



TMS INTERNATIONAL, LLC

TERMS AND CONDITIONS FOR THE PURCHASE OF TRANSPORTATION SERVICES

1. CONTRACT. These terms and conditions, together with the terms set forth in TMS' email order confirmation / request (collectively, the "Contract"), (a) constitute the entire contract between the transportation carrier ("Carrier") and TMS International, LLC (together with its subsidiaries and affiliates, "TMS") with respect to Carrier's performance of transportation services for TMS, regardless of whether Carrier has acknowledged acceptance of these terms and conditions, and (b) expressly limit Carrier's acceptance to the terms of this Contract. If TMS' writing is construed as an acceptance or a confirmation acting as an acceptance, then TMS' acceptance is EXPRESSLY CONDITIONAL ON CARRIER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN CARRIER'S WRITING. Further, if TMS' writing is construed as the offer, acceptance thereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND TMS HEREBY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS; NO SUCH ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS SHALL BE BINDING ON TMS UNLESS AGREED TO IN WRITING BY TMS. TMS' acceptance of any writing from Carrier, or commencement of performance (including payment for services) shall not constitute acceptance of any of Carrier's terms and conditions. Any use of Carrier's documentation to administer the performance of services hereunder shall be for convenience only and all terms and conditions set forth on such documentation shall be null and void and not binding on TMS unless agreed to in writing by TMS. TMS' failure to object to any terms contained in any subsequent communication from Carrier will not be a waiver or modification of the terms set forth herein. In any event, Carrier's assent to the terms of this Contract shall be conclusively presumed from Carrier's: (a) delivery to TMS of a signed copy of this Contract (including by facsimile or electronic means); (b) receipt of TMS' order confirmation without written objection sent to TMS within ten (10) days after receipt of same; (c) preparation for and or commencement of any of the services to be provided hereunder, in either case, after receipt of this Contract; or (d) acceptance of all or any part of TMS' payment for the services ordered.

2. SERVICES. Carrier shall provide transportation, delivery, handling and related services for the goods identified in TMS' email order requesting services from and to the locations designated by TMS (collectively, the "Services"). TMS will tender or cause to be tendered to Carrier a shipment or series of shipments and Carrier shall accept tender of shipment(s) as directed by TMS and load, transport, unload and deliver such shipments promptly and efficiently without loss, damage or delay. Carrier shall provide efficient and timely transportation services which shall include, but not be limited to, the following: (a) Carrier will supply and make available the requisite equipment and drivers within the timeframe specified by TMS of a shipment being tendered hereunder; (b) upon receipt of any shipment from TMS, Carrier shall proceed immediately and without detour or delay to the point of delivery designated in the accompanying shipping documents, unless otherwise specified by TMS; (c) while transporting any of TMS' goods pursuant to this Contract, Carrier shall not accept, receive, cause or allow to be loaded on the equipment being used to transport TMS' goods the commodities or goods of any other person or entity, unless agreed to by TMS in writing; (d) Carrier will maintain an adequate and constant supply of equipment and drivers as necessary to fully and timely perform the transportation services on behalf of TMS; and (e) Carrier shall immediately notify TMS of all accidents and/or occurrences which may impair the safety, condition or materially delay the delivery of the goods. Carrier acknowledges and agrees that timely performance of the Services is essential to TMS' unique transportation requirements.

3. EQUIPMENT & PERSONNEL. Carrier agrees to furnish TMS with adequate equipment, drivers, and management personnel as necessary to perform this Contract. In furnishing the Services, Carrier shall supply and use safe and well-maintained equipment, which shall be free of any defects and contaminants and shall be satisfactory to TMS. All drivers provided will be properly licensed, trained, and qualified. Carrier shall supply equipment that is sufficient in number, size and capacity to adequately and efficiently meet the transportation obligations established herein. All equipment shall be maintained in good and efficient condition at Carrier's cost. Carrier further acknowledges and agrees that it shall upgrade and/or replace equipment due to, among other things, age and condition, as may be required to ensure that all equipment performs at or above the levels or specifications required by federal, state or local agencies having jurisdiction over the Carrier.

4. REPRESENTATIONS & WARRANTIES. Carrier represents and warrants that (a) Carrier maintains active authority, in the form of a permit or other documented evidence of motor contract carrier status, to perform the transportation services contemplated by this Contract; and (b) all Services performed hereunder shall be performed in a skillful and workmanlike manner, with the highest degree of skill and care, in accordance with generally recognized commercial practices and standards for similar services, and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including all rules and regulations promulgated by the United States Department of Transportation and other federal or state agencies having jurisdiction over the transportation Services provided hereunder. If Carrier, its employees, subcontractors, agents, or any other party under Carrier's control (collectively, "Carrier Parties") will perform services hereunder at any TMS premises or the premises of a third party as directed by TMS (in either case, the "TMS Site"), Carrier represents, warrants, and agrees that Carrier shall, and shall cause all Carrier Parties to: (y) comply with all rules and regulations (whether of TMS or a third party) of the TMS Site; and (z) keep materials and the TMS Site (including all property and fixtures thereon) free and clear of any liens for material and labor incident to the performance of the Services by Carrier hereunder. If requested by TMS, Carrier shall execute and deliver to TMS a waiver/ release of lien as a condition of payment hereunder. In the event of a breach of any of the foregoing representations, warranties, or agreements, Carrier shall promptly, safely and expeditiously correct such breach by, at the option of TMS, removal, replacement and reinstallation or repair, modification or adjustment of the nonconforming goods or Services. Acceptance by TMS of Services shall not relieve Carrier of any of its warranty obligations hereunder.

6. ACCEPTANCE. Carrier will be responsible for inspecting all shipments prior to transport and determining whether a shipment is suitable for transportation. Acceptance of a shipment by Carrier's driver will serve as Carrier's acknowledgement and agreement that the shipment has been properly loaded and secured, protected against potential damage or loss, and meets all requirements for safe and lawful transportation. Upon acceptance of a shipment, Carrier agrees to indemnify and hold TMS harmless from and against any and all claims, actions, causes of action, damages, losses, injuries, fines or other liabilities arising out of or related to the loading, securing and transporting of TMS' goods.

7. CUSTODY & CONTROL. Carrier shall have exclusive custody, control and care of each shipment tendered for transport under this Contract and for all of TMS' Goods comprising each shipment, from the time the shipment is tendered to Carrier for transportation until such time that the shipment has been delivered to and accepted by the consignee. Carrier shall inspect each shipment prior to transport and note any exceptions to the quantity or quality of goods received. A clean bill of lading or scale ticket shall indicate that the Carrier has inspected and received the freight in accordance with the bill of lading or scale ticket and, in such event, Carrier shall be liable for any and all damage or loss of freight while under the control, custody and care of the Carrier, regardless of the cause of such damage or loss. Unless otherwise agreed to by the Parties in a signed agreement, Carrier may not limit its liability for damage or loss of TMS' goods transported hereunder, and no unilateral or collectively applied limitation of liability shall apply to Shipper, regardless of whether or not Shipper has actual knowledge of same.

8. RATES; PAYMENT. Rates shall be as set forth on TMS' order confirmation / request and shall not be filled at higher prices than last quoted or charged to TMS, without prior written approval from TMS. Unless otherwise specified in TMS' order confirmation / request, payment of undisputed amounts due hereunder shall be made within forty-five (45) days after receipt of Carrier's invoice. The parties agree that the Carrier is responsible for the payment of any sales, use or other taxes, tariffs, or similar charges arising from the performance of Services pursuant to this Contract, and that any such taxes are included in the price set forth in the order

confirmation / request. Carrier will reimburse TMS if it pays any such taxes, tariffs or other charges directly to the relevant authorities, including any interest and / or penalties thereon. Unless specifically agreed upon in writing in advance of shipment, TMS will not pay for any detention charges or charges related to cleaning of equipment.

9. REJECTION. Carrier shall immediately notify TMS of any shipment that is rejected by the consignee or is undeliverable, despite Carrier’s efforts to deliver same. Upon notification, TMS shall provide Carrier with instructions as to the handling and subsequent disposition of the shipment. If a shipment must be returned to its point of origin, the Carrier shall be compensated at the rates that would apply on an inbound shipment to that point of origin, but in no event shall such return rates exceed the rates applicable to the original shipment. No payment for rejected or undeliverable shipments will be owed or made by TMS if the procedures set forth herein are not followed by the Carrier or if the rejection or inability to deliver was caused by the Carrier.

10. INDEMNITY. In addition to any other obligation in this Contract for Carrier to defend, indemnify or hold TMS harmless, Carrier agrees to protect, defend, indemnify and save TMS, its parents, subsidiaries and affiliates, and their respective officers, directors, employees, contractors and agents (the “Indemnified Parties”), harmless from and against any and all actions, losses, liabilities, damages, claims, costs (including attorney’s fees), charges, expenses, penalties, fines, or demands of any nature that arise out of, relate to or in connection with: (a) any breach of the terms of this Contract by Carrier or Carrier Parties; (b) any personal injuries (including death) or property damage (including contamination) arising from Carrier or Carrier Parties’ performance of Services under this Contract; (c) Carrier or Carrier Parties’ violation of any laws, rules, regulations or ordinances (d) negligence or willful misconduct of Carrier or Carrier Parties; except that Carrier shall have no liability for damages caused by the sole negligence of any of the Indemnified Parties.

11. INSURANCE. For the duration of this Contract, Carrier shall maintain, at its own expense, and shall require its subcontractors, if any, to maintain insurance coverage meeting or exceeding the requirements set forth below, unless TMS provides other insurance requirements to Carrier in connection herewith, in which case such other requirements shall govern:

Policy Type	Limit Type	Minimum Limits (USD)	Additional Insured	Waiver of Subrogation
General Liability Must include contractual liability, products, completed operations and coverage for any subcontractor’s liability.	Each Occurrence	\$1,000,000	Yes CG 20 10 & CG	Yes
	Aggregate	\$2,000,000	20 37	
Automobile Liability Must include contractual liability, and coverage for all owned, hired and non-owned vehicles. <i>FMCSA Form MCS-90 Endorsement Required</i>	Combined Single Limit	\$1,000,000	Yes CA 20 48	Yes
Worker’s Compensation Employers Liability	Statutory Requirement	Statutory	N/A	Yes
	Each Accident / Disease	\$500,000		
	Each Employee / Disease	\$500,000		
	Policy Limit	\$500,000		
Cargo Liability Excess/Umbrella Liability At a minimum, must provide excess coverage over and follow form to the General Liability, Automobile Liability and Employer’s Liability policies. Coverage may be increased to supplement the minimum limits of any other policies, in which case it must follow form.	Per Conveyance	\$100,000	N/A	Yes
	Each Occurrence	\$1,000,000	Yes	Yes
	Aggregate	\$2,000,000	CG 20 10 & CG 20 37	

All policies must be issued by insurance carriers with an AM Best rating of “A- X” or better. Additional insured coverage to be provided using the specified ISO form. Furthermore, the additional insured coverage under the General Liability policy must be primary and non-contributory and the additional insured coverage under the Automobile Liability policy should be primary in that it must provide coverage before any TMS policies (with the Excess / Umbrella Liability policy following form, in each case, as applicable). Carrier shall furnish certificates evidencing the insurance coverage required hereby satisfactory in form and substance to TMS, naming TMS, its subsidiaries and affiliates as additional insureds and/or loss payees, with a waiver of subrogation (in each case per the table above). In addition, if Carrier is delivering fuel, oils or other liquids, Carrier must include an endorsement that the policies provide coverage for cleanup of any spills. TMS must be named as a certificate holder on all required insurance policies using the following certificate holder language: “TMS International, LLC c/o AMCS, PO Box 129, Conway, AZ 72033.” The following endorsement verbiage is required on all such certificates: “TMS International, LLC and its subsidiaries and affiliates are (a) additional insured’s on the General Liability, Automobile Liability and Excess / Umbrella Liability policies, and (b) loss payee on the Cargo Liability policy. A waiver of subrogation to the benefit of TMS International has been provided under the General Liability, Automobile Liability, Workers’ Compensation / Employer’s Liability, Cargo Liability, and Excess / Umbrella Liability policies. The additional insured coverage under the General Liability policy is written on a primary and non-contributory basis and the additional insured coverage under the Automobile Liability policy is primary and written to provide coverage before any TMS policies (with the Excess / Umbrella Liability policy following form, in each case, as applicable). In addition, the Excess / Umbrella Liability policy is written on a follow form basis as to the General Liability, Automobile Liability, and Employer’s Liability policies.”

12. MISCELLANEOUS. This Contract and all related documents (including any quotation or any other document submitted in connection therewith), and all matters arising out of or related to this Contract or any such documents, shall be governed by and construed, interpreted and enforced in accordance with, the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law provisions. All disputes arising directly or indirectly hereunder or in connection herewith shall be resolved in a court of competent jurisdiction sitting in Philadelphia, Pennsylvania. This Contract may not be modified, altered or waived, either orally, by usage of trade, course of performance or course of dealing. Any change to, deviation from, or waiver of this Contract shall only be made pursuant to a writing signed by both parties. If any term or provision of this Contract is declared invalid, illegal or unenforceable in any jurisdiction, (a) the affected provision will be modified to conform to applicable law, if possible, or omitted, and (b) such invalidity, illegality or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. No assignment or sublease of this Agreement shall be made without prior written consent of TMS, which TMS, in its sole discretion, may withhold for any reason. In the event of a conflict between the terms set forth in the order confirmation / request and the terms and conditions in this Contract, the terms set forth in the order confirmation / request shall prevail.