

# TERMS AND CONDITIONS OF SERVICES

The Terms and Conditions Set Out Below  
Exclude or Otherwise Limit Freight Management Inc.'s Liability  
With Respect to the Goods to Be Transported

**(Please Read Carefully)**

**Freight Management, Inc. ( hereafter "Freight Management" or the "Company) is an Illinois corporation licensed as a Property Broker (MC-394333-B) by the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMSCA) and/or other government agencies as required by law.**

**FREIGHT MANAGEMENT, INC. IS NOT A FREIGHT CARRIER OR AN AGENT FOR A FREIGHT CARRIER.**

**As a condition of service, you, the Shipper and/or Consignee (hereafter collectively referred to as "Customer") agree to these TERMS AND CONDITIONS OF SERVICES (TERMS AND CONDITIONS) which no agent or employee of the parties may alter. Any individual or entity acting on behalf of the Customer in scheduling shipments hereunder warrants that it has the right to act on behalf of the Customer and the right to legally bind Customer. These TERMS AND CONDITIONS shall apply to all shipments scheduled by Customer, until these TERMS AND CONDITIONS are amended by the Company**

- 1. Acceptance of Customer Goods and Property Broker Services Acceptance.** Freight Management agrees to arrange the transportation of Customer's freight from its point of origin to its destination, and in so doing, arrange any or all of the following services (Services): packing, crating, handling, loading, unloading, storage or transport of goods for the Customer. The Services are offered and performed under the Terms and Conditions set forth in this document and available to the Customer on the Company's website [www.ofmi.com](http://www.ofmi.com), under the link "Terms and Conditions" which Customer, as a condition of Company providing and arranging services, accepts.
- 2. Duties of the Company when acting as a Broker:** (A) The Company shall procure the Services from third parties in the name, and on behalf of, the Customer. (B) There shall be a direct relationship between the Customer and those third parties. The Company shall be permitted to act in any reasonably necessary manner and shall perform its duties using a reasonable degree of care and diligence. (C) The Company shall perform its services within a reasonable time, taking all

reasonable steps to perform the transaction in accordance with the Customer's instructions. (D) The Company shall be permitted to depart from any instruction from the Customer if the Company deems it necessary to do so in order to protect the Customer's interests. (E) The Company shall seek further instructions from the Customer if it becomes impossible at any time for the Company to fulfill its duties. (F) The Company shall not be liable for loss of or damage to the goods while the goods are in the custody, possession or control of third parties. (G) The Company disclaims any control over how the carrier performs its services, including safe transport, timely delivery or insurance coverage beyond that required by the FMCSA. .

- 3. Duties of the Customer:** (A) The Customer warrants that it is either the owner or the authorized agent of the owner of the goods. (B) The Customer authorizes the Company to contract in the name of the Customer with third parties to perform any or all of the Services on behalf of the Customer. (C) The Customer shall provide a full and accurate description of the goods and weights thereof to be transported. (D) Except where the Company is instructed to do so, the Customer shall properly pack, stow and prepare the goods in a manner suitable and appropriate for shipment by any mode of transport. (E) The Customer shall mark the goods and the outside packaging as required by any laws or regulations which may be applicable while the Services are being provided. (F) The Customer shall pay all freight charges, duties, or other sums connected with the handling and transportation of the goods. (G) The Customer shall pay to the Company all sums immediately when due, without reduction or deferment on account of any claim. (H) The Customer shall remain responsible for the payment of all charges when the Services are to be provided upon instructions to collect freight, duties, charges or any other expenses from another. (I) the confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to pay all charges or other sums due promptly on demand. (J) The Customer shall not tender, deliver or transport any goods which are dangerous, flammable, radioactive, or hazardous except under special arrangements in which prior notice is given to the Company. (K) The Customer shall not tender, deliver or transport any bank notes, bonds, negotiable instruments, securities, bullion, coins, precious stones, jewelry, valuables, antiques, human remains, livestock or plants except under special arrangements in which notice is given to the Company and accepted in writing by Company. (L) The Customer shall advise Company if any goods require special handling (including food and food grade related products) or liable to taint or affect other goods or are likely to harbor or encourage vermin or other pests. (K) The Customer shall declare the value goods transported, or in the event of non-disclosure, accepts the lowest level of cargo value for the rate and services provided a third party carrier.

#### **4. Rates and Service**

- (A) For **Less-Than-Truckload (LTL)** Shipments rates quoted are based on the freight class as determined by the NMFC (National Motor Freight Classification) which are based on the actual description, size, and weight of the shipment. Additional fees may apply for other charges including appointment delivery, reweighs and reclassifications, lift gate services, inside delivery or various other accessorial services.

Any Company rate and service quote is based on information provided by you, the customer. The carrier reserves the right to inspect all shipments to determine discrepancies and assess applicable payment charges which you are solely responsible for payment.

- (B) **Truckload rates** are based on dock door pickup/dock door delivery and shipper load/consignee unloads and is state to state and mileage or flat fee based. Additional fees may apply for charges

including but not limited to, tractor detention, trailer detention, fuel surcharge, overweight, and oversize and driver assistance. Once the Company has contracted with a carrier to move a truckload shipment, the scheduled load must be tendered to the carrier as requested. Carrier service is subject to equipment availability. Rates do not include "exclusive use" of a trailer unless requested and specified. The parties mutually acknowledge that dimensions, weight, commodity, and pickup and delivery requirements of a shipment affect freight charges.

All transit times are estimates only and do not include day of pickup. Pickup dates are not guaranteed.

(C) **Rail Intermodal Shipments** rate quotes are good for 2 hours from the time rate is quoted after which capacity is not guaranteed. The rail carrier reserves the right to reject any tender. All rail shipments shall be under 43,000 lbs. gross weight. Rail carriers are not required to scale (weigh) the freight unless requested and associated charges applies. If a tendered shipment is overweight and rejected by rail carrier, additional drayage charge and scaling (weighing) charge is the sole responsibility of customer. All rail carriers take no responsibility for shifting or damage to the freight unless proper blocking and bracing performed by shipper with proof thereof. Rail carriers will not block or brace.

#### **4. Payment**

All Customers are subject to credit approval. Credit terms are subject to Company's continued approval. Company may change credit terms and may establish and/or revise a credit limit at any time.

Company shall invoice Customer for its services in a Rate Confirmation email prior to processing customer's shipment; plus any written supplements or revisions that are mutually agreed to between the Parties in writing (Rate Confirmation Sheet) and not otherwise confirmed in writing (e.g. charges referenced in or included in email correspondence), such charges shall be considered "written," and shall be binding, upon Company's invoice to Customer and Customer's payment to Company.

Customer agrees to pay Company's invoice within 15 days of invoice date without deduction or setoff.

All charges are payable in US Dollars and are due upon receipt or upon agreed payment terms.

Any payment which is past due shall be subject to an additional charge at the rate of 1.5% per month of the average outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less. Overpayments do not accrue interest. In the event the Company retains an attorney or collection agency to collect unpaid charges or for the enforcement of these SHIPPING TERMS AND CONDITIONS, all unpaid charges will be subject to a late payment penalty of 33% and Customer shall also be liable for all attorneys and collection agency fees incurred, together with related costs and expenses. All shippers, consignors, consignees, freight forwarders or freight brokers are jointly and severally liable for the freight charges owed to the Company relating to this shipment and the Company holds a warehouseman's general lien on all tangible personal property in its possession or control for any outstanding balances owed to the Company.

The Company reserves the right to amend or adjust the original quoted amount or re-invoice the Customer if the original quoted amount was based upon incorrect information received at the time of the original quote, if additional services by the carrier were required, or as otherwise necessary to

perform the pickup, transportation and delivery functions therein.

When paying by credit card or electronic funds, the Customer agrees they will be responsible for all charges payable, including any adjustments, on account of such Customer's shipment. These charges and adjustments, if any, will be automatically debited to the Customer's credit card or bank account. Customer is permitted thirty (30) business days from the date of the invoice to dispute any invoiced charges. If the Company does not receive a dispute within the allowable thirty (30) business days, the disputed item will be denied by the Company.

#### **5. Indemnification by Customer.**

The Customer shall indemnify and hold the Company harmless for: (A) All duties, taxes, fines, third party carrier freight charges, or other expenses incurred by the Company caused by the Customer or any party acting on his behalf. (B) Any claim for general average and/or salvage, and the Customer shall provide such security as may be required. (C) Where the Customer himself has prepared the goods for transport, for any claim by a third party for bodily injury or property damage arising out of the Customer's failure to pack, load, stow or otherwise adequately prepare the goods for shipment.

#### **7. Company's Lien on Cargoes and Sale Thereof.**

(A) The Company shall have a general lien on any and all goods tendered by Customer in its possession or control, for any claim for charges, expenses or advances incurred by the Company in connection with any of the services rendered to the Customer including similar charges or expenses in relation to other goods, wherever deposited or located. (B) The Company may suspend property delivery until all Customers' obligations are paid. (C) If such claim remains unsatisfied for thirty (30) days after demand is made, the Company may sell the goods at public auction or private sale on ten (10) days' written notice to the Customer in satisfaction of the sum due to the Company. (D) Any surplus from such sale, after the payment of any applicable expenses, shall be transmitted to the Customer. (E) The Customer shall remain liable for any deficiency in the sale.

#### **8. Claims and Limitations of Liability.**

The Company may assist in the claim filing process if requested by Customer. If the Company is involved, it will use commercially reasonable efforts to assist and cooperate with Customer to investigate and process with the carrier any freight loss or damage claims occurring in the course of the transportation services rendered to such Customer. The carrier liability and claims process for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. 14706 and 49 C.F.R. §370.1 et seq. respectively. Customer agrees the Company, as a licensed Property Broker only, is not liable for any damages, except as stated hereafter. To the extent Company is found negligent, Company's liability is limited to no greater than a refund of the total freight charge payment related to the specific Bill of Lading in question.

The individual carrier's governing publications or General Rules Tariff will apply when determining carrier liability. Those Tariffs or publications may be viewed at the carriers' website or by inquiry to the carrier. If the shipment contains freight with a predetermined exception value (excess valuation requiring higher rate for cargo value of shipment) as determined by the selected carrier, the maximum

exception liability will override the otherwise standard liability coverage. The maximum amount that Customer will receive from carrier on a claim will be that which is recoverable under the respective transportation tariffs or publications. It is the Customer's responsibility to ensure the liability limits of the carrier meet their shipment needs. The Company will not be responsible in any way for claims arising out of Customer negligence, carrier's negligence, or the negligence of any third party.

All claims and supporting documentation must be submitted to the carrier within 30 days after delivery. Claims for damages that are not readily apparent ("concealed damage") must be submitted within 3 days after delivery. Company shall not be liable for any actions brought to enforce a claim unless all claims procedures have been complied with and the action is brought within one year after the date the carrier first disallowed all or part of the claim. The filing of a claim does not relieve the responsible party for payment of freight charges. Freight payment is necessary in order to process a claim. Customer may not offset freight or other charges owed to Company against claims for any loss, damage, mis-delivery or non-delivery. The Company has a lien on funds recovered through the processing of damage claims and reserves the right to apply recovery amounts to open past due invoices on account.

In no case will the maximum cargo liability be greater than \$100,000 for a Truckload shipment. Cargo liability on LTL shipments may vary by carrier, but in no case will the maximum liability for new goods be greater than \$10 per pound, or for used or resold goods be greater than \$0.10 per pound. The carrier may offer greater cargo valuation at additional cost upon request by the Customer.

In the event that the goods are lost, damaged, delayed or otherwise received in a manner inconsistent with its intended delivery, the Customer shall give notice to the Company, immediately after it learns of the condition, but not later than seven (7) days thereafter. On receipt of such notice, the Company will arrange on Customer's request and behalf an investigation of the circumstances surrounding the matter. (B) The Company shall not be liable for the loss, delay or damage to the goods. Carriers used for the Shipment will assume liability as provided under CFR 370 for all shipment loss and damage claims, including delay, will not exceed the least of (1) The invoice value (2) The declared value or (3) \$100,000 per shipment not to exceed the maximum amount of Carrier's cargo insurance, unless at time of booking the Shipment, Customer requested a higher amount as declared value and paid the appropriate excess valuation charge. Any Shipment of used materials may be subject to lower limitations of liability than the limits set forth in the preceding sentence, as published by Carrier. Customer shall seek restitution from the Carrier by filing a proper claim for loss and damage against the Carrier, and not against the Company. Note: Customer should procure cargo insurance to protect for loss, damage or delay that occurs in Mexico.

## **9 Indemnity.**

Company and Customer shall each defend, indemnify and hold harmless the other party from and against all loss, damage, expense, including injury resulting in death, and damage to property arising out of or in connection with the indemnifying party's or its agents' and employees' failure to observe and/or enforce the duties and responsibilities set forth herein, including loading, handling, transportation, unloading or delivery of any Shipment hereunder or in any other way related to the indemnified party's or its agents' and employees' negligent acts, omissions or performance of their obligations hereunder, unless such injury is caused by the sole negligence of the indemnifying party.

## **10. Force Majeure.**

Neither Company nor Carrier shall be liable for any delay in the performance of the Transportation Services resulting directly or indirectly from or contributed to by any force majeure, including, but not limited to, act of God, acts of government or other civil or military authorities, fires, accidents, floods, strikes, lockouts, war, riot or other circumstances beyond their reasonable control.

## **11. Waiver of Certain Damages.**

**IN NO EVENT SHALL COMPANY OR CARRIER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES WHICH MAY ARISE FROM LOSS, DAMAGE, NON DELIVERY OR DELAY OF ANY SHIPMENT. THIS LIMITATION SHALL APPLY TO AND INCLUDE, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFIT, LOSS OF INCOME OR LOSS OF BUSINESS OPPORTUNITY.**

## **12. Law and Jurisdiction of Disputes or Claims.**

The terms and conditions of the Services to be provided shall be construed in accordance with the laws of the State of Illinois. Jurisdiction and venue of any dispute or claim shall be with any Court residing within Cook or DuPage Counties, Illinois.

## **13 .Severability/Survivability.**

In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of this Agreement for any reason.

## **14. Independent Contractor.**

It is understood between Company and Customer that Company is not an agent for the carrier or Customer and shall remain at all times an independent contractor. Customer does not exercise or retain any control or supervision over Company, its operations, employees, or carriers.

**15. Non-waiver.**

Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, 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.

**16. Notices.**

Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing by any one of the following: US Mail or fax telephone or electronic transmission (e mail).

**8. Electronic Agreement.**

The parties mutually consent and agree that the electronic ( e mail or fax ) exchange of information is adopted in and for the course of business.

**10. Acceptance of Services is a Contract.**

The tender of freight (product) by Customer to a third party transportation carrier ( or acceptance of other Services) referenced or arranged by Company is acceptance by Customer of Company's services and all charges and related obligations associated with said services.

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