

**TERMS AND CONDITIONS OF PROPERTY BROKER SERVICE**

**“Rules Circular”**

These Terms and Conditions for Property Broker Service (these “Terms and Conditions”) apply to customers of **Kings Peak Logistics, LLC** unless superseded in writing in a written agreement signed by both parties.

**I. Definitions**

 a. “Broker” shall mean **Kings Peak Logistics, LLC**. Broker is an arranger of third party logistics services including the arranging of transportation of surface shipments and related logistics services for and on behalf of its Customers. Broker is authorized and qualified to operate as a property broker pursuant to 49 C.F.R. 371 under license number MC-1525745.

 b. “Carrier” as used herein shall mean a licensed for-hire motor carrier which is authorized to transport shipments in interstate commerce pursuant to regulations promulgated by the U.S. DOT.

 c. “Customer” shall mean the party which retains Broker to arrange for the provided Services, and who agrees to be responsible for payment of charges.

 d. “Services” shall mean all logistics services arranged or provided by Broker as well as services provided by its Carriers which are independent contractors. Services initiated on a per shipment basis are predicated on an individual rate agreement (the “Spot Quote”). The Spot Quote rate will apply per vehicle/container/trailer/car used regardless of actual weight of a shipment and notwithstanding any other published rate or rule in effect. If Customer desires to change the terms of the shipment or cancel the shipment, Customer must notify Broker of the changes or cancellation prior to dispatch, or Customer may incur additional charges.

**II. Customer’s Warranties**

Customer shall be responsible for and warrants compliance by it and all consignors and consignees with applicable laws, rules, and regulations, including, but not limited to, customs laws, import and export laws, anti-corruption laws and governmental regulations of any jurisdiction to, from, through or over which the shipment may be carried. Broker assumes no liability to Customer or to any other person for any loss or expense due to the failure of Customer to comply with this provision. Any individual or entity acting on behalf of Customer in scheduling shipments hereunder warrants that it has the right to act on behalf of Customer and the right to legally bind Customer.

**III. Customer Responsibilities**Unless agreed to otherwise in writing, Customer warrants that the consignor shall be responsible for: (i) loading, blocking and bracing the shipment in the Carrier vehicle in such proper and timely manner to prevent shifting of the shipment during normal transportation and to comply with highway weight limits and (ii) that consignee will unload shipments from Carrier vehicle in a timely manner and within free time allowed by Carrier. Detention beyond allowed free time may cause assessment of additional charges. All shipments shall be treated as “Shipper load and count, consignee unload” where shipments are delivered with seal intact. Customer also warrants that consignor will agree to Broker’s “Hazardous Materials Transportation Policy” when shipping hazardous materials and that consignor is knowledgeable in shipping hazardous materials.

**IV. Broker Warranties**

Broker shall be solely responsible for vetting and retaining licensed, authorized and insured carriers in accordance with 49 C.F.R. 371. Broker shall contractually require strict compliance of its retained service providers with all federal and state safety and employment laws.

**V. Payment**Broker shall agree to submit to Customer an invoice for all services provided together with proof of delivery. Customer agrees to pay all such invoices within 30 days of receipt without offset unless agreed to otherwise in writing. Invoices not paid within this time limit will be subject to interest at the rate of 1½% (or, if less, the maximum rate permitted by applicable law) per month or any part thereof plus attorney’s fees in the amount of 25% of the unpaid amount if litigation is required.

**VI. Bills of Lading**Any bill of lading used by Customer to tender a shipment to a Carrier shall contain the shipper name and address, consignee name and address, description of the goods, number of packages, and weight in accordance with 49 C.F.R. 373. The bill of lading will be deemed to read as if it were a Standard Truckload Bill of Lading. Any terms, conditions and provisions of a bill of lading or other receipt shall be subject and subordinate to these Terms and Conditions. Any bill of lading issued by Customer or Carrier shall constitute a delivery receipt only. Customer will not insert Broker’s name as the carrier on a bill of lading and will ensure that the consignor releases the shipment to the authorized carrier named by Broker to transport the load.

**VII. Responsibility For Freight Charges**Upon payment by Broker of freight charges to its retained Carrier, Broker acquires by assignment all collection rights of its Carrier. Upon payment by Customer to Broker, Broker warrants that all freight charges will be paid without recourse to Customer.

**VIII. Independent Contractor**Broker and its Carriers are and will remain separate independent contractors with respect to Customer and the Services being performed hereunder. Nothing herein shall be construed as creating a legal partnership or joint venture between any parties.

**IX. Insurance**Broker shall procure and maintain, at no cost to Customer, and with reputable and financially responsible insurance underwriters, the following insurance coverages:

 a. A surety bond and/or trust fund in the amount of $75,000 as prescribed by Federal law;

 b. Worker’s compensation insurance as required by applicable law; and

 c. Any additional insurance required under any and all applicable federal, state, provincial and local laws, rules and regulations.

Broker warrants that it will require Carriers it retains to maintain auto liability insurance as required by federal statute as well as worker’s compensation insurance as required by applicable law and any additional insurance required by federal, state or local laws or regulations.

**X. Indemnification**Each party shall indemnify, defend and hold harmless the other, its successors and assigns, and their respective affiliates, employees, directors, officers, owners, representatives and agents from any and all losses, claims, demands, damages, liabilities, obligations, costs and/or expenses, including, without limitation, reasonable attorneys’ fees to the extent caused by any negligent or willful act or omission of the indemnitor, its employees or agents. Broker warrants that Carriers retained by it hold insurance as required by federal statute and that such insurance will inure to Customer’s benefit.

**XI. Cargo Liability and Claims**All claims will be filed by Customer with the authorized Carrier retained by Broker subject to the Federal Claims Rules, 49 C.F.R. §370, the Carmack Amendment, 49 U.S.C. §14706 and the terms and conditions of the Standard Truckload Bill of Lading.

 a. Unless otherwise agreed in writing, all truckload shipments will be released to a maximum value not to exceed five US dollars ($5.00) per pound per package subject to a maximum liability of US$100,000 per vehicle, whichever is less. Used machinery will have a released value of US$0.10 per pound.

 b. Where substituted rail for motor carrier service is authorized by Customer and used, liability for cargo loss or damage shall be limited to the extent of applicable railroad claims rules, policy guidelines, railroad rules, packaging guidelines and other service conditions.

 c. Where less-than-truckload shipments are tendered, the published service conditions, accessorial charges and release rate of the applicable service provider shall apply.

 d. Where transloading and/or warehousing services are provided, liability for property loss or damage shall be limited to the coverage of each applicable transloader or warehouse provider used by Broker unless Customer 1) declares value and requests specific cargo coverage from Broker in writing and 2) receives approval to provide cargo coverage for these services from Broker in writing.

 e. When service is arranged to or from points in Mexico, all claims for loss or damage occurring there will be filed by customer with the authorized Mexican carrier retained by company subject to applicable Mexican statutes, laws and limitations of liability.

**XII. Undercharge and Overcharge Claims**Except as otherwise expressly provided for herein, Broker shall process all overcharges as provided in 49 C.F.R. Part 378. The time limit for filing of initial claims for alleged undercharges or overcharges under the terms of this Agreement shall be one hundred and eighty (180) days from the date of delivery of the shipment. Failure to file a claim challenging initial charges within said one hundred and eighty (180)-day period shall forever bar any action at law for recovery of same. Any action at law by either party to collect alleged undercharges or overcharges under the terms of this Agreement shall be commenced not later than eighteen (18) months after delivery of the shipment. Expiration of said eighteen (18)-month term shall be a complete and absolute defense against any such claim, regardless of any extenuating or mitigating circumstances or excuses of any nature whatsoever.

**XIII. Application of General Principles of Federal Transportation Law**

Broker and Customer acknowledge that these terms and conditions are designed to incorporate by reference general principles of federal transportation law and the duties, obligations, rights and remedies applicable to Broker’s retained motor carrier service providers without regard to the nature of the shipment.

**XIV. Force Majeure**Neither Customer nor Broker will be liable for any delay in the performance of their respective obligations for Services resulting directly or indirectly from or contributed to by any acts of God, acts of government or other civil or military authorities, acts of terrorists, fires, accidents, floods, war, riot or other circumstances beyond its reasonable control.

**XV. Severability**In the event any paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

**XVI. Dispute Resolution, Choice of Law and Venue**

Upon the request of either party, a dispute may be submitted for arbitration before the Transportation Lawyers Association Alternative Dispute Resolution Council. Any lawsuit regarding the services provided by Broker or the terms and conditions of service shall be filed in accordance with U.S. Federal law and venue in a court of competent jurisdiction in Cache County, Utah.

**XVII. Special Pricing Alternatives**

These terms and conditions shall be incorporated into all spot market pricing reflected in the load confirmation process at time of booking. When Customer requires dedicated service or special terms and conditions, the waiver provisions of 49 U.S.C. 14101(b) shall only apply in return for dedicated volume commitments reflected on a signed scope of work addendum that identifies and prices Customer’s additional shipping requirements.