



Broker – Carrier Terms & Conditions

This document sets forth the terms and conditions pursuant to which BirdDog Logistics, LLC, 2301 N 117th Avenue, Suite 201, Omaha, Nebraska 68164 (the "BROKER") shall tender freight from time to time on behalf of its clients ("SHIPPER" or "SHIPPERS") to motor carriers that have accepted these terms and conditions ("CARRIER") as evidenced by the motor carrier's acceptance of a Carrier Confirmation, as hereinafter described. Hereinafter, these terms and conditions shall be referred to as the "Agreement" and the BROKER and CARRIER shall sometimes be referred to collectively as the "PARTIES" and individually as "PARTY".

1. GENERAL PROVISIONS:

- A. This Agreement is effective as of the date set forth on the Carrier Confirmation.
- B. If there is a conflict between the terms of this Agreement and the terms and conditions of any bill of lading, manifest or other shipping documentation relating to the transportation of freight tendered to the CARRIER hereunder ("Shipping Document"), then the terms and conditions of this Agreement shall control and take precedence over the terms and conditions of any such Shipping Document.
- C. BROKER reserves the right to unilaterally amend, modify or supplement (collectively "Amendment") this Agreement. Any such Amendment shall govern the transportation of freight tendered to and accepted by the CARRIER from and after the effective date of such Amendment. The current version of the Agreement and its effective date may be found at www.birddoglogistics.com/documents.
- D. Neither Party intends to give the other Party any exclusive rights or privileges pursuant to this Agreement and, except as otherwise stated herein, either Party may contract with or otherwise provide services to any other motor carrier, broker or SHIPPER.

2. CARRIER'S REPRESENTATIONS, WARRANTIES AND AGREEMENTS:

- A. The CARRIER is duly registered with the Federal Motor Carrier Safety Administration ("FMCSA") as a for-hire motor carrier of property under contracts with SHIPPERS and receivers and/or brokers of general commodities in interstate and foreign commerce pursuant to 49 U.S.C. § 13902;
- B. The CARRIER shall transport freight tendered to it hereunder pursuant to its own operating authority and subject to the terms of this Agreement and the CARRIER shall at all times comply with all applicable federal, state and local laws, statutes, ordinances and regulations applicable to the operations of a motor carrier;
- C. The CARRIER acknowledges and agrees that the insertion of the BROKER'S name on a Shipping Document as the motor carrier whether by the CARRIER or SHIPPER shall be for convenience only and shall not be deemed to render the BROKER to be a carrier nor change the BROKER'S status as a property broker nor CARRIER'S status as the motor carrier;
- D. The CARRIER shall not subcontract, re-broker, assign or interline any shipments tendered to it hereunder ("Subcontracting") without the prior written consent of BROKER. As between the CARRIER and BROKER, all costs for rendering the transportation services, including compensation of any Subcontractors, shall be borne solely and exclusively by the CARRIER. Any such Subcontracting, with or without the BROKER'S consent, shall not affect CARRIER'S responsibilities or liabilities to BROKER pursuant to this Agreement. In addition to the indemnity obligation, below, the CARRIER will be liable to BROKER and SHIPPER for any consequential damages resulting from CARRIER'S violation of this paragraph;

- E. CARRIER is in and, during the term of this Agreement, shall maintain compliance with all applicable federal, state and local laws relating to the provision of motor carrier services, including, but not limited to the transportation of Hazardous Materials, (including the licensing and training of drivers), as defined in 49 C.F.R. § 172.800, § 173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securing of freight; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers.
- F. The CARRIER shall at all times during the term of this Agreement maintain a satisfactory safety rating and shall immediately notify BROKER if its (i) safety rating is changed to "Unsatisfactory" or "Conditional" or (ii) operating authority is revoked, suspended or rendered inactive for any reason; and/or if it's authority is sold, or if there is a change in control or ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- G. The CARRIER shall defend, indemnify and hold BROKER and its SHIPPERS and their respective, officers, directors, members, managers, shareholders and employees harmless from an against any claims, liabilities, losses, fines, penalties, payments, costs, expenses actions or damages (collectively "Claims"), arising directly or indirectly out of the performance or non-performance under this Agreement or otherwise of the CARRIER and its employees, agents and subcontractors, including any Claim for (i) loss, damage, injury to cargo including shortage or failure to comply with delivery instructions as set forth in the any Load Confirmation, (ii) personal injury or (iii) death. The obligation to defend shall include all costs of defense as they accrue and all financial losses or damage thus incurred, including reasonable attorney's fees and any other related costs entailed in investigations, court or arbitration proceedings, and/or judicial appeals from any adverse ruling or finding. Should the BROKER be required to initiate litigation to enforce or interpret any of the provisions of this Agreement, particularly the indemnification provisions, BROKER shall also be entitled to recover resulting costs and reasonable legal expenses. Neither Party shall be liable to the other for any Claims due to the negligence of the other Party;
- H. The CARRIER agrees and authorizes BROKER to invoice CARRIER'S freight charges to SHIPPER, consignee, or third parties responsible for payment and
- I. The CARRIER agrees that in no event shall it acquire, assert or seek to impose a lien upon any freight transported pursuant to this Agreement nor shall it assign to any person or entity any right, title or interest to any lien that is or may be imposed upon such freight for the benefit of the CARRIER. If law upon freight transported hereunder imposes a lien, then the CARRIER expressly waives any right, title or interest to said lien.

3. BROKER'S RESPONSIBILITIES:

- A. Subject to the non-exclusivity provision of paragraph 1. D., the BROKER shall from time to time solicit and obtain freight transportation business for CARRIER to the mutual benefit of CARRIER and BROKER. With respect to each shipment tendered to CARRIER hereunder, BROKER shall inform CARRIER of (a) place of origin and destination of all shipments; and (b) if applicable, any special shipping instructions or special equipment requirements, of which BROKER has been timely notified;
- B. The tender of freight to the CARRIER shall be in the form of a LOAD CONFIRMATION, in the form attached hereto as Exhibit A and that the CARRIER shall be deemed to have accepted (i) the tender of freight, (ii) the terms of the LOAD CONFIRMATION and (iii) the terms and conditions of this AGREEMENT by signing the LOAD CONFIRMATION and returning it to the BROKER without modification via facsimile or email in PDF format. All transactions and signatures done via facsimile, email or other electronic means shall be deemed legal and binding;
- C. BROKER shall conduct all billing services to SHIPPERS. CARRIER shall invoice BROKER for its (CARRIER'S) charges, as set forth in the LOAD CONFIRMATION. Additional rates for truckload or LTL shipments, or modifications or amendments of the rates set forth in the LOAD CONFIRMATION, or

additional rates, may be established to meet changing market conditions, SHIPPER requirements, BROKER requirements, and/or specific shipping schedules; provided, however, that any such addition or modification must be mutually agreed upon, and shall be confirmed in a writing signed by both Parties. Under no circumstances, shall CARRIER contact, invoice or bill the SHIPPER, consignee, or any customer of BROKER to seek payment for transportation services rendered, it being understood and agreed by the Parties that BROKER alone is liable for the payment of such charges and

- D. BROKER shall pay CARRIER, in accordance with BROKER policy, within thirty (30) days of completion of transportation services, after CARRIER presents BROKER with original proof of delivery and provided that CARRIER is not in breach or default of this Agreement. If CARRIER enters into a factoring agreement whereby payments due CARRIER are to be paid to a third party; then such an arrangement shall not be deemed to modify this Agreement including but not limited to the timing of payments due to CARRIER. CARRIER agrees that under no circumstance is CARRIER to invoice SHIPPERS directly. BROKER agrees to make every effort to pay CARRIER for shipments within thirty (30) days of receipt by BROKER of CARRIER'S original invoice and original proof of delivery. CARRIER agrees that if their current practice is to report BROKERS pay history to any agency or bureau, they will report BROKER based on this Agreement, i.e. "days from receipt of invoice" and not "days from delivery". The Parties further agree that if an invoice is received by BROKER ninety (90) days or more after the date of delivery, then it is within BROKER'S sole discretion whether or not it pays such invoice.

4. CARRIER RESPONSIBILITIES:

- A. Subject to its representations and warranties in Paragraph 2 above, CARRIER, at its sole cost and expense, shall provide all equipment and properly trained, licensed, qualified and experience personnel, required to provide the services hereunder and the CARRIER shall maintain such equipment in clean condition, good repair and working order. CARRIER shall not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. §261.1 et. seq. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing;
- B. CARRIER shall, for each shipment transported hereunder, issue a uniform bill of lading as prescribed in the Code of Federal Regulations (49 CFR 1035). The bill of lading shall specify the SHIPPER and consignee of the shipment; BROKER shall be indicated on the document as the bill party as "BIRDDOG LOGISTICS, LLC". CARRIER agrees to furnish BROKER an original bill of lading and an original proof of delivery for each shipment transported hereunder. BROKER may, but is not obligated to, prepare the bill of lading or other shipping document. It is also agreed that CARRIER shall have its driver fax a POD to BROKER immediately upon delivery of freight. Unless otherwise agreed in writing, CARRIER is solely responsible and liable for the freight when it takes/receives possession thereof, and the trailer(s) is loaded, regardless of whether a bill of lading has been issued, signed, and/or delivered to CARRIER. The CARRIER'S responsibility and liability shall continue until delivery of the freight to the consignee and the consignee signs the bill of lading or delivery receipt. The CARRIER'S failure to issue or sign a bill of lading acknowledging receipt of the cargo by CARRIER shall not affect the liability of CARRIER.
- C. CARRIER agrees that the following provisions shall apply to all freight loss and damage claims: (i) CARRIER shall comply with all regulations of the FMCSA governing the processing of freight claims, including 49 C.F.R. §370.1 et seq., (ii) The CARRIER'S liability for any cargo damage, loss, theft or delay in delivery from any cause shall be determined under the Carmack Amendment, 49 U.S.C. § 14706, (iii) Special Damages: CARRIER'S indemnification liability for freight loss and damage claims shall include reasonable legal fees which shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability of CARRIER under sub paragraph (ii) above, (iv) Notwithstanding the terms of 49 CFR. 370.9, CARRIER shall pay, decline or make settlement offer in writing on all cargo claims within 30 days of CARRIER'S receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this 30-day period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement and (v) BROKER shall have a right to hold all payments due CARRIER for any losses, unpaid claims or other amounts or deductions by SHIPPERS or consignees for any transportation of freight by CARRIER pursuant to this Agreement until all claims are settled. Notwithstanding the foregoing, the CARRIER shall not be permitted to salvage any damaged freight without the BROKER'S written authorization;

- D. CARRIER agrees that during the term of this Agreement, it shall maintain: Commercial General Liability Insurance, including Public Liability exposure coverage, with an annual limit of no less than \$1,000,000 per occurrence or claim; Automotive or Fleet Liability Insurance with an annual limit of no less than \$2,000,000 per occurrence or claim; Property Damage Liability Insurance with an annual limit of no less than \$1,000,000 per occurrence or claim; and Cargo Insurance in an amount no less than \$100,000 per occurrence or claim with a maximum \$2,000 deductible in order to compensate SHIPPER, consignee or the beneficial owner of the shipment for any loss or damage thereto. CARRIER shall provide BROKER with a certificate of insurance naming BROKER as an "additional insured" with a stipulation that BROKER shall receive no less than thirty (30) days notice of cancellation of the coverage; and in the interim will fax a copy directly to BROKER for verification. The CARRIER also shall maintain workers compensation insurance in such amounts required by law.

Except for the higher coverage limits that may be specified above, the insurance policies shall comply with minimum requirements of the FMCSA and any other applicable regulatory state agency. Nothing in this Agreement shall be construed to avoid CARRIERS liability due to any exclusion or deductible in any insurance policy. CARRIER shall be responsible to ensure that all insurance provider requirements are met in every respect, including but not limited to driver screening, vehicle registration and document retention. CARRIER shall also ensure that its insurance policy does not exclude the type of cargo being transported. Nothing contained herein shall be interpreted as limited the CARRIER'S indemnity obligation to the amount of the insurance required hereunder.

CARRIER shall be responsible for ensuring that its insurers designate not only designate the BROKER as an "additional insured" on each cargo and CGL policy referenced above; but also designate all consignors, consignees or other foreseeable third party beneficiaries of any transaction services provided pursuant to this Agreement as "additional insureds" on each such policy upon BROKER'S request in each particular instance, in order to comply with any SHIPPER'S requirements;

- E. CARRIER hereby assigns to BROKER all of CARRIER'S rights to collect freight charges from SHIPPER or any responsible third party on receipt of payment from BROKER and
- F. The rate, delivery terms and instructions set forth in the Carrier Confirmation are incorporated herein and made a part of this Agreement and failure of CARRIER to comply with such terms and instructions shall constitute a breach of this Agreement. If the CARRIER holds freight pending payment for transportation services rendered on behalf of a SHIPPER, then this will constitute a material breach of this Agreement and CARRIER will be subject to liquidated damages payable to BROKER in the amount of \$25,000. Payment of liquidated damages for this specific breach shall not preclude BROKER from seeking recovery for other breaches of the Agreement or for the collection of reasonable attorneys fees associated with this or other breaches. The payment of liquidated damages to BROKER for this specific breach of this Agreement will not prevent the SHIPPER, consignee or BROKER customer from filing claims or initiating legal proceedings against CARRIER.

4. MISCELLANEOUS:

- A. It is understood and agreed that the relationship between BROKER and CARRIER is that of independent contractor and that no employer/employee, joint venture or partnership relationship exists, or is intended. BROKER has no control over CARRIER, including but not limited to routing of freight, and nothing contained herein shall be construed to be inconsistent with this provision.
- B. Any rates that may be verbally agreed upon by the Parties shall be deemed enforceable and confirmed in writing if and only if the CARRIER has billed the agreed verbal rate and BROKER has paid that rate. CARRIER charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, released rates or values, or any provisions of a CARRIER'S tariff rules or circulars, shall only be valid when specifically agreed to in a signed writing by the Parties and if there is any conflict between the terms of this Agreement and/or the Carrier Confirmation and terms of the CARRIER'S tariffs or circulars, then the terms of this Agreement and/or Carrier Confirmations, as the case may be, shall govern. It is understood between the Parties that BROKER may invoice the SHIPPER or billed party a service charges in addition to the transportation charges. Invoicing a service charge does not affect or alter any obligations hereunder and CARRIER is not entitled to any portion of such service charges. Payment by BROKER of CARRIER'S freight charges shall be deemed a payment by SHIPPER, consignee or other billed party. If for any reason, after initial payment of CARRIER'S freight bill, a subsequent bill is generated by CARRIER to any party for

additional charges, any difference between the initial and subsequent bill is to be considered by the parties as commission owed to BROKER for its services to CARRIER and shall become immediately due and payable to BROKER.

- C. Neither the failure of a Party to exercise any right, power or privilege hereunder, nor its delay in any such exercise shall be deemed a waiver of that right, power or privilege. No waiver shall be binding unless in writing and signed by the Party against whom the waiver is asserted. No such waiver on one occasion shall preclude subsequent enforcement of a Party's rights, powers and privileges hereunder or at law or equity;
- D. This Agreement is for specified services pursuant to 49 U.S.C. § 14101(b). To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the Parties expressly waive any or all rights and remedies they may have under the Act;
- E. CARRIER and BROKER agree that the BROKER, at great expense and effort, has developed a customer base that is essential to the successful operation of BROKER'S business. CARRIER acknowledges and agrees that the disclosure of the identity of BROKER'S SHIPPER, consignor, consignee, or other customer of BROKER (collectively "Customer") to CARRIER constitutes valuable consideration. During the term of this Agreement and for a period of one year following termination for any reason, the CARRIER shall not, directly or indirectly, solicit or do business of a transportation nature with any of BROKER'S Customers who are serviced by CARRIER as a result of this Agreement. Prohibited activity includes the participation in any conduct the purpose of which involves the transportation of the Customer's freight by CARRIER for which CARRIER does, or did in the past, provide transportation services for that SHIPPER traffic under arrangements first made or procured by BROKER. If the CARRIER breaches the terms of this paragraph, then the CARRIER shall pay the BROKER within ten (10) days of such breach an amount equal to fifteen (15%) percent of all revenues invoiced BROKER'S Customer by CARRIER.

The BROKER shall identify its Customer to CARRIER in the Carrier Confirmation as each first load from such Customer is tendered to the CARRIER. The CARRIER'S acceptance of the tender as evidenced by its signature on the Carrier Confirmation shall be deemed and acknowledgment that the Customer is BROKER'S Customer. The CARRIER has ten (20) days after such first load is tendered to it to sign challenge, in writing, why the Customer should not be deemed a BROKER Customer in which case the Parties shall agree in writing as to how to resolve the challenge.

CARRIER shall not communicate directly or indirectly with any representative of any SHIPPER, consignor, consignee or third party beneficiary involved in the transportation by CARRIER of freight tendered to the CARRIER by BROKER hereunder; provided, however, the CARRIER may communicate with such party about (i) the need for CARRIER to obtain signatures, (ii) operational issues concerning a particular shipment with employees at such party's' loading docks or other locations or (iii) the need for the CARRIER'S to administer freight claims.

CARRIER shall not communicate with any of BROKER'S employees or subcontractors for the purpose of hiring or inducing such person or subcontractor to cease working for BROKER or to limit or reduce such person's or subcontractor' services on behalf of the BROKER;

- F. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their Customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, Customer shipping or other logistics requirements shared or learned between the Parties and their Customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.

In the event of violation of this Confidentiality paragraph, the Parties and agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees;

- G. This Agreement represents the entire Agreement of the Parties with regard to the subject matter hereof. Not prior understandings or agreements, whether written or oral, nor any course of conduct of

the Parties before or after the effective date of this Agreement, shall have the effect of modifying the Parties' rights and obligations under this Agreement. Except as expressly provided for herein, no amendment or modification to this Agreement shall be valid unless it is set forth in writing and is signed by Parties;

- H. Any notice required or permitted hereunder shall be deemed sufficient if sent by prepaid first class mail, by a nationally recognized overnight delivery service or by facsimile transmission, if such Notice is sent to the address or fax number of the Party. Notices shall be considered to have been received by the addressee Party on the third business day after mailing or the first business day after deposit with the overnight courier or on the day of the facsimile if the sending machine produces written confirmation of a successful transmission. All Notices shall be addressed to the Party at the address noted herein unless notice has been given of a change of the Party's address pursuant to the procedures set forth herein;
- I. Either Party may terminate this Agreement upon 30 days written notice to the other Party; provided, however, that either Party may terminate this Agreement immediately in the event of a breach of the Agreement by the other Party. If any shipment remains in transit on the effective date of termination of this Agreement, both Parties' rights and duties under this Agreement shall remain in effect with respect to such shipment until it is delivered and all related invoices and claims are satisfied;
- J. Venue for any suit or controversy relevant to any interpretation of this Agreement shall be in the State of Massachusetts. Unless preempted or controlled by federal transportation law and regulations, the internal laws of the Commonwealth of Massachusetts shall govern the interpretation and enforcement of this Agreement;
- K. This Agreement shall be binding upon the CARRIER and its successors, assigns and non-corporate principals (whether disclosed or undisclosed); provided, however, that no such assignment of the CARRIER'S rights and obligations hereunder shall be effective without the BROKER'S prior written consent;
- L. If any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the parties hereunder shall survive termination of this Agreement for any reason.