



Terms and Conditions

RECITALS

LANTER Logistics LLC is a freight broker licensed by the Federal Motor Carrier Safety Administration (FMCSA) MC #955797, and as a licensed broker, LANTER, arranges for transportation of freight by hiring motor carriers authorized to operate by FMCSA.

SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of LANTER to arrange for transportation of SHIPPER's freight.

SERVICE LANTER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by these terms and conditions. Unless otherwise agreed in writing, SHIPPER acknowledges and agrees that shipments **may be** brokered to rail carriers. LANTER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight.

Shipment information SHIPPER shall be responsible to LANTER for timely and accurate delivery specifications and description of the cargo, including, but not limited to, time sensitive shipments, dimensions, weight, any special handling or security requirements, and employing reasonable security protocols to reduce the risk of cargo theft.

FREIGHT CARRIAGE LANTER warrants that it has entered into, or will enter into, bilateral written contracts with each carrier it hires to transport SHIPPER'S freight. LANTER further warrants that those contracts comply with all applicable federal and state laws and regulations and shall include (but not be limited to) the substance of the following terms:

- A. Carrier is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to:
 1. Transportation of Hazardous Materials, (including the licensing and training of drivers), as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials;
 2. Security regulations;
 3. Owner/operator lease regulations;
 4. Loading and securement of freight regulations;
 5. Implementation and maintenance of driver safety regulations including, but not limited to hiring, controlled substances, and hours of service regulations;
 6. Sanitation, temperature, and contamination requirements for transporting food, perishable, and other products;
 7. Qualification and licensing and training of drivers;
 8. Implementation and maintenance of equipment safety regulations;
 9. Maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers;

10. All registration and licensing requirements required to perform the services including but not limited to insurance requirements.

- B. Carrier shall agree to defend, indemnify and hold LANTER and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death.
- C. Carrier shall agree that its liability for cargo loss or damage shall be determined by 49 USC §14706 (the Carmack Amendment). Exclusions in carrier's insurance coverage shall not exonerate carrier from this liability. No limitation of carrier's liability shall apply, unless LANTER first obtains the express written consent of SHIPPER.
- D. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:
 - General Liability - \$1,000,000
 - Auto Liability - \$1,000,000 (scheduled auto does not qualify)
 - Cargo Liability - \$ 100,000 (no exclusions for type of cargos transported under this Agreement)
 - Worker's Compensation – as required by law.

LANTER shall verify that each carrier it utilizes in the performance of this Agreement has insurance policies as defined above.

- E. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims (except for exempt commodities), for loss, damage, injury or delay to property and the processing of salvage.
- F. LANTER and carrier agree that LANTER is the sole party responsible for payment of carrier's charges. Failure of LANTER to collect payment from its customer shall not exonerate LANTER of its obligation to pay carrier. LANTER agrees to pay carrier's undisputed invoice within 25 days of receipt of the bill of lading or proof of delivery, provided carrier is not in default under the terms of this Agreement. If LANTER has not paid carrier's undisputed invoice as agreed, and carrier has complied with the terms of this Agreement, carrier may seek payment from the Shipper or other party responsible for payment after giving LANTER five (5) (business days) advance written notice, except that carrier shall not seek payment from Shipper or any other Party responsible for payment if SHIPPER or such other Party can prove payment to LANTER.
- G. Carrier agrees that at no time during the term of its contract with LANTER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA), and that it has no knowledge of any threatened or pending interventions by FMCSA; if carrier receives an "Unsatisfactory" safety rating, or a rating has changed from "Satisfactory" to "Conditional" or if any future safety rating has otherwise been downgraded by FMCSA, it shall immediately notify LANTER and shall not transport any freight hereunder without LANTER's prior written consent. The provisions of this paragraph are intended to include safety rating designations which may replace those above, which are subject to change by FMCSA at any time.
- H. Carrier shall agree that the terms and conditions of its contract with LANTER shall apply on all shipments it handles for LANTER. Any tariff terms published by carrier which are inconsistent with the contract shall be subordinate to the terms of the contract.

- I. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.
- J. Carrier will not broker, assign, or subcontract the shipments without prior written consent of LANTER. If carrier breaches this provision, LANTER shall have the right of paying the monies it owes CARRIER, directly to the delivering carrier in lieu of payments to the CARRIER. Upon LANTER's payment to delivering carrier, CARRIER shall not be released from any liability to LANTER under this Agreement, or from liability under 49 U.S.C. 14916.
- K. On behalf of the SHIPPER, consignee and LANTER interests, to the extent that any shipments subject to this Agreement are transported within the State of California, CARRIER warrants that it is in compliance with all California Air Resources Board regulations. CARRIER shall be liable to LANTER and SHIPPER for any penalties, or any other liability, imposed on or assumed by LANTER or LANTER's customer because of CARRIER's use of non-compliant equipment.

RECEIPTS AND BILLS OF LADING If requested by SHIPPER, LANTER agrees to provide SHIPPER with proof of acceptance and delivery of shipments in the form of a signed Bill of Lading or Proof of Delivery via US Mail, courier, or electronically by fax or email. SHIPPER's insertion of LANTER's name on the bill of lading shall be for SHIPPER convenience only and shall not change LANTER's status as a property broker. The terms and conditions of any freight documentation used by LANTER or carrier selected by LANTER may not supplement, alter, or modify the terms of this Agreement.

PAYMENTS LANTER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions, and any written supplements or revisions that are mutually agreed to between the PARTIES in writing. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon LANTER's invoice to SHIPPER and SHIPPER's payment to LANTER. SHIPPER agrees to pay LANTER's invoice within twenty-one (21) days of invoice date without deduction or setoff. LANTER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to LANTER shall relieve SHIPPER, consignee or other responsible party of any liability to the carrier for non-payment of its freight charges. LANTER shall indemnify SHIPPER from and against any claim for freight payment brought by carrier against SHIPPER when SHIPPER has paid LANTER and LANTER has failed to pay carrier.

Freight Claims: SHIPPER must file claims for cargo loss or damage with LANTER within one hundred fifty (150) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against LANTER in a Court of Law (or commence arbitration) within one (1) year from the date the carrier or LANTER provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice.

LANTER shall assist SHIPPER in the filing and/or processing of claims with the Carrier. If payment of claim is made by LANTER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to LANTER.

In no event shall LANTER or LANTER's Carrier be liable to SHIPPER for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed LANTER, in written or electronic form, prior to or when offering a shipment or series of shipments to LANTER of the potential nature, type and approximate amount of such damages, and LANTER specifically agrees in written or electronic form to accept responsibility for such damages.

All Other Claims: The PARTIES shall notify each other of all known material details within sixty (60) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly

thereafter as more information becomes available. Civil action, or arbitration, if any, shall be commenced within two (2) years from the date either Party provides written notice to the other Party of such a claim.

INSURANCE. LANTER agrees to procure and maintain at its own expense the following insurance coverage amounts:

- A. Comprehensive general liability insurance covering bodily injury and property damage \$1,000,000
- B. Contingent Cargo Insurance \$ 100,000
- C. Contingent Auto Liability Insurance \$1,000,000
- D. Workers Compensation and Employers Liability (as required by state law.)
- E. LANTER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER (or an insurance monitoring service) as "Certificate Holder" as requested by SHIPPER.
- F. Unless mutually agreed by the Parties in writing prior to offering or tendering of any shipment hereunder to carriers hired by LANTER pursuant to this Agreement, neither LANTER nor the hired carrier shall be liable for freight loss, theft, and damage claims which exceed \$100,000.00. SHIPPER assumes all risk of loss to the extent that any one shipment (truckload or less than truck load), of freight is valued at greater than \$100,000.00.

SURETY BOND LANTER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of at least \$75,000 or as otherwise required by the FMCSA and furnish SHIPPER with proof prior to any transportation services to be provided herein.

HAZARDOUS MATERIALS SHIPPER 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. SHIPPER is obligated to inform LANTER immediately if any such shipments constitute hazardous materials. SHIPPER shall defend, indemnify and hold LANTER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

HOMELAND SECURITY As applicable to each, respectively, LANTER and SHIPPER shall comply with state and federal Homeland Security related laws and regulations.

"CURE"/DEFAULT Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith.

INDEMNIFICATION LANTER and SHIPPER shall defend, indemnify and hold each other harmless subject to insurance limits and coverage as described herein from: payment of rates and/or accessorial charges to carriers, arising out of their respective performances under this Agreement, and from claims, for property damage or cargo loss, damage, or delay up to \$100,000; and from claims for personal injury and/or death up to \$1,000,000, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither party shall be liable to the other party for any claims, actions or damages due to its own negligence or intentional acts. Failure of insurance coverage, for any

reason, shall not exonerate either party from its indemnity obligations hereunder. The obligation to defend shall include all costs of defense as they accrue.

INDEPENDENT CONTRACTOR It is understood between LANTER and SHIPPER that LANTER is not an agent for the carrier or SHIPPER, and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over LANTER, its operations or employees.

FORCE MAJEURE Neither Party shall be liable to the other for failure to perform any of its obligations during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or LANTER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.

DISPUTE RESOLUTION In the event of a dispute, either Party may declare a “negotiation period” by giving 30-day written notice to the other Party. Upon the issuance of such notice, each Party shall appoint a representative to negotiate a resolution of the issue(s). If the appointed representatives cannot reach resolution within 30 days negotiation period, the Parties shall resolve the dispute through the option selected below.

ARBITRATION In the event of a dispute arising out of this Agreement, the Party’s sole recourse shall be to arbitration within one year from the date of the alleged loss. Proceedings shall be conducted under the rules of the Transportation Arbitration and Mediation PLLC (TAM), the American Arbitration Association (AAA) or Transportation ADR Council, Inc. (ADR) at the discretion of the party filing the complaint. Upon agreement of the PARTIES: Arbitration proceedings may be conducted outside of the administrative control of the TAM, AAA or ADR; arbitration proceedings may be conducted by tele-conference or video-conference. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for appeal or injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

CONFIDENTIALITY Other than as required to comply with law or legal process requiring disclosure, the Parties agree to the following:

- A. LANTER shall not utilize SHIPPER’s name or identity in any advertising or promotional communications without written confirmation of SHIPPER’s consent. LANTER will require its carriers and/or other LANTERs to comply with this confidentiality clause.
- B. 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.
- C. In the event of violation of this Confidentiality paragraph, 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 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.