

BROKER-SHIPPER TERMS & CONDITIONS (“T&C”)

The Shipper (“SHIPPER”) and **MCG Transportation Management, LLC** (“BROKER”) (collectively, the “Parties”) hereby agree as follows:

BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (“FMCSA”), and SHIPPER seeks to utilize the services of BROKER to facilitate the transportation of goods on behalf of or for the benefit of SHIPPER. Intending to be legally bound, BROKER and SHIPPER hereby agree as stated herein.

1. REPRESENTATIONS AND RELATIONSHIP OF THE PARTIES

- 1.1 BROKER holds FMCSA license number **MC-893567-B** and is licensed only as a BROKER. BROKER agrees to comply with all federal, state and local laws regarding the provision of brokerage services to SHIPPER.
- 1.2 SHIPPER represents that it has possession or custody of goods that it will offer for shipment, either directly or through its agents who may contact BROKER to ship goods on behalf of SHIPPER. SHIPPER shall ensure that such goods are packaged and secured properly and appropriately for transportation prior to being tendered to the Servicing Motor Carrier. SHIPPER shall accurately describe the goods tendered for shipment, including the description of the goods and the weight of the goods. In situations where the transportation is arranged by an agent of the SHIPPER, that agent shall have no interest in the goods once they are loaded onto a truck for transport, and the agent shall have no rights as against BROKER.
- 1.3 BROKER and SHIPPER are each independent business, and neither has control over the other’s operations, facilities, or employees. Neither Party intends this Agreement to create a joint venture, partnership, or any other type of shared entity. Neither party is an agent for the other, except that BROKER will act as an agent for SHIPPER to the extent required for BROKER to fulfill its obligations hereunder to arrange for the shipment of SHIPPER’S goods with third-party licensed motor carriers (“Servicing Motor Carriers”).
- 1.4 BROKER shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain a surety bond.

2. TERM AND SERVICES

- 2.1 This Agreement does not grant BROKER an exclusive right to provide transportation related services to SHIPPER or to its Customers. This Agreement does not require SHIPPER to retain BROKER for any pre-set volume of goods or shipments.
- 2.2 SHIPPER will register in BROKER’S electronic system and provide the information required by that system. On an as needed basis, SHIPPER will tender goods to BROKER through use of BROKER’S electronic system. Subject to section 6 of these Terms and Conditions, SHIPPER grants BROKER the authority to enter shipment information in BROKER’S electronic system as requested by SHIPPER.
- 2.3 SHIPPER acknowledges that absent separate written agreement signed by the parties, BROKER does not arrange for shipments of hazardous materials, and SHIPPER will not tender such goods to BROKER.
- 2.4 Upon receipt of SHIPPER’S tender of goods for shipment, BROKER shall arrange for the shipment of the goods by a Servicing Motor Carrier.
- 2.5 BROKER shall make reasonable efforts to place SHIPPER’S loads with Servicing Motor Carriers for the purposes of transporting the loads with reasonable dispatch pursuant to the information provided by SHIPPER. However, the Parties understand and agree that

BROKER, by signing this Agreement, makes no express or implied warranties or guarantees concerning delivery time or the locating of a Servicing Motor Carrier to provide the transportation services requested by SHIPPER.

2.6 The Parties understand and agree that BROKER functions as an independent entity, and not as a motor carrier, in selling, negotiating, providing and arranging for transportation for compensation, and that the actual transportation of shipments tendered to BROKER shall be performed by a Servicing Motor Carrier.

2.7 BROKER makes no representation or warranty regarding the amount or existence of cargo insurance maintained by any Servicing Motor Carrier. If SHIPPER requires a specific level of cargo insurance to be maintained by the Servicing Motor Carrier, SHIPPER shall inform BROKER, in writing, and SHIPPER acknowledges that the rate for the transport may be affected by the insurance requirement.

3. PAYMENT TERMS

3.1 SHIPPER'S payments to BROKER must be in U.S. Dollars and are due and payable Fifteen (15) days from the date of delivery of shipment. Past due invoices shall be subject to late fees charged at the rate of One and One-half Percent (1.5%) per month. In the event past due invoices are given to an attorney or collection agency for collection, SHIPPER agrees to pay, in addition to the account balance, all late fees, and collection costs including reasonable attorney's fees.

4. CREDIT APPROVAL

4.1 Payment terms and credit limits are subject to credit approval, which shall be determined from time to time, in the sole and absolute discretion of BROKER. SHIPPER grants BROKER the right to perform such credit and background searches as BROKER deems necessary. SHIPPER agrees it will be responsible for all charges due and owing, including any adjustments, on account or such SHIPPER's shipment.

5. DETERMINATION OF CHARGES

5.1 SHIPPER shall be liable for all charges payable on account of such SHIPPER's shipment. Such charges may include transportation, fuel and other applicable accessorial charges, any charges made by the carrier(s) after the shipment, and all duties, customs assessments, governmental penalties, fines and taxes. BROKER reserves the right to amend or adjust charges and to re-invoice SHIPPER in the following events: (i) if the original quoted amount was based upon incorrect information provided by SHIPPER; or (ii) if additional services by the carrier were required; or (iii) if SHIPPER authorized the carrier to perform the pickup, transportation and delivery functions other than contemplated by the BOL. Any dispute by SHIPPER of any invoice issued by BROKER shall be made in writing, specifically indicating the nature of the dispute and made within 30 days from the date of the invoice. In the event BROKER does not receive timely written notice of the dispute, the charges will be conclusively presumed to be valid.

6. BILLS OF LADING

6.1 SHIPPER is to use the BROKER's system-generated Bill of Lading ("BOL"). SHIPPER shall complete all the appropriate documents required for carriage, in light of the services being sought, and the pick up or destination requested. In the event SHIPPER fails to timely and properly complete the appropriate documents, BROKER may at its option, but without obligation, complete, correct or replace

the documents. If a substitute form of BOL is needed to complete delivery of any shipment for any reason and BROKER completes that document, the terms of the completed BOL will govern and BROKER will be exonerated from all liability for undertaking such actions on behalf of SHIPPER including specifically liability for, in whole or in part, negligence by BROKER. All Bills of Lading are non-negotiable and will have been prepared by SHIPPER or by BROKER on behalf of SHIPPER in accordance with SHIPPER's instructions and approved by SHIPPER, and shall be deemed, conclusively, to have been prepared by SHIPPER. SHIPPER is to provide the BROKER BOL. BROKER shall have no obligation to make any payments or honor any rate quotes in any of the following instances: (i) the unauthorized alteration or use of bill of lading, or (ii) tendering of shipments to any carrier other than that designated by BROKER, or (iii) the use of any BOL not authorized or issued by BROKER.

7. RATES

7.1 "Less than Truckload" Rates ("LTL") rates are based on the calculated density and/or freight class as determined by the National Motor Freight Classification ("NMFC") and are weight based. All displayed transit times are estimates only and do not include day of pickup. LTL pickup dates are not guaranteed. Truckload rates ("TL") rates are based on Dock Door Pickup/Dock Door Delivery and Shipper Load/Consignee Unload and are mileage based. Additional fees may apply for charges including, Tractor Detention, Trailer Detention, and Driver Assistance. SHIPPER must tender this load to carrier at the agreed upon rate, or pay a "truck ordered, not used" penalty at cost. Air Freight rates are based on the greater of actual or dimensional weight. If an Air Freight shipment contains oversize freight, additional charges and transit delays may apply. Van Line rates are based on mileage, weight (actual or density) and commodity/product type. Flatbed rates are based on transport equipment type, mileage and weight. If a shipment includes over-dimensional freight, additional charges and transit days may apply. All displayed transit times are estimates only and do not include day of pickup. Pickup dates are not guaranteed.

8. GUARANTEED SERVICES

8.1 BROKER will provide LTL Guaranteed Services for additional charge, if requested by SHIPPER. LTL delivery times generally do not begin to run until the day after the pickup of the shipment, except as otherwise noted by the carrier selected. Guaranteed Service transit times do not include holiday and/or "no service" days as defined by the individual carrier. SHIPPER is liable for all charges related to the shipment. In the event of a carrier's failure to comply with the guaranteed service requested, SHIPPER shall have fourteen (14) days from the actual delivery date of shipment to file a written claim request with BROKER. If BROKER does not timely receive a claim request within fourteen (14) days, the service provided by the LTL carrier will be deemed to have met all guaranteed service standards and the claim request will be considered invalid and denied. In the event of the carrier's failure to comply with the guaranteed service requested and after the carrier has agreed to liability and has paid the amount to SHIPPER to BROKER, BROKER will credit the account of SHIPPER with such amount paid by the carrier. In no event shall BROKER be liable, nor will any account be credited if SHIPPER does not use BROKER'S BOL.

9. INDEMNIFICATION

- 9.1 BROKER shall indemnify, defend and hold SHIPPER, its employees, and agents harmless from and against any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney's fees), judgments, or demands on account ("Claims") or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof ("Damages"), suffered or claimed to have been suffered by any person or persons, only to the extent that such damages arise out of BROKER'S services provided in connection with this Agreement only where such claim is proven to be caused by (1) the intentional misconduct of BROKER; (2) BROKER'S violation of applicable laws or regulations; or 3) BROKER'S breach of this Agreement, except to the extent such liability, claims or loss represent consequential or special damages, or are the result of the negligence or other wrongful conduct of SHIPPER.
- 9.2 SHIPPER shall indemnify, defend and save BROKER, its employees, and agents harmless from and against any and all Claims or Damages suffered by any person or persons, arising out of SHIPPER'S performance under this Agreement where such claim is caused by (1) the condition of the freight or its packaging; (2) the negligence or intentional misconduct of SHIPPER; (2) SHIPPER'S violation of applicable laws or regulations; or (3) SHIPPER'S breach of this Agreement, except to the extent such liability, claims or loss are the result of the negligence or other wrongful conduct of BROKER.
- 9.3 In the event that such Claims are caused by the joint and concurrent negligence or other fault of the Parties, or of the Parties and a third party, the indemnity obligations for such Claims shall be borne by each Party in proportion to its degree of negligence or other fault.
- 9.4 Any indemnified Party shall promptly tender the defense of any Claim to the indemnifying Party. The indemnified Party shall be entitled to select its own attorney and the indemnifying Party must pay the reasonable attorneys' fees and costs incurred by that attorney.

10. INSURANCE

- 10.1 BROKER shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain a surety bond to benefit the SHIPPER.
- 10.2 SHIPPER agrees that it will obtain insurance coverage for any items of high value (over \$100,000) per truckload.

11. CARGO LOSS, DAMAGE, OR SHORTAGE

- 11.1 In the event of a cargo loss, damage or shortage claim, SHIPPER agrees to notify BROKER immediately and to subsequently submit to BROKER a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt or rejection notice, listing the nature and cause of the claim for cargo damage within twenty (20) days following the date of delivery. No claims or allowances for shortages, damage or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery.

- 11.2 BROKER assumes no liability for cargo loss, damage, or shortage. BROKER shall not be liable for penalties, fines, or consequential damages, including lost profits, whether foreseen or unforeseen, under any legal theory.
- 11.3 In the event of a conflict between the terms of any shipping documents including the bill of lading and the terms of this Agreement, the terms of this Agreement shall prevail.
- 11.4 Upon request of SHIPPER, BROKER shall require all Servicing Motor Carriers to obtain a delivery receipt from the consignee, showing the products delivered condition of the shipment and the date and time of such delivery.
- 11.5 BROKER shall assist SHIPPER in asserting its claim against the motor carrier as a service to SHIPPER only, and such assistance shall not be construed as an admission of liability for any cargo loss, damage, shortage, or delay.
- 11.6 The SHIPPER's responsibility for payment of freight charges to BROKER is not permitted to be offset by the value of any outstanding cargo loss, damage, shortage, delay, or claim.

12. DISPUTE RESOLUTION

- 12.1 The Parties agree that any claim, dispute, and/or controversy arising out of this Agreement or the Services provided hereunder, which would otherwise require or allow resort to any court whether based on tort, contract, statutory, or equitable law, or otherwise shall be submitted to and determined exclusively by binding arbitration to be administered by JAMS Endispute, Adjudicate West, or the American Arbitration Association, at the discretion of the Party instituting the arbitration. Any arbitrator shall be a retired California Superior Court Judge or Court of Appeal Justice, or shall be an attorney having no less than 15 years' experience in civil litigation, and no less than five years' experience as an arbitrator. The Parties agree that they, in conjunction with the arbitrator, will determine and agree upon the scope and timing of the discovery and depositions to be permitted in light of the issues raised and the amount in controversy. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") other than such controlling law. The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. **BOTH PARTIES UNDERSTAND THAT BY AGREEING TO THIS BINDING ARBITRATION PROVISION, THEY ARE GIVING UP THEIR RIGHTS TO TRIAL BY JURY.**

13. MISCELLANEOUS PROVISIONS

- 13.1 BROKER agrees to notify SHIPPER of any accident or other event of which BROKER is apprised and which prevents the motor carrier from making a timely or safe delivery.
- 13.2 This Agreement may not be assigned or transferred in whole or in part. This Agreement shall be binding upon and inure to the benefit of the Parties hereto.
- 13.3 In the event that the operation of any portion of this Agreement results in a violation of any law, the Parties agree that such portion shall be severable and that the remaining provisions of this agreement shall continue in full force and effect.
- 13.4 This Agreement constitutes the entire agreement of the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both Parties.