

TERMS AND CONDITIONS

ODW LTS, LLC, an Ohio limited liability company ("BROKER") agrees to arrange for transportation services of CLIENT's general commodities (herein referred to as "Property") via modes to include, but are not limited to, Truckload (TL), Less-than-Truckload (LTL), Expedited, Parcel, Air, Drayage, or Intermodal (IM) motor carrier, or other mode ("Services"), tendered by enrolled customers, shippers, consignors and consignees (each, a "CLIENT") subject to these Terms and Conditions ("T&C"). Acceptance of the Services by a Customer results in Customer's agreement to be subject to these T&C, as amended from time to time.

1. **General.** These T&C shall govern all Services provided to Customer by BROKER, and will supersede any terms and conditions maintained by Customer or otherwise purporting to govern the arrangement of transportation services by Broker.
2. **Compliance with Laws, Ordinances, Rules and Regulations:**
 - A. BROKER represents it is engaged in the business of marketing and arranging for transportation and distribution services of various general commodities as a duly licensed property broker authorized by the Federal Highway Administration under MC# 679673 and maintains such licenses and permits as are required by local, state or federal authorities with respect to such transportation services and shall comply with laws and regulations applicable thereto.
 - B. BROKER will arrange for transportation of Property by motor carriers ("Carriers") for CLIENT pursuant to these T&C. BROKER's responsibilities under these T&C are limited to arranging for, but not actually performing, transportation.
 - C. The transportation Services provided under these T&C are performed on a non-exclusive basis and CLIENT is not precluded from using the services of other brokers or carriers, and BROKER is not restricted from arranging transportation for other persons or entities.
 - D. The provision of Services by BROKER shall be governed by the laws of the State of Ohio, except where such laws are preempted by federal law. The Parties agree that exclusive jurisdiction and venue of any lawsuits relating to BROKER's Services pursuant to these T&C shall be in the County of Franklin, State of Ohio, except when and to the extent that federal law requires an action to be filed in the federal courts, the jurisdiction shall be in the Southern District of Ohio.
 - E. The Services are provided in accordance with 49 U.S.C. Section 14101(b)(1), and CLIENT and BROKER expressly waives any and all rights and remedies that each may have under 49 U.S.C. 13101 through 14914 that are contrary to specific provisions of this Agreement.
3. **Commitment of BROKER/CLIENT:**
 - A. CLIENT agrees to tender Property for transport to the BROKER a series of shipments so long as BROKER meets conditions of 2(b) below and other provisions of this Agreement.
 - B. BROKER agrees to accept such shipments and to arrange for delivery of each shipment promptly, efficiently, and with reasonable dispatch as defined by CLIENT'S requirements.
4. **Insurance:** BROKER will require all contracted Carriers to maintain not less than the minimum insurance required by law, rules and regulations of all governmental bodies and agencies having jurisdiction. Contracted Carriers will have at least one million dollars (\$1,000,000) automobile liability, \$100,000 per shipment cargo liability insurance, and Worker's compensation insurance in statutory amounts in the jurisdictions in which the services will be performed. The minimum insurance requirements listed in this section apply only when the contracted Carrier is transporting and handling Property exclusively within the United States. NOTE: Insurance requirements shown here will not apply to certain carriers (expedited, parcel, courier, "last mile", air freight, et al). Refer to individual carrier's terms of service for specific insurance liabilities and conditions.
5. **Claims:**
 - A. BROKER is not a carrier or freight forwarder, and BROKER will not be liable for any overages, shortages, loss, delay, or damages, including personal injury and property damages in the transportation of Property. Although BROKER has no obligation to do so, when requested by CLIENT and agreed to by BROKER, BROKER may facilitate the filing and processing of claims with Carriers on CLIENT's behalf.
 - B. When arranging for the transportation of Property exclusively within the United States, or when arranging for the domestic component of any international transportation of Property to or from Mexico or Canada, BROKER will select only Carriers that agree to assume the liability of a motor carrier pursuant to the provisions of 49 USC §14706 for loss or damage to Property, up to a maximum of \$25 per pound per package and subject to a maximum liability of \$100,000 per shipment (whichever is less) unless expressly agreed upon in writing by both parties. The Carrier used by BROKER may have a minimum dollar claim amount and/or reduced liability limits. Such parameters are common and are imposed by the carrier. CLIENT will abide by rules and guidelines of BROKER's carrier in regards to minimum claim amounts and reduced liability limits. General guidelines are as follows:

- i. For LTL freight, minimum claim amount is fifty dollars (\$50.00) per claim and maximum liability limit is between one dollar per pound (\$1.00/lb) and twenty-five dollars per pound (\$25.00/lb) depending on the carrier and service type.
 - ii. For rail and intermodal shipments, minimum claim amount is two hundred fifty dollars (\$250.00) per claim and maximum liability limit is twenty-five dollars per pound (\$25.00/lb).
 - iii. Volume LTL or partial truckload shipments have a minimum claim amount of fifty dollars (\$50.00) per claim and a maximum liability limit of one dollar per pound (\$1.00/lb).
 - iv. Parcel shipments, minimum claim amount is ten dollars (\$10) per claim and maximum liability limit is one hundred dollars (\$100) per shipment (unless CLIENT purchased additional shipment insurance)
 - v. Expedited, courier, "last mile", air freight, carriers et al operating within the U.S. impose their own specific claim/liability limitations.
 - vi. Refer to individual carrier's terms of service for maximum liabilities and minimum claim amounts.
- C. For shipments originating in Canada and for transportation within Canada of shipments originating in the United States, BROKER will select only Carriers that agree to assume the standard liability imposed by Provincial regulations in Canada of \$2CDN per pound based on the weight of Property in a shipment.
- D. CLIENT acknowledges that BROKER will not require Carriers to assume liability or to purchase any insurance to cover the period during which any shipment is within Mexico. It is the obligation of CLIENT to arrange for any such insurance.
- E. All claims for overage, shortage, loss, delay, or damages must be filed in writing in CLIENT's name or on behalf of CLIENT against the Carrier within nine (9) months of the date of delivery of the Property or in the case of non-delivery, within nine (9) months of the date delivery should have been made. If salvage is retained by CLIENT, CLIENT shall deduct from such claim to Carrier the reasonable salvage value, if any, of any damaged Property. Any suit or other legal action to recover for cargo loss, damage, or delay, must be commenced against the Carrier no later than two (2) years after declination of the cargo claim by Carrier. CLIENT agrees not to tender any freight valued over \$25 per pound per package or \$100,000 per load unless expressly agreed to in writing by the Parties. It is understood that values, time limitations and other conditions shown will not apply via certain carriers (expedited, parcel, courier, "last mile", air freight et al); client is expected to abide by the specific rules of such carrier. Refer to the individual carrier's terms and conditions for claim filing limitations which may vary by mode.

6. Confidentiality:

- A. BROKER's cost of providing services is confidential and need not be disclosed to CLIENT. CLIENT specifically waives any rights it may have under 49 CFR 371.3.
- B. CLIENT will not reveal to anyone the pricing of transportation, or any other details of the business conducted between the CLIENT and BROKER.
- C. All data collected or constructed by BROKER during the business relationship of the Parties shall be the property of BROKER. All data provided to BROKER by CLIENT shall remain the property of CLIENT even when such data is used to perform studies requested by the CLIENT on CLIENT's behalf. Such data and information shall remain confidential to the BROKER and CLIENT and be used only to perform such requested studies.
- D. This provision shall survive the termination, expiration or cancellation of the Services relationship.

7. Rates and Charges:

- A. CLIENT shall pay BROKER directly for transportation Services provided by BROKER at the rates and charges agreed upon and considered for the specific mode of transportation as set forth in the price quote or other written confirmation acknowledged in writing by CLIENT AND BROKER (including by electronic means, such as e-mail). Any and all adjustments, additions or deletions to rates and charges shall be accomplished by subsequent acknowledgment by BROKER and CLIENT, whether it be email, phone conversation, fax or other means of correspondence. Payment of the invoice shall be construed as acceptance of the rates and charges for that shipment. BROKER will maintain and update a pricing tariff containing all agreed upon pricing.
 - i. All modes of Transportation (excluding Parcel): Payment is due within thirty 30 days of invoice date, **without deduction or setoff**. BROKER may assess a service charge of one and one-half percent (1½%) per month (or the highest lawful rate, if less) for any delayed payments.
 - ii. Parcel: Payment is due within fifteen 15 days of invoice date, **without deduction or setoff**. BROKER may assess a service charge of six percent (6%) per month (or the highest lawful rate, if less) for any delayed payments.
 - iii. All late charges shall apply from and after the stated due date for payment (31st day for transportation excluding parcel, and 16th day for parcel), and shall not be prorated based on the number of days in the billing cycle in which payment is past due.
- B. If BROKER alleges undercharges or CLIENT alleges overcharges, duplicate payment, or overcollection, notice of such claims must be given within one hundred eighty (180) days of receipt of the original invoice with respect to which such undercharges, overcharges or billing disputes are claimed and a civil action must be filed within eighteen (18) months of

delivery or tender of delivery of the shipments involved. (Notice of such claims for Parcel is one hundred twenty (120) days of receipt of the original invoice)

8. **Bills of Lading, Documentation:** If requested by CLIENT, BROKER will provide CLIENT with proof of acceptance and delivery of shipments in the form of a signed bill of lading or other proof of delivery. CLIENT shall not insert Broker's name on any bill of lading., or other shipping documents. In the event CLIENT's insertion of BROKER's name on any bill of lading or shipping document will be for CLIENT's convenience only and will not change BROKER's status as a broker. The terms and conditions of any documentation used by CLIENT or a Carrier will not supplement, alter, or modify these T&C.
9. **Consequential Damages:** Under no circumstances will BROKER or Carrier be liable for any consequential, indirect, incidental, special, exemplary, or punitive damages (including damages resulting from loss, damage and/or delay to cargo), or commercial loss of any kind (including, but not limited to, loss of business or lost profits).
10. **CLIENT'S Obligations:**
 - A. CLIENT is responsible for ensuring that the Property is properly and safely loaded, supported, blocked, braced and secured. Such responsibility shall include, but is not limited to, the actual loading of the Property unless CLIENT includes Carrier loading as part of the tender; the supervision of such loading; and SOPs related to the proper loading of CLIENT's Property; and/or any other action or instruction to keep the Property safe and secure during the rigors of transportation. CLIENT will be responsible for expenses arising out of any load shift that occurs during transportation due to improper or insufficient loading, blocking, or bracing.
 - B. CLIENT must provide necessary shipping instructions and properly identify all Property in the bill of lading or other shipping instructions. CLIENT will not tender any restricted commodities, including but not limited to hazardous materials and waste, oversize or overweight shipments, coiled or rolled products or commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation. BROKER SHALL BE NOTIFIED OF ANY SUCH SPECIAL TRANSPORTATION REQUIREMENTS IN WRITING (I.E., E-MAIL, FAX OR OTHER WRITTEN COMMUNICATION) PRIOR TO TENDER OF SUCH SHIPMENT(S).
 - C. Unless CLIENT has requested that BROKER arrange for the Carrier to provide driver count services before dispatch and the Carrier performs such driver count services, CLIENT is responsible for properly counting and recording the number of pieces transported and applying a protective seal to the loaded equipment.
 - D. CLIENT is responsible for checking all empty containers or trailers tendered for loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the Property during transportation.
 - E. If CLIENT requests BROKER arrange for equipment to be dropped at a location for CLIENT's convenience and left unattended by Carrier, CLIENT and its consignors or consignees will not lose, damage, or misuse the equipment and CLIENT will pay for loss or damage to the equipment occurring during or as a result of such possession or use of the equipment.
11. **Agreement Changes:** No changes to these T&C shall be binding on BROKER unless BROKER agrees to such changes in writing signed by BROKER.
12. **Force Majeure:** In the event that BROKER is prevented from performing any of its obligations by any law or legally binding regulation, act of any government or agency having jurisdiction over BROKER, or by war, Acts of God, labor disturbances, fire, riot, acts of terrorism, or any cause beyond the reasonable control of BROKER, BROKER shall be excused from performing its obligations and BROKER shall be liable to the CLIENT for damages resulting from the force majeure events listed in this paragraph..
13. **Indemnification from Third Party Claims:**
 - A. CLIENT shall defend, indemnify, and hold BROKER, its subsidiary companies, related companies and divisions, and their respective stockholders, directors, officers, employees, and agents (which term will include any Carrier engaged by BROKER) harmless from and against any and all losses, liabilities, damages, fines, expenses (including reasonable attorneys' fees and court costs), actions and claims resulting from or arising out of any personal injury (including death) and property damage to the extent caused by CLIENT's or CLIENT's employees' or agents' negligence or intentional misconduct, (ii) CLIENT's breach of these T&C, or (iii) CLIENT's or CLIENT's employees' or agents' violation of applicable laws or regulations. The obligation to defend includes payment of all reasonable costs of defense as they accrue.
 - B. BROKER shall defend, indemnify, and hold CLIENT, its stockholders, directors, officers, employees, and agents harmless from and against any and all losses, liabilities, damages, fines, expenses (including reasonable attorneys' fees and court costs), actions and claims resulting from or arising out of any personal injury (including death) and property damage (excluding cargo loss, damage, and/or delay) to the extent caused by BROKER's or BROKER's employees' or agents' negligence or intentional misconduct, (ii) BROKER'S breach of these T&C, or (iii) BROKER's or BROKER's employees' or agents' violation of applicable laws or regulations. The obligation to defend includes payment of all reasonable costs of defense as they accrue.



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- 14. **Severability:** If any part, term, or provision of this Agreement is declared unlawful or unenforceable, by judicial determination or performance, the remainder of these T&C shall remain in full force and effect.
 - 15. **Independent Contractors:** BROKER and CLIENT acknowledge that they are dealing with each other as independent contractors. These T&C shall not be construed to: (a) give BROKER or CLIENT the power to direct and control the day-to-day activities of any of the other; (b) create or constitute a partnership, joint venture, franchise, employment or agency relationship between or among CLIENT and/or BROKER; or (c) allow CLIENT or BROKER to create or assume any obligation on behalf of the other for any purpose whatsoever. Neither CLIENT nor BROKER owes the other or any third-party any compensation for performing the actions contemplated by this T&C except as expressly set forth in this T&C and/or applicable price quotations/confirmations.
 - 16. **Notice:** Any notices and other communications required or permitted under these T&C must be in writing and delivered to the party entitled to receive the same by hand or U.S. Mail, postage prepaid, or via reputable overnight delivery service, addressed as follows:

If to BROKER:

ODW LTS, LLC

345 High Street, Suite 600

Hamilton, OH 45011

If to CLIENT: to the address set forth in the applicable price quotation and/or the applicable rate confirmation.

- 17. **Waiver:** Failure by BROKER or CLIENT to enforce a breach or waiver of any provision or term of these T&C will not be deemed to constitute a waiver of any subsequent failure or breach, and will not affect or limit the right of either of them to thereafter enforce such a term or provision.
- 18. **Assignment:** Neither BROKER nor CLIENT may assign the services relationship created by these T&C and the applicable price quotation/rate confirmation without the prior written consent of the other of them.
- 19. **Entire Agreement:** These T&C, together with the applicable price quotation/rate confirmation, supersedes any other prior or contemporaneous agreements, whether oral or written, with respect to the subject matter hereof and constitutes the entire agreement with respect to the subject matter hereof and thereof. Except as specifically stated in these T&C, no tariffs or other contracts apply.