

## **Wallport Freight Solutions, L.L.C.**

### **Terms and Conditions of Brokerage**

1. **Parties.** The term “Customer” means the person or entity desiring to have the goods transported, sending the goods, or otherwise liable as a shipper under law. This definition includes the exporter, importer, sender, receiver, owner, consignor, consignee, transferor, transferee, forwarder, broker and/or any other agents or representatives of Customer (not to include Broker). It is the responsibility of all such parties to provide notice and copies of these Terms and Conditions of Brokerage (“Terms and Conditions”) to each other. The term “Broker” means Wallport Freight Solutions, L.L.C. operating under **MC 643051**, Broker is not acting, and does not act, as either a motor carrier or a common carrier within the meaning of USC Title 49. Customer and its agents expressly agree that they will not under any circumstances attempt to hold Broker liable in the capacity of a motor carrier. Customer or third party’s insertion of Broker as the carrier of record in any bill of lading, delivery order, or other document will not alter or affect Broker’s status as a freight Broker. The carrier(s) actually transporting the freight at issue shall be solely responsible in the capacity of a motor carrier. The term “Carrier” shall refer solely to the motor carrier providing the actual transport.

2. **General.** These Terms and Conditions are applicable to the services performed by Broker undertaken on the Customer's behalf. These Terms and Conditions supersede all previous conditions of transportation and other prior statements concerning the rates and conditions of Broker's services. These Terms and Conditions control in the event of any discrepancy or conflict between these Terms and Conditions and those of any Customer, unless changes have been made by obtaining prior written approval by an Officer of Broker. Broker reserves the right from time to time to modify, amend or supplement these Terms and Conditions without notice. Copies of Broker's most recent terms and conditions are available upon request. Broker’s terms and conditions in effect on the date of shipment shall apply. In the event that Broker and the Customer have entered into a signed, written contract containing terms and conditions different than those set forth in these Terms and Conditions, the signed, written contract will control to the extent that such terms conflict with these Terms and Conditions. These Terms and Conditions apply to Broker, not the Carrier actually providing the transportation services. In the event one of the Broker’s affiliates actually transports a load, such transportation shall be subject to the affiliate’s terms and conditions, which are available upon request.

3. **Service.** Broker will arrange for transportation of Customer’s freight pursuant to these Terms and Conditions. Broker’s responsibility will be limited to arranging for, but not actually performing, transportation of Customer’s freight. Broker does not exercise or retain any control or supervision over any carrier, its operations, employees, or contractors. Broker reserves the right, in its sole discretion, to refuse any shipment at any time. The relationship between Broker and Customer is that of one independent contractor with another, and nothing herein is intended to create a joint venture, partnership, agency, or any employment relationship. Broker reserves the right to refer shipments to, and Customer approves such use of, Broker’s affiliates to provide transportation services for any shipment.

4. **Rates and Fees.** Quotes are based on information provided by the Customer. Unless indicated, the price excludes charges for detention time, per diem and additional stops. Customer will be liable for all additional charges incurred relating to the transportation of Customer’s freight. The quoted rate depends on the weight, dimension and released value of the property described. Any changes to the actual released value, dimension, description or weight of the load may result in revisions to the quoted price. Unless otherwise indicated by Customer in writing and confirmed by an Officer of Broker, Broker’s rates are based on a limited released value of \$100,000 per shipment and Broker will not be responsible for loss or damage in excess of \$100,000 per shipment.

5. **Payments.** Broker or Broker’s affiliate will invoice Customer for Broker’s services in accordance with the rates, charges and provisions negotiated and agreed to between Customer and Broker. Customer agrees to pay Broker’s invoice within 30 days of the invoice date without deduction or setoff. As a convenience to Customer, invoices may be processed by Broker’s affiliated entity and such administrative support in issuing invoices will not alter Broker’s role in connection with a particular shipment, as the act of invoicing is a purely administrative function performed independent of arranging for transportation services. In the event of a loss, Customer’s claim and any remedies will be directed to, and the sole responsibility of, the actual Carrier performing transportation services for the particular shipment at issue, to the extent of any claim for loss, damage or delay.

6. **Liability for Loss, Damage, or Delay.** Broker will assist with processing of claims on behalf of its Customers. However, **BROKER IS NOT LIABLE FOR DELAY TO CARGO OR LOSS OR DAMAGE TO CARGO, UNLESS THE LOSS OR DAMAGE IS CAUSED BY THE SOLE NEGLIGENCE OR FAULT OF BROKER. THIS RELEASE SHALL INCLUDE SITUATIONS WHERE BROKER IS CONCURRENTLY NEGLIGENT OR AT FAULT. IN NO EVENT WILL BROKER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFITS, WHETHER OR NOT SUCH DAMAGES WERE REASONABLY FORESEEABLE.** The motor carrier actually performing the transportation is responsible for their own conduct. **BROKER SHALL BE ENTITLED TO ALL LIMITATIONS OF LIABILITY, RIGHTS, AND PROTECTIONS AVAILABLE TO THE CARRIER, INCLUDING, BUT NOT LIMITED TO THE TERMS IN THE**

BILL OF LADING, TERMS AND CONDITIONS, RULES TARIFF, AND OTHER DOCUMENTS. BROKER WILL NOT BE LIABLE FOR PERSONAL INJURY OR DEATH OR PROPERTY DAMAGE ARISING FROM, RELATED TO, OR CONNECTED WITH THE CONDUCT OF THE MOTOR CARRIER.

7. Force Majeure. Broker will not be liable for failure to perform any of its obligations under these Terms and Conditions during any time in which such performance is prevented by circumstances beyond Broker's control including but not limited to an act of God, fire, inclement weather, flood, or other natural disaster, war, embargo, riot, strike, lock-out, labor disturbance, civil disobedience, the intervention of any government authority, or any other cause outside of the reasonable control of Broker.

8. Disclaimer of Warranties. Except as expressly provided in these Terms and Conditions, Broker makes no warranties, express or implied, including without limitation, warranties of merchantability or fitness for a particular purpose, with regard to shipments, warehoused goods, items in transit or deliveries or with regard to the information provided on the website or services related to transactions conducted on the website. Broker cannot guarantee delivery by any specific time or date.

9. Notice of Claims.

A. Freight Claims. Customer must give Broker written notice of any claims for cargo loss or damage within 180 days from the date of such loss, shortage or damage, which for purposes of these Terms and Conditions will be the delivery date or, in the event of non-delivery, the scheduled delivery date. Customer must file any civil action against Broker in a court of law not later than 2 years from the date of delivery or, if delivery was not completed, the expected date of delivery.

B. Payment of Claims by Broker. If payment of claim is made by Broker to Customer, Customer automatically assigns its rights and interest in the claim to Broker, and agrees to execute any documents that may be necessary in connection with such assignment. All damage claims will be handled directly with the Carrier or its insurance representatives. Notwithstanding the foregoing, this provision does not obligate Broker to pay any claim.

C. All Other Claims. Customer shall notify Broker of all known material details within 91 days of receiving notice of any facts giving rise to a claim other than cargo loss or damage claims, or else such claims are waived. Customer shall update Broker promptly thereafter as more information becomes available. Civil action, or arbitration, if any, must be commenced within 2 years from the date of the event giving rise to the claim.

10. Customer Responsibilities. Customer must properly mark, pack and label cargo so it will safely endure ordinary handling in transit. By tendering a shipment to the Carrier(s), Customer certifies that the shipment is sufficiently packaged to withstand the normal hazards of truck transportation. Customer shall be responsible to Broker for timely and accurate delivery instructions and description of the cargo, including any high value, special value, special handling or security requirements, for any shipment. Any article susceptible to damage by ordinary handling must be adequately protected and packaged and marked in such a way as to alert the Carrier(s) of the possibility of damage from ordinary handling and must bear appropriate labels. Customer shall provide the Carrier(s) with access to the facilities necessary to load or unload the tendered shipments. Customer is solely responsible for maintaining the loading and unloading facilities in a good and safe condition, and in compliance with all applicable laws, codes and regulations. CUSTOMER HEREBY WAIVES AND RELEASES BROKER FROM ANY LIABILITY FOR ANY LOSS OR DAMAGE TO CUSTOMER'S FACILITIES OR TO CUSTOMER'S PERSONAL PROPERTY LOCATED ON SUCH FACILITIES. Broker will not be responsible for stolen, lost, or damaged goods, containers, chassis, or other equipment after such items have been delivered. Customer will reimburse Broker for any costs Broker pays or incurs with regard to theft, loss, or other damage to goods, containers, chassis, or other equipment occurring after delivery of the shipment.

11. Shipments not Accepted. Customer will not tender shipments for transportation of explosives, shipments requiring "protective security service or armed guard surveillance," human remains, precious metals, currency, object d'art, collection, antiques or precious stones, jewelry, manufactured tobacco products, ammunition, or any items of unusual value.

12. **HAZARDOUS MATERIALS**. Customer shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and §397 et seq. to the extent that any shipments constitute hazardous materials. Customer is obligated to inform Broker immediately if any such shipments constitute hazardous materials. CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS BROKER AND ITS OFFICERS, EMPLOYEES, AGENTS AND INSURERS, AGAINST ALL CLAIMS, LIABILITIES, LOSSES, FINES, REASONABLE ATTORNEY FEES AND OTHER EXPENSES ARISING OUT OF OR RELATED TO THE RELEASE OF ANY HAZARDOUS MATERIAL, INCLUDING WITHOUT LIMITATION, FINES OR EXPENSES RELATED TO THE REMOVAL OR TREATMENT OF HAZARDOUS MATERIAL OR OTHER REMEDIAL ACTION PERTAINING TO THE HAZARDOUS MATERIAL UNDER FEDERAL OR STATE LAW, IF CUSTOMER FAILS TO PROVIDE ADVANCED NOTICE PRIOR TO TENDERING HAZARDOUS

MATERIAL TO BROKER; THE CONTACT, EXPOSURE OR RELEASE RESULTED FROM THE IMPROPER PACKAGING OR LOADING OR OTHER ACTS OR OMISSIONS OF THE CUSTOMER, ITS EMPLOYEES OR AGENTS; AND THE CONTACT, EXPOSURE OR RELEASE OCCURRED SUBSEQUENT TO THE TRANSPORT OF THE HAZARDOUS MATERIAL BY BROKER OR THE CARRIERS.

13. Surety Bond. Broker will maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration and furnish Customer with proof upon request.

14. Default. Both Broker and Customer will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes. However, if either party materially fails to perform its duties under these Terms and Conditions, the party claiming default may terminate its duties upon written notice to the other party. Customer shall be responsible to pay Broker for any services performed prior to the termination of duties and for shipments not yet completed and/or not yet invoiced to Customer.

15. Attorneys' Fees. In the event any litigation arises from breach of these Terms and Conditions or to collect for the services provided under these Terms and Conditions, Broker will be entitled to recover all reasonable costs incurred including court costs, attorney fees, and all other related expenses incurred in such litigation.

16. Severability. If any provision of these Terms and Conditions is invalid for any reason whatsoever, these Terms and Conditions will be void only as to such provision, and the remaining terms and conditions will remain binding between the parties. Any provision voided will be replaced with provisions which are as close to Broker and Customer's original intent as permitted under applicable law.

17. Non-Waiver. The failure or refusal of either party to insist upon the strict performance of any provision of these Terms and Conditions or to exercise any right in any one or more instances or circumstances will not be construed as a waiver or relinquishment of such provision or right, nor will such failure or refusal be deemed a customary practice contrary to such provision or right.

18. Venue and Jurisdiction. These Terms and Conditions shall be subject to and governed by the laws of the State of Texas, without regard to choice-of-law principles and irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The parties agree that any and all disputes under this Agreement shall be filed in the appropriate county, state and federal courts located within Harris County, Texas. Customer hereby waives any claims or objections to personal jurisdiction and/or that such courts will be improper or inconvenient forums.