

## TERMS & CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

### **1. Definitions.**

- (a) "Company" shall mean Freightlink, Inc., its subsidiaries, related companies, agents and/or representatives;
- (b) "Customer" shall mean the person for which the Company is rendering service, as well as its principals, agents and/or representatives;
- (c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;
- (d) "Third parties" shall include, but not be limited to, the following: carriers, truckmen, cartmen, lightermen, railroads, barge operators, forwarders, agents, warehousemen, steaming or cleaning facilities and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise.

**2. Company as agent.** The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with arranging for transportation services or other logistics services as a motor carrier "broker" as that term is defined in 49 U.S.C § 13102(2), or in any capacity other than as a carrier. When acting as agent, Company shall not be liable for any loss, damage or delay to cargo and Customer will exclusive to the responsible Third parties for any claims it may have.

### **3. Limitation of Actions.**

- (a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within 90 days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.
- (b) For claims arising out of the preparation and/or submission of an import entry(s), within 120 days from the date of liquidation of the entry.
- (c) All suits against Company must be filed and properly served on Company within two (2) years from the date of the loss or damage.

**4. No Liability For The Selection or Services of Third Parties and/or Routes.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment. Advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party. All claims in connection with the Act of a third party shall be brought solely against such party and/or its agents. In connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

**5. Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice. No quotation shall be binding upon the Company unless the Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer. Any alterations or other changes to the scope of work, including changes to the weights or dimensions of the cargo involved, are subject to the company's right to adjust the quotation price and completion schedule and, in all events, are subject to the right of the company to refuse to agree to any proposed alterations or changes. Unless otherwise expressly stated in the quotation, all sales taxes, excise taxes, customs duties, value added taxes and similar value added taxes and similar items are additional, where applicable, to the quotation price(s).

**6. Reliance On Information Furnished.**

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agency and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customers behalf;

(b) In preparing and submitting export declarations, applications, security filings, documentation and/or other required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods

**7. Packaging and Special Conditions.** All items must be properly packaged, reinforced or braced and suitable for handling using the methods described in the price quotations. Company accepts no liability for damages to cargo due to insufficient packaging. **Hazardous goods will not be accepted for transport, handling or storage unless they have been declared by Customer in advance and Company has accepted the tender.**

**8. Declaring Higher Value To Third Parties.**

(a) Third parties to whom the goods are entrusted may limit liability for loss or damage. The Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore. In the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

(b) When rail or motor transportation is included in the scope of work, the terms and conditions and any limitations in liability of the carrier(s) involved in the transportation and handling of shipments will prevail should a conflict arise between the Company's terms and conditions and those of the carriers. The carrier terms and conditions are public documents and available for public viewing, and can be obtained by contacting the

carrier directly or by reviewing their websites.

**9. Insurance.** Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

**10. Disclaimers; Limitation of Liability.**

(a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;

(b) In connection with all services performed by the Company, Customer may obtain liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).

(c) Unless Company is acting as a carrier, the Company's liability shall be limited to US \$50.00 per shipment or transaction.

(d) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been put on notice of the possibility of such damages, or for the acts of third parties.

**11. Advancing Money.** All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to Customer. The granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

**12. Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from any conduct of the Customer, including but not limited to the inaccuracy of data supplied by Customer or its agent or representative, the tender of hazardous materials or the tender of overweight containers, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims. In the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

**13. Costs of Collection.** In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.

**14. General Lien and Right To Sell Customer's Property.**

(a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

(b) Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.

(c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of

credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage, demurrage, detention or other ancillary charges assessed by third parties accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

**15. No Duty To Provide Licensing Authority.** Unless requested by Customer in writing and agreed to by the Company in writing, Company shall not be responsible for determining licensing authority or obtaining any license or other authority pertaining to the export from or import into the United States.

**16. Preparation and Issuance of Bills of Lading.** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc. Unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer.

**17. No Modification or Amendment Unless Written.** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

**18. Compensation of Company.** The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment.

**19. Force Majeure.** Company shall not be liable for losses, damages, delays, wrongful or missed deliveries or nonperformance, in whole or in part, of its responsibilities under the Agreement, resulting from circumstances beyond the control of either Company or its sub-contractors, including but not limited to: (i) acts of God, including flood, earthquake, storm, hurricane, power failure or other natural disaster; (ii) war, hijacking, robbery, theft or terrorist activities; (iii) incidents or deteriorations to means of transportation, (iv) embargoes, (v) civil commotions or riots, (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment, (viii) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or (ix) strikes, lockouts or other labor conflicts.

**20. Severability.** In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in Full force and effect. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

**21. Governing Law; Consent to Jurisdiction and Venue.** These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Utah without giving consideration to principles of conflict of law. Customer and Company

(a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Utah;

(b) agree that any action relating to the services performed by Company shall only be brought in said courts;

- (c) consent to the exercise of in personam jurisdiction by said courts over it,
- (d) consent to accept service of process via certified mail; and
- (e) further agree that any action to enforce a judgment may be instituted in any jurisdiction.