



Freight Broker Terms and Conditions

The terms and conditions describe the process which Gorilla Logistics, LLC will arrange for transportation services. It is understood that these terms and conditions will apply to all services provided by Gorilla Logistics, LLC to Shipper.

Gorilla Logistics, LLC (Broker) is licensed as a property Broker by the Federal Motor Carrier Safety Administration ("FMCSA") in Docket Number MC-1022440, or by appropriate State agencies. Gorilla Logistics, LLC is defined as a Broker according to 49 USC § 13102(2). As a licensed Broker, Broker arranges for exempt and/or nonexempt freight transportation by Motor Carrier. Motor Carrier, or Carrier, is defined by 49 USC § 13102(14). A copy of Broker's authority is available upon request.

Shipper, to satisfy some of its transportation needs, desires to utilize the services of Broker to arrange for transportation of Shipper's lading.

Broker and Shipper, intending to be legally bound, agree to the following terms and conditions (Terms) that will apply for all shipments Broker arranges for Shipper. Only Broker employees or officers with the title of Director or higher have authority to modify, alter, or suspend these terms. By using Broker's services, Shipper agrees to these Terms.

1. **Service**. Broker agrees to arrange for transportation by Motor Carrier of Shipper's lading pursuant to these Terms in all material respects with all federal, state and local laws and regulations relating to brokerage of the freight transportation arranged under these Terms. Broker's responsibility under these Terms shall be limited to arranging for, but not actually performing, transportation of Shipper's lading.
2. **No Exclusivity**. Shipper is not restricted from tendering cargo to other brokers, or directly to other transportation providers. Broker is not restricted from arranging transportation for other persons or entities.

3. **FREIGHT CARRIAGE**. BROKER warrants that it has entered into, or will enter into, bilateral contracts with each Motor Carrier it utilizes in the performance of these Terms. BROKER further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

1. **Motor Carrier's Indemnification**. The contract will contain the agreement of the Motor Carrier to defend, indemnify and hold Shipper harmless from all damages, claims or losses (other than cargo loss or damage which the Broker will address with the Motor Carrier consistent with Section 8A) caused by and resulting from (i) any negligence or intentional misconduct by the Motor Carrier or its employees or agents or (ii) the Motor Carriers or its employees' or agents' violation of applicable law or regulation.
2. **Motor Carrier Insurance**. The contract shall contain the agreement of the Motor Carrier to monitor at all times during the term of the contract insurance coverage with limits not less than the following and to provide certificates of insurance to Broker verifying the following coverage:

Comprehensive General Liability (including contractual liability)	\$1,000,000 (minimum)
Comprehensive Automobile/Truckers Liability (including UIIA and trailer interchange endorsements)	\$1,000,000 (minimum)
Cargo Insurance	\$100,000 (minimum)

3. **Brokers' Liability to the Motor Carrier for Freight Charges**. The contract shall authorize Broker to invoice Shipper for services provided by the Motor Carrier and declare that (i) Broker is the sole party responsible for payment of the Motor Carrier's invoices, and (ii) the Motor Carrier will not seek payment from Shipper or its consignee or consignor.
4. **Motor Carriers' Safety Rating**. The contract will prohibit the Motor Carrier, during the term of its contract with Broker, from having an "unsatisfactory" or a "conditional" safety rating as determined by the FMCSA. If the Motor Carrier receives an "unsatisfactory" or a "conditional" safety rating, it is required to immediately notify Broker.

Broker shall not knowingly utilize any Motor Carrier with an “unsatisfactory” or a “conditional” safety rating in the performance of these Terms.

5. **Subordination of Motor Carrier’s Tariff**. The contract will state that the contract terms and conditions shall apply on all shipments the Motor Carrier handles for Broker. Any terms in any rules, classifications, conditions of service or tariffs that are referenced in the contract between Broker and the Motor Carrier that are inconsistent with such contract shall be subordinate to the terms of the contract.
6. **Carmack Amendment**. The contract shall provide that the transportation provided by the Motor Carrier shall be contract carriage as defined in 49 U.S.C. § 13102(4)(B), and accordingly pursuant to 49 U.S.C. § 14101(b).
7. **Equipment**. The contract shall require the Motor Carrier to provide safe, operational equipment and not to supply any trailers or containers that have been used to transport hazardous wastes (as defined in 40 CFR § 261), trash, or solid or liquid waste, whether or not defined as hazardous wastes under as described in 40 CFR Part § 261. The contractual obligation not to supply trailers or containers used to transport such wastes shall be on a best efforts basis in circumstances where such Motor Carrier does not own or lease (i.e., have control over) the trailers or containers.
8. **CARB**. The contract will provide that if Motor Carrier operates in California, Motor Carrier warrants that it is in full compliance with all requirements of the California Air Resources Board (“CARB”) for all equipment, including motor vehicles and Transport Refrigeration Units (TRU). Motor Carrier will supply any certificates issued by CARB for Equipment Registration (ARBER). Motor Carrier will defend and indemnify BROKER for all claims, costs, expenses, penalties, and damages, including for reasonable attorney’s fees, incurred by BROKER as a result of Motor Carrier non-compliance with CARB regulations.
9. **FOOD**. The contract will provide the following with respect to food shipments:
 1. All equipment provided for the transportation of food or food grade products will comply with the requirements of The Sanitary Food Transportation Act, or, to the extent that Carrier performs

services hereunder within, or to or from Canada, the Food and Drug Acts and any/all other applicable statutes and regulations, including, but not limited to the Ontario Food Safety and Quality Act, 2001, or any other jurisdiction's equivalent, and that none of the equipment so provided has been or will be used for the transportation of any waste of any kind, garbage, hazardous materials, poisons, pesticides, herbicides, or any other commodity that might adulterate or contaminate food, food products or cosmetics.

2. Carrier must ensure that all personnel transporting or handling freight subject to the Food Safety Modernization Act of 2011 and its implementing regulations (collectively the "Act"), receive training required by the Act. Broker will transmit to Carrier, on the Load Confirmation or separately by email, the shipper's or consignee's protocols and requirements, if provided to Broker from Shipper, for transporting food shipments subject to the Act. Carrier must strictly comply with all such protocols and requirements. Carrier's failure to comply with such protocols and requirements will permit the consignor, consignee, or broker to declare any freight transported on a shipment on which non-compliance occurred to be rejected and a total loss. In the event Broker does not transmit protocols and requirements, Carrier must request such protocols and requirements before transporting freight.
4. **Receipts and Bills of Lading**. If requested by Shipper, Broker may provide Shipper with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery. Either Party, at its option, may supply any document required by or referenced in these Terms in either paper or electronic form (including, but not limited to, an electronically imaged, faxed, photocopied, or online posted version), and any such version shall be sufficient for all purposes under these Terms. Shipper is prohibited from inserting Broker's name on the BOL because Broker is not the Motor Carrier. If the Shipper inserts Broker's name on the bill of lading, that is done solely for the Shipper's convenience only and shall not change Broker's status as a property Broker. The terms and conditions of any documentation used

by Shipper, Broker or a Motor Carrier selected by Broker shall not be effective to the extent of any inconsistency with these Terms.

5. **Rates and Payments.** Broker shall invoice Shipper for its services in accordance with the previously agreed upon rates and charges. Such rates and charges shall be considered “written,” even if transmitted verbally, and shall be binding, upon Broker’s invoice to Shipper and Shipper’s payment to Broker.
 1. Shipper shall pay Broker net thirty (30) days on Shipper’s receipt of Broker’s invoice. Broker’s invoice will provide shipment date, invoice reference number, all applicable Shipper reference numbers, the amounts calculated in accordance with these Terms, and bill of lading copy. No offsets may be taken against invoiced charges. Broker shall apply Shipper’s payment to the amount due for the specified invoice, regardless of whether there are earlier unpaid invoices. Broker may assess service charges for any delayed payments.
 2. Broker will pay its carriers per the terms of its agreements with Carrier.
 3. If Broker alleges undercharges, or Shipper alleges overcharges, duplicate payment, or over-collection, notice of such claims or unidentified payments must be given within twelve (12) months of receipt of the invoice and a civil action or arbitration proceeding must be filed within eighteen (18) months of delivery or tender of delivery of the shipments involved.
6. **Shipper’s Obligations.**
 1. **Shipping Instructions.** Shipper will provide necessary shipping instructions and will properly identify all cargo and its actual value in the bill of lading or other shipping instructions provided to Broker. Shipper will not tender any commodities restricted under Circulars, including but not limited to hazardous materials and waste; shipments valued more than the cargo insurance limits in Section 4B; oversize or overweight shipments; coiled or rolled products and commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation thereof.
 2. **Food Safety Modernization Act (FSMA).** Any required documents to be compliant with the FSMA shall be provided by Shipper to Broker when the shipment is tendered to Broker. Broker will relay those documents

to the Motor Carrier per the FSMA. If Shipper fails to comply with this subsection, Shipper will defend, indemnify, and hold Broker and motor carrier harmless from all fines, penalties, claims, liability, and damages, including reasonable attorney's fees and costs of defense as they are incurred.

3. **Count, Load and Seal.** Unless Shipper has requested Broker to arrange for the Motor Carrier to provide driver count services before dispatch and the Broker performs such driver count services, Shipper is responsible for causing all contents of shipments moving under these Terms to be properly counted and recorded and to have a protective seal applied to the loaded equipment.
4. **Inspection of Equipment.** Shipper will cause all empty containers or trailers tendered for loading to be inspected before loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the cargo during transportation. Shipper will promptly notify Broker of any rejected equipment.
5. **Use of Equipment.** If Shipper requests that Broker arrange for Intermodal Equipment to be dropped at a location for Shipper's convenience and left unattended by the Motor Carrier, Shipper and its consignors or consignees will not lose, damage or misuse the Intermodal Equipment and Shipper will pay for loss or damage to the Intermodal Equipment occurring during or as a result of such possession or use of the Intermodal Equipment if caused by Shipper or its consignees or consignor or their agents or employees.

7. **Provisions Regarding Handling of Cargo and Cargo Loss and Damage.**

1. **Liability of the Brokers.** Broker will select only Motor Carriers, in the transportation of cargo hereunder in the United States and Canada, that agree (1) to assume the liability of a common Motor Carrier for full actual loss of cargo, subject to the provisions of the 49 U.S.C. 14706 (or successor regulation to such Carmack Amendment), up to a maximum liability of \$100,000 per container or trailer. Motor Carriers will agree to process and pay cargo claims in accordance with and subject to 49 CFR §1005 and 370, respectively. The Motor Carriers cargo liability for any one shipment shall not exceed the amounts described above, unless Broker is notified by Shipper of the increased value prior to shipment pickup and with reasonable advance notice and Broker and/or the

Motor Carrier have accepted the increased liability and procured the additional insurance coverage. Cargo liability on shipments in or out of Mexico, are strictly limited to that portion of the transportation service performed in the United States.

2. **Cargo Liability of Broker**. It is understood and agreed that Broker is not a Motor Carrier or freight forwarder, and Broker shall not be held liable for loss, damage or delay in the transportation of Shipper's cargo unless caused by Broker's negligent acts or omissions in the performance of these Terms or by Broker's breach of these Terms. Broker shall facilitate the filing and/or processing of claims with the applicable Motor Carrier. Shipper shall assist Broker in the handling of claims by providing notice of the claim and all relevant documentation to Broker in time sufficient to allow Broker to adequately present such claims within the time limits required by law or contract. If Broker elects to pay a claim to Shipper, Shipper shall assign its rights and interest in the claim to Broker in writing in a form reasonably satisfactory to Broker so as to allow Broker to subrogate the loss.
3. **Defenses**. Neither Broker (to the extent it is otherwise liable) nor the Motor Carrier will be liable for the following: (1) damage to cargo to the extent due to packaging, loading, unloading, blocking, bracing or securing of the cargo (unless the Motor Carrier has provided loading or unloading services at Shipper's request, in which case such Motor Carrier (but not Broker) may be liable for cargo damage caused by such loading or unloading services); (2) inherent vice or defect in the cargo transported, including, without limitation, rusting of metals, swelling of wood caused by humidity, moisture or condensation, or deterioration of perishable products; (3) act of God or the public enemy; (4) an act or default of any Shipper, consignor, consignee or beneficial owner of the cargo; (5) act of a public authority; or (6) any other defense recognized by statute or common law to broker or carrier liability for cargo loss or damage claims.
4. **Disclaimer of Liability for Certain Types of Damages**. In no event shall Broker or the Motor Carrier be liable to Shipper or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless Shipper has informed Broker in written or electronic form, prior to or when tendering a shipment or

series of shipments to Broker, of the potential nature, type and approximate value of such damages, and Broker specifically agrees in written or electronic form to accept responsibility for such damages. In no event shall Broker or the Motor Carrier be liable to Shipper or anyone else for punitive or exemplary damages that relate to loss, damage or delay to a shipment.

5. **Notification.** If a shipment arrives with visible or obvious damage or loss of cargo, Shipper will note such damage on delivery paperwork and notify Broker telephonically or in writing advising Broker of the nature and extent of the loss or damage. Photographs of the said damages will be taken by Shipper or its consignee and forwarded to the Broker. The Broker may consider Shipper to have waived and released the claim if there is a failure to provide notification. Shipper and its consignee must preserve and make available to Broker's or the Broker's inspectors all damaged cargo, all cargo received in good condition and all packaging, blocking, bracing and security devices to assist the inspectors in determining the cause of the damage or loss. Concealed damages must be reported to Broker within five (5) days of delivery.
6. **Time Limits To File Cargo Claims and Commence Recovery Action.** Shipper may proceed with any claim for cargo loss or damage by filing the claim with the Broker or directly with the applicable Motor Carrier, and Broker facilitate the processing of Shipper's claim by Motor Carrier. Broker will provide assistance in recovering a cargo loss or damage from the Motor Carrier on Shipper's behalf. Shipper must (1) submit the claim to Broker for damage or loss of cargo occurring during (i) motor transportation, within eight (8) months of the delivery date or, for lost shipments, of the expected delivery date. For cargo claims for which Broker is directly liable under these Terms, as a condition precedent to recovery, Shipper must submit the claim to Broker for damage or loss of cargo within eight (8) months of the delivery date or, for lost shipments, of the expected delivery date and, if the claim is not voluntarily paid, must commence civil action against Broker to recover on a claim for damage or loss of cargo occurring during (i) motor transportation, within twenty-three (23) months from date of the first disallowance in writing of all or any portion of the claim. After expiration of these time periods, Broker will have no responsibility to

assist Shipper against the Motor Carrier or any liability for the cargo loss or damage or payment or processing of the claim.

7. **Sealed Shipment.** If Shipper loads and seals the cargo in or on the equipment and the Motor Carrier does not have the opportunity to count the cargo being loaded and the seal is intact upon delivery, then Broker and the Motor Carrier shall be absolved from any liability for shortages or any damage to the cargo except when proximately caused by independent action of Motor Carrier or the Broker. Such absolution of liability will also occur if (i) the seal is broken at the direction and under the supervision of an agent of a governmental authority, or (ii) the Equipment is preloaded and the Motor Carrier's representative cannot practically determine the adequacy of loading or count of the cargo in or on such Equipment. Broker will direct the Motor Carrier to request any governmental authority that breaks a seal in connection with an inspection to reseal the trailer or container and/or make appropriate notation on the cargo documentation form. Shipper agrees that the Motor Carrier engaged by Broker may break the seal on a trailer or container if, upon its determination, it becomes reasonably necessary to do so to inspect, reposition, or protect the cargo or the transportation equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations.

8. **Insurance.** Broker agrees to procure and maintain at its own expense and at all times the following minimum insurance coverage amounts:

1. General Liability insurance \$1,000,000 (minimum) (including professional liability)

2. Contingent Cargo Insurance \$100,000

3. Workers Compensation Statutory Limits

Upon request Broker shall submit to

4. Shipper a certificate of insurance as evidence of such coverage and which names Shipper as "Certificate Holder"

9. **Hazardous Materials.** Shipper, Broker, and Motor Carrier shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.101 (or any successor regulation) to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform Broker immediately if any such shipments do constitute hazardous materials. Shipper shall defend, indemnify and hold

Broker and Motor Carrier harmless from any penalties or liability of any kind, including, without limitation, reasonable legal fees, arising out of Shipper's failure to comply with applicable hazardous materials laws and regulations.

10. **Indemnification.**

1. Except for cargo loss, damage or delay which shall be governed solely by Section 8, Broker shall defend, indemnify and hold Shipper and Shipper's employees and agents harmless, up to the dollar amounts set forth in Section 8, against any claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) (collectively, "Losses") caused by or resulting from (i) Broker's or Motor Carrier's employees' or agents' negligence or intentional misconduct, (ii) its breach of these Terms, including but not limited to any failure to secure the agreement of the Motor Carrier (or any re-Broker) to the requirements set forth in Section 4 hereof, or (iii) Broker's or Motor Carrier's employees' or agents' negligent or intentional violation of applicable laws or regulations.
2. Shipper shall defend, indemnify and hold Broker and Motor Carrier's employees or agents (which term shall include any Motor Carrier engaged by Broker) harmless against any Losses caused by or resulting from (i) Shippers or Shipper's employees' or agents' negligence or intentional misconduct, (ii) Shipper's breach of these Terms, or (iii) Shipper's or Shipper's employees' or agents' violation of applicable laws or regulations.
3. In the event such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) are caused by the joint and concurrent negligence of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) shall be borne by each Party in proportion to its degree of fault. Although Section 8 only imposes insurance requirements upon Broker, for purposes of this Section 11, those dollar amounts also shall limit the scope of Shipper's indemnification obligations as well as Broker's indemnification obligations. The obligation to defend shall include all reasonable costs of defense as they accrue. Any person or entity indemnified under these Terms shall

promptly tender the defense of any claim to the indemnifying Party. Neither party will offer settlement in any such claim without the agreement of the other party (which agreement shall not be unreasonably withheld or delayed) unless the settlement would not impose any obligations or liability on such other party.

11. **Modifications of Agreement; Re-Brokering.**

1. These Terms shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. No amendment or modification of these Terms shall be binding unless in writing and signed by the Parties.
2. Broker shall not utilize the services of any other broker ("Re-Broker") to arrange for the transportation services contemplated herein without Shipper's consent. If Broker does utilize the services of a re-broker, Broker will be responsible for all obligations hereunder to the same extent that Broker would be liable if it performed the transportation and related services itself.

12. **Severability / Survivability.** If the operation of any portion of these Terms is found by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Terms shall continue in full force and effect.

13. **Independent Contractor.** It is understood between Broker and Shipper that Broker is not an agent for the Motor Carrier or Shipper and shall remain at all times an independent contractor. Shipper does not exercise or retain any control or supervision over Broker, its operations, employees, or the Motor Carriers.

14. **Nonwaiver.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions of these Terms, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of these Terms, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred. No waiver of any right, power, or privilege hereunder shall be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.

15. **Notices.** All notices under these Terms will be in writing and will be deemed to be sufficient if (a) delivered personally, (b) sent by facsimile or e-mail transmission if confirmed by notice sent by one of the other notice methods permitted hereunder, (c) sent by nationally-recognized, overnight courier guaranteeing next business day delivery, or (d) mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties.

1. All such notices and other communications will be deemed to have been given and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of facsimile or e-mail transmission that is confirmed by notice sent on the same day by one of the other methods permitted hereunder, on the date of transmission if sent on a business day, (or if sent on other than a business day, on the next business day after the date sent), (c) in the case of delivery by nationally-recognized, overnight courier, on the business day following dispatch if sent by guaranteed next day delivery, or (d) in the case of mailing, on the third business day following such mailing.

16. **Force Majeure.** If performance by one Party is affected by any condition beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable condition is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable condition, then the performance of obligations under these Terms (other than Shipper's obligation to pay for services performed) affected by such condition shall be suspended during the continuance of such condition, and such Party shall promptly notify the other Party of such condition. Such period of suspension shall not in any way invalidate these Terms, but on resumption of operations, any affected performance by such Party shall be resumed. The Motor Carriers engaged by Broker shall be permitted an extension period equal to the period of suspension to complete shipments adversely affected by the suspension. Neither Party will incur any liability for damages resulting from such suspensions.

17. **Choice of Law.** All questions concerning the construction, interpretation, validity and enforceability of these Terms, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.
18. **Confidentiality.**
 1. **Publicity.** Broker shall not utilize Shipper's name or identity in any advertising or promotional communications without Shipper's written consent.

Confidentiality. The Parties shall not publish, use or disclose the contents or existence of these Terms except (1) as necessary to conduct their operations pursuant to these Terms, (2) to the extent required by a governmental agency, under a court order or as otherwise required by law, provided that the receiving Party has notified the other Party of such governmental or court action before disclosing the Information, (3) to obtain financing, or (4) to auditors retained for the purpose of assessing the accuracy of freight bills or similar purposes. Broker will require its Motor Carriers to comply with this confidentiality clause. These confidentiality obligations will not prohibit or limit the receiving Party's use of information (1) previously known to it and not subject to any confidentiality restrictions, (2) acquired by it from a third party which is not, to the receiving Party's knowledge, under an obligation not to disclose such information, or (3) which is or becomes publicly available through no breach of these obligations by the receiving Party or its employees or agents of these confidentiality obligations.