



## Transportation Services Terms & Conditions

*Last Modified June 2023*

The following terms and conditions apply to the provision of transportation services by Custom Air Trucking, LLC and/or its affiliates (collectively, "**COMPANY**"). By tendering GOODS to COMPANY, the entity tendering the goods ("**CUSTOMER**") agrees to accept these terms and conditions with respect to all GOODS tendered to COMPANY (the "**GOODS**"). Each of the CUSTOMER and COMPANY may be referred to individually as a "**PARTY**", or collectively as the "**PARTIES**".

### **1. AUTHORITY**

- a. COMPANY represents and warrants that it is duly and legally qualified to provide all transportation services contemplated herein, including that it will hold motor carrier authority issued by the FMCSA and that its drivers will be duly licensed for the provision of the services.
- b. CUSTOMER represents and warrants that it either (i) is the lawful owner of the GOODS which are not subject to any lien or security interest of others; or (ii) is the authorized agent of the lawful owner and/or any holder of a lien or security interest and has full power and authority to tender the GOODS pursuant to these terms and conditions.
- c. CUSTOMER agrees to notify all parties acquiring any interest in the GOODS of these terms and conditions, as a condition of granting such an interest, the agreement of such parties to be bound by these terms and conditions.

### **2. USE OF THIRD PARTIES**

- a. COMPANY is authorized by FMCSA to operate as a property broker. In order to meet CUSTOMER's transportation needs, COMPANY may arrange for brokerage service to be provided to CUSTOMER, which services shall be subject to the provisions of this Section 2.
- b. When COMPANY arranges with a third party to provide or arrange services hereunder, COMPANY shall be deemed to be acting as a property broker and not a for-hire motor carrier. In any such event, COMPANY's obligation to CUSTOMER shall be limited to using reasonable efforts to select motor carriers duly authorized in accordance with applicable law, rule or regulation to provide the requested motor carrier services.
- c. COMPANY will not be responsible for the acts or omissions of any third party retained by COMPANY except that COMPANY will remain liable for cargo loss and damage claims with respect to any shipments brokered by COMPANY pursuant to these terms and conditions as if COMPANY had provided the underlying motor carrier services directly under its own authority.

### **3. BILLS OF LADING**

- a. Each shipment shall be evidenced by a bill of lading or delivery order issued by CUSTOMER. The bill of lading or delivery order shall act as a receipt and to identify the kind and quantity of property shipped, places of pickup and delivery, shipper and consignee.
- b. COMPANY shall notify CUSTOMER within a reasonable timeframe of any exception made on the billing of lading or delivery order.

### **4. CHARGES AND PAYMENT TERMS**

- a. All services are subject to minimum charges.
- b. Unless governed by a separate signed agreement for transportation charges, the charges for the services shall be validated electronically by the PARTIES prior to tender.
- c. COMPANY's rates are subject to periodic rate increases.



- d. Unless otherwise agreed in writing, all charges are due and payable within fifteen (15) days of the date of invoice.
- e. All charges not paid within fifteen (15) days from the due date are subject to an interest charge, from the date such charge became due until paid, at the rate of 1.5% per month.
- f. COMPANY shall be jointly liable with the consignee/recipient for all unpaid charges payable on account of a shipment that is made "Collect" (i.e. with the understanding that the transportation charges will be billed to the recipient/consignee).
- g. CUSTOMER agrees to pay COMPANY all costs, including reasonable attorney's fees, incurred by COMPANY in connection with the transportation, storage, handling and/or disposition of the GOODS, including without limitation, such costs and/or fees relating to lawsuits (including bankruptcy proceedings) involving in any way such GOODS and/or CUSTOMER's obligations. All such costs and fees, for purposes of Section 8 below, shall constitute "charges present or future in relation to the GOODS".
- h. In no event shall CUSTOMER offset any amount owed by COMPANY to CUSTOMER against amounts owed to COMPANY.
- i. CUSTOMER shall have a reasonable period of time, not to exceed thirty (30) days from its receipt of the invoice, to object in writing in the event that CUSTOMER disputes any of COMPANY's invoices. If requested by CUSTOMER, COMPANY shall promptly provide reasonable supporting documentation for any disputed invoice. Subject to applicable law, any failure to object in writing within such thirty (30)-day period shall result in the charges be agreed as valid and shall be deemed an account stated between the PARTIES.
- j. In the event CUSTOMER is overdue in paying accounts receivable, COMPANY shall have the right to suspend services until such overdue amounts are paid in full.
- k. All rates and charges are subject to change at any time in the event that there is an increase in COMPANY's operating expenses due to factors outside of COMPANY's reasonable control, including but not limited to regulatory changes, market changes, changes in volumes, scope of services, CUSTOMER's business profile, or other changes beyond COMPANY's reasonable control.

#### **5. LOSS & DAMAGE TO GOODS; LIABILITY LIMITATIONS**

- a. The provisions of 49 U.S.C. Section 14706 et seq. (the "**CARMACK AMENDMENT**") shall govern the rights and obligations of the PARTIES, except as modified by these terms and conditions.
- b. COMPANY's liability for loss, damage or injury to GOODS tendered hereunder shall be limited to loss or damage incurred in the transportation of GOODS from the point of COMPANY pickup to destination as stated on the bill of lading.
- c. COMPANY's liability to CUSTOMER for loss, damage or injury to GOODS tendered hereunder shall be for actual product cost (factory invoice amount) plus transportation fees paid by CUSTOMER for such lost, damaged, or injured GOODS, less salvage value, up to a maximum of the lesser of: (i) fifty cents (\$0.50) per pound or (ii) one hundred thousand dollars (\$100,000) per truckload.
- d. In the event CUSTOMER wishes to declare a higher limit of liability with respect to any shipment, CUSTOMER must make such request to COMPANY in writing at least seventy-two (72) hours prior to the scheduled pick-up which request is not valid unless agreed upon in writing by an officer of COMPANY. If such request is accepted by COMPANY in a signed writing, and CUSTOMER pays additional freight charges applicable thereto, then COMPANY will be liable for the full value declared by CUSTOMER, but such liability shall in no event exceed the lesser of two hundred fifty thousand dollars (\$250,000.00) or the full cost to repair or replace the GOODS, whichever is less.
- e. COMPANY shall not be liable for any concealed shortages, or shortages in a factory sealed carton or inner pack. COMPANY shall not be liable for hidden, concealed or latent defects in the GOODS.
- f. COMPANY shall not be liable for damage caused to GOODS that are received by COMPANY in other than their original shipping carton.



- g. COMPANY shall not be liable for any shortage that occurs with respect to cargo that is loaded and sealed by CUSTOMER or its shipper or agent and the seal remains intact upon delivery by COMPANY.
- h. COMPANY shall not be liable for damage caused by an Act of God, the public enemy, the act or default of CUSTOMER or its agent, Public Authority, or the inherent vice or nature of the GOODS.
- i. The filing, processing and disposition of all cargo loss and damage claims shall be governed by 49 C.F.R. Part 370. COMPANY shall have no liability with respect to cargo loss or damage unless CUSTOMER shall submit to COMPANY written notice of any cargo claim, for loss, damage or delay, within nine (9) months of the delivery date of the shipment or, if no delivery date is specified, the date of delivery would have been reasonably expected. Any lawsuit or other action related to any such cargo claim must be filed no later than two (2) years from the date of denial of all or any part of such claim, or COMPANY shall be relieved of any liability with respect to any such claim.
- j. In no event will COMPANY have any responsibility for, and CUSTOMER will defend, indemnify, and hold COMPANY harmless from, and will pay and reimburse, any charges imposed by third parties with respect to use of equipment in which GOODS tendered by, to or on behalf of CUSTOMER is or has been laden, or for charges assessed with respect to storage or handling of any such equipment, including, but not limited to, per diem, demurrage, detention or other charges assessed by steamship lines, rail carriers, rail terminal operators, marine terminal operators or port authorities.
- k. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, INCLUDING CHARGEBACKS, LOSS OF FUTURE REVENUE, LOST PROFIT, LOST INCOME, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY, WHETHER ARISING FROM OR RELATING TO COMPANY'S PERFORMANCE OR ALLEGED FAILURE TO PERFORM SERVICES FOR CUSTOMER, A BREACH OR ALLEGED BREACH OF THESE TERMS AND CONDITIONS, WHETHER BASED ON STATUTE, CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT ARISING FROM COMPANY'S SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, CRIMINAL LIABILITY OR OTHER FAULT, REGARDLESS OF WHETHER COMPANY HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S LIABILITY TO CUSTOMER, INCLUDING BUT NOT LIMITED TO LIABILITY FOR LOSS OF GOODS, EXCEED THE TOTAL OF THE AMOUNTS PAID BY CUSTOMER TO COMPANY FOR SERVICES RENDERED.

## 6. FORCE MAJEURE

- a. COMPANY shall not be liable for damages or any delay or failure to perform its obligations resulting from an act of God, pandemic, epidemic, strikes, fire, flood, war, sabotage, riots, acts of terrorism, civil disturbance, interference by civil or military authority, or other causes beyond the reasonable control of COMPANY, whether or not similar to the aforementioned causes ("**FORCE MAJEURE**"). Upon the occurrence of a *FORCE MAJEURE* event, COMPANY shall promptly give written notice to CUSTOMER of the nature and consequences of the event.
- b. In the event of damage to GOODS resulting from a *FORCE MAJEURE* event, CUSTOMER shall be liable for the removal, cleanup and disposal of all damaged GOODS and waste associated with CUSTOMER'S GOODS. If CUSTOMER fails to act in a responsive manner, COMPANY, at its discretion, may arrange for the cleanup and disposal of the damaged GOODS. If COMPANY takes such action, CUSTOMER will remain liable for all costs associated with the removal, clean up and disposal associated with the damaged GOODS.

## 7. PROHIBITED ITEMS AND DANGEROUS GOODS

- a. The following articles will not be accepted for carriage: Any shipments prohibited by law, artwork, bonds, coins, currency, furs, gems or stones, gold, silver, money, securities, and jewelry other than costume.
- b. CUSTOMER agrees that it will not tender to COMPANY, without COMPANY's prior written consent, any GOODS that are adulterated, flammable, hazardous or dangerous materials or articles,



explosives or pesticides, as defined under the regulated federal, state or local laws, statutes, ordinances, or regulations.

- c. Any GOODS tendered by CUSTOMER to COMPANY which are defined or are subject to regulation under federal, state or local laws, statutes, ordinances or regulations concerning adulterated, flammable, hazardous or dangerous materials or articles, explosives or pesticides (all of which require COMPANY's written consent prior to tender), will be individually listed on the receiving/ shipping document (bill of lading) naming the GOODS and designating which laws, statutes, ordinances or regulations apply to the storage, handling and transportation of the GOODS.
- d. With respect to any GOODS tendered to COMPANY which, due to federal, state or local laws, statutes, ordinances or regulations applicable to the GOODS, require registration, permits, licenses or similar approvals, CUSTOMER shall have such registrations, permits, licenses or approvals as of the time the GOODS are tendered to COMPANY and at all times they are in COMPANY's custody.
- e. CUSTOMER agrees to indemnify and hold COMPANY harmless from all losses which COMPANY pays or incurs by reason of any breach by CUSTOMER of the representations and agreements of the CUSTOMER set forth in this Section 7.

#### **8. LIEN**

- a. COMPANY shall have a general lien against the GOODS and on the proceeds thereof for all amounts due to COMPANY by CUSTOMER including but not limited to charges for transportation, handling, storage, accessorial charges and other charges and expenses present or future with respect to the GOODS and for expenses necessary for preservation of the GOODS or reasonably incurred in their sale pursuant to law. The lien shall apply to all charges present or future in relation to the GOODS in COMPANY's possession and similar charges in relation to other GOODS whenever deposited. COMPANY's lien shall extend to all charges and expenses with respect to any GOODS stored by CUSTOMER in any facility owned or operated by COMPANY whenever deposited and without regard to whether or not such GOODS are still in storage.
- b. In order to protect its lien, COMPANY reserves the right to require advance payment of all charges prior to shipment of GOODS.

#### **9. RELATIONSHIP OF PARTIES**

It is agreed and understood that COMPANY is performing the services as an independent contractor. Neither PARTY nor any personnel engaged by such PARTY shall be considered as employees or agents of the other PARTY at any time or for any purpose whatsoever. Nothing contained herein shall be deemed to constitute a relationship of agency, joint venture, partnership or any relationship other than that of an independent contractor.

#### **10. MODIFICATION**

By tendering GOODS to COMPANY, CUSTOMER agrees to accept these terms and conditions. Any amendment or modification to these terms and conditions shall be effective only if in writing and signed by an authorized representative of each of the CUSTOMER and COMPANY.

#### **11. GOVERNING LAW/VENUE**

These terms and conditions shall be construed and enforced in accordance with the laws of the United States and the State of California. The PARTIES agree that any lawsuit arising out of or resulting from these terms and conditions or the services provided by COMPANY to CUSTOMER shall be subject to the laws of the United States and the State of California, and the appropriate state or federal court shall have exclusive jurisdiction. The PARTIES mutually acknowledge and agree that they shall not raise, in connection therewith, and hereby waive any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing.



#### **12. SEVERABILITY**

If any term or provision herein or any application thereof shall be invalid or unenforceable, the remainder of these terms and conditions or any other application of such term or condition shall not be affected thereby.

#### **13. WAIVER**

Compliance with any term or condition herein may be waived (either generally or in a particular instance and either retroactively or prospectively) by the PARTY entitled to enforce such term, but any such waiver shall be effective only if in a writing signed by the PARTY against which such waiver is to be asserted. Except as otherwise provided herein, no failure or delay of any PARTY in exercising any power or right under these terms and conditions shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power preclude any other or further exercise thereof or the exercise of any other right or power.

#### **14. CHANGES TO THESE TERMS AND CONDITIONS**

COMPANY reserves the right, in its sole discretion, to modify these terms and conditions at any time. If a revision is material, the COMPANY will make reasonable efforts to provide at least 30 days' notice prior to any new terms taking effect. By continuing to tender goods or use the COMPANY's services after those revisions become effective, CUSTOMER agrees to be bound by the revised terms.