

# BILL OF LADING TERMS AND CONDITIONS OF CONTRACT

## 1. DEFINITIONS

“Carrier” means Tofflemire Freight Service Inc. doing business under any of its trade names.

“Bill of Lading” means Carrier’s Non-Negotiable Bill of Lading, front and reverse pages.

“Customer” includes the consignor, shipper, consignee, owner of the Goods, and any person lawfully acting on behalf of any of those persons.

“Goods” means articles of every kind and description, including their packaging, containers, or other shipping units or materials, as to which Customer desires Forwarder to arrange Carriage.

“Carriage” means the transportation of the Goods from a place of receipt to a place of delivery and all Services, undertakings, and procedures that Carrier performs or arranges that are related to the transportation, security, and handling of the Goods. “Charges” includes freight for the Carriage or other transportation, storage, detention, demurrage, transloading, crossdocking, dead freight, interest, and any other costs Carrier incurs or pays that arise out of or are in any way related to the Carriage or any services Carrier provides or arranges, and all costs Carrier incurs or pays to collect Charges due from Customer, including reasonable attorneys’ fees and court costs.

“Services” means Carriage and any other service Carrier may perform or arrange for Customer.

## 2. AGREEMENT TO CARRIER’S BILL OF LADING TERMS AND CONDITIONS OF CONTRACT

(a) By Customer’s request to Forwarder to arrange or perform Services, Customer agrees to Carrier’s Bill of Lading Terms and Conditions of Contract (the “Bill of Lading Terms”), which no agent or employee of the parties may alter. No other bill of lading, waybill, or transportation contract terms shall apply to the Carriage. If there were to be a conflict between the terms of any such other bill of lading, waybill, or purported transportation contract and the Bill of Lading Terms, then the latter shall prevail.

(b) This Bill of Lading is non-negotiable. Customer has prepared this Bill of Lading, or Carrier or its authorized agents have done so on Customer’s behalf. Customer agrees that the Carriage is subject to these Bill of Lading Terms and those stated on the front page of this Bill of Lading, which are also available online at <https://tflax.com/terms-conditions/>. The defenses and limits of liability stated in these Bill of Lading Terms shall apply to all Services and in any action against Carrier under any legal theory, whether in contract, tort, bailment, indemnity, contribution, or otherwise.

## 3. LIMITED WAIVER OF CARMACK AMENDMENT AND OTHER PARTS OF TITLE 49, SUBTITLE IV, PART B OF THE U.S. CODE

Where the liability scheme for interstate motor transportation under U.S. laws collectively known as the Carmack Amendment and other parts of Title 49, Subtitle IV, Part B of the United States Code (collectively, the “Title 49 Laws”) would otherwise apply to the Carriage, Customer expressly agrees to a limited waiver of the Title 49 Laws, but only to the extent that they are inconsistent with sections 5, 6, 8, 10, and 24 of the Bill of Lading Terms. For such Carriage, Customer agrees that this Bill of Lading, and particularly, this clause, satisfies the express written waiver required under 49 U.S.C. § 14101(b) as to the waiver of any of Customer’s rights and remedies under the Title 49 Laws. The Title 49 Laws shall otherwise apply to Carrier and the Carriage.

## 4. CARRIER ACTING AS AGENT FOR NON-CARRIAGE UNDERTAKINGS

Whenever Carrier undertakes to perform or arrange any Service other than the Carriage to which Service Carrier and Customer did not initially agree or one that is not stated on this Bill of Lading, Carrier shall act as Customer’s agent and shall neither undertake nor have any liability for any loss of or damage to the Goods or any direct, indirect, or consequential loss arising out of or resulting from such Service.

## 5. NOTICE OF CLAIM AND TIME-BAR

(a) As a condition to Carrier’s processing of a freight claim or of a claim relating to Services other than Carriage, all Charges must have been paid in full as to the Goods or non-Carriage Services in question.

(b) Any freight claims must be filed against Carrier within 90 days after the delivery of the Goods, or in the case of export traffic, within 90 days after delivery at the port of export, except that claim for failure to make delivery must be filed within 90 days after a reasonable time for delivery has elapsed. Any claims relating to Services other than Carriage must be filed against Carrier no later than 90 days from the date of Carrier’s invoice to Customer for such Services. The failure to file a claim within the above 90-day periods shall result in the claim’s being time-barred and Carrier’s discharge from any liability. Carrier shall not pay any time-barred claims. A timely notice of claim is a condition to the right to file a timely lawsuit against Carrier, as stated below in sub-section (c).

(c) Any lawsuits for freight claims must be filed against Carrier in the mandatory venue under section 24(a) no later than one year from the day on which Carrier has given written notice to the claimant that Carrier has disallowed the claim or any part or parts of the claim stated in the timely notice of claim. Any lawsuits that arise out claims relating to Services other than Carriage must be filed against Carrier in the mandatory venue under section 24(a) no later than one year from the date of Forwarder’s invoice to Customer for such Services. Assuming a timely notice of claim, the failure to file a timely lawsuit in the mandatory venue within the above one-year period shall result in the claim’s being time-barred and Carrier’s discharge from any liability. Carrier shall not pay any time-barred claims.

## 6. SPECIAL SECURITY/PROTECTIVE SERVICES

Carrier’s failure to arrange any agreed-to special security Services or requirements, including team drivers, shall not negate Carrier’s limitation of liability, which is stated below in section 8.

## 7. EXEMPTIONS FROM LIABILITY

Carrier shall have no liability for the loss of or damage to Goods because of (1) an act of God; (2) the public enemy; (3) an act or omission of Customer; (4) public authority; (5) or the inherent vice or nature of the Goods.

## 8. LIMITATION OF LIABILITY FOR LOSS OF OR DAMAGE TO GOODS; CHOICE AS TO LIMITATION AND OPPORTUNITY TO AVOID LIMITATION BY SPECIAL AGREEMENT, BY DECLARING AN INCREASED LIABILITY VALUATION AS TO THE GOODS

(a) Carrier has established and has offered Customer alternative levels of liability for the Carriage. Customer understands and agrees that it has had a reasonable opportunity to choose between two or more levels of Carrier’s liability and has made its choice as to Carrier’s liability limit as follows: Customer has had the choice to ship the Goods and to pay (A) Carrier’s regular/lower rates for goods with limited value and

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a corresponding limited liability for Carrier or (B) ad valorem rates for goods not so limited in value and a corresponding increased level of liability for Carrier, the basis for which rates is Carrier's regular/lower rates plus an increased liability charge.

(b) Unless Customer declares the nature and value of the Goods before the Carriage by stating a value on the front page of this Bill of Lading and initialing in the "SPECIAL AGREEMENT" box, then Customer knowingly and willingly elects to ship under Carrier's regular/lower rates, the consequence of which is that in no event shall Carrier or its servants or agents be or become liable for any loss of or damage to the Goods, or in connection with the Carriage, in an amount exceeding \$.50 per pound. For any claims arising out of or in any way connected to Services other than Carriage, Carrier's liability shall be limited to Customer's actual loss or \$50, whichever is less.

### 9. CARRIAGE METHODS/ROUTES, SUBSTITUTION OF MODE/EQUIPMENT

Customer understands and agrees that without notice to Customer, Carrier may perform the Carriage and:

(a) Use any means of transport or storage;

(b) Transfer the Goods from one conveyance to another, including transshipment or carrying on a truck or trailer other those that Carrier arranged in the first instance; or

(c) Proceed by any route in Carrier's sole discretion, irrespective of whether such route is the nearest, most direct, customary, or advertised route.

Customer understands and agrees that anything done or not done in accordance with the above sub-sections or any resulting delay shall be within the scope of the Carriage and not a deviation.

### 10. FORCE MAJEURE

Without prejudice to any of Carrier's rights or privileges under this Bill of Lading or under applicable law, Carrier shall not be responsible for any loss, damage, or delay that arises out of or is in any way related to, directly or indirectly, any event beyond the reasonable control of Carrier, regardless of the event's foreseeability, including events such as war, hostilities, warlike operations, terrorism, hijacking or robbery, use of force or threats to use force, embargoes, blockades, port congestion, strikes or labor disturbances, pandemics or epidemics, regulations of any governmental authority pertaining to any of the above, or any other official restrictions on commerce that arise out of or are in any way related to the above conditions and that affect Carrier's operations or Carriage in any way, in which case Carrier shall have the right to cancel any outstanding booking or the Carriage. Carrier, at its sole discretion, without prior notice to Customer and irrespective of whether the Carriage has begun, may treat the performance of the Carriage as terminated and place the Goods at Customer's disposal at any place or port that Carrier, in its sole discretion, deems to be safe and convenient, at which place or port Carrier's responsibility for such Goods shall cease. Carrier shall nevertheless be entitled to full freight and Charges on such Goods, and Customer shall pay any additional costs of transportation, transshipment, loading, unloading, delivery, storage, demurrage, detention, and all expenses related to each of the above, including Carrier's reasonable attorneys' fees.

### 11. REFUSED DELIVERY

Refusal of the consignee or Customer to take delivery of the Goods notwithstanding its having received notice of the Goods' availability shall constitute an irrevocable waiver of all claims arising out of or in any way relating to the Goods or the Carriage. Customer shall be liable for any losses, damages, expenses, and liabilities it incurs arising out of such a refusal, including the return of the Goods to their place of receipt.

### 12. FREIGHT AND CHARGES

(a) All freight shall be deemed fully, finally, and unconditionally earned on Carrier's receipt of the Goods.

(b) All freight and Charges shall be paid without any set-off, counter-claim, deduction, or stay of execution before delivery of the Goods.

(c) If Customer's description of the Goods in this Bill of Lading or in any documents Carrier receives from or on behalf of Customer is inaccurate, incorrect, or misleading in any respect, Customer shall pay for any damages that Carrier suffers as a result, including any reasonable attorneys' fees.

(d) Payment of any Charges to anyone other than Carrier or an authorized agent that Carrier identifies in writing to Customer shall not be considered payment to Carrier and shall be at Customer's sole risk.

(e) The class of persons within the definition of "Customer" shall be jointly and severally liable to Carrier for payment of all Charges. Customer understands and agrees that it has the duty to so notify all other such persons of their potential liability to Carrier for Charges.

### 13. CARRIER'S SPECIFIC AND GENERAL LIENS AS TO THE GOODS AND ANY PROPERTY OF THE CUSTOMER

(a) In addition to a specific cargo lien under law, including under California Civil Code § 3051.5, Carrier shall have a general and continuing lien on the Goods and on any property of Customer coming into Carrier's actual or constructive possession or control as to any unpaid Charges, including for monies Customer owes to Carrier as to the shipment on which Carrier is claiming the lien, a prior shipment, or both, including all Charges and for any expenses that Carrier pays or incurs for storage, security, repacking, remarking, fumigation, or disposal of Goods, for fines, dues, tolls, or commissions that Carrier has paid or incurred on behalf of the Goods, for any sums, including reasonable attorneys' fees Carrier has paid or incurred because of any attachment or other legal proceedings brought against the Goods by governmental authorities or any person claiming an interest in the Goods. The failure to pay any Charges may result in a lien on a future shipment or shipments, including the cost of storage and appropriate security for the subsequent shipment or shipments that Carrier may hold under this section. Customer understands and agrees that any delivery of Goods shall be conditioned on the survival of the above liens.

(b) Carrier shall provide written notice to Customer of Carrier's intent to exercise its lien rights, which notice shall state the exact amount due. Customer shall notify all parties having an interest in the shipment or shipments at issue of Carrier's lien rights and the potential exercise of such rights in the absence of the payment of the amount due.

(c) Unless, within thirty 30 days of receiving notice of lien, Customer posts cash or letter of credit at sight, or if the amount due is in dispute, an acceptable bond equal to 110 percent of the value of the total amount due in favor of Carrier guaranteeing payment of all amounts due, plus all accruing Charges, Carrier shall have the right to sell the Goods or other property of Customer at public or private sale or auction and Carrier shall refund to Customer any net proceeds remaining after such sale.

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## 14. DESCRIPTION OF GOODS AND NOTIFICATION

(a) Customer's description of the Goods in a sealed trailer, shipping container, or package that Customer or its agents have prepared shall not be binding on Carrier, and the description declared by Customer on any document is information Customer provides solely for its own use. Customer understands that Carrier has not and will not verify the contents, weight, or measurement of a sealed trailer, shipping container, or package, or the weight or measurement, or the value, quantity, quality, description, condition, marks, or numbers of the contents. Carrier is under no responsibility as to such description of particulars and Customer shall indemnify and hold Carrier harmless from and against any loss, damage, liability, and expense, including reasonable attorneys' fees Carrier has paid or incurred, arising out of or in any way connected with or caused by, in whole or in part, such description of particulars.

(b) Carrier, its agents, and servants shall not in any circumstances be under any liability for insufficient packing or inaccuracies, obliteration or absence of marks, numbers, addresses or description, or for misdelivery due to marks or countermarks or numbers, or for failure to notify the consignee of the arrival of the Goods, notwithstanding any custom of the place of delivery to the contrary.

## 15. HAZARDOUS GOODS

(a) Prior to tendering hazardous goods, as defined under applicable federal and state law and regulations, Customer shall, in compliance with the laws and regulations governing the transportation of such goods, have the same properly packed, distinctly marked, and labeled, and notify Carrier in writing of their proper description, nature, and the necessary precautions.

(b) Goods that are hazardous goods or are otherwise of an inflammable, explosive, or dangerous nature, as to the shipment of which Carrier has not consented with knowledge of their nature and character, may at any time before delivery be unloaded at any place and destroyed or rendered innocuous by Carrier without compensation, and Customer shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such Goods shipped with such knowledge and consent shall become a danger to the transporting conveyance or to any cargo, then they may in like manner be loaded in any place or destroyed and rendered innocuous by Carrier without liability on the part of Carrier.

(c) Customer shall indemnify Carrier from and against any loss, damage, liability, and expense, including attorneys' fees Carrier has paid or incurred, arising out of or in any way connected with or caused by, in whole or in part, omission of full disclosure required by this clause or by applicable treaties, conventions, laws, codes, or regulations.

## 16. PERISHABLE GOODS

(a) Carrier shall transport Goods of a perishable nature in ordinary trailers without special protection, services, or other measures unless Customer provides written instructions for the Carriage to be in a refrigerated, heated, electrically ventilated, or otherwise specially-equipped trailer or shipping container, or that the Goods are to receive special attention in any way. In case of refrigerated trailers or shipping containers packed by or on behalf of Customer, it undertakes not to tender for Carriage any Goods that require refrigeration without giving written notice to Carrier of their nature and the required temperature-setting of the thermostatic controls before Carrier's arranging of the Carriage. Customer undertakes that the Goods have been properly stowed in the trailer or shipping container and that the thermostatic controls have been adequately set before Carrier's receipt of the Goods and, if necessary, that the Goods have been pre-cooled before their stuffing into the trailer or shipping container. Customer understands and agrees that refrigerated trailers and shipping containers are not designed to freeze down Goods that have not been presented for stuffing at or below their designated carrying temperature, and Carrier shall not be responsible for the consequences of Goods tendered at a higher temperature than that required for the Carriage. If Customer fails to comply with the above requirements, then Carrier shall not be liable for any loss of or damage to the Goods.

(b) The term "apparent good order and condition" when used in this Bill of Lading or other document with reference to Goods that require temperature control does not mean that the Goods were verified by Carrier as being at the designated carrying temperature.

(c) Carrier shall in no event be held liable for damage to Goods due to condensation.

## 17. GOODS UNACCEPTABLE FOR CARRIAGE

(a) Unless Carrier otherwise agrees in writing, Carrier shall not accept any of the following for Carriage: accounts, bills, deeds, evidences of debt, notes, securities, currency, money, coins or stamps, jewelry, precious stones, fine arts, bullion, specie, or other precious metals, furs, garments trimmed with furs, weapons, ammunition, explosives, live animals and plants, Christmas trees, batteries, used household goods and personal effects, used machinery, used automobiles, used aircraft, used boats, temperature-controlled commodities, cigarettes and other tobacco products, hazardous materials, human remains, antiques, plants, live animals, pharmaceuticals, lewd, obscene or pornographic materials, D.O.T.-restricted articles, including dangerous goods and hazardous or combustible materials, any material prohibited from transport by any law, regulation, or statute of any country in which the shipment may be carried.

(b) If Customer tenders any of the above without the prior written disclosure to Carrier and gets its written agreement to transport the same before the Carriage, then Customer shall indemnify Carrier from and against any loss, damage, liability, and expense, including reasonable attorneys' fees Carrier has paid or incurred, arising out of or in any way connected with or caused by, in whole or in part, such Goods.

## 18. INSPECTION OF GOODS

Carrier shall be entitled, but shall be under no obligation, to open any trailer, package, carton, or other shipping unit at any time and to inspect the Goods.

## 19. CUSTOMER-PACKED GOODS, CUSTOMER-STUFFED TRAILERS AND CONTAINERS

(a) If Goods have not been packaged, and if a trailer or shipping container has not been stuffed by or on behalf of Carrier, then Carrier shall not be liable for the loss of or damage to the Goods, and Customer shall indemnify Carrier from and against any loss, damage, liability, and expense, including attorneys' fees Carrier has paid or incurred, if such loss, damage, liability, or expense arises out of or is in any way connected with or is caused by, in whole or in part:

- (1) The manner in which the Goods, trailer, or shipping container was stuffed, filled, packed, or loaded; or
- (2) The unsuitability of the Goods for Carriage in their packaging or in a trailer or shipping container; or

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(3) The unsuitability or defective condition of the trailer or shipping container, provided that, if the trailer or shipping container had been supplied by or on behalf of Carrier, that unsuitability or defective condition could have been apparent upon inspection by Customer at or prior to the time when the trailer or shipping container was stuffed, filled, packed, or loaded.

(b) Customer shall inspect trailers or shipping containers before stuffing them and Customer's use of a trailer or shipping container shall be prima facie evidence of its being suitable and without defect.

### **20. CARRIAGE AFFECTED BY THE CONDITION OF THE GOODS**

If it appears at any time that the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measure or measures in relation to the Goods or the trailer or shipping container, then Carrier may, without notice to Customer, take any measure or measures or incur any additional expense or expenses to carry or to continue the Carriage, or to sell or dispose of the Goods, or to abandon the Carriage or to store Goods, or any combination of the above, under cover or in the open, at any place that Carrier, in its sole discretion, considers most appropriate, which abandonment, storage, sale, or disposal shall be deemed to constitute delivery and completion of the Carriage. Customer shall indemnify Carrier against any additional expenses it has so incurred.

### **21. DELAY, CONSEQUENTIAL LOSS, ETC.**

(a) Carrier does not undertake that the Goods will be transported from the place of receipt, or will arrive at the place of delivery, or will be shipped on board any particular truck or other conveyance at any particular date or time or to meet any particular market or in time for any particular use. The scheduled or advertised departure and arrival times are only expected times and may be advanced or delayed and Carrier shall in no event be liable for direct, special, incidental, indirect, or consequential loss or damage caused by delay.

(b) Carrier shall in no event be liable for any special, incidental, indirect, or consequential loss or damage arising from any other cause, notwithstanding Carrier's notice of the possibility of such damages at the time Carrier arranged such Carriage.

### **22. NO MODIFICATION OR WAIVER**

No person has the power to change or waive any of these Bill of Lading Terms unless the president or chief executive officer of Carrier, in writing, has expressly agreed to such a change or waiver.

### **23. PARTIAL INVALIDITY**

If any provision of these Bill of Lading Terms shall for any reason be held to be invalid or unenforceable by any court or regulatory body, then the remainder of these Bill of Lading Terms shall remain in full force and effect.

### **24. MANDATORY LAW, VENUE, AND JURISDICTION**

(a) Subject to Carrier's option under section 24(b), all claims or disputes arising out of or in any way related to this Bill of Lading or the Carriage shall be determined under the federal law of the United States of America, without regard to its conflict of laws rules and notwithstanding the limited waiver in section 3, or in the absence of such federal law, then under the laws of the State of California, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.

(b) To recover any damages or sums due arising out of Customer's non-payment of Charges, Carrier shall have the option to file an action in any court with subject matter jurisdiction and with personal jurisdiction over Customer.