

**TMX LOGISTICS, LLC STANDARD TERMS & CONDITIONS APPLICABLE TO FREIGHT BROKERAGE SERVICES**

These Standard Terms and Conditions Applicable to Freight Brokerage Services (the "Terms and Conditions") shall apply to (i) all property/transportation brokerage services performed by Company and its Affiliates on behalf of Customer, and (ii) any and all shipments or loads tendered by Customer and for which Company and/or its Affiliates arrange for transport in their capacity as a property broker, unless and until these Terms and Conditions are altered or amended by the Company as provided herein.

For purposes of these Terms and Conditions, "Company" shall mean TMX Logistics, LLC, an Ohio limited liability company and any affiliate of the Company, including, but not limited to, any parent companies, subsidiary companies, contractors, subcontractors, representatives, agents, successors and assigns of Company.

For purposes of these Terms and Conditions, "Customer" shall mean each and every customer, shipper and/or consignee which schedules a shipment using the transportation brokerage services of the Company which otherwise engages the Company to perform transportation brokerage services or other services on its behalf.

Each Customer hereby expressly agrees to these Terms and Conditions, which no agent or employee of the parties may alter. These Terms and Conditions shall supersede all prior oral or written statements or documents made with respect to (i) the subject matter contained herein, (ii) all property/transportation brokerage services performed by Company on behalf of Customer, and (iii) any and all shipments or loads tendered by Customer and for which Company arranges for transport in its capacity as a property broker. The terms and conditions contained herein shall also supersede any terms or conditions contained in any proposal, quotation, invoice, order acknowledgment, rate confirmation sheet, bill of lading or other communication provided by Customer to the Company or any of its Affiliates. Any terms or conditions not specifically contained herein shall be inapplicable to any shipments scheduled/tendered by the Customer.

**1. Authority.** The Company is licensed by the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMSCA) as a property broker operating under Certificate No. MC-194259-B. THE COMPANY IS NOT A FREIGHT CARRIER, COMMON CARRIER, CONTRACT CARRIER, MOTOR CARRIER, FREIGHT FORWARDER OR AGENT OF THE ANY OF THE FOREGOING. Customer shall not represent to any person or entity or represent upon any document that the Company is are anything other than a property/transportation broker.

**2. Rate Quotations.** The Company and its Affiliates shall not be bound, contractually or otherwise, to provide services to Customer as a result of any rate quotation or other communication until such time as either (i) the Company or an Affiliate provides Customer with a rate confirmation sheet and the Customer returns a signed copy of such rate confirmation sheet, or (ii) a motor carrier arrives at the Customer's location to pick up the subject freight. Any rates or other terms of shipment sent by the Company and its Affiliates are considered quotations only, and no pricing or other terms/conditions contained in any rate quotation or other communication shall be considered an offer by the Company to provide services or an offer by the Company to enter into a binding contract.

**3. Scope of Services.** Following such time as the Company and/or any of its Affiliates become bound to perform services under Section 2 above, the Company shall arrange for the transportation of Customer's freight in accordance with these Terms and Conditions and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by these Terms and Conditions. Following such

time as the Company becomes bound to perform services under Section 2 above, the sole responsibility of Company shall be limited to arranging for, but not actually performing, transportation of Customer's freight, which will include only (i) engaging licensed motor carriers to transport Customer's freight, (ii) ensuring that the licensed motor carriers have all required permits, certifications, authorizations and insurance necessary to transport the freight, and (iii) using commercially reasonable efforts to ensure such motor carriers arrive at the pick-up destination in accordance with the estimated or proposed shipping schedule. Without limiting the foregoing, the Company will not act as a freight carrier, common carrier, contract carrier, motor carrier or freight forwarder, and the Company and its Affiliates will have no obligations to actually transport any freight on behalf of Customer. The parties may, upon written mutual agreement, include additional service terms conditions. Notwithstanding anything contained herein to the contrary, the Company and its Affiliates shall be under no obligation to accept any particular shipment or load offered by Customer.

**4. Carrier Rules and Regulations.** The General Rules Tariffs, and any other conditions and terms of service maintained by the carriers utilized by the Company, will in every instance take precedence over the Company's Terms and Conditions stated herein. If not in conflict with the carrier's General Rules Tariff, or other terms and conditions of service, the Company's Terms and Conditions as stated herein shall control.

**5. Bills of Lading/Shipping Documentation.** All Bills of Lading are NON-NEGOTIABLE and shall be prepared by the Customer in a form approved by the Company and/or its Affiliates, or, if requested by Customer, the Company and/or its Affiliates shall prepare the Bills of Lading. All Bills of Lading shall be deemed, conclusively, to bind Customer. Any (i) unauthorized alteration of Bills of Lading or tendering of shipments to any carrier other than a carrier designated by the Company, (ii) the alteration of the form of Bill of Lading approved by the Company, or (ii) the use of any Bill of Lading form not authorized or approved by the Company shall VOID the Company's obligations to make any payments relating to the applicable shipment and VOID all rate quotes.

If the Customer does not complete all the documents required for carriage, or if the documents which the Customer submits are not appropriate for the services requested, the Customer hereby instructs the Company, where permitted by law, to complete, correct or replace the documents at the expense of the Customer. However, the Company will not be obligated to do so. If a substitute form of Bill of Lading is needed to complete delivery of this shipment and the Company completes that document, the terms of such substitute Bill of Lading will govern. The Company shall not be liable to the Customer or to any other person for any actions taken or not taken on behalf of the Customer under this provision.

Customer's insertion of the Company's name on the bill of lading shall be for Customer convenience only and shall not change the Company's status as a property broker ONLY. The terms and conditions of any freight documentation used by the Customer shall not supplement, alter, or modify these Terms and Conditions.

**6. Customer's Warranties.** The Customer is responsible for and warrants its compliance with all applicable laws, rules, and regulations relating to the packaging and shipment of its goods including but not limited to customs laws, import and export laws and governmental regulation of any country to, from, through or over which the shipment may be carried. Customer further warrants that to the extent required, it is registered and in compliance with the security plan and training requirements, and any amendments related thereto, relating to hazardous materials, 49 C.F.R. §172.701704, and 49 C.F.R. §172.800-804. Customer further warrants that it will immediately advise Company or any of its Affiliates in the event that its registration and/or compliance with these regulations expires or is otherwise terminated. The Customer agrees to

furnish such information and documentation as is necessary to establish its compliance with such laws, rules and regulations. The Company and its Affiliates assume no liability to the Customer or to any other person for any loss or expense due to the failure of the Customer to comply with this provision. 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. Customer agrees to indemnify Company and all of its Affiliates against any all claims, damages, costs and expenses (including reasonable attorneys' fees) incurred as a result of Customer's failure to comply with the provisions of this Section 6.

**7. Payment.** Customer agrees to pay the Company, without offset, for all services performed by Company and its Affiliates in accordance with (i) the applicable signed rate confirmation agreement or (ii) as otherwise stated in any unsigned rate confirmation agreement or rate quotation provided by Company or an Affiliate to Customer (if Customer tenders the applicable load to a carrier without signing a rate confirmation agreement). Without limiting the foregoing, Customer shall only pay the Company and no payments shall be made directly to any Affiliates. The Company shall be responsible for tendering the applicable payment to any Affiliate which performs services hereunder, and the Company shall indemnify and hold Customer harmless against any all claims, damages, costs and expenses (including reasonable attorneys' fees) incurred by Customer as a result of the Company's failure to pay an applicable Affiliate under this paragraph.

All Customers are subject to credit approval. Subject to credit approval, all charges are payable in US Dollars and are due upon receipt of an applicable invoice or in accordance with any other payment terms agreed upon in writing by Company. Any payment which is past due shall be subject to an additional charge at the rate of 1½% per month of the average outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less. In the event the Company retains an attorney or collection agency to collect unpaid charges or for the enforcement of these Terms and Conditions, Customer shall also be liable for all attorney and collection agency fees incurred, together with related costs and expenses. The Customer and any participating shippers, consignors, consignees, freight forwarders or freight brokers are jointly and severally liable for the freight charges owed to the Company relating to each shipment.

**8. Third Party Billing.** In those instances where the Customer requests that the Company invoice the Customer's customer or other third party or where a shipment is FOB, the Company may in its sole discretion, but shall not be obligated to, bill such other third party directly, provided, however, that if Company agrees to do so, Customer guarantees full payment to the Company in the event the customer, consignor, consignee or other third party fails or refuses to make payment within the time provided in Section 7 above.

**9. Carrier Invoices.** The Company and its Affiliates shall be responsible for payment of the invoices of carriers utilized to transport Customer's freight. The parties agree that the Company and its Affiliates shall have no obligation to make payment upon a carrier's invoice until such time as the Customer has made payment to the Company for the transportation involved.

**10. Pickup and Delivery Times.** Unless otherwise specifically noted, all transit times provided by Company and its Affiliates are estimates only and do not include the day of pickup. UNLESS OTHERWISE AGREED TO BY COMPANY IN WRITING, THERE IS NO GUARANTEED PICK-UP OR DELIVERY TIME ASSOCIATED WITH (I) ANY PROPERTY/TRANSPORTATION BROKERAGE SERVICES PERFORMED BY COMPANY AND ITS AFFILIATES ON BEHALF OF CUSTOMER OR (II) ANY SHIPMENTS OR LOADS TENDERED BY CUSTOMER AND FOR WHICH COMPANY AND/OR ITS AFFILIATES ARRANGE FOR TRANSPORT IN THEIR CAPACITY AS A PROPERTY BROKER.

NOTWITHSTANDING THE FOREGOING, THE COMPANY WILL USE COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT ANY LOAD BROKERED BY COMPANY AND/OR AN AFFILIATE IS PICKED-UP AND DELIVERED BY THE RELEVANT CARRIER IN A TIMELY FASHION, BUT THE COMPANY AND ITS

AFFILIATES SHALL IN NO WAY BE HELD LIABLE FOR DELAYS IN PICK-UP OR DELIVERY OF ANY PARTICULAR LOAD. CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS AGAINST THE COMPANY AND ITS AFFILIATES AS A RESULT OF LOSSES, DAMAGES, INJURIES, OR EXPENSES, INCURRED OR SUSTAINED BY THE CUSTOMER AND WHICH RELATE TO DELAYS IN PICK-UP AND DELAYS IN DELIVERY.

**11. Claims and Limitations of Liability.** Consistent with Section 3 above, it is understood and agreed that the Company is not a freight carrier, common carrier, contract carrier, motor carrier or freight forwarder, and the Company shall not be liable for any damage, destruction, delay, theft or other loss resulting from the transportation of Customer's cargo or freight. Customer hereby expressly waives any and all claims against the Company for any damage, destruction, delay, theft or other loss resulting from the transportation of Customer's cargo or freight.

The Customer shall be solely responsible for making all claims with all freight carriers, common carriers, contract carriers, motor carriers and/or or freight forwarders for delivery, non-delivery and damage, destruction, delay, theft or other loss resulting to Customer's cargo or freight. Notwithstanding the foregoing, the Company may, but shall not be obligated to, assist Customer in the filing and/or processing of claims with the applicable carriers. As a part of this any claims assistance service provided by the Company, Customer shall assist the Company in this process by providing notice of the claim and all relevant documentation in time sufficient to allow the Company to adequately present such claims within the time limits required by law or contract.

Claims will be processed in accordance with 49 C.F.R. § 370. Subject to the limitations contained herein and those set forth in any individual carrier's governing General Rules Tariff, the liability for any cargo damage, loss, or theft from any cause shall be determined in accordance with the Carmack Amendment, 49 U.S.C. § 14706. Notwithstanding the foregoing, if a shipment contains freight with a predetermined exception value, as determined by the selected carrier, or is otherwise subject to a released value rate, such limitation of liability will override the otherwise applicable liability coverage.

Additionally, the Company may, but shall not be obligated to, pay any claim filed by Customer. If Company, in its sole discretion, elects to pay a claim to Customer, Customer shall assign its rights and interest in the claim to the Company in writing in a form reasonably satisfactory to the Company so as to allow the Company to subrogate the loss. If Customer refuses or fails to assign such claims rights and interest to Company following payment, the Customer shall be deemed to have automatically assigned such claims rights and interest upon receipt of the applicable payment.

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, delay, damage, mis-delivery or non-delivery. The Company shall have a lien on funds recovered through the processing of damage claims and reserve the right to apply recovery amounts to open past due invoices on account.

**12. Special Damages.** Notwithstanding anything contained herein to the contrary, Customer and Company specifically agree that neither party shall be liable to the other party, nor shall any Affiliates be liable to Customer, for incidental, consequential (including lost profits), punitive or exemplary damages in connection with these Terms and Conditions, performance or omission of performance hereunder or termination hereof, even if the party has been advised of the possibility of such damages and without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, or otherwise).

**13. Indemnification.** In exchange for the transportation brokerage services provided by the Company and its Affiliates, Customer, as well as any of Customer's successors and assigns, hereby agrees to indemnify and hold harmless the Company, its Affiliates, and their respective shareholders, directors, members, managers, officers, employees, representatives, contractors,

subcontractors, agents, successors and assigns from and against any and all claims for damages, costs, and expenses (including reasonable attorney's fees) which are filed by third parties against Company and which result from (i) delays in pick-up or delays in delivery, (ii) loss, damage, destruction, delay or theft of any goods or loads shipped in connection herewith, (iii) the negligence or intentional acts of any freight carrier transporting any loads in connection herewith, (iv) personal injuries, death, or damages or loss to personal property caused by the negligent or intentional acts of any freight carrier transporting any loads in connection herewith, (v) any breach of these Terms and Conditions by Customer and (vi) the negligence or intentional acts of Customer.

**14. Governing Law.** These Terms and Conditions shall be construed in accordance with the laws of the State of Ohio, except where such laws are preempted by federal law. Any claim brought under these Terms and Conditions, as well as any claim arising out of the services performed by Company and its Affiliates on behalf of Customer, shall be brought in the courts of the State of Ohio located in Hamilton County or in the Federal Courts located in Hamilton County, Ohio, and by accepting the services of Company and its Affiliates hereunder, Customer hereby irrevocably submits to the jurisdiction of said courts.

**15. Entire Agreement.** These Terms and Conditions may be changed, waived, or modified at anytime by the Company. These Terms and Conditions may not be changed, waived or modified by the Customer unless in a written agreement signed by the Company. These Terms and Conditions set forth the entire agreement between the parties with respect to the subject matter herein, and any prior understanding, proposal, representation, or agreement between the parties shall be deemed to have merged into these Terms and Conditions.

**16. Severability.** If any provision of these Terms and Conditions is deemed unenforceable by any court or competent jurisdiction, such provision shall be severed and the remaining provisions herein shall continue in full force and effect.

**17. Binding Effect.** These Terms and Conditions shall be binding upon the successors and assigns of the respective parties.