

## **Terms and Conditions for the Arrangement of Domestic Motor Carrier Transportation by Summit Logistics Group, LLC (Freight Broker)**

These terms and conditions of service (the “Terms and Conditions”) constitute a legally binding contract among the Parties (defined below), and shall apply solely to services provided by **Summit Logistics Group, LLC** (“Broker”) for the arrangement of transportation services in North America and Auxiliary Services described herein. BROKER is bonded and duly-authorized as a property broker with the Federal Motor Carrier Safety Administration under MC-995171. The Terms and Conditions are subject to change by BROKER upon posting on BROKER’s website from time to time. The most current and controlling version of the Terms and Conditions are published at: [www.slg-nc.com](http://www.slg-nc.com)

### DEFINITIONS:

(a) “Auxiliary Services” are those services which are performed prior or subsequent to transportation such as local cartage, loading, unloading, crating, uncrating, packing, unpacking and storage which are requested by Customer and arranged by BROKER as an additional service.

(b) “Bill of Lading” is the reference to the official shipping document, sometimes completed by Customer or in some cases by the Carrier accepting the Shipment, authorizing the Carrier to carry the Shipment to said destination, and containing pertinent information about the Shipment such as piece count, weight, quantity, and the like; the Bill of Lading may include, but not be limited to, shipping documents directly referred to and titled as a Bill of Lading, and also other shipping documents commonly used in the industry such as Shippers Letter of Instruction, Air Waybill, Delivery Receipt, etc., which duly authorize the Carrier to accept the Shipment. Customer’s or any other party’s insertion of BROKER’s name on the bill of lading shall be for convenience only and shall not change BROKER’s status as a property broker. Customer understands that even when, for Customer’s convenience, BROKER is listed on the bill of lading, BROKER is not a motor or other freight carrier and will not perform transportation of freight. Customer further agrees and acknowledges that BROKER is performing its services as a freight broker and not as a freight forwarder.

(c) “Bill to Party” is the person or entity to whom the Bill of Lading instructs BROKER to issue the invoice to for the Shipment.

(d) “Carrier” is the person or entity actually performing the carriage of the Shipment with its own means of transport as the performing carrier, and subject to carrier liability.

(e) “Consignee” is the person or entity listed as the “ship to” party or to whom the Bill of Lading instructs the Carrier to deliver the Shipment.

(f) “Customer” or “Shipper” includes the Person with whom BROKER has contracted to arrange to move the Shipment and any Person whom directly benefits from services performed pursuant to the Terms and Conditions.

(g) “Package” or “Packages” are the customary shipping units as listed on the Bill of Lading including, but not limited to, packages, cartons, pallets, tubes, etc.

(h) “Parties” include the Customer, the Consignee, the consignor, BROKER, and any other Person having a present or future interest in the Shipment or any Person acting on behalf of any of the above-mentioned parties with respect to a Shipment.

(i) “Person” means any individual, corporation, limited liability company, joint venture, trust, partnership or other entity.

(j) “BROKER” means Summit Logistics Group, LLC., its respective employees, officers, directors, and agents performing freight brokerage services pursuant to the Terms and Conditions.

(k) "Shipment" is the total of the Packages and their contents listed and described on the Bill of Lading, or as amended in subsequent written documentation provided to BROKER.

1. **AGREEMENT TO TERMS AND CONDITIONS.** In tendering a Shipment to BROKER for BROKER to arrange for the transportation of the Shipment, or otherwise engaging the services of BROKER in any other fashion, Customer agrees that the version of the Terms and Conditions in effect at the time the shipment is tendered to BROKER for the arranging of transportation will apply to the Shipment and the Auxiliary Services, which no agent or employee of the Parties may alter. To the extent the Terms and Conditions conflict with a Bill of Lading or other shipping document, the Terms and Conditions shall control. Further, except to the extent the Terms and Conditions conflict with any written agreement between the Parties, the Terms and Conditions shall supersede any alleged or asserted oral agreement, promise, representation, or understanding between the Parties.

2. **CUSTOMER'S WARRANTY.** Customer warrants that each Package and Shipment is properly classified and completely described on the Bill of Lading or other relevant shipping documentation furnished by Customer, that each Package and Shipment is properly marked and addressed, is packaged properly and adequately to protect the contents in the normal course of transportation for surface and air transport, and except as otherwise noted on the Bill of Lading, is in good order and condition. Customer also warrants its compliance with all applicable laws, rules, and regulations including, but not limited to, customs laws, import and export laws, and Hazardous materials laws. Customer shall furnish such information and attach to the Bill of Lading such documents as are necessary for the Carrier performing the transportation of the Shipment to comply with all laws, rules and regulations.

3. **QUOTATIONS NOT BINDING.** Except as set forth in a written agreement between the Customer and BROKER, quotations as to fees, rates of duty, freight charges, insurance premiums or other charges provided by BROKER to Customer are for informational purposes only and are subject to change without notice. No quotation shall be binding on BROKER unless BROKER agrees in writing to undertake the handling of the Shipment at a specific rate accepted by Customer within five (5) business days from the date of the quote. Customer understands that quotations are provided to Customer in reliance on the information furnished to BROKER at the time the quotation is provided, and are subject to change based on actual weights, commodity, contents, mode of transportation, dimensions, and volumes tendered by the Customer, as well as due to unforeseen or unanticipated costs, occurrences or events which are beyond the control of BROKER. Rates are not valid for any residential, inside, or show delivery. If such service is requested, additional charges will apply.

4. **RATES AND CHARGES.** Rates are in USD, and unless noted in the rate confirmation, rates exclude accessorial charges, custom clearance or other international crossing fees. Except as provided in any written agreement between the parties, rates and charges for Shipments will be based on actual or dimensional weight, whichever is greater.

5. **INDEPENDENT CONTRACTORS.** It is understood between BROKER and Customer that BROKER 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 BROKER or its operations, employees, or carriers. BROKER does not exercise or retain any control or supervision over the Carrier or over the Carrier's operations or employees. BROKER does not exercise or retain any control or supervision over Customer or over the Customer's operations or employees. For the purpose of clarity, Customer acknowledges and agrees that (i) the Carriers used by BROKER are third party independent contractors, (ii) nothing herein shall imply that Carriers are employees or agents of BROKER and (iii) BROKER does not have, exercise or retain any control or supervision over carriers or their operations, employees, drivers, or equipment.

6. **WAIVER.** Failure of either party to insist upon performance of any of these Terms and Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of these terms and conditions, 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.

7. **CLAIMS AND LIMITATION OF LIABILITY.**

- a. No Liability for Freight Claims. BROKER is a broker only and not a motor carrier and has no liability for freight claims. BROKER has no responsibility to transport and deliver Customer's

freight but is solely responsible for arranging for transportation of Customer's freight with a motor carrier authorized to transport Customer's freight by applicable regulatory authorities. **BROKER has no responsibility, liability or involvement in the issuance of insurance, the denial of insurance, or in the payment of claims. Customer's sole remedy for any claims for damage to the cargo is against the Carrier.** Carrier's governing Rules Tariff and/or Carrier's contract with BROKER determines the Carrier's liability, limitations of liability, and the amount of excess liability available. CUSTOMER is subject to such provisions of the Carrier's Rules Tariff and/or contract with BROKER. Insurance information will be provided to the CUSTOMER upon request.

- b. Claims Process and Facilitation of Claims. CUSTOMER must file all claims with BROKER within 60 days. BROKER will facilitate and attempt to assist in the resolution of freight claims but has no responsibility or liability related to any claim and any involvement by BROKER in facilitating freight claims shall not be deemed as waiving BROKER's absolute defense to freight claims. The Carrier is responsible for adjusting, paying, declining, or otherwise resolving freight claims. If the loss or damage to a Shipment is apparent at the time of delivery, Consignee must immediately note such loss or damage on the delivery receipt or other documentation or platform utilized to sign for delivery of a Shipment (i.e. signature on android application, tablet, truck pro, or other shipping documentation utilized as evidence of goods received by Consignee). Apparent loss or damage shall include, without limitation, shortage in the shipment, damage to the package(s), or possible damage to the contents which is ascertainable without inspection of the contents itself. If the loss or damage to a Shipment is not apparent (concealed), BROKER must be given written notice within 14 days from the date of delivery, or in the case of non-delivery, within 14 days from the date on which delivery should have occurred. Notwithstanding the foregoing, in the case of perishables, BROKER must be notified of all claims within 48 hours of delivery. If Customer gives BROKER notice of Customer's intention to make a concealed loss or damage claim, BROKER, the Carrier, and/or the Carrier's insurer shall have the right to inspect the Shipment and all materials used to package or protect the Shipment for transportation at the location where the Shipment was delivered.
- c. Timeliness of Notice. Unless otherwise provided in an applicable statute, the failure to give timely notice of any loss or damage in accordance with this Section 8 or the failure to permit or arrange inspection as required herein shall constitute an absolute bar to recovery for any claim for loss or damage. Failure to keep all product and packaging of damaged product, unless otherwise instructed in writing by BROKER, may result in non-payment of claim. Further, it is incumbent upon the claimant and all other interested parties to mitigate the damages to the extent that is reasonably possible under the circumstances.
- d. No Offsetting; Assignment. The filing of a claim does not relieve the responsible party for payment of freight charges. Freight charge payment is necessary in order for the Carrier to process a claim. Customer may not offset claims or any other amounts from freight charges owed to BROKER or the Carrier. BROKER may offset freight or other charges owed by Customer from claims or other payments made to Customer by BROKER or Carrier. If payment of claim is made by BROKER to Customer, at BROKER's sole discretion, Customer automatically assigns its rights and interest in the claim to BROKER so as to allow BROKER to subrogate its loss.
- e. Exclusions. In no event shall BROKER or the Carrier be liable for any loss or damage caused by:
  - i. Acts, defaults or omissions of the Customer or Consignee, including but not limited to, inadequate or improper packaging, marking, addressing, or providing incomplete/inaccurate shipping instructions, documents or information; or from the BROKER's or Carrier's compliance with instructions received by Customer or from any other person authorized to give them;
  - ii. The handling, loading, stowage, or unloading when not performed by the Carrier;
  - iii. For Return Shipments, BROKER and the Carrier shall not be liable for any claims for shipments which have been previously unpackaged by Consignee or Customer, are no longer in their original sealed condition, or where the Carrier did not deliver the original shipment to Consignee; or

- iv. (for BROKER only): The selection of Carriers for Shipments or service providers for Auxiliary Services.
- f. Monetary Maximum Liability. The following monetary maximum liability shall be imposed in all instances, unless the Customer has declared a higher value for the Shipment and paid an excess valuation charge and then only to such declared higher value:  
The Carrier's (and Broker's to the extent it is legally liable) liability is limited to
  - 1. Less-than-truckload (LTL): \$50.00 per Shipment or USD \$.50 per pound, per package, whichever is greater
  - 2. Truckload: maximum amount of \$100,000 per occurrence.
- g. Salvage Right. In the event BROKER pays a claim, BROKER shall be entitled to possession of the portion of the Shipment for which the claim was made and shall be under no obligation to return any portion of the Shipment to Customer or other Parties. BROKER shall be entitled to salvage any such portion of the Shipment and shall be under no obligation to return any salvaged proceeds to Customer or other Parties. The failure to provide the salvage shall be a bar to recovery of such claim. Finally, if BROKER pays a claim and Customer or a third party later salvages that portion of the Shipment for which the claim was made, BROKER shall be entitled to a refund, up to the amount of the claim paid by BROKER.
- h. Address for Notice and Claims. ALL COMMUNICATIONS REGARDING A CLAIM, INCLUDING DISPUTED DEBTS AND INSTRUMENTS TENDERED AS FULL SATISFACTION OF A DEBT ARE TO BE SENT IN WRITING TO: Summit Logistics Group, LLC, PO Box 2789, Wilmington, NC 28402.

**8. PICK UP AND DELIVERY TIMES.** Transit times are estimated standard business work days and do not include pick up date, a public holiday, or weekend. Due to the inherent nature of the transportation business, neither BROKER nor the Carrier guarantees pick up, transportation, or delivery by a stipulated time. If such service is requested, additional charges will apply. Pick up and delivery times are based on standard business hours 8 AM to 5 PM. The Carrier shall not use a lift gate or handle for pick up or delivery. If such service is requested, additional charges will apply.

**9. LIMITATION OF LIABILITY; NO CONSEQUENTIAL DAMAGES.** **BROKER is a broker only and not a motor carrier and has no liability for freight claims. BROKER has no responsibility to transport and deliver Customer's freight but is solely responsible for arranging for transportation of Customer's freight with a motor carrier authorized by the FMCSA to operate in interstate commerce as a motor carrier of property.** IN NO EVENT SHALL BROKER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF MARKET, LOSS OF INCOME, DAMAGES ARISING FROM LOSS, ATTORNEYS' FEES OR PUNITIVE DAMAGES, WRONG DELIVERY, OR DAMAGE TO PROPERTY, DELAYED DELIVERY OR FAILURE TO ATTEMPT DELIVERY, WHETHER OR NOT SUCH DAMAGES WERE REASONABLY FORESEEABLE, AND WHETHER OR NOT BROKER HAD KNOWLEDGE THAT SUCH DAMAGES OR LOSSES MIGHT OCCUR.

**10. BILATERAL CONTRACTS.** Customer authorizes BROKER to negotiate and enter into contracts with carriers that will perform transportation of Customer's freight. Such contracts may include terms that limit the carrier's liability for loss or damage to Customer's freight. Customer understands and agrees that it will be bound by such limitations of liability.

**11. FORCE MAJEURE.** BROKER shall not be liable for loss, damage, delay or monetary losses of any type caused by: acts of God; public authorities acting with actual or apparent authority; pandemic, endemic, or epidemic; closure of public highways; transportation network disruptions; strikes; labor disputes; cyber attacks; weather; mechanical failures; aircraft failures; civil commotions; acts or omissions of customs or quarantine officials; acts of

carriers related to security; the nature of the freight or any defects thereof; inherent vice of the goods; public enemies; violent theft; hazards incident to a state of war; and acts of terrorism.

**12. GOVERNING LAW, VENUE, JURISDICTION.** The Terms and Conditions, and any action or contract to which they apply, shall be governed and interpreted by federal law, or where federal law does not apply, by the laws of the State of North Carolina, U.S.A., without reference to its choice of law provisions. All suits to recover a claim must be exclusively submitted to the jurisdiction of a state or federal court located in New Hanover County, North Carolina, to which the Parties irrevocably consent to personal jurisdiction and waive all objections thereto. Where claims are not filed or suits are not instituted in accordance with the foregoing provisions, such claims shall be deemed waived and will not be paid.

**13. SEVERABILITY.** If any provision of the Terms and Conditions may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision shall have the meaning which renders it valid and enforceable. The language of all provisions of the Terms and Conditions shall be construed according to fair meaning and not strictly construed against any party. The provisions of the Terms and Conditions are severable and shall be interpreted and enforced as if all completely invalid or unenforceable provisions are not contained herein, and partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable.

**14. PROHIBITED CARGO.** There are certain types of articles that are either on the list of prohibited items which will never be accepted for arranging for transport by BROKER, or which will not be accepted for arranging for transportation without the prior knowledge and written approval from BROKER. The following is a list of such prohibited cargo(s) any Shipment prohibited by law; firearms; live animals; certain types of dangerous goods; original works of art, antiques; bonds; coins of any kind; currency; currency equivalents; furs; fur clothing; gems or stones (cut or uncut); industrial diamonds; gold or silver; coined concentrates; jewelry (other than costume jewelry); pearls; precious metals; securities (negotiable); time sensitive written material; one-of-a-kind articles or models; prototypes; valuable rugs (i.e. Oriental rugs, Persian rugs) and prints or lithographs and household goods and/or personal effects when the total declared value of the Shipment exceeds USD \$100,000 or when the declared value exceeds USD \$0.50 per pound. BROKER shall not be liable for any loss, damage, delay, liabilities, penalties or fines resulting from the transportation of any of the foregoing articles, however described or misdescribed in the Bill of Lading (including unacceptable descriptions such as "FAK"), and no employee or agent of BROKER has any authority to waive the limitations herein contained. BROKER retains the right to refuse any such Shipment prior to the Carrier's acceptance. In the event the Carrier discovers, after acceptance of a Shipment, that the Shipment contains any of the herein mentioned articles, the Carrier may refuse to transport the Shipment, or if already in transit, the Carrier may refuse to deliver the Shipment to the Consignee. Customer agrees to pay all expenses, freight charges, fines and penalties for said Shipment. Customer further agrees to indemnify and hold harmless BROKER and the Carrier from any and all loss, damage, delay, liabilities, penalties or fines arising out of or related in any way to Shipments containing any of the items described in this Section 14.

**15. COMPLIANCE WITH LAWS.** BROKER conducts its business ethically and in compliance with all laws in the countries where BROKER does business. Shipments are subject to all applicable international, federal, state and local laws and regulations, including all anti-corruption laws such as the U.S. Foreign Corrupt Practices Act of 1977, as amended and the UK Bribery Act, as amended (collectively, the "Laws"). Exporting Shipments to companies, organizations, or persons listed on the Specially Designated Nationals List, the U.S. Debarred List, the U.S. Entity List, and other governmental lists are prohibited, including those on other lists of denied parties. Customer agrees not to use BROKER'S services to transport cargo in any manner that violates any embargoes of countries or persons, including without limitation U.S. embargoes against Cuba, Iran, and Syria.

**16. C.O.D. SHIPMENTS.** BROKER does not arrange collect on delivery (C.O.D.) shipments and Carriers selected by BROKER shall not transport C.O.D. shipments.

**17. INSPECTION & SECURITY.** All Shipments are subject to inspection by BROKER, including by the Carrier and by any duly authorized government entities, including but not limited to the U.S. Transportation Security Administration, U.S. Customs and Border Protection, and like entities. Notwithstanding the foregoing right to inspect

shipments, neither BROKER nor the Carrier is obligated to perform such inspection except as mandated by law. Further, the Carrier may unilaterally reject any Shipment that it deems unfit for transport after inspection.

**18. INDEMNITY.** Customer, Consignor, and Consignee shall be jointly and severally liable for all unpaid charges payable on account of the Shipment pursuant to the Terms and Conditions and shall pay or indemnify BROKER for claims, fines, penalties, damages, costs (storage, handling, re-consignment, return of freight to shipper, etc.) or other sums which may be incurred by BROKER by reason of any violation of the Terms and Conditions, or any other default of Customer, Consignor, Consignee. Customer agrees to indemnify, defend, and hold BROKER harmless for any claims, damages, liabilities, lawsuits, or expenses (including reasonable attorneys' fees), arising out of: (a) Customer's, Consignor's or Consignee's negligent, willful, or wanton acts or omissions in connection with the Shipment; or (b) Customer's breach of these Terms and Conditions.

**19. PAYMENT TERMS.** All funds will be in USD. Customer shall pay BROKER within fifteen (15) days of the invoice date unless otherwise agreed by the Parties in writing.

**20. COLLECTION EXPENSES.** Should the Customer not comply with these terms, the Customer agrees to pay reasonable attorney's fees and all other costs and expenses incurred in the collection of any obligation of the undersigned pursuant hereto, the laws of the State of Minnesota will be applicable to all suits arising under these Terms and Conditions.

**21. INSURANCE.** Insurance is available to Customer upon request only. The amount and type of available coverage is based on BROKER'S cargo insurance policy in effect on the date the Shipment is tendered to the Carrier. In order to obtain coverage under that policy; a) Customer must properly notify BROKER in writing of the need for increased insurance at the time of load offer, b) BROKER's authorized representative must agree in writing to the higher declared value at, and c) the higher declared value must be inserted on the face of the Bill of Lading or other document that is used for receipt purposes. Failure to insert a full value insurance amount shall reduce any insurance payment proportionately. NOTWITHSTANDING ANYTHING IN THE TERMS AND CONDITIONS TO THE CONTRARY, INSURANCE PROCEEDS SHALL BE LIMITED TO THE LESSER OF (A) THE INSURED VALUE OF THE GOOD(S) AND (B) THE SUM OF THE ACTUAL COST TO THE CUSTOMER OF THE DAMAGED OR LOST GOOD(S) SHIPPED AND FREIGHT CHARGES. Insurance coverage and/or special insuring conditions are subject to the insurance option and related coverage and will be limited thereby. BROKER will be considered an insured under any policy so purchased.

**22. CONFIDENTIALITY.** The information contained in any quote or load confirmation sheet is confidential information between the parties and may not be disseminated to other than those Customer employees and agents with a need to know and who are responsible for analyzing its contents and may not be disseminated to any third parties without the express permission of the other party.

**23. CUSTOMER USE OF BROKER SOFTWARE.** Customer shall have a limited, personal, revocable, non-transferable and non-exclusive right to use BROKER Software as set forth in this Section 23. BROKER shall make the BROKER Software available to Customer for the sole purpose of allowing Customer to track and obtain information about Shipments during transit and for a reasonable period of time after delivery has been made, and for no other purpose. Customer agrees to only use the BROKER Software for the limited scope of use and purpose described herein. Customer further agrees to keep all passwords to the BROKER Software confidential and to limit its disclosure only to those employees with a need-to-know and who are bound by written confidentiality obligations for such information. Customer will not provide its login or password to any third party and will not alter or remove any copyright notice or other proprietary rights that may appear in the BROKER Software. Customer will not reproduce, copy, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the BROKER Software and will not challenge BROKER's rights in the BROKER Software. The BROKER Software shall at all times remain the sole and exclusive property of BROKER or the property of a third party under which BROKER has a license. BROKER reserves the right to terminate Customer's password and its access to the BROKER Software, at its convenience without notice or cause. BROKER makes no warranties, whether express, implied, or statutory regarding or relating to the BROKER Software. BROKER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE BROKER SOFTWARE INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR TITLE. BROKER will not be liable for any indirect, direct, special or consequential losses or damages, including but not

limited to, loss of business or lost profits. Customer hereby releases, forever discharges and holds BROKER harmless from and against all claims, actions, suit, proceedings, obligations, liabilities, losses, costs or expenses resulting from, related to or in connection with Customer's access to or usage of BROKER Software or breach of this Section 23. As used herein, the term "BROKER Software" means BROKER's shipping information system, including without limitation all translations (including translation into any other computer languages), conversions, partitions, corrections, additions, extensions, enhancements, upgrades, improvements, modifications, compilations, abridgements, or other forms in which any portion thereof may be recasted, transformed and/or adapted.

**24. LOGO/TRADEMARK.** Customer shall not use BROKER'S name, logo, trademarks or trade names in publicity releases, promotional material, customer lists, advertising, marketing or business generating efforts, whether written or oral, without obtaining BROKER'S prior written consent, which consent shall be given at BROKER'S sole discretion.

**25. INTERMODAL SHIPMENTS.** All charges assessed or incurred by BROKER or Carrier in connection with intermodal Shipments are the sole responsibility of the Customer and shall be paid by the Customer immediately upon demand, including without limitation customs charges, demurrage charges, detention charges, and per diem charges, and any terminal charges such as tollage, wharfage, usage, loading or unloading charges, or any other port terminal charges at piers, wharves, dockside terminals or warehouses. BROKER shall have no liability for such charges. Customer further agrees to indemnify and hold harmless BROKER from any and all claims for unpaid charges related to intermodal shipments, including without limitation undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. If Customer requests that BROKER arrange for intermodal equipment to be dropped at a location for Customer's convenience and left unattended by the Carrier, Customer and its consignors or consignees will not lose, damage or misuse the intermodal equipment and Customer will pay for loss or damage to the intermodal equipment occurring during or as a result of such possession or use of the intermodal equipment if caused by Customer or its consignees or consignor or their agents or employees.

**26. UNDELIVERED FREIGHT.**

(a) If freight cannot be delivered because of the consignee's refusal or inability to accept it, or because the Carrier cannot locate the consignee, or if freight cannot be transported because of an error or omission on the part of the consignor, the Carrier will make a diligent effort to notify the consignor promptly that the freight is being stored and the reason therefor.

(b) Undelivered shipments will be subject to Storage fees and may be deemed on-hand by BROKER on behalf of the Carrier.

(c) On undelivered shipments, disposition instructions printed on the Bill of Lading, shipping label or container will not be accepted as authority to reship, return or reconsign a shipment.

**27. SPECIAL PERMITS.** When special permits are required for the transportation of oversize and/or overweight shipments, the consignor or owner of the freight to be transported shall procure and furnish such permits, or request the Carrier to secure them. If BROKER or the Carrier secures the required permits, the cost of the permit plus a service charge of up to 25% will be assessed per state for each permitted shipment to the Customer paying the freight charges in addition to all other applicable rates and charges. Escort cars or flagmen, when required, shall be paid by Customer and are in addition to all other charges. BROKER shall add up to a 25% handling fee for arranging these services.

**28. OVERLOAD – OVERWEIGHT.**

Any shipment containing an article which measures in excess of legal length, width or height, dimensions shall be subject to additional fees and charges based upon the percentage excess dimension of rate overlength.

**29. REFRIGERATED SERVICE AND PROTECT FROM FREEZING SERVICE.** If Customer requests BROKER arrange refrigerated or protect-from-freezing service, the following applies:

(a) Customer must expressly indicate the correct temperature setting on the bill of lading.

(b) If a refrigerated shipment or protect-from-freezing is rejected for any reason by consignee, BROKER will notify Customer and direct Carrier to maintain the shipment at the required temperature until disposition instructions are received from Customer or Consignee.

(c) Customer must expressly inform BROKER to any additional requirements for transportation of freight for which refrigerated service or protect-from-freezing service is requested.

**30. SHIPPING INSTRUCTIONS.** Customer will provide necessary shipping instructions and will properly identify all cargo and its actual value in the bill of lading or other shipping instructions.

**31. FOOD SAFETY MODERNIZATION ACT (FSMA).** Any required documents to be compliant with the FSMA shall be provided by Shipper to BROKER when the shipment is tendered to BROKER. BROKER will relay those documents to the Carrier per the FSMA. If Shipper fails to comply with this subsection, Shipper will defend, indemnify, and hold BROKER and motor carrier harmless from all fines, penalties, claims, liability, and damages, including reasonable attorney's fees and costs of defense as they are incurred.

**32. COUNT, LOAD, AND SEAL.** Unless Customer has requested BROKER to arrange for the Carrier to provide driver count services before dispatch and BROKER arranges for the Carrier to perform such driver count services, Customer is responsible for causing all contents of shipments moving under these Terms to be properly counted and recorded and to have a protective seal applied to the loaded equipment.

**33. INSPECTION OF EQUIPMENT.** Customer will cause all empty containers or trailers tendered for loading to be inspected before loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the cargo during transportation. Customer will promptly notify BROKER of any rejected equipment.

**34. BACK SOLICITATION.** For a period of fifteen (15) months after BROKER arranges for the transportation of Customer's freight, Customer shall not solicit the services of BROKER's motor or other freight carriers where the Customer's use of such carrier first occurred through the BROKER's efforts. If the CUSTOMER breaches this provision, BROKER shall be entitled, as reasonable damages and not as a penalty, to a commission of fifteen percent of the gross revenue from traffic assigned by Customer to such carrier for a period of fifteen months. CUSTOMER also agrees that the breach of this provision entitles BROKER to be entitled to obtain an injunction against CUSTOMER in a court of competent jurisdiction, at BROKER's option.

**35. HEIRS AND ASSIGNS; NON-WAIVER.** The provisions of these Terms and Conditions shall be binding upon the Customer's heirs, executors, successors and assigns. BROKER's failure to require strict compliance with any provision of these Terms and Conditions shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s).

**36. ACCURATE INFORMATION; CUSTOMS.** Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with Customs and Border Protection (CBP), other Government Agency and/or third parties, and will immediately advise BROKER of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's behalf. In preparing and submitting CBP entries, export declarations, applications, security filings, documentation and/or other required data, BROKER 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, defend, and hold BROKER harmless from all claims asserted and/or liability, expenses (including reasonable attorneys' fees) 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 BROKER reasonably relied. Customer agrees that it has an affirmative non-delegable duty to disclose all information required to import, export or enter the goods.