



MOTOR CARRIER TERMS AND CONDITIONS

These MOTOR CARRIER TERMS AND CONDITIONS (these “*Terms*”) and any agreed upon pricing documents apply to all transportation services (the “*Services*”) provided by the undersigned, or (if these Terms are not signed) by the individual(s) or entity(ies) that provide the Services (referred to herein as “*Carrier*”) to and for TOLL GLOBAL FORWARDING (USA) INC., or any of its subsidiaries or affiliated entities (hereafter “*Toll*”), and its Shippers (hereinafter defined). The parties expressly waive any or all rights and remedies under Part B, 49 USC §13101 *et. seq.* as provided for by 49 USC §14101(b) to the extent such rights and remedies conflict with these Terms. Performance of any work by Carrier for Toll shall constitute acceptance by Carrier of these Terms.

1. SERVICES. Toll is a licensed property broker by the Federal Motor Carrier Safety Administration (“*FMCSA*”), and, as a licensed broker, arranges for freight transportation. To satisfy some of its customer’s or shipper’s (herein, a “*Shipper*”) transportation needs, Toll desires to utilize the services of Carrier to transport some of Shipper’s freight (the “*Services*”).

2. PAYMENT FOR SERVICES. Rates for each shipment will be as set out in the quote provided by Carrier and acknowledged and accepted by Toll. Toll shall not be liable for costs, charges, surcharges, or other amounts not specified in said quote. Toll will pay Carrier the agreed amount within thirty (30) days after Toll’s receipt of Carrier’s freight bill, bill of lading, clear delivery receipt, and any other documents necessary to enable Toll to ascertain transportation services have been properly provided. Only Toll, and not Carrier, shall bill Shipper for transportation services provided by Carrier. Carrier shall in no event seek to collect payment from Shipper or any other party involved with a shipment other than Toll. In the event that, subsequent to services being provided, it is determined that there was no agreed upon rate in place, the amount paid by Toll shall be deemed to be the applicable contract rate unless objected to by Carrier within fifteen (15) days after receipt. Carrier shall not withhold any freight due to any dispute with Toll regarding freight charges. Carrier waives and releases all liens which it might otherwise have to any of Toll’s or Shipper’s freight in its possession.

3. CARRIER’S OBLIGATIONS.

(a) Carrier represents and warrants that it is authorized as a motor carrier by all relevant federal, state and/or provincial authorities to lawfully perform all services undertaken pursuant to these Terms, including but not limited to registration with the U.S. Department of Transportation pursuant to 49 U.S.C. 13902 and 13905.

(b) Carrier represents and warrants that it does not have an unsatisfactory safety rating issued from the U.S. Department of Transportation, and further agrees to comply with all federal, state, and local laws regarding the provision of the transportation services contemplated under these Terms. Carrier shall immediately notify Toll after receiving, or upon the occurrence that has a likelihood of Carrier receiving, an unsatisfactory safety rating issued from the U.S. Department of Transportation or any similar rating that could result in any order that may prohibit operations by Carrier by any authority with jurisdiction over Carrier’s operations.

(c) Carrier shall transport shipments without delay and will comply with all agreed upon pick-up and delivery schedules. Carrier shall immediately notify Toll of any likelihood of delay. Carrier shall obtain from the Shipper or its consignee a complete, signed delivery receipt for each

shipment, and it shall notify Toll immediately of any exception on any document.

(d) Carrier shall make commercially reasonable efforts to send Toll delivery receipts and bills of lading within twenty-four (24) hours of delivery, but in no event beyond ten (10) business days after delivery. Documents for each Shipment shall name Toll as third-party payor of all freight charges and Carrier as the carrier of record. If there is a wrongly worded document, the parties will treat it as if it showed Toll as “third party payor” and Carrier as “carrier”.

(e) If there is a conflict between these Terms and any transportation document related to a shipment, these Terms shall govern. In no event will any tariff, service guide, terms and conditions, or any other similar document maintained by Carrier apply to its services hereunder.

(f) At all times that Carrier provides services for Toll or any Shipper, Carrier shall procure and maintain, at its sole expense, the following insurance coverage:

(i) Commercial Automobile Liability Insurance, with a combined single limit of not less than US \$1,000,000 each occurrence, or such greater amount as is required by governing law, covering all vehicles used to provide services under these Terms, including coverage for all liabilities for personal injury (including death) and property damage arising out of Carrier’s transportation under these Terms;

(ii) All Risk Broad Form Motor Truck Cargo Legal Liability insurance in an amount not less than the greater of \$250,000 or the total declared value for any cargo tendered by Toll to Carrier, if any. Such insurance policy shall list Toll as loss payee and provide coverage to Toll or Shipper for any loss, damage or delay claim to any property coming into the possession of Carrier under these Terms. Unless approved in advance by Toll, the coverage provided under the cargo policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to a cargo loss, damage, or delay claim, including, but not limited to, exclusions for theft, employee fraud or dishonesty, unattended or unattached trailers, or commodity exclusions;

(iii) Comprehensive General Liability insurance with a minimum combined single limit of not less than US \$1,000,000 for each occurrence. Such insurance policy shall include coverage for bodily injury, property damage, premises/operations, products/completed operations, contractual, independent contractors, road damage, property damages, and personal injury. Such policy or policies shall include cross liability (severability of interest);

(iv) Workers’ Compensation in accordance with statutory requirements.

Prior to performing any of the transportation services hereunder, and promptly upon Toll’s written request therefor, Carrier shall provide Toll with copies of its MCS 90 forms and written certificates of insurance for the above policies from its insurance agent evidencing the insurance, that it is being properly maintained, the expiration date, and specifying that Toll will be given thirty (30) days prior notice of cancellation or material modifications.

4. NO DOUBLE BROKERING. Carrier shall transport all freight tendered by Toll only on equipment operated under Carrier’s operating authority, on equipment owned or leased by Carrier, and use employees or independent contractors under contract with Carrier. Carrier shall not in any way sub-contract, broker, or arrange for the freight to be transported by a third party without Toll’s prior written consent, which consent may be withheld or denied



in Toll's sole and absolute discretion. In the event Carrier breaches this Section 4, and without waiving any other rights or remedies available to Toll hereunder, Carrier agrees and acknowledges that it will remain primarily liable for any loss, damage or expense incurred during the transportation of any shipment by such third party. In addition, any breach of this provision will result in the forfeiture of any compensation otherwise payable to Carrier by Toll for each shipment handled by Carrier in violation of this Section 4.

5. MILEAGE. Where rates are based on mileage, mileages will be determined through the use of the most current version of PC Miller Practical Miles (Zip Code to Zip Code, with the 53-foot option turned on) at the time the load is tendered.

6. LIABILITY FOR LOSS, DAMAGE OR DELAY. For purposes of loss, damage, and/or delay of Shipper's freight while under Carrier's care, custody, or control, Carrier shall assume common carrier liability subject to the provisions of 49 U.S.C. §14706 (i.e. Carmack Amendment). The loss, damage or injury shall be measured as the actual loss or injury to the property. In addition, Carrier shall pay to Toll, or it shall allow Toll to deduct from the amount Toll owes Carrier, for Shipper's loss for the commodities so lost, delayed, damaged, or destroyed and the amount of any indemnity, as stated above. Within twenty-four (24) hours of any loss, delay, damage or destruction of Shipper's property, Carrier shall provide detailed written notice to Toll of same. For any freight claim, Carrier shall pay Toll or Shipper within thirty (30) days after Carrier's receipt of an appropriate invoice and supporting documentation. Except for damages or loss arising out of (i) Carrier's gross negligence or willful misconduct, (ii) Carrier's breach of any term or condition contained in these Terms, or (iii) Carrier's failure to comply with any applicable laws, rules, or regulations, Carrier's liability for loss or damage to Shipper's freight shall be limited to the market value of the goods at the time of such loss or damage occurs.

7. INDEMNITY. Carrier shall defend, indemnify, and hold Toll and Shipper harmless from and against all loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to, (i) Carrier's performance of the contemplated transportation services under these Terms, (ii) breach of any terms of these Terms by Carrier or any of its employees, agents, or independent contractors, (iii) violation of applicable law by Carrier or any of its employees, agents, or independent contractors, (iv) the negligence of Carrier or any of its employees, agents, or independent contractors, or (v) the willful misconduct of Carrier or any of its employees, agents, or independent contractors. Toll shall defend, indemnify, and hold Carrier harmless from and against all loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, to the extent arising out of Toll's negligence, willful misconduct, or violation of applicable law.

8. NONSOLICITATION. Carrier shall not knowingly solicit freight shipments or accept shipments for a period of twenty-four (24) months from any shipper, consignor, consignee, or other customer where: (i) the availability of such traffic first became known to Carrier as a result of Toll's efforts; or (ii) the traffic of the Shipper, consignor, or consignee was first tendered to Carrier by Toll. If Carrier breaches this provision, Carrier shall be obligated to pay Toll for a period of fifteen (15) months from the date of such breach, commissions in the amount of fifty percent (50%) of the transportation revenue resulting from traffic transported in violation of this provision, and Carrier shall provide Toll or its agents with all documentation requested by Toll to verify such transportation revenue.

9. CONFIDENTIALITY AND NONDISCLOSURE. Except as permitted herein, Toll and Carrier shall not disclose these Terms or any other confidential information, including, without limitation, the identity of any

Shipper, rates for the Services, or any proprietary information to any third party without the written consent of the other. The foregoing prohibition shall not apply to disclosure that is made in the event: (1) disclosure is required by applicable law or regulation; (2) disclosure is made to Shipper, or either party's officers, directors, employees (on a need-to-know basis), accountants, insurers, attorneys, or parent, subsidiary, or affiliate companies; or (3) disclosure is made to facilitate compliance with these Terms. In addition to any other right or remedy available under applicable law, both parties agree that, in the event of any violation or threatened violation of this provision by either party, and provided that the non-breaching party is acting in good faith, the non-breaching party shall be authorized and entitled to (1) injunctive relief by temporary restraining order, temporary injunction, or permanent injunction, all without the posting of any bond, and (2) any other legal and equitable relief to which it may be entitled. In any such action, the prevailing party shall be entitled to recovery of all reasonable attorney's fees and costs incurred. Both parties will refrain from using the Shipper's or the other party's names or identities in any advertising or promotional materials or communications.

10. NONEXCLUSIVE TERMS AND CONDITIONS. It is understood and agreed between the parties hereto that Toll shall be free to tender freight for transportation to carriers other than Carrier and that Carrier shall be free to accept freight for transportation from brokers other than Toll.

11. INDEPENDENT CONTRACTOR. Carrier is an independent contractor, and, as such, is wholly responsible in every way for such persons as Carrier hires or employs in the performance of any of the services covered under these Terms. Carrier shall be wholly responsible for performing the contemplated transportation services and for all costs and expenses of such transportation services, including but not limited to, costs and expenses of all Carrier's transportation equipment, its maintenance, and those persons who operate it. As to Toll, Carrier shall have the sole and exclusive responsibility for the manner in which its employees and/or independent contractors perform the transportation service, including the equipment provided.

12. GOVERNING LAW; DISPUTE RESOLUTION. These Terms, and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the law of the jurisdiction in which the Services are provided without giving effect to the conflict of law provisions thereof. If the law of the jurisdiction in which the Services are provided cannot be reasonably determined or agreed upon, then the laws of the State of New York shall apply. As a pre-condition of bringing any action, each party shall appoint a senior official to attempt in good faith to settle the dispute.

13. SEVERABILITY AND WAIVER. If any phrase, clause, sentence, or other provision contained in these Terms violates any applicable statute, ordinance, rule or law, such phrase, clause, sentence, or provision shall be ineffective to the extent of such violations without invalidating any other provision of these Terms. The waiver by either party of any breach or default hereunder, or the failure of either party to enforce any of these Terms, shall not affect, limit, or waive the right of either party thereafter to enforce and compel strict compliance with these Terms.

14. ENTIRE AGREEMENT. These Terms represent the entire understanding of the parties with respect to the subject matter herein and cannot be amended except in writing signed by both parties. No other tariff provisions shall apply to the Services provided by Carrier to Toll under these Terms. Toll objects to any terms proposed in Carrier's acknowledgment or other form of acceptance of Toll's offer to perform services which add to, vary from, or conflict with these Terms. Any such terms proposed by Carrier



shall be void and these Terms shall constitute the complete and exclusive statement of the terms and conditions between Carrier and Toll. These Terms may be modified only by a written instrument executed by authorized representatives of both parties.

15. WAIVER OF CONSEQUENTIAL DAMAGES. EXCEPT FOR CARRIER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, AND EXCEPT FOR CARRIER'S BREACH OF SECTION 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS

HEREUNDER, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST OPPORTUNITY, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND EVEN IF SUCH PARTY WAS NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

16. FORM OF SIGNATURE. These Terms may be executed and transmitted electronically, and signatures obtained and/or transmitted electronically shall be effective as originals for all purposes.

EXECUTED, ACKNOWLEDGED, AND AGREED as of the earlier of (i) last date of signature below, or (ii) the date on which Carrier first began providing Services for Toll.

CARRIER:

Entity Name: _____

By (Signature): _____

Printed Name: _____

Title: _____

Date of Signature: _____

Notice Address:

