

Brokerage Terms and Conditions

1. **APPLICABILITY.** Unless expressly superseded by a written contract signed by an officer of **Phoenix National Brokerage LLC** (“BROKER”) and the shipper, consignee, consignee, or any other entity claiming an interest in goods for which BROKER arranges transportation (“CUSTOMER”) these Terms and Conditions shall govern property brokerage service (which, for purposes hereof, shall mean the arrangement of motor carrier transportation to be performed by third party Servicing Motor Carriers as defined below) provided by BROKER (“Services”), including services provided pursuant to a load confirmation. Any terms and conditions on documents exchanged between the parties other than these Terms and Conditions, as revised from time to time, shall not apply to any Services and shall not be binding on or applicable to BROKER. CUSTOMER understands and agrees that BROKER functions as an independent entity, and not as a carrier, in selling, negotiating, and arranging for transportation for compensation, and that the actual transportation of shipments tendered to BROKER shall be performed by third-party motor carriers (“Servicing Motor Carriers”). BROKER and CUSTOMER represent and warrant that their relationship is that of independent contractors and that the respective employees are under their respective exclusive management and control. Nothing in these Terms and Conditions shall be deemed to require BROKER to provide Services upon request of CUSTOMER and BROKER reserves the right to accept or decline, in its sole discretion, any particular request for Services.

2. **COMPLIANCE WITH LAW.** BROKER represents and warrants that it is duly and legally qualified to operate as a property broker and to provide the Services contemplated herein. BROKER agrees to comply with all applicable federal, state and local laws regarding the provision of such brokerage Services. CUSTOMER warrants and represents that it is authorized to tender the cargo in question to BROKER and that all descriptions of the cargo are complete, accurate, and include all information required by applicable law, rules or regulation. Without in any way limiting the foregoing, if CUSTOMER tenders for transportation cargo designated as hazardous materials or dangerous goods, CUSTOMER shall be solely responsible for complying with any and all applicable laws, rules, regulations, or conventions with respect to classifying, tendering, packaging and labeling such cargo and must provide notice of any such cargo at the time a request for Services is first initiated by CUSTOMER to BROKER. When requesting service with respect to any shipment containing food that is subject to regulations of the Food and Drug Administration (“FDA”) (hereinafter, “Food”), CUSTOMER shall be solely responsible for identifying handling obligations necessary for the safe and sanitary handling of food and, at the time of the initial request for services with respect to the individual shipment, will provide written notice (each a “Food Handling Notice”) to BROKER that the consignment contains Food which Food Handling Notice must also include any special instructions or handling requirements to be imposed on the Servicing Motor Carrier. Any such Food Handling Notice shall specifically identify the consignment to which it relates and in no event shall any Food Handling Notice apply to more than one shipment regardless of whether BROKER confirms receipt of a Food Handling Notice purporting to apply to multiple conveyances. In no event will BROKER have any obligation to provide any instructions to the Servicing Motor Carrier with respect to cargo other than those expressly noted by the CUSTOMER on a load confirmation provided by BROKER to CUSTOMER and BROKER has no obligation to comply with or pass on to the Servicing Motor Carrier any handling instructions received after the initial request for service. If CUSTOMER does not provide a Food Handling Notice, CUSTOMER warrants and represents that the cargo is appropriately packaged to ensure safe and sanitary transportation without the need for any specialized handling by the Servicing Motor Carrier. CUSTOMER acknowledge and agrees that BROKER’s sole obligation with respect to food handling and food safety is to pass through to the Servicing Motor Carrier instructions contained in a Food Handling Notice.

3. **PAYMENT AND CHARGES.** BROKER will charge and CUSTOMER will pay the rates and charges set forth in a load confirmation or

as otherwise agreed for services provided by BROKER without offset. CUSTOMER agrees to pay BROKER without offset and within fifteen (15) days of receiving the invoice, with interest accruing monthly at a rate of one percent (1%) per month on any unpaid balance. CUSTOMER shall also be liable for any expenses, including attorney fees, BROKER incurs in collecting its rates and charges. If any information provided by CUSTOMER is inaccurate or incomplete, CUSTOMER acknowledges and agrees that agreed upon rates may, in BROKER’s sole discretion, be revised to reflect the goods actually tendered. CUSTOMER shall also be responsible for any additional accessorial charges imposed by the Servicing Motor Carrier which were not anticipated by BROKER at the time BROKER arranged for services with Servicing Motor Carrier or which were not otherwise included in the rate set forth in the load confirmation. Without limiting the foregoing, CUSTOMER will be solely liable for any and all charges imposed by third parties with respect to use of equipment in which cargo is or has been laden which such equipment is neither owned by nor leased to BROKER or the Servicing Motor Carrier. Such charges include, but are not limited to, per diem, detention and demurrage charges imposed by steamship lines or other intermodal equipment providers. BROKER shall have a possessory lien on all cargo, and any proceeds therefrom, in its, or in its Servicing Motor Carrier’s, dominion or control for the payment of any and all amounts due and owing from CUSTOMER or with respect to services rendered at the request, or for the benefit of, CUSTOMER. In addition, to the extent not prohibited by applicable law, BROKER will have a general lien on any cargo under its, or its Servicing Motor Carrier’s, dominion or control, and any proceeds thereof, for any and all amounts due and owing from CUSTOMER or with respect to services rendered at the request, or for the benefit of, CUSTOMER, regardless of whether those amounts relate to cargo or proceeds against which the general lien is enforced.

4. **INDEMNIFICATION, WARRANTIES AND LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER THE PARTY TO BE CHARGED HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF BROKER WITH RESPECT TO ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO SERVICES PROVIDED PURSUANT TO THESE TERMS AND CONDITIONS WILL BE FOR THE AMOUNT CHARGED BY BROKER WITH RESPECT TO THE SERVICES SPECIFICALLY GIVING RISE TO SUCH CLAIMS OR DAMAGES. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BROKER FROM AND AGAINST, AND SHALL PAY AND REIMBURSE BROKER FOR, ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY CUSTOMER OF THESE TERMS AND CONDITIONS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULE OR REGULATION; OR (iv) CUSTOMER’S FAILURE TO PROVIDE, OR BROKER’S OR THE SERVICING MOTOR CARRIER’S COMPLIANCE WITH OR RELIANCE ON, INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER. THE FOREGOING NOTWITHSTANDING, CUSTOMER’S OBLIGATION TO HOLD HARMLESS, DEFEND, INDEMNIFY, PAY AND REIMBURSE SHALL NOT APPLY TO THE EXTENT ANY CLAIM IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BROKER THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. BROKER IS NOT LIABLE FOR THE CONSEQUENCES OF IDENTIFY THEFT OR FRAUDULENT CONDUCT OF THIRD PARTIES, INCLUDING UTILIZING THE SERVICES OF ENTITIES REPRESENTING THEMSELVES TO BE SERVICING MOTOR CARRIERS OR REPRESENTATIVES THEREOF.

5. **SERVICING MOTOR CARRIERS.** BROKER's sole responsibility with respect to selection and retention of Servicing Motor carriers is to make reasonable efforts to place CUSTOMER's loads with responsible Servicing Motor Carriers: (i) authorized to perform the services required by CUSTOMER; (ii) which such carriers do not hold an "unsatisfactory" or unfit safety rating from the U.S. Department of Transportation; and (iii) that possess all insurance coverages required by applicable law. BROKER makes no express or implied warranties or guarantees concerning delivery time or the locating of a Servicing Motor Carrier to provide the transportation services requested by CUSTOMER.

6. **BROKER INSURANCE.** BROKER shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain a surety bond or trust fund agreement.

7. **CARGO LOSS, DAMAGE, OR SHORTAGE.** CUSTOMER acknowledges that Servicing Motor Carriers may limit their liability for cargo loss, damage or delay. It will be CUSTOMER's responsibility to insure product in-transit and CUSTOMER acknowledges that if CUSTOMER wishes to declare excess value higher than the Servicing Motor Carrier's limitation, BROKER will have no responsibility to do so and it will be CUSTOMER's responsibility to do so directly with the Servicing Motor Carrier. BROKER may facilitate claims filing and processing with the Servicing Motor Carrier if CUSTOMER submits to BROKER, within six (6) months of the date of delivery, a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage. BROKER may, in its sole discretion and without liability to CUSTOMER, discontinue pursuit of claims with the Servicing Motor Carrier if such claim is not resolved within sixty (60) days of receipt by BROKER or if CUSTOMER, in BROKER's sole discretion, fails to cooperate with BROKER in filing of claims with the Servicing Motor Carrier. CUSTOMER acknowledges and agrees that failure or alleged failure by the Servicing Motor Carrier to comply with shipment handling instructions, or a broken trailer seal, shall not result in any presumption that food has been adulterated, contaminated, or otherwise rendered unfit for its intended purpose, nor otherwise be grounds for rejection of a shipment or filing of a claim for cargo loss and damage without proof of actual loss or damage. BROKER shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused by BROKER's negligent acts or omissions, in which case, BROKER's liability shall be limited to the charges assessed by BROKER and paid by CUSTOMER with respect to the goods at issue. CUSTOMER is responsible for filing a claim with BROKER alleging BROKER's liability for cargo loss and damage within ninety (90) days of the date of delivery of the cargo in question (or, if none, within ninety (90) days of the date cargo should have been delivered). Failure to do so will result in an absolute bar to any such claim and will relieve BROKER of any and all liability with respect thereto. In no event will BROKER have any liability arising from or related to the Servicing Motor Carrier's refusal to accept full value liability or the Servicing Motor Carrier otherwise limiting its liability for cargo loss and damage. BROKER shall be under no obligation to arrange, and Servicing Motor Carrier shall be under no obligation to provide, service in accordance with any set pick-up or delivery schedule; BROKER's sole obligation is to ensure Servicing Motor Carriers provide services with reasonable dispatch. Any lawsuit arising from such claim must be commenced within eighteen (18) months of denial of all or any part of such claim. CUSTOMER acknowledges and agrees that the sole liability of BROKER with respect to loss, damage or delay to cargo shall be as set forth in this provision and CUSTOMER warrants and represents that if it is not the owner of such cargo, CUSTOMER holds authority from such owner to bind the owner to the provisions of these Terms and Conditions.

8. **RAIL TRANSPORTATION.** Notwithstanding anything in these Terms and Conditions to the contrary, in the event, whether upon request of CUSTOMER or in BROKER's discretion, any portion of the underlying transportation is performed by a rail carrier ("Rail Carrier"), CUSTOMER acknowledges and agrees that the Rail Carrier services, including, but not limited to, charges, liability (including limitations) for loss or damage to cargo,

and terms and conditions of services are governed by tariffs, circulars or similar documents maintained by the Rail Carrier or other third party logistics provider arranging such Rail Carrier services (the "Rail Conditions"). CUSTOMER acknowledges and agrees that CUSTOMER, and not BROKER, shall be deemed as a shipper or beneficial cargo owner for purposes of application of the Rail Conditions. As between CUSTOMER and BROKER, CUSTOMER shall be solely responsible for: (a) proper packing of any and all shipments; (b) blocking and bracing all such cargo in accordance with the Rail Conditions, as well as in accordance with industry standards (including, but not limited to, those imposed by the American Association of Railroads via Circular 43, Rules Governing the Loading, Blocking and Bracing of Freight in Closed Trailers and Containers for TOFC/COFC Service); and (c) compliance with any and all obligations or charges imposed by the Rail Carrier with respect to tender of cargo for rail and/or intermodal transportation, including but not limited to any and all charges for accessorial services imposed by Rail Carriers whether or not included in the initial rates agreed upon by the parties.

9. **SHIPPING DOCUMENTS.** Shipments tendered hereunder may be evidenced by a bill of lading or similar transportation document. In no event will BROKER being shown as the "carrier" on any such document change BROKER's status as a property broker. Upon request of CUSTOMER, BROKER shall request that Servicing Motor Carriers obtain a delivery receipt from the consignee, showing the products delivered, the condition of the shipment and the date and time of such delivery. CUSTOMER waives access to BROKER's records pursuant to 49 C.F.R. Part 371.

10. **NOTIFICATION OF ACCIDENTS OR DELAYS.** BROKER agrees to notify CUSTOMER of any accident or other event of which BROKER is apprised and which prevents the motor carrier from making a timely or safe delivery.

11. **DISPUTE RESOLUTION.** These Terms and Conditions shall be deemed to have been drawn in accordance with the statutes and laws of the state of Wisconsin and in the event of any disagreement or dispute regarding services subject to these Terms and Conditions, to the extent not otherwise governed by federal law, the laws of the state of Wisconsin shall apply and suit must be brought in the state of Wisconsin as each party specifically submits to the exclusive personal jurisdiction of such courts for disputes between them or otherwise involving BROKER's services.