

**AMERICAN FREIGHT, INC.
BROKER–MOTOR CARRIER TRANSPORTATION SERVICES
TERMS AND CONDITIONS AGREEMENT**

RECITALS

- A. AMERICAN FREIGHT, INC.**, an Oregon corporation (“AFI”) is a Federal Motor Carrier Safety Administration (“FMCSA”) registered property broker holding License No. MC-417538, which is incorporated herein by reference.
- B.** The motor carrier identified in the Carrier Setup Form submitted to American Freight Inc. (“CARRIER”), whose legal name, address, MC number, and USDOT number are provided therein, is an FMCSA registered motor carrier.
- C.** AFI and CARRIER are entering into this Agreement so that all shipments of freight tendered by AFI to CARRIER and accepted by CARRIER are handled pursuant to this agreement.
- D.** This Agreement is executed pursuant to 49 U.S.C. §§ 13102(4)(B) and 14101(b).

AGREEMENT

1. Scope; Contract Carriage; Waiver.

- A. Scope.** This agreement governs all shipments, whether moving in interstate, intrastate or foreign commerce, tendered by AFI to CARRIER and accepted by CARRIER.
- B. Contract Carriage.** All motor carrier services performed by CARRIER shall be as a contract carrier pursuant to 49 U.S.C. §§ 13102(4)(B) and 14101(b) and the regulations issued thereunder, if any.
- C. Limited Waiver of Statutory Rights Under 49 U.S.C. § 14101(b).** Except to the extent that the provisions of this Agreement conflict with the provisions of 49 U.S.C. Subtitle IV, Part B, the parties do **not** waive any rights and remedies they have thereunder. Limited to the extent the provisions of this Agreement conflict or are inconsistent with those provisions, AFI and CARRIER expressly waive their rights and remedies thereunder.

2. Term and Termination. The term of this Agreement shall begin on the electronic time stamp when submitted, and shall remain in effect until terminated by either party giving the other party at least thirty (30) days prior written notice, except as otherwise provided hereunder.

3. Specific Obligations of AFI.

- A. Volume.** AFI anticipates tendering a series of shipments to CARRIER during the term of this Agreement, but is not obligated to tender any minimum number of shipments.

B. Payment. AFI will pay CARRIER for its services the charges set forth in paragraph 6 herein, within terms of twenty-one (21) days after CARRIER's invoice and signed delivery receipt are received by AFI.

4. Specific Obligations of CARRIER.

A. Service. CARRIER will transport each shipment it accepts as a motor carrier in accordance with the service requirements specified in the Load Confirmation/Contract and this Agreement. CARRIER has the sole and absolute right to accept or reject any shipment tendered to it.

B. Costs and Expenses. CARRIER, at its sole cost and expense, shall

- (1) furnish all equipment (including accessorial equipment) needed to transport a shipment;
- (2) maintain the equipment provided in clean, odor- and contaminant-free condition, good repair and working order;
- (3) provide all drivers and other workers necessary to provide the required service; and all drivers and other personnel shall be competent and legally qualified and authorized to do the work they perform;
- (4) load and unload shipments as required by AFI, the consignor and consignee;
- (5) be solely responsible for and pay all costs, expenses and taxes, directly or indirectly incurred in providing service; and, in the event AFI pays or incurs a liability for any of these costs, expenses or taxes, AFI has the right to deduct that amount from any monies owed CARRIER;
- (6) pay any and all costs, expenses and taxes in the first instance and not charge any such amount to AFI or AFI's account.

C. Subcontracting Prohibited. Without the prior written consent of AFI, CARRIER shall not broker, subcontract or otherwise arrange for or allow any shipment to be transported or arranged to be transported by any other motor carrier, person or entity. CARRIER covenants that it will transport all shipments with equipment registered, licensed and insured under its own name, MC and USDOT numbers, and insurance policies.

D. Bill of Lading.

- (1) **Issuance.** CARRIER shall issue a bill of lading or other receipt ("bill of lading") for each shipment it receives for transportation, but CARRIER's failure to do so does not affect its liability hereunder.

- (2) **Exceptions to be Noted.** The bill of lading establishes receipt of the described property by CARRIER in good order and kind, quantity and condition, except as noted on its face at the time CARRIER takes possession.
- (3) **Conflict of Provisions.** If the language in the bill of lading or receipt conflicts or is inconsistent with this Agreement, this Agreement shall prevail.
- (4) **Receipt Only.** The bill of lading or receipt is a receipt only and does not constitute a contract between CARRIER and AFI or between CARRIER and either the consignor or consignee.
- (5) **Liability Limitations Tariffs Null & Void.** Any provision in a bill of lading that purports to limit CARRIER's liability for freight loss, damage and/or delay, and any document that the bill of lading purports to incorporate by reference is null and void.
- (6) **Preparation.** The bill of lading shall state that CARRIER is the carrier. If AFI's name is listed as the carrier on a shipper-prepared bill of lading, CARRIER shall cross out AFI's name and insert its own name as the carrier. The name of the shipper shall be inserted in the blank for the consignor, and the name of the receiver shall be inserted in the blank for the consignee. The bill of lading must be signed by CARRIER upon receipt of the shipment and show the kind, quantity and condition of the freight when received from the consignor. CARRIER must obtain the consignee's signature when the shipment is delivered, and any shortages or damage must be noted by the consignee. It is CARRIER's obligation to insure that the bill of lading or other receipt is issued in strict compliance with the requirements set forth in this paragraph, regardless who prepares it.

E. CARRIER's Liability for Cargo Loss, Damage & Delay.

- (1) **Carmack Amendment Liability.** CARRIER is liable for cargo loss, damage and delay pursuant to, and to the extent provided by, the Carmack Amendment, 49 USC 14706, except that CARRIER's liability shall not be limited under the provisions of 49 U.S.C. § 14706(c) or in any other manner. Carmack Amendment liability standards shall apply even if a shipment or service is exempt from the Carmack Amendment.
- (2) **Liability for Special and Consequential Damages.** If the Load Confirmation/Contract or bill of lading specifies pickup and/or delivery times or other special or specific services to be provided, CARRIER is obligated to meet those pickup and/or delivery times and provide those other special or specific services; and if CARRIER fails to do so, it shall be liable for special and consequential damages.

- (3) Measure of Damages.** Except as otherwise provided, CARRIER is liable pursuant to the Carmack Amendment for the actual loss or injury to the shipment. Full value of lost or damaged items means any replacement cost established by trade sale or other invoice documentation, plus any additional transportation cost, and, further, expenses of delay will include employee or equipment compensation, overtime and the like. Damages for delay shall include loss of sale and/or profit.
- (4) Attorney Fees.** If AFI is required, as determined in its sole discretion, to hire an attorney to represent or advise it in connection with any claim made against CARRIER under this Agreement, it shall be entitled to recover its attorney fees, regardless whether an arbitration, settlement conference, mediation, lawsuit or other legal proceeding is filed or held.

F. Claims for Cargo Loss, Damage & Delay.

- (1) Parties Entitled to Make a Claim.** Claims against CARRIER for cargo loss, damage and/or delay may be filed with CARRIER by AFI, parties to the bill of lading, and the beneficial owner of the shipment.
- (2) Claim Handling Procedures; Deadline for Determination; Consequence of Failing to Meet Deadline.** CARRIER will process claims in accordance with 49 C.F.R. Part 370; provided, however, that CARRIER shall make a disposition of the claim pursuant to 49 C.F.R. § 370.9 (a) within 45 days after the receipt of the claim. If CARRIER fails to make a disposition of the claim within the 45 day period, CARRIER shall be conclusively deemed to have accepted liability for the claim as filed and shall pay the claim amount within 20 days thereafter.
- (3) Claims filed by AFI: Exclusive Dealing.** If AFI files a claim, CARRIER shall (i) deal exclusively with AFI in resolving the claim and shall not contact any other party to the bill of lading or the beneficial owner of the shipment in an effort to adjust and settle the claim unless authorized in writing by AFI and (ii) shall cooperate with and provide all requested documents and information to AFI.
- (4) Time Limits.** The time limits for filing a cargo claim and lawsuit shall be the minimum times allowed by 49 USC § 14706(e). Filing a claim is not a requirement for filing a lawsuit.

G. CARRIER's Insurance Obligation.

- (1)** CARRIER shall maintain insurance in the following types and amounts: Coverage Minimum Limits Public Liability \$1,000,000 per occurrence. Automobile Liability (including hired and non-owned vehicles) Cargo loss or damage ("all risks") \$1,000,000 per occurrence \$100,000 or the value of the

cargo, whichever is higher. \$150,000 or higher cargo required on ALL U.S. Federal Government jobs Worker's Compensation As Required by law

- (2) CARRIER shall require its insurance carrier(s) to provide AFI with a Certificate of Insurance prior to providing any service and whenever requested by AFI.
- (3) CARRIER shall require (i) AFI to be named a "loss payee" on its cargo policy and (ii) its insurance policies to be endorsed with the requirement that the insurer shall give AFI thirty days (30) days written advanced notice of cancellation, termination or modification of any policy or coverage.
- (4) CARRIER shall provide AFI with no less than five (5) days advance notice of cancellation, termination or modification of any policy or coverage.
- (5) CARRIER will provide AFI with a complete copy of its insurance policy(ies) within three (3) business days of AFI's request.
- (6) CARRIER's insurance policy(ies) shall comply with the minimum requirements of the FMCSA and any other applicable regulatory agency.
- (7) All of CARRIER's insurance policies and coverages are subject AFI's approval.
- (8) Nothing in this Agreement shall be construed to avoid, limit or modify CARRIER's liability due to any limitation , exclusion or deductible in any insurance policy.

H. Duration of Liability. CARRIER's liability (except for delay in pickup) shall begin at the time CARRIER assumes possession or control of a shipment or any portion thereof, which in no event will be later than the time it is loaded on CARRIER's equipment, and shall continue until the shipment is unloaded from CARRIER's equipment, is delivered to the consignee, and the consignee signs and gives CARRIER a receipt acknowledging delivery.

I. Indemnification. To the fullest extent allowed by applicable law, CARRIER shall indemnify, defend and hold harmless AFI from any and all liability, costs (including attorney fees), damages, fines, penalties, claims and the like for:

- (1) Cargo loss or damage; loss or damage resulting from delay; and cargo loss or damage resulting from CARRIER's failure to provide the service requirements specified in the Load Confirmation/Contract or this Agreement;
- (2) Personal injury (including death), property loss or damage (excluding cargo loss, damage and delay) claims) arising out of the acts or omissions of CARRIER; and

- (3) CARRIER's failure to perform any obligation under this Agreement or Load Confirmation/Contract; provided, however, that-
- (4) CARRIER's indemnification obligation is limited by the extent that AFI's negligence or failure to perform its obligations under this Agreement proximately caused the loss.

J. Authority; Compliance with Safety Laws & Regulations.

- (1) **Authority.** CARRIER warrants that it has, and will have, authority from all federal, state, provincial, municipal, and other governmental agencies to legally provide all services called for and provided hereunder.
- (2) **Compliance; Safety Rating.** CARRIER warrants that: (i) all service will be provided in full compliance with all applicable laws, rules and regulations, including, but not limited to, the Federal Motor Carrier Safety Regulations (FMCSR); (ii) that the driver(s) provided will be qualified and properly licensed to provide the requested service and will have sufficient hours available under the FMCSRs to provide the requested service without delay and in accordance with the pickup and delivery schedule specified in the Load Confirmation/Contract; (iii) it shall at all times maintain a USDOT safety rating that authorizes it to provide the service required, (iv) it shall immediately give notice to AFI, refuse to accept any shipment tendered, and discontinue transporting any shipment that is in transit immediately upon being made aware in any manner that it has been or is going to be assigned an "unsatisfactory" or comparable USDOT safety rating that prohibits or will prohibit it from providing service or otherwise places its equipment or driver "out of service."

K. Waiver of Lien. CARRIER shall neither have nor claim any lien rights on or against any shipment transported. In the event that CARRIER violates the terms of this paragraph, it shall (i) forfeit all monies then due and owing to CARRIER by AFI, including charges relating to the shipment against which the lien is claimed; and (ii) be strictly liable for conversion to AFI, AFI's customer, the parties to the bill of lading, and the beneficial owner of the shipment.

L. Foods, Drugs and Cosmetics. CARRIER warrants that it will comply with the Food Safety and Inspection Service Safety and Security Guide for the Transportation and Distribution of Meat, Poultry, and Egg Products; the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub L. 107- 188, 2002 HR 3448); all applicable rules and regulations of the Food and Drug Administration; and any and all other federal, state, municipal and provincial laws applicable to the transportation of foodstuffs, drugs, cosmetics and the like. All CARRIER's equipment used to transport foodstuffs shall meet the standards established by the consignor and consignee, and it is CARRIER's obligation to obtain and know those standards.

5. Agreement; Load Confirmation/Contract.

- A. ORAL Agreement Confirmed by Load Confirmation/Contract.** AFI generally discusses a shipment, and the service requirements and the rate with CARRIER orally by telephone, and CARRIER will verbally accept or reject the tender. If agreement is reached, AFI prepares a written Load Confirmation/Contract confirming the oral agreement and faxes, emails or otherwise delivers it to CARRIER to sign and return confirming the agreement. Failure of AFI to prepare and/or deliver or CARRIER to sign and/or return a Load Confirmation/Contract with respect to a shipment shall not affect AFI's or CARRIER's rights and liabilities orally agreed upon and as provided hereunder. A sample of a Load Confirmation/Contract is attached as Exhibit A, but is subject to change by AFI in its sole discretion. Facsimile machine and electronically transmitted copies and signatures are accepted and treated as originals.
- B. Modification.** Any modification to a signed Load Confirmation/Contract shall be indicated by changes thereon initialed by the parties or by execution of a replacement Load Confirmation/Contract.
- C. Addendum to Agreement.** Executed Load Confirmation/Contracts constitute an addendum to this Agreement with respect to the shipment described.
- D. Retention.** The originals or copies of all Load Confirmations/Contracts shall be retained by CARRIER and by AFI together with this Agreement during the term of this Agreement and three (3) years thereafter.

6. Freight Charges; Billing; Payment.

- A. Charges.** The charge CARRIER agrees to accept in full payment, and AFI agrees to pay, **as an agent of SHIPPER**, for all services provided with respect to a shipment is as stated in the Load Confirmation/Contract. The charge generally will be a "flat rate," that is, an all-inclusive amount for all services, except as otherwise noted. In the event the charges are not stated in a Load Confirmation/Contract, the charges shall be the amount orally agreed upon or, if there is a dispute over that amount, then the default rate shall be \$1.00 per loaded mile.
- B. Time.** CARRIER shall request payment for services provided by delivering an invoice to AFI for each shipment transported within ten (10) days after delivery of a shipment.
- C. Delivery Receipt.** CARRIER's invoice shall provide the information requested by AFI and shall be accompanied by the original or a true copy of the signed delivery receipt(s). CARRIER will provide AFI with the original signed delivery receipt upon request.

- D. Responsibility.** AFI shall be solely responsible for the payment of CARRIER's charges, and CARRIER shall not seek to collect its charges from any other person or entity.
- E. Collection.** CARRIER authorizes AFI, as its limited special agent, to invoice and collect its charges from the responsible party, and payment of the charges to AFI constitutes payment to CARRIER and relieves the consignor, consignee, owner and "bill-to party" of any liability to the CARRIER for non-payment of charges or undercharge claims.
- F. Time Limitation.** If CARRIER fails to request payment for a shipment within 45 days after delivery, it forfeits its right to payment for that shipment. Any claim for under-payment or non-payment of a rate or charge by CARRIER against AFI must be made within 45 days after the date of delivery of the shipment. Any claim for return of an overpayment by AFI against CARRIER must be made within 90 days after the date of AFI's payment to CARRIER.
- G. Right of Set-Off.** In the event (i) any amount is owed to AFI by CARRIER under this agreement or otherwise or (ii) any claim made with respect to a shipment is pending against CARRIER, AFI has the right to set-off an amount sufficient to satisfy the amount owed or the amount of the pending claim, and to deduct and withhold such amount from any amounts due CARRIER. As part of the amount set-off, AFI shall have the right to withhold any and all administrative expense, attorney fees, adjustment fee, insurance deductible, or other cost, fee or expense, of whatever kind, incurred or reasonably anticipated to be incurred by AFI in connection with the amount owed or claimed giving rise to the set-off.

7. Back Solicitation Prohibited; Confidentiality.

- A. Prohibited Solicitation; Liability.** CARRIER shall not solicit shipments from any consignor, consignee, party to a bill of lading, or customer of AFI where (i) the availability of such shipments first became known to CARRIER as a result of AFI'S efforts or actions; or (ii) where such shipments were first tendered to CARRIER by AFI. If CARRIER solicits such shipments, AFI is entitled, for a period of 18 months from the time of the solicitation, to twenty percent (20%) of the gross charges billed by CARRIER regardless whether collected.
- B. Confidentiality.** CARRIER shall not disclose any information regarding any shipment to any person or entity not named in the Load Confirmation/Contract or bill of lading.

8. No Authority to Bind AFI. CARRIER is not AFI's agent and shall take no action on behalf of AFI except as expressly authorized herein. CARRIER shall insure that third parties know that it is not AFI's agent.

9. Independent Contractor Relationship. The relationship of the CARRIER to AFI shall at all times be that of an independent contractor, and CARRIER is not a servant, agent, employee, joint venturer or partner of AFI, and AFI will not be responsible for any of CARRIER's expenses, including, but not limited to, insurance, wages, benefits, and taxes which in any way relate to CARRIER and CARRIER's employees, agents, contractors or other representatives. As an independent contractor, CARRIER agrees that CARRIER shall be solely responsible for payment of CARRIER's employees, withholding and paying the appropriate state and federal income taxes of CARRIER, FICA, medical insurance or life insurance, paying any unemployment taxes required of CARRIER by law, and maintaining any workers compensation coverage required of CARRIER by law. CARRIER has total and absolute control over the means and manner of providing the transportation and related service required with respect to a shipment, as described in the Load Confirmation/Contract. CARRIER has the sole and absolute discretion to accept or reject any shipment tendered to it by AFI.

10. Non-Exclusive. This Agreement and the relationship between AFI and CARRIER is non-exclusive. AFI and CARRIER each currently work with other customers in similar business relationships and will continue to do so.

11. Third-Party Beneficiaries. AFI's customers, the consignors and consignees named on the bills of lading, the beneficial owner of the shipment, are third-party beneficiaries of this agreement.

12. Force Majeure. Neither party is liable for the failure to tender or timely transport shipments if the delay or other omission is caused by strikes, acts of God, war, civil disorder, or through compliance with legally constituted order of civil or military authorities.

13. Attorney Fees. In any arbitration, mediation, lawsuit, or other legal proceeding, including appeals, involving this agreement, the prevailing party shall recover from the losing party its attorney fees incurred in connection with the proceeding, action or suit, in addition to any other sums allowed by law.

14. Non-assignment. Neither party shall sell, convey, assign, transfer, dispose or encumber any of its rights, interests, benefits, obligations or liabilities under this agreement without obtaining prior written consent of the other party.

15. Integration. Except for the Load Confirmation Contract, and any amendments thereto, this Agreement embodies the entire understanding between the parties, and it is agreed that there are no other arrangements, agreements or understandings, oral or written, which affect this Agreement in any way. This agreement may not be changed, waived or modified only by written agreement signed by both parties stating that it is an amendment to this agreement.

16. Severability. If any term, provision, covenant or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

17. Governing Law; Jurisdiction; Venue. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon, except to the extent preempted by federal transportation law, including, but not limited to, 49 USC Subtitle IV, Part B. Any action filed in relation to this agreement shall be filed in the Circuit Court of the State of Oregon for Jackson County or the United States District Court for the District of Oregon, Medford Division, which courts have exclusive jurisdiction. CARRIER agrees to, and hereby does, submit to the exclusive jurisdiction of these courts and further consents that the proper and exclusive venue for any action shall be in Medford, Jackson County, Oregon.

18. Nonwaiver. Waiver of any default or breach of this agreement or of any warranty, representation, covenant or obligation contained herein shall not be construed as a waiver of any subsequent breach.

19. Authority of Representatives to Bind Parties. The parties warrant that the persons accepting this agreement respectively for CARRIER and AFI are their authorized representatives to accept such Agreement. No further proof of authorization is or shall be required.

20. Originals and Counterparts. This Agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original hereof. Electronically accepted copies of this agreement shall have the same force and effect as a signed original

21. Notices. All notices under this agreement shall be given orally and confirmed immediately in writing sent by facsimile 541-826-5176 (with machine confirmation), or by overnight delivery service, to American Freight Inc. Corporate office 2399 Merry LN, White City, OR 97503.

22. Works Compensation, Hold Harmless and Indemnification.

- A. As a condition of brokering shipments to CARRIER, AFI requires that CARRIER provide AFI with either (a) written proof that CARRIER maintains worker's compensation insurance coverage for all subject workers as required by applicable state law, or (b) written proof that CARRIER maintains alternative insurance coverage comparable to worker's compensation insurance coverage that is acceptable to AFI and its customers, or (c) this certifies that CARRIER has elected to not maintain worker's compensation insurance coverage and further agreeing as set forth herein.
- B. CARRIER hereby represents, warrants and covenants that it is not required by any applicable state law to maintain worker's compensation insurance covering any workers supplied by CARRIER, directly or indirectly, including but not limited to independent contractors who lease equipment with a driver to or subcontract with CARRIER to provide service arranged by AFI; and, further, that CARRIER has done everything necessary to opt out, elect not to be covered by, or otherwise exempt itself from any applicable state law requiring that it maintain worker's compensation insurance on any such workers supplied by CARRIER.

- C.** In the event CARRIER (a) becomes subject to any applicable state law requiring it to maintain workers compensation insurance on any worker supplied by CARRIER, directly or indirectly, including but not limited to independent contractors who lease equipment with driver or subcontractor with CARRIER to provide services arranged by AFI, or (b) changes Its election described in paragraph 2 and elects to maintain worker's compensation insurance, CARRIER will immediately provide AFI with proof of its workers compensation insurance coverage in compliance with paragraph a. above and the terms and conditions of the Broker-Carrier Agreement executed between CARRIER and AFI.
- D.** CARRIER hereby further represents, warrants and covenants that no workers supplied by the CARRIER directly or indirectly, including but not limited to independent contractors who lease equipment with a driver to or subcontract with CARRIER to provide service arranged by AFI, is or will be at any time will claim to be a subject worker of AFI or any of its customers required to be covered by Worker's compensation insurance, coverage provided by AFI or any of its customers under any applicable law.
- E.** CARRIER agrees to and shall hold harmless and indemnify AFI from and against any and all claims, liabilities, damages, losses, demands, fines, penalties, cost, attorney fees, administrative expenses, and other cost, fee or expense arising in any way out of CARRIERS breach of any CARRIERS representations, warranties, covenants, and obligations hereunder. AFI's customers are intended third parties beneficiaries of this agreement and are expressly entitled to enforce CARRIERS obligation hereunder.