier hereby irrevocably submits to the jurisdiction of said courts.

675748.1 16. **MISCELLANEOUS:** These Terms and Conditions may be changed, waived, or modified at anytime by Broker. These Terms and Conditions may not be changed, waived or modified by the Carrier unless in a written agreement signed by Broker. These Terms and Conditions, together with any associated Rate Confirmation Sheets and any Broker-Carrier Agreement signed by Carrier, sets forth the entire agreement between the parties with respect to the subject matter herein, and any prior understanding, proposal, representation, or agreement between the parties shall be deemed to have merged into these Terms and Conditions. If any provision of these Terms and Conditions is deemed unenforceable by any court or competent jurisdiction, such provision shall be severed and the remaining provisions herein shall continue in full force and effect. These Terms and Conditions shall be binding upon the successors and assigns of the respective parties.