



BROKER/SHIPPER TRANSPORTATION TERMS OF SERVICE

The following Terms of Service apply to all property broker services provided by COWAN LOGISTICS, LLC, having offices at 4700 Hollins Ferry Rd., Baltimore, Maryland 21227 (“BROKER”) to its SHIPPER Customers (“SHIPPERS”); collectively, the “PARTIES”.

RECITALS

- A.** BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number USDOT 84386 and MC 44801-B, and as a licensed broker, arranges for freight transportation. A copy of BROKER’s authority is attached as Appendix A, and a copy of BROKER’s Surety Bond or trust fund agreement is attached as Appendix B (if not attached, BROKER will provide these documents upon SHIPPER’s request); and
- B.** SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER’s freight.

NOW, THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:

TERMS

1. **SERVICE.** BROKER agrees to arrange for transportation of SHIPPER’s freight pursuant to the terms and conditions set forth herein and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of freight. BROKER’s responsibility shall be limited to arranging for, but not actually performing, transportation of SHIPPER’s freight. The Parties may, upon written mutual agreement, include additional service terms.
2. **VOLUME/SPECIFICATIONS.**
 - A. SHIPPER is not restricted from tendering freight to other brokers, freight forwarders, third-party logistics providers, or directly to motor carriers. BROKER is not restricted from arranging transportation of freight for other parties.
 - B. SHIPPER shall be responsible to BROKER for: Written, timely and accurate delivery specifications and description of the cargo, including, but not limited to, dimensions, weight, temperature, any special handling or security requirements, and employing reasonable security protocols to reduce the risk of cargo theft.
3. **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into, bilateral written contracts with each carrier it engages to perform the property broker services offered herunder. BROKER further warrants that those contracts comply with all applicable federal, state and local laws and regulations and shall include (but not be limited to) the substance of the following terms:
 - A. Carrier is in, and shall agree to maintain compliance with all applicable federal, state and local laws and regulations relating to the provision of its services including, but not limited to:
 1. all registration, licensing, and insurance requirements required to perform the services;
 2. security regulations;
 3. loading and securement of freight;

4. qualification, licensing, hiring, and training of drivers;
 5. implementation and maintenance of driver safety including, but not limited to, controlled substances and hours of service;
 6. maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers;
 7. owner/operator leases;
 8. implementation and maintenance of equipment safety;
 9. sanitation, temperature, and contamination requirements for transporting food, perishables, and other products; and
 10. the Food Safety Modernization Act (21 U.S.C. § 2201 et seq.) and its implementing regulations; and
 11. transportation of Hazardous Materials, (including the licensing and training of 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.
- B. Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damage, theft, delay (as specified in subparagraph C. below), damage to property, and personal injury or death.
- C. Carrier shall agree that its liability for cargo loss or damage shall be determined by 49 USC §14706 (the Carmack Amendment). Exclusions in carrier's insurance coverage shall not exonerate carrier from this liability. No limitation of carrier's liability shall apply, unless BROKER first obtains the express written consent of SHIPPER.
- D. Carrier shall agree to maintain at all times during the term of the contract, insurance policies with limits not less than the following:
- | | |
|-------------------------|---|
| General Liability - | \$1,000,000 |
| Auto Liability - | \$1,000,000 (\$5,000,000 if transporting hazardous materials) |
| Cargo Liability - | \$100,000 |
| Worker's Compensation - | as required by law. |
- BROKER shall verify that each carrier it utilizes in the performance of services has insurance policies with the minimum amount as defined above.
- E. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage, unless otherwise agreed in writing in an instrument other than a bill of lading, tariff or shipping document. Carrier may agree in such written instrument to an alternative claims process for exempt commodities and BROKER shall provide SHIPPER with advance notice of any such process.
- F. Carrier shall agree that BROKER is the sole party responsible for payment of carrier's charges.
- G. Carrier shall agree that at no time during the term of its contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA), and that it has no knowledge of any threatened or pending interventions by FMCSA; if carrier receives an "Unsatisfactory" safety rating, a rating has



changed from “Satisfactory” to “Conditional” or if any future safety rating has otherwise been downgraded by FMCSA, it shall immediately notify BROKER and shall not transport any freight hereunder.

- H. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any tariff terms published by carrier which are inconsistent with the contract shall be ineffective and inapplicable to the shipments tendered under the Agreement.
- I. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the Agreement.
- J. Carrier shall agree that it will not broker, re-broker, assign, interline, or subcontract the shipments without prior written consent of BROKER. Regardless of BROKER’s payment to delivering carrier, the contracted carrier shall not be released from any liability to BROKER under the Agreement, or from liability under 49 U.S.C. §14916. Carrier will not have recourse against SHIPPER for Broker’s nonpayment of freight bill(s) to Carrier associated with any brokerage, re-brokerage, assignment, interline, or subcontracting by Carrier.
- K. To the extent that any shipments subject to the Agreement are transported into, out of, through or within the State of California, the carrier shall warrants that it is in compliance with all California Air Resources Board regulations. The carrier shall be liable to BROKER and SHIPPER for any penalties, or any other liability, imposed on or assumed by BROKER or SHIPPER because of Carrier’s use of non-compliant equipment.

4. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, BROKER will provide SHIPPER with proof of acceptance and delivery of shipments in the form of a signed Bill of Lading or Proof of Delivery via US Mail, courier, or electronically by fax or email. SHIPPER’s insertion of BROKER’s name on any bill of lading shall be for SHIPPER’S convenience only and shall not change BROKER’s status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify these terms of service without Shipper’s consent.

5. **PAYMENTS.** BROKER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions that are mutually agreed to between the PARTIES in writing. If rates are negotiated between the PARTIES they shall be confirmed in writing to be binding upon SHIPPER. SHIPPER agrees to pay BROKER’s invoice within 30 days of invoice date without deduction or setoff. Unless otherwise agreed in a signed writing, BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to BROKER shall unconditionally relieve SHIPPER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges. BROKER shall indemnify SHIPPER from and against any claim for freight payment brought by carrier against SHIPPER when SHIPPER has paid BROKER and BROKER has failed to pay carrier.

6. **CLAIMS.**

- A. **Freight Claims:** SHIPPER must file claims for cargo loss or damage with BROKER within one hundred eighty (180) days from the date of such loss, shortage or damage, which shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file



any civil action against BROKER in a Court of Law within two (2) years from the date the carrier or BROKER provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice.

- B. Carriers utilized by BROKER shall agree in writing with BROKER to be liable for cargo loss or damage as outlined in paragraph 3.C above. The carrier's cargo liability for any one shipment shall not exceed \$100,000, unless BROKER is notified by SHIPPER of the increased value at the time of tendering of the shipment with the BROKER. It is understood and agreed that the BROKER is not a motor carrier and that the BROKER shall not be held liable for loss, damage or delay to or in the transportation of SHIPPER's property, unless caused by BROKER's negligent acts or omissions in the performance of its services. BROKER shall assist SHIPPER in the filing and/or processing of cargo claims with the carrier. If payment of a claim is made by BROKER to SHIPPER, SHIPPER agrees that its rights and interest in the claim shall automatically be assigned to BROKER without need for further documentation.
- C. In no event shall BROKER or BROKER's contracted Carrier be liable to SHIPPER for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed BROKER in written or electronic form prior to or when tendering a shipment or series of shipments to BROKER of the potential nature, type and approximate amount of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages.
- D. SHIPPER shall not be responsible to salvage food shipments that are inspected by a qualified individual as referenced in 21 C.F.R. 1.908(a)(6) and found to be "adulterated" as defined in 21 CFR § 342. BROKER will contractually require its carriers to comply with SHIPPER's written instructions regarding food safety and its carriers to be liable for failure to comply with and pay for reasonable disposal instructions.
- E. **All Other Claims:** The Parties shall notify each other of all known material details of claims within sixty (60) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available. Civil actions, or arbitration, if any, shall be commenced within two (2) years from the date either Party provides or should have provided written notice to the other Party of such a claim.

7. **INSURANCE.** BROKER agrees to procure and maintain at its own expense, the following insurance coverage amounts:

- A. Comprehensive general liability insurance covering bodily injury and property damage \$1,000,000
- B. Errors and Omissions Insurance \$1,000,000
- C. Broker Liability/Contingent Auto Liability Insurance \$1,000,000

BROKER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder".



8. **SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$100,000 and furnish SHIPPER with proof upon request.

9. **HAZARDOUS MATERIALS.** SHIPPER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and § 397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments contains or constitutes hazardous materials. SHIPPER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

10. **HOMELAND SECURITY.** As applicable to each, respectively, BROKER and SHIPPER shall comply with federal, state and local Homeland Security related laws and regulations.

11. **INDEMNIFICATION.** Subject to the monetary insurance limits and coverage in Section 7, BROKER and SHIPPER shall defend, indemnify and hold each other harmless from and against any claims, actions or damages, including, but not limited to cargo loss, damage, or delay and payment of rates and/or accessorial charges to carriers, arising out of their respective performances, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither Party shall be liable to the other Party for any claims, actions or damages due to such other Party's own negligence or intentional acts. Failure of insurance coverage, for any reason, shall not exonerate either Party from its indemnity obligations hereunder which for either party shall not exceed the amounts specified in Section 7. The obligation to defend shall include all costs of defense as they accrue.

12. **LTL AND RAIL SHIPMENTS.** Notwithstanding any language in this document to the contrary, BROKER shall not be responsible for any claims for loss or damage to less than truckload ("LTL") or rail shipments. SHIPPER acknowledges and agrees that rates for LTL and rail shipments are subject to the published tariffs, including those by the underlying carrier, and will not be modified or negotiated by BROKER. The process, loss and damages for LTL and rail claims will be governed by the carrier's published tariffs.

13. **INDEPENDENT CONTRACTOR.** The relationship of the Parties to each other shall at all times be that of independent contractors. None of these terms, 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, or employer/employee relationship between the Parties. Each Party shall provide sole supervision and shall have exclusive control over the actions and operations of its employees and agents used to perform its services hereunder. Neither Party has any right to control, discipline or direct the performance of any employees or agents of the other Party. Neither Party shall represent to any party that it is anything other than an independent contractor in its relationship to the other Party.

14. **NONWAIVER.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions set forth herein, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions herein, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

15. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the Party so prevented uses its best efforts to perform and provided further, that such Party provide reasonable notice to the other Party of such inability to perform. Performance obligations of the Parties may be extended by the amount of delay caused by Force Majeure events, upon mutual agreement.

16. **CHOICE OF LAW AND VENUE.** All questions concerning the construction, interpretation, validity and enforceability of these terms of service, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with Federal laws governing interstate transportation, and to the extent not pre-empted thereby, the laws of the State of Maryland, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

17. **CONFIDENTIALITY.** Other than as required to comply with law or legal process requiring disclosure, the Parties agree to the following:

- A. BROKER shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent. BROKER will require its carriers and/or other brokers to comply with this confidentiality clause.
- B. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.

18. **ENTIRE TERMS.** These terms of service constitute the entire understanding of the Parties and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof. The Parties further intend that these terms of service constitute the complete and exclusive statement of terms and that no extrinsic evidence may be introduced to reform these terms of service in any judicial or arbitration proceeding.



APPENDIX A
Broker's Authority



APPENDIX B

Broker's Bond