

GENIEZIP USA, INC. BROKER – CARRIER TERMS AND CONDITIONS

1. SCOPE OF SERVICES

A. Carrier agrees to provide transportation services by motor vehicle, on a non-exclusive basis, for goods tendered by Broker or Broker's suppliers between such locations as may be designated from time to time by Broker ("Services"). All Services performed by Carrier pursuant to these Terms and Conditions shall be as a motor carrier operating in United States interstate or foreign commerce and shall be rendered as contract carriage within the meaning of 49 U.S.C. §§ 13102-4(B) and 14101(b).

B. Broker's responsibilities under these Terms and Conditions shall be limited to arranging for, but not actually performing, transportation of freight. Broker may offer, from time-to-time, on a non-exclusive basis, shipments for Carrier to transport subject to these Terms and Conditions. Broker shall inform Carrier of (i) place of origin and destination of all shipments; and (ii) if applicable, any special shipping and handling instructions, special equipment requirements, or value of shipments of which Broker has been timely notified.

2. RELATIONSHIP OF PARTIES. The relationship of Carrier to Broker is that of an independent contractor. The Parties do not intend to provide for division of profits between Carrier, Broker and/or any Shipper, or to clothe Broker and/or any Shipper with joint control over Carrier's performance of the Services, or otherwise to create a *de facto* or *de jure* joint venture, joint enterprise or partnership between Carrier, Broker and/or any Shipper. Under no circumstances shall employees or agents of Carrier be deemed employees or agents of Broker or shipper, nor shall Broker or shipper be liable for any wages, fees, payroll taxes, assessments or other expenses relating to employees or agents of Carrier.

3. REPRESENTATIONS AND WARRANTIES OF CARRIER

A. Carrier represents and warrants that it is duly registered with FMCSA as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. § 13902.

B. Carrier shall comply with all lawful orders, rules and regulations of properly constituted authorities governing the operation of motor carrier transportation services involving for-hire operations including the Hours of Service regulations and labor and employment laws. C. Carrier represents that it possesses, and shall maintain throughout the duration of the Services and any extensions thereto, all necessary registrations, certifications and/or authorizations required by each state in which Carrier shall operate as a contract carrier for Broker. Moreover, Carrier represents that it currently possesses, and shall maintain throughout the duration of the Services, and any extensions thereto, a satisfactory or higher safety rating issued by FMCSA and a Satisfactory safety rating with FMCSA, and percentages for each of the seven Behavior Analysis and Safety Improvement Categories ("BASIC Categories") in the FMCSA Safety Measurement System below the intervention thresholds, established by the FMCSA in each of the BASIC Categories.

D. Any transportation of hazardous materials that may be tendered by Broker is subject to the Hazardous Materials Regulations of the Department of Transportation ("DOT") as published in 49 C.F.R. Parts 171-177. Carrier represents and warrants that it is familiar with those regulations, that it is fully qualified to properly handle such hazardous materials, that it is properly registered as a carrier of such commodities with the DOT, and agrees to maintain a DOT Emergency Response Guidebook and necessary emergency response information in the cab of each of its trucks.

4. SHIPPING DOCUMENTS

A. Shipping documents include rate confirmation, delivery order, delivery receipts, proof of delivery, and/or bills of lading. Carrier shall ensure each shipment transported is evidenced by a bill of lading and that the applicable bill of lading contains the name and address of the shipper, the destination address, and consignee name. Carrier acknowledges that an insertion of Broker's name as the carrier on a bill of lading shall be for convenience only and shall not change Broker's status as a property broker or Carrier's status as a motor carrier.

B. Carrier agrees to immediately contact Broker to advise of any inconsistencies between the information contained in any shipping document and any information provided by Broker. Carrier shall be solely responsible for any consequences, including claims for loss, damage or delay, if Carrier fails to contact Broker and obtain instructions regarding any such inconsistencies. Carrier must ensure that any visual damage to freight or discrepancies in count are noted on the relevant shipping documents, which is to be signed by Carrier's driver or agent and by shipper or consignee. Carrier must immediately notify Broker of any such notations. Carrier must ensure that the proof of delivery and receipt of freight are noted on the bill of lading. Carrier is responsible for confirming the count and condition of the freight accepted by Carrier's driver. Carrier is solely responsible for ensuring that cargo is maintained according to any requirements stated on the bill of lading or load confirmation.

5. EQUIPMENT. Subject to its representations and warranties in Section 3 above, Carrier agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for Broker and/or its customers. Carrier shall, at its sole cost and expense, furnish all necessary and appropriate equipment for the performance of its obligations hereunder. Carrier agrees to maintain and operate its motor vehicles and trailers at all times in an efficient, safe and lawful manner, and in accordance with such legal instructions and directions as may, from time-to-time, be issued by Broker. Carrier's equipment offered to Broker for loading is to be clean, odor-free, dry, leak proof and free of contamination and infestation. Carrier is prohibited from supplying equipment that has been used to transport waste in any form, regardless of whether a substance is defined in 40 C.F.R. § 261.1 et seq. For hazardous materials shipments, Carrier will comply with all applicable federal, state, and local laws and regulations, including, but not limited to, 49 C.F.R. §§ 172.800, 173, 397 et seq. Carrier shall be solely responsible for compliance with all provisions of all applicable state and federal law, including those regarding over-dimension and overweight loads and air quality and environmental standards including, but not limited to, those of the California Air Resource Board. Carrier shall be liable to Broker and its customer(s), for any penalties, liabilities, or damages arising out of Carrier's violation of the law.

6. TEMPERATURE-CONTROLLED HANDLING. Carrier shall ensure that any shipments requiring controlled temperature transit are maintained at all times within required temperature ranges and shall otherwise comply with handling instructions provided by the shipper, consignee or consignee (including such instructions that may be passed through to Carrier by Broker). If Carrier is transporting cargo of a type that a reasonable person would understand to require controlled temperature transportation, but is not provided with instructions regarding such service, Carrier shall request such instructions prior to accepting the cargo in question and, if controlled temperature service is declined, shall refrain from transporting the cargo without first obtaining instructions and an express declination in writing from shipper. If Carrier accepts goods and does not determine the temperature of the goods prior to loading, or does not provide proper equipment, or fails to maintain and monitor proper temperature requirements for the shipment form loading, en route and upon unloading, Broker's customer(s) or consignee may reject, and Carrier shall be liable for, the load as a total loss, without any salvage obligation or credit to Carrier.

7. FOOD AND FOOD-RELATED GOODS. With respect to transportation governed by regulations of the Food and Drug Administration ("FDA") codified at 21 C.F.R. Part 1900, and regardless of whether such FDA regulations apply to Carrier, Carrier shall be responsible for the safety and sufficiency of all items used in the transportation of the goods, including all vehicles and Transportation Equipment, as defined in such regulations. Carrier is responsible for all sanitary conditions during transport. Carrier must confirm that vehicle and Transportation Equipment is in appropriate physical condition to transport the good tendered, and any such Transportation Equipment must be dry, leak proof, free of harmful or offensive odor, free from pest infestation and free from evidence of prior cargo that could render the shipment unsafe. Carrier's compliance with all federal, state, and local laws and regulations shall include compliance with 21 U.S.C. § 301 et seq. and 49 U.S.C. § 5701. Carrier shall comply with handling instructions provided by the shipper, consignee or consignee (including such instructions that may be passed through to Carrier by Broker). Carrier agrees that any food or food-grade products that have been transported or offered for transport under conditions that are not in compliance with the load handling instructions, as provided to Carrier, may be considered "adulterated" within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 342(g), and its implementing regulations. Carrier understands and agrees that adulterated shipments may be refused by the consignee or receiver. Carrier shall bear sole risk of rejection of cargo arising from or related to broken seals or failure to comply with load handling instructions.

8. SEALED LOADS. When required by Broker, the shipper, or the consignee, or if noted on the bill of lading, Carrier shall secure shipments with a serialized seal and shall ensure that such serialized number appears on the bill of lading. Carrier is solely responsible to maintain any seals until removed by an authorized employee of consignee upon delivery. Except as is required by law enforcement personnel or other authorized government agent, under no circumstances shall Carrier or any of its personnel break any seal without the express consent of Broker. If law enforcement or an authorized government agent breaks the seal, Carrier shall immediately notify Broker and reseal the goods. Carrier is liable for any and all claims, losses, or liabilities arising from or as a result of any unauthorized removal of seal, broken seal, missing seal, tampered seal, or mismatched seal number.

9. PROHIBITION OF SUB-CONTRACTING

A. Carrier shall not re-broker, co-broker, subcontract, assign, interline, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority, without prior written consent of Broker. Carrier agrees that all freight shall be transported on equipment operated only under the motor carrier authority of Carrier.

B. If Carrier breaches the above, Carrier shall remain directly liable to Broker as if Carrier transported such freight under its own authority, and shall further hold harmless, defend, and indemnify Broker and Broker's customer from any Claims (as defined below), arising out of or in any way related to the use of any subcontractor in violation of this provision regardless of whether arising from the conduct or omissions of Carrier, the subcontractor, or any other third party. Broker shall also have the right of paying the monies it owes Carrier directly to the actual carrier, in lieu of payment to Carrier. Upon Broker's payment to the actual carrier, Carrier shall not be released from any liability to Broker under these Terms and Conditions or otherwise under law. Furthermore, in addition to any indemnity obligations of Carrier contained in these Terms and Conditions, Carrier shall be liable for indirect or consequential damages for the violation of this Section.

10. RATES

A. Broker agrees to conduct all billing services to shippers, consignees, or other party responsible for payment. Carrier shall invoice Broker for its (Carrier's) charges, as mutually agreed in writing, by fax, or by electronic means, contained in Broker's Load Confirmation Sheet(s), Rate Confirmation Sheet(s) and/or dispatch sheets which are incorporated herein by this reference. Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, Broker requirements, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by fax or email) by both Parties. Any such additional, modified, or amended rates, changes in rates shall automatically be incorporated herein by this reference.

B. Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where Carrier has billed the agreed rate and Broker has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference. Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, tariff rates, released rates or values, or tariff rules or circulars, shall only be valid when their terms are specifically agreed to in a writing signed by both Parties.

11. PAYMENT. Carrier agrees that Broker is the sole party responsible for payment of its invoices and that, under no circumstances, will Carrier seek payment from the shipper, consignee and Broker's customer(s). Carrier waives any right under any federal, state, or local law to collect freight charges or other amounts from shipper, consignee, and Broker's customer(s). Broker agrees to pay Carrier within thirty (30) days of receipt of the shipping documents from Carrier, regardless of any failure of payment by Broker's customer. Broker reserves the right to offset any amounts due to Broker or Broker's customer. The foregoing notwithstanding, Broker has no obligation to pay Carrier prior to receipt of invoice and shipping documents, including proof of delivery. Broker shall not be liable for any payment with respect to services for which Carrier has failed to provide both an invoice and supporting documentation, including proof of delivery, to Broker within one-hundred and eighty (180) days after the shipment date. Broker is permitted to withhold payment for any breach or potential breach of these Terms and Conditions. Carrier waives all liens and agrees not to hold or delay freight based on any disputes against Broker, Broker's customer(s), any shipper or any consignee. If Carrier wishes to have invoices paid to a factoring company, Carrier must provide prior notification to Broker. Carrier waives and releases Broker from any claim arising out of the use of, or issuance of payment to, a factoring company. Carrier and any affiliates of Carrier (including factoring companies) may not report open invoices to credit bureaus. Carrier may not report past due invoices to credit bureaus if any payment disputes with Broker arise out

of an alleged breach by Carrier of these Terms and Conditions.

12. LIABILITY FOR LOSS, DAMAGE, OR DELAY TO SHIPMENTS

A. Carrier agrees that, in the transportation of all goods hereunder, it assumes the liability of a common carrier for full actual loss, subject to the provisions of 49 U.S.C. § 14706 ("Carmack Amendment"), that it has not limited its liability for loss and damage to goods tendered by or to Broker, and that this responsibility and liability will exist from the time of initial receipt of any of said goods by Carrier until prior delivery has been made as required by these Terms and Conditions.

B. Carrier's liability for loss or physical damage to the cargo shall be for the original invoice value or the destination wholesale market value of the goods lost or damaged in the quantity shipped, whichever is higher, whether or not lost or damaged en route to a purchaser. Carrier shall also be liable for Broker's administrative expenses incurred in connection with the filing of claims against Carrier. Irrespective of any provisions in Carrier's tariffs, pricing agreements, schedules, rules, regulations, or practices, Carrier's liability for loss, damage or delay shall be determined solely by these Terms and Conditions. Any attempts to limit Service Provider's liability by tariff or other provisions incorporated by reference in a bill of lading or shipping document shall be deemed to be null and void. Exclusions in Carrier's insurance coverage shall not relieve Carrier from any liability.

C. Carrier shall notify Broker immediately by telephone, facsimile or telecommunication of any accidents, spills, theft, hijacking, delays, or shortages which involve or impair the safe and prompt delivery of the goods in its control. Carrier shall also notify Broker with such information in Carrier's possession or control as Broker may reasonably request with regard to any such accident, spill, etc. Carrier shall immediately notify Broker by telephone, facsimile or telecommunication of any refused freight and request additional instructions regarding delivery or storage of such goods. Any such notice by Carrier shall be immediately confirmed in writing, stating the amount, date and time that storage charges will begin to accrue, if any.

D. Carrier acknowledges that Broker may utilize other carriers to facilitate the movement of any such delayed shipment. In the event that Carrier fails to complete any trip undertaken by it, and Broker or any person with which Broker contracts, completes such trip, Carrier shall be responsible for reasonable and necessary costs, charges, fees, and expenses related thereto.

E. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF MARKET, LOSS OF CUSTOMER GOODWILL, OR PUNITIVE OR EXEMPLARY DAMAGES), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES SOUNDS IN CONTRACT, TORT, BREACH OF WARRANTY, CONSUMER FRAUD, OR OTHERWISE.

13. CLAIMS

A. Carrier shall comply with 49 C.F.R. § 370.1 et seq. and any amendments thereto, and/or any other applicable regulations adopted by the FMCSA, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvage.

B. Notwithstanding the terms of 49 C.F.R. § 370.9, Carrier shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within sixty (60) days of receipt of the claim. Failure of Carrier to pay, decline or offer settlement within this sixty (60) day period shall be deemed admission by Carrier of full liability for the amount claimed.

C. Salvage. Carrier waives the right to salvage damaged freight. Carrier further understands and agrees that the shipper or consignee may choose to destroy the goods rather than allowing them to reach the consumer market. Carrier agrees that it shall not sell, otherwise dispose of, or permit the sale, disposal, or salvage of any food-related goods or any goods bearing any trade name, trademark, logo or service mark without first obtaining the written consent of Broker.

14. INDEMNIFICATION. Without regard to the insurance limits in Section 15, Carrier shall defend, indemnify and hold Broker, Broker's customer, their respective affiliates, subsidiaries, directors, officers, employees, contractors, and agents (collectively, the "Indemnified Parties") harmless against any fines, penalties, demands, regulatory actions, citations, claims, lawsuits or damages arising out of or in any way related to the performance or breach of these Terms and Conditions by Carrier, its employees or independent contractors working for Carrier (collectively, the "Claims"), including but not limited to: Claims for or related to personal injury (including death), to any person including Carrier employees, subcontractors, and contractors; property damage, including cargo loss, damage, or delay; provided, however, that Carrier's obligations under this paragraph will not apply to the prorated extent that any Claim is directly and proximately caused by the negligence or willful misconduct of the party to be indemnified, defended or held harmless. Carrier hereby expressly waives any exclusive remedy defense, including, but not limited to, those available under any workers' compensation or other occupational accident statutory regime, to the extent necessary to effectuate Carrier's obligations under this provision. In the event Carrier is obligated to provide a defense hereunder, Carrier shall do so with qualified counsel approved by the Indemnified Party. Carrier shall not settle, compromise, or consent to the entry of any judgment with respect to any Claim without the prior written consent of the Indemnified Party. The obligation to defend shall include payment of all costs of defense as they accrue, including reasonable attorney's fees.

15. INSURANCE

A. Carrier shall obtain and keep in force continuously throughout the provision of Services, the following insurance: i) General Liability insurance in an amount no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate; ii) Auto Liability insurance (including hired and non-owned) in an amount no less than \$1,000,000; iii) Motor Truck Cargo Liability insurance in an amount no less than \$250,000 per occurrence, with the deductible not to exceed \$5,000; iv) Workers' Compensation insurance with limits required by law; and v) Employers' Liability insurance in an amount no less than \$1,000,000.

B. Carrier shall furnish Broker with certificate(s) of insurance and insurance policies within forty-eight (48) hours of request by Broker, and shall provide thirty (30) days advance written notice of cancellation or termination.

C. Carrier's insurance policies shall be primary and shall waive subrogation and contribution against Broker and Broker's customers. Broker shall be named as a certificate holder on Carrier's General Liability and Auto Liability policies, and as a loss payee on the Motor Truck Cargo Liability policy as evidenced by an endorsement on the certificates of insurance. Motor Truck Cargo Liability coverage shall be broad form, non-form-following coverage. Each policy of insurance maintained by Carrier for insurance required by herein shall be underwritten by an insurer with an A.M. Best rating no less than A-. Carrier's liability shall not be limited by the amount of insurance required herein, and Carrier remains fully liable, without limitation, for any loss for which it is otherwise liable by law or by these Terms and Conditions. Carrier has the right to reject any load whose value it believes exceeds its available insurance coverage. Broker and shipper have no duty to inform Carrier of the value of loads transported by Carrier.

16. APPLICABILITY. Carrier agrees that these Terms and Conditions shall apply on all shipments it handles for Broker. In no event shall any terms in a tariff, service guide, or other shipping document maintained by Carrier apply to any services provided hereunder. Any terms in any tariff, shipping document or other document that purport to limit Carrier's liability for any cargo loss shall be ineffective. Carrier expressly waives all rights and remedies under 49 U.S.C. Subtitle IV, Part B to the extent they conflict with these Terms and Conditions.

17. FORCE MAJEURE. In the event that either Party is prevented from performing its obligations under these Terms and Conditions because of an occurrence beyond its control and arising without its fault or negligence, including without limitation, war, riots, rebellion, acts of God, acts of lawful authorities, fire, strikes, lockouts or other labor disputes, such failures to perform (except for any payments due hereunder) shall be excused for the duration of such occurrence. Economic hardships, including, but not limited to, recession and depression, shall not constitute Force Majeure events.

18. GOVERNING LAW AND DISPUTE RESOLUTION. In the event of a dispute arising out of the Services, including but not limited to Federal or State statutory claims, the Party's recourse (except as provided below) shall be arbitration. Arbitration Proceedings shall be conducted under the rules of the American Arbitration Association (AAA). Arbitration proceedings shall be started within twenty four (24) months from the date of delivery or scheduled date of delivery of the freight, whichever is later. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the AAA. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The rationale and reasoning of the decision of arbitrator(s) shall be fully explained in a written opinion, including findings of fact and conclusions of law. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at the office of the AAA or at such other place as mutually agreed upon in writing, or by conference call or video conferencing upon agreement of the Parties, or if no agreement then at the selection of the Broker or as directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted or controlled by federal transportation law and regulations, the laws of the State of California shall be controlling notwithstanding applicable conflicts of laws rules. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

19. MISCELLANEOUS

A. No Waiver. Failure of either Party to enforce a breach or waiver of any provision of these Terms and Conditions shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either Party to thereafter enforce such a term or provision.

B. No Solicitation. Unless otherwise agreed in writing, Carrier shall not knowingly solicit freight shipments (or accept shipments) for a period of twelve (12) month(s) following termination of Services for any reason, from any shipper, consignee, or other customer of Broker, when such shipments of shipper customers were first tendered to Carrier by Broker. In the event of breach of this provision, Broker shall be entitled, for a period of twelve (12) months following delivery of the last shipment transported by Carrier under these Terms and Conditions, to a commission of thirty-five percent (35%) of the gross transportation revenue (as evidenced by freight bills) received by Carrier for the transportation of said freight as liquidated damages. Additionally, Broker may seek injunctive relief and in the event it is successful, Carrier shall be liable for all costs and expenses incurred by Broker, including, but not limited to, reasonable attorney's fees.

C. Assignment and Modifications. Carrier may not assign or transfer its Services, in whole or in part, without the prior written consent of the Broker. No amendment or modification or waiver of these Terms and Conditions shall be binding unless in writing and signed by agents of the Parties with express authority to agree to such terms.

D. Confidentiality. 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 Section, the Parties 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 Section in which case the non-prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

E. Severance. In the event any of the terms of these Terms and Conditions are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written.

F. Survival. The representations and warranties, rights and obligations of the Parties hereunder, as well as the provisions of these Terms and Conditions related to claims shall survive the termination of Services for any reason.

G. Broker's Records. To the extent allowable under applicable state and federal law, Carrier hereby waives its right to obtain copies of Broker's records as provided for under 49 C.F.R. Part 371. Notwithstanding the foregoing, to the extent that Carrier obtains records set forth in 49 C.F.R. § 371.3 by any means whatsoever, Carrier agrees to refrain from utilizing such records in negotiating for the provision of services with any third party, including existing customers of Broker. Carrier further agrees and understands that all such records comprise Broker's confidential information and trade-secrets. Nothing in this section is intended to relieve Carrier of any other obligations imposed upon it by these Terms and Conditions, or to limit any rights of Broker to enforce such obligations.