

# BROKERAGE TERMS AND CONDITIONS OF CONTRACT

## 1. DEFINITIONS

"Broker" means Watchpoint Logistics, Inc.

"Customer" includes the consignor, shipper, consignee, owner of the Goods, and any person lawfully acting on behalf of any of the above persons.

"Goods" means articles of every kind and description, including their packaging, containers, or other shipping units or materials, as to which Customer desires for Broker to arrange motor transportation from a place of receipt to a place of delivery (the "Carriage").

"Charges" includes freight, all expenses, costs, detention, demurrage, and any other money obligations arising out of or in any way related to the Carriage of the Goods, and all collection costs for freight and other amounts due from the Customer, including attorneys' fees and court costs.

"Services" means Carriage and any other service Broker may perform or arrange for Customer.

## 2. AGREEMENT TO BROKERAGE TERMS AND CONDITIONS OF CONTRACT

By Customer's request to Broker to arrange or perform Services, Customer agrees to these Brokerage Terms and Conditions of Contract, which no agent or employee of the parties may alter. Customer will prepare a bill of lading for the Carriage, or Broker, its authorized agents, or contracted motor carriers or freight forwarders will do so on Customer's behalf. Customer agrees that the Carriage is subject to these Brokerage Terms and Conditions of Contract, which are also available online at <https://www.watchpointlogistics.com/terms-conditions>. The defenses and limits of liability stated in these Brokerage Terms and Conditions of Contract shall apply in any action against Broker under any legal theory, whether in contract, tort, bailment, indemnity, contribution, or otherwise.

## 3. BROKER'S UNDERTAKING

Customer understands and agrees that Broker is a Title 49 property broker with such operating authority from the Federal Motor Carrier Safety Administration—docket number MC270056. Customer understands and agrees that as to the Carriage, Broker is neither a motor carrier nor a freight forwarder (collectively, "Carriers") and that Broker does not hold itself out in those capacities. Customer understands and agrees that Broker will contract Carriers to perform the Carriage or, alternatively, another property broker to arrange it.

## 4. NOTICES OF CLAIM AND TIME-BARS AS TO BROKER AND AS TO CARRIERS

(a) NOTICE OF CLAIM TO BROKER FOR ITS ASSISTANCE. Customer must provide Broker with written notice of a claim for the Goods' loss, damage, or non-delivery within 90 days after delivery of the Goods or the date on which the Goods should have been delivered. Conditioned on Customer's timely notice of claim, Broker will forward the same onto the Carriers that performed or undertook to perform the Carriage of the Goods. As further condition to Broker's assistance to Customer with such a claim, Customer must first pay all freight charges in full. Customer's failure to provide written notice to Broker or to pay the freight charge in full within the above 90-day period shall extinguish Broker's duty to forward the claim to the potentially responsible Carriers.

(b) TIME-BAR AS TO BROKER. In any event, Broker shall be discharged from all liability to Customer as to any Services that Broker has arranged or provided unless Customer files an action in the mandatory venue within nine months after the delivery of the Goods or the date on which the Goods should have been delivered.

(c) NOTICE OF CLAIM TO CARRIERS. Carriers typically have contractual notice-of-claim periods within which a claimant must make a claim for the loss of or damage to cargo. Unless the Carriage is exempt carriage under 49 U.S.C. § 14101(b), then under the federal law known as the "Carmack Amendment," a contractual notice-of-claim cannot be less than nine months after delivery of the Goods or the date on which the Goods should have been delivered. Subject to section 4(a), Customer understands and agrees that it, and not Broker, shall be responsible to make such a timely notice of claim, understanding that the consequence of failing to make such a timely notice of claim is that Customer's claim against the Carriers of the Goods will be time-barred.

(d) TIME-BAR AS TO CARRIERS. Carriers also typically have contractual time-bar or limitations periods within which a claimant must sue the Carrier for the loss of or damage to cargo. Unless the Carriage is exempt carriage under 49 U.S.C. § 14101(b), then under the Carmack Amendment, a contractual limitations period cannot be less than two years from the day on which the Carrier has given written notice to the claimant that the Carrier has disallowed the claim or any part or parts of the claim specified in the timely notice of claim. Customer understands and agrees that it, and not Broker, shall be responsible to file such a timely action, understanding that the consequence of failing to timely file such an action is that Customer's action against the Carriers of the Goods will be time-barred.

## 5. SPECIAL SECURITY/PROTECTIVE SERVICES

Broker's failure to arrange any agreed-to special security services or requirements, including team drivers, shall not negate any of Broker's limitations of liability, which are stated below in section 7.

## 6. CARRIERS' POSSIBLE LIMITATIONS OF LIABILITY

Customer understands and agrees that Carriers may limit liability for loss of or damage to cargoes they transport, undertake to transport, or handle. Broker will request declared-value or excess valuation coverage only upon receiving specific written instructions from Customer, which must agree to pay any charge for such declared-value or excess valuation coverage before such coverage will be effective. Customer understands and agrees that there is a distinction between excess valuation coverage, which increases the legal liability amount of a Carrier beyond a released value or limited-liability amount, and Customer's purchase of cargo or "shipper's interest" insurance on the Goods.

## 7. BROKER'S LIMITATION OF LIABILITY; CHOICE AS TO LIMITATION AND OPPORTUNITY TO AVOID LIMITATION

(a) Broker 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 Broker's liability and has made its choice as to Broker's liability limit as follows: Customer has had the choice to ship the Goods and pay (A) Broker's regular/lower rates for goods with limited value and a corresponding limited liability for Broker or (B) ad valorem rates for Goods not so limited in value and a corresponding increased level of liability for Broker, the basis for which rates is Broker's regular/lower rates plus an increased liability charge.

(b) Unless Customer declares the nature and value of the Goods in writing prior to the Carriage and pays the corresponding increased liability charge, Customer knowingly and willingly elects to ship under Broker's regular/lower rates, the consequence of which is that in no event shall Broker or its servants or agents be or become liable for any loss of or damage to or in connection with the Carriage in an amount exceeding \$50 per pound or \$50, whichever is greater. For any claims arising out of or in any way connected to Services other than Carriage, Broker's liability shall be limited to Customer's actual loss or \$50, whichever is less.

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

Customer understands and agrees that without notice to Customer, Broker may arrange or the Carriers 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 Broker arranged in the first instance, or any other means of transport; or

(c) Proceed by any route in any 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-paragraphs or any resulting delay shall be within the scope of the Carriage and not a deviation.

## 9. FORCE MAJEURE

Without prejudice to any of Broker's rights or privileges under these Brokerage Terms and Conditions of Contract or under applicable law, neither Broker nor a Carrier shall 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 Broker or a 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 Broker's or a Carrier's operations or the Carriage in any way, in which case Broker, a Carrier, or both, shall have the right to cancel any outstanding booking or the Carriage. Either Broker or a Carrier, in 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 that Broker or a Carrier, in its sole discretion, deems to be safe and convenient, at which place Carrier's responsibility for such Goods shall cease. Broker and the Carrier in question 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 Broker's and a Carrier's reasonable attorneys' fees.

## 10. REFUSED DELIVERY

Refusal of the consignee or Customer to take delivery of the Goods notwithstanding 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.

## 11. FREIGHT AND CHARGES

(a) All freight shall be deemed fully, finally, and unconditionally earned upon a Carrier's pick-up 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 a bill of lading or in any documents Broker receives from or on behalf of Customer is inaccurate, incorrect, or misleading in any respect, then Customer shall pay for any actual damage that Broker suffers as a result.

(d) Payment of any Charges to anyone other than Broker or its authorized agent shall not be considered payment to Broker and shall be made at Customer's sole risk.

(e) The class of persons that make up the definition of "Customer" shall, where applicable, be jointly and severally liable to Broker for payment of all freight, demurrage, detention, and Charges, including any court costs, expenses, and reasonable attorneys' fees Broker has paid or incurred in collecting any sums due, failing which shall be considered a default by Customer in the payment of freight and Charges.

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

(a) In addition to any specific cargo lien arising under law, including under California Civil Code § 3051.5, Broker shall have a general and continuing lien on the Goods and on any property of Customer coming into Broker's actual or constructive possession or control as to any unpaid Charges, including for monies owed to Broker with regard to the shipment on which Broker is claiming the lien, a prior shipment, or both, including freightage, dead freight, demurrage, detention, and for any expenses that Broker incurs for storage, security, repacking, remarking, fumigation, or required disposal of Goods, for fines, dues, tolls, or commissions or any other expenses that Broker has paid or advanced on behalf of the Goods, for any sums, including reasonable attorneys' fees, Broker 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 any subsequent shipments that Broker may hold under this section. All Broker's liens shall survive discharge or delivery of the Goods.

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

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

## 13. DESCRIPTION OF GOODS AND NOTIFICATION

(a) Customer's description of the Goods in a sealed trailer, shipping container, or package by Customer or on its behalf shall not be binding on Broker, and the description declared by Customer on any document is information Customer provides solely for its own use. Customer understands that Broker 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. Customer understands and agrees that Broker has no responsibility as to such description of particulars and Customer shall indemnify and defend Broker from and against any loss, damage, liability, and expense, including reasonable attorneys' fees that Broker has paid or incurred, that arise out of or are in any way connected with or caused by, in whole or in part, such description of particulars.

(b) Customer understands and agrees that neither Broker nor its agents or servants undertake or shall have 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.

## 14. 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 Broker 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 to the shipment as to which neither Broker nor any Carrier has consented with knowledge of their nature and character, may at any time before delivery be landed at any place and destroyed or rendered innocuous by a Carrier without compensation to Customer, which shall be liable for all damages and expenses directly or indirectly arising out of such shipment. If any such Goods shipped with such knowledge and consent nevertheless become a danger to the transporting conveyance or to any other goods, then Carrier may, in like manner, land such Goods in any place, or destroy and render them innocuous without liability on the part of Broker or the Carrier.

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

## 15. PERISHABLE GOODS

(a) Broker shall arrange Carriage of 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 Broker of their nature and the required temperature-setting of the thermostatic controls before Broker'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 the 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's 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 Broker 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 Broker shall not be liable for any loss of or damage to the Goods.

(b) Customer understands and agrees that the phrase "apparent good order and condition" or its equivalent, when used in a bill of lading or other document with reference to Goods that require refrigeration, does not mean that Broker has verified that the Goods are at the designated carrying temperature.

## 16. 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 Broker, then Broker shall not be liable for the loss of or damage to the Goods, and Customer shall indemnify and defend Broker from and against any loss, damage, liability, and expense, including reasonable attorneys' fees that Broker 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 by:

(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

(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 Broker, 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.

## 17. 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 the 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 sell or dispose of the Goods, or abandon the Carriage or store Goods, or any combination of the above, under cover or in the open, at any place that the 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 Broker against any additional expenses it has so incurred.

## 18. DELAY, CONSEQUENTIAL LOSS, ETC.

(a) Broker does not undertake that the Goods will depart from the place of receipt or 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 Broker shall in no event be liable for direct, indirect, or consequential loss or damage caused by delay.

(b) Unless these Brokerage Terms and Conditions of Contract expressly state otherwise, Broker shall in no event be liable for direct or indirect consequential loss or damage arising from any other cause.

## 19. VARIATION OF THE CONTRACT

No person has the power to waive or vary any of these Brokerage Terms and Conditions of Contract unless an officer of the Broker, in writing, has expressly agreed to such a waiver or variation.

## 20. PARTIAL INVALIDITY

If any provision of these Brokerage Terms and Conditions of Contract shall for any reason be held to be invalid or unenforceable by any court or regulatory body, then the remainder of these Brokerage Terms and Conditions of Contract shall be unaffected, and remain in effect.

## 21. MANDATORY LAW, VENUE, AND JURISDICTION

(a) Subject to Broker's option under section 21(b), all claims or disputes arising out of or in any way related to these Brokerage Terms and Conditions of Contract or the Services shall be determined under the federal law of the United States of America, without regard to its conflict of laws rules 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 courts serving or the state courts in San Mateo 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, Broker shall have the option to file an action in any court with subject matter jurisdiction and with personal jurisdiction over Customer.

A late fee of 1.5% per month, with a minimum of \$500, will be assessed and due upon any invoice that remains unpaid five (5) or more days after its due date.