

MODE TRANSPORTATION, LLC
TERMS OF SERVICE

The terms contained herein apply on each shipment tendered to and accepted by Mode Transportation, LLC (“Mode Transportation”) and constitute a binding agreement between Mode Transportation on the one hand, and, you, the party tendering the shipment, (“Shipper”) on the other hand. In consideration of services provided by Mode Transportation on each shipment, Shipper hereby consents to the terms contained herein. Said terms may not be changed except in writing signed by a duly authorized executive employee of Mode Transportation located at its corporate headquarters in Dallas, Texas. Action by Shipper in presenting a uniform bill of lading shall be null and void and of no consequence to these Terms of Service between Mode Transportation and Shipper.

- 1. Rates, Charges and Credit:** The rates and charges of Mode Transportation are subject to change without notice. Payment of any Mode Transportation invoice must be made within 21 days of the invoice date. Failure to meet this requirement may result in a loss of credit. Should no payment be received within 21 days of the invoice date, interest in the amount of 1.5% per month may be assessed commencing with the 22nd day following the invoice date. Payment of Mode Transportation invoices shall be in currency of the United States and Canada only, as applicable. FAILURE OF SHIPPER TO PAY INVOICED CHARGES OF MODE TRANSPORTATION WITHIN THE CREDIT PERIOD WILL RESULT IN A LIEN BY MODE TRANSPORTATION ON EXISTING AND FUTURE SHIPMENTS, INCLUDING THE COST OF STORAGE, DETENTION AND APPROPRIATE SECURITY FOR THE HELD SHIPMENT. IF SHIPPER FAILS TO PAY THE FULL AMOUNT OF THE UNPAID CHARGES WITHIN 10 DAYS OF THE NOTICE OF EXERCISE OF SUCH LIEN, MODE TRANSPORTATION MAY SELL THE FREIGHT SUBJECT TO THE LIEN AT A PUBLIC OR PRIVATE AUCTION UPON 15 DAYS’ NOTICE TO THE SHIPPER OF THE TIME, PLACE AND DATE OF SUCH AUCTION. Shipper guarantees all freight charges including those which move on a freight collect basis. If an account has to be placed in the hands of an attorney or collection agency for collection, Shipper is liable for payment of all collection, attorney and court costs associated with the collection effort which will be added to the balance owed.
- 2. Freight Charge Collect and C.O.D. Shipments.** Shipper directing a freight charge collect shipment shall guarantee the prompt payment of all charges accruing on such collect shipments. Terms contained herein regarding freight charge collect shipments shall supersede any other document. Action by Shipper in presenting a uniform bill of lading and signing section 7 therein shall be null and void. Mode Transportation will not handle “C.O.D.” shipments and shall not be responsible for the collection of any funds from the consignee to be transmitted back to Shipper.
- 3. Cargo Loss or Damage.** Mode Transportation is a transportation property broker and is not a carrier; provided, however, if Mode Transportation in its sole discretion determines that a cargo loss or damage claim filed by Shipper is valid, then Mode Transportation may advance payment of the cargo claim in accordance with the following criteria and limits:

 - A. For motor, intermodal or rail shipments wholly within the United States (“U.S. Shipments”), Mode Transportation’s payment of a cargo loss or damage claim is subject to the provisions of 49 U.S.C. § 14706, 49 C.F.R. Part 370 (over-the-road shipments), and Part 1005 (rail shipments), and is further subject to a maximum of one hundred thousand U.S. dollars (\$100,000) for any single trailer or container and ten thousand U.S. dollars (\$10,000) for any less-than-truckload shipment.
 - B. For motor, intermodal and rail shipments wholly within Canada or between the United States and Canada (“Canadian Shipments”), Mode Transportation’s payment of a cargo loss or damage claim is subject to all defenses and immunities available to the underlying carrier arising by operation of law, contract or otherwise, and is further subject to a maximum of the lesser of i) the value of the goods at the place and time of shipment, including the freight and other charges if paid, ii) two Canadian dollars (\$2.00 (CDN) per pound computed on the total weight of the lost or damaged portion of the shipment, iii) where the goods are carried by rail, any applicable rail carrier limitation of liability as prescribed in a Rail Circular (as defined in Section 3 (G) below), tariff, confidential rate contract or similar document, or iv) one hundred thousand Canadian dollars (\$100,000 CDN).

- C. Mode Transportation is licensed as an Ocean Transportation Intermediary (OTI) by the Federal Maritime Commission (FMC) to provide export ocean freight forwarding services and international non-vessel operating common carrier (NVOCC) services. Mode Transportation's liability for loss or damage to cargo for international ocean transportation services is as follows:
- (1) When providing international ocean services as a common carrier through a U.S. port, Mode Transportation is operating as a NVOCC pursuant to its FMC OTI license. Mode Transportation provides said NVOCC services pursuant to its NVOCC tariffs and bill of lading terms and conditions, which are published at <http://www.dmstradeservices.com> and are available for review upon Shipper's request, and Mode Transportation's liability for the loss and damage of cargo is limited to five hundred U.S. dollars (\$500) per package or customary freight unit pursuant to the U.S. Carriage of Goods by Sea Act (COGSA).
 - (2) When providing international ocean services as a common carrier NVOCC on shipments not moving through a U.S. port, Mode Transportation's liability shall be determined pursuant to the terms and conditions of its NVOCC bill of lading that Mode Transportation has issued for the shipment, including, but not limited to the limitations of liability contained therein.
 - (3) On all international ocean transportation shipments where Mode Transportation is not acting as a NVOCC and has not issued a NVOCC bill of lading, the Shipper's recourse for loss or damage claims to its shipments shall be against the ocean common carrier or NVOCC that handled the shipment and shall be subject to the terms and conditions, tariffs and bills of lading of those carriers, including, but not limited to, any limitations of liability contained therein. Any and all liability of Mode Transportation to Shipper for claims for such international ocean shipments shall be limited to fifty U.S. dollars (\$50) per shipment.
 - (4) Notwithstanding any other provision of these Terms of Service, and except as required by mandatory statute which cannot be waived, if Shipper has cargo insurance coverage to cover loss or damage to its shipment, then Mode Transportation shall have no liability whatsoever, or obligation to advance payment, for a cargo loss or damage claim. Shipper's recourse for recovery on any loss or damage to its shipment shall be through the insurance company and not Mode Transportation.
- D. When arranging U.S. domestic or international air services, Mode Transportation does not act as an indirect air carrier but will instead arrange for the shipment to be handled by an indirect air carrier. Mode Transportation's liability for any claims involving domestic or international air shipments shall be limited to fifty U.S. dollars (\$50) per shipment. All U.S. domestic air shipments, meaning shipments that originate in, and are destined to, points in the United States or any territory, possession or commonwealth of the United States, shall be subject to the terms and conditions of the applicable tariffs and U.S. domestic air waybill of the indirect air carrier or air carrier. All international air shipments shall be subject to the terms and conditions of the indirect air carrier or air carrier's international air waybill and tariffs governing the provisions of such services.
- E. In addition to the terms otherwise stated herein, the following terms also apply to Frozen, Refrigerated, Temperature Controlled and Mixed shipments:
- (1) "Frozen" means when products are shipped frozen and so stated on the bill of lading by Shipper. "Refrigerated" means when products are shipped refrigerated and so stated on the bill of lading by Shipper. "Temperature Controlled" means when products are shipped temperature controlled and so stated on the bill of lading by Shipper. "Mixed" means when products are shipped in mixed shipments of Frozen, Refrigerated or Temperature Controlled and so stated on the bill of lading by Shipper. While in the underlying carrier's custody and control, Frozen shipments will be transported at an equipment air temperature of 0 – 32 degrees Fahrenheit, Refrigerated shipments will be transported at an equipment air temperature of 33 – 45 degrees Fahrenheit, Temperature Controlled shipments will be

transported at an equipment air temperature of 46-70 degrees Fahrenheit and Mixed shipments will be transported at the respective equipment air temperatures described above relative to the products shipped. Notwithstanding the temperature of the product at the time of acceptance by the underlying carrier, Mode Transportation and the underlying carrier shall only be responsible for maintaining the respective equipment air temperatures set forth above for Frozen, Refrigerated, Temperature Controlled or Mixed shipments.

(2) Mode Transportation will not be liable for any cargo loss or damage involving Frozen shipments, unless (i) actual physical loss or damage to the cargo is established, and (ii) such actual physical loss or damage is due to an equipment mechanical failure that lasted in excess of twelve (12) consecutive hours.

(3) When perishable cargo is delivered to the consignee, the consignee must check the cargo to determine quantity being received and condition by close, careful observation. If cargo shortage or damage is found to exist, then a notation applicable to the discrepancy will be so noted by the consignee on the underlying carrier's copy of the delivery receipt. When offering a shipment for delivery, if any portion of the shipment bears any indication of having been pilfered, a joint inventory of contents shall be made by the underlying carrier's driver and consignee, and the results of inventory so noted on the underlying carrier's copy of the delivery receipt.

- F. IN NO EVENT SHALL MODE TRANSPORTATION BE LIABLE FOR ANY LOSS OR DAMAGE IF OR WHEN A SHIPMENT IS IN MEXICO. IN NO EVENT SHALL MODE TRANSPORTATION BE LIABLE FOR LOST PROFIT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.
- G. All intermodal or rail shipments shall also be subject to the terms and conditions set forth in the applicable published intermodal circulars and directories of the rail carriers ("Rail Circulars"). Shipper is responsible to block and brace any intermodal or rail shipments according to the AAR (Association of American Railroad) guidelines; provided that for shipments wholly within Canada, Shipper is responsible to block and brace any such shipment as required by the applicable Canadian rail carrier.
- H. The measure of loss or damage to freight hereunder shall be Shipper's replacement value applicable to the kind and quantity of the commodities in question, less salvage value. Claims or lawsuits for less than \$100 shall not be filed and no claims shall be paid if the amount of the loss or damage is found to be less than \$100.
- I. Shipments are accepted as Shipper's load, count and seal. Mode Transportation shall have no liability whatsoever for cargo loss or damage (i) for shipments delivered with the seal intact or (ii) in the absence of evidence of actual physical cargo loss or damage. A variation in air equipment temperature for Frozen, Refrigerated, Temperature Controlled or Mixed shipments or a broken or damaged seal does not by itself constitute actual physical cargo loss or damage. Mode Transportation is not liable for the payment of any claim for cargo loss or damage when products transported in dry equipment freeze or overheat. No offsets from open invoices due Mode Transportation will be allowed as settlement for cargo loss and damage claims. Shipper has an obligation to mitigate its cargo loss and damage. Mode Transportation's liability as set forth in this Section 3 is also subject to Sections 7 and 8 below.
- J. Prior to filing a claim as set forth in 3(K) below, the failure of Shipper to first notify Mode Transportation within the shorter of (a) as soon as commercially practical when Shipper becomes aware of cargo damage or loss (or within 5 days of delivery for concealed damages or within 24 hours from the time of delivery in the case of perishable commodities) or (b) within the time frame required by the underlying carrier, may, at Mode Transportation's discretion, result in the claim being denied. To report cargo loss or damage claims during normal business hours contact 800-208-6100 or claims@modetransportation.com and after normal business hours contact 630-430-2565 or bgardner@hubgroup.com.

K. The time period for filing a claim for cargo loss or damage is as follows:

- (1) Cargo loss or damage claims involving U.S. Shipments must be filed by Shipper with Mode Transportation within nine (9) months from the date of delivery (or of the date of anticipated delivery in the event of non-delivery) and claims filed after such nine (9) month period are not valid, subject to any shorter claim filing period required by the underlying carrier.
- (2) Cargo loss or damage claims involving Canadian Shipments must be filed within the earlier of (a) four (4) months of the date of delivery (or of the date of anticipated delivery in the event of non-delivery) of a rail or intermodal shipment or any such deadline set forth in the applicable underlying carrier's tariff, issued bill of lading or transport document, or (b) sixty (60) days of the date of delivery (or of the date of anticipated delivery in the event of non-delivery) for shipments involving motor carriage or, in the case of intermodal shipments, where the cargo loss or damage occurs while the shipment is in the custody and control of the motor carrier.
- (3) Cargo loss or damage claims involving air transport must be filed within the shorter of (a) the time period required by the underlying carriers in their air waybills, tariffs and terms and conditions or (b) one hundred and eighty (180) days of the event giving rise to the claim, or in the case of concealed damage or delay, within thirteen (13) days of delivery or the date of scheduled delivery.
- (4) Cargo loss or damage claims involving international ocean transport shipments must be filed at the time and place of delivery or, in the case of concealed damage, within two (2) consecutive days thereafter.
- (5) All cargo loss or damage claims must be in writing and contain sufficient information to process the claim, including but not limited to, any and all information required by the underlying carrier in its terms and conditions, tariffs, bills of lading, and claims processing documents.
- (6) Any legal action for cargo loss or damage against Mode Transportation not arising out of air or ocean transportation must be instituted by Shipper against Mode Transportation within two (2) years from the first disallowance of the cargo claim by Mode Transportation or the underlying carrier, or the time limits set forth in the underlying carrier's bill of lading, terms and conditions, and other governing documents, whichever time period is shorter.
- (7) Any legal action for cargo loss or damage against Mode Transportation arising out of ocean transportation must be instituted within the shorter time period of either (a) the time set forth in the underlying carrier's tariff, bills of lading or terms and conditions or (b) eleven (11) months of the date of shipment.
- (8) Any legal action for cargo loss or damage against Mode Transportation arising out of air transportation must be instituted within the shorter time period of either (a) the time limit set forth in the air carrier's tariffs, air waybills or terms and conditions or (b) two (2) years from the initial date of shipment.

L. The rates provided to Shipper in connection with this agreement are predicated on the underlying carriers selected by Mode Transportation being tendered freight released for cargo loss or damage at an amount not in excess of those amounts set forth in this Section 3. Shipper acknowledges that Mode Transportation has made available to Shipper the opportunity to pay a higher rate and thereby obtain greater levels of liability offered by Mode Transportation or the underlying carrier for cargo loss or damage. In the absence of the Shipper availing itself of that opportunity by entering into a written contract establishing a higher value signed by Shipper and a duly authorized executive of Mode Transportation located at its corporate headquarters in Dallas, Texas, Shipper releases its shipments to the underlying carriers selected by Mode Transportation at the released values stated in this Section 3.

4. Accessorial Charges, Regulations and Penalties. Mode Transportation and its underlying carriers have rules and charges respecting accessorial matters such as detention and storage which are available for review at

Shipper's request. Mode Transportation shall not be responsible for the failure of Shipper to know such accessorial charges or rules. Unless accessorial charges have been caused by the sole act of Mode Transportation, Shipper shall be responsible for any such accessorial charges.

5. **Underlying Carriers Selected By Mode Transportation as Third Party Beneficiaries.** Any underlying carrier selected by Mode Transportation to transport Shipper's freight shall be considered a third party beneficiary to this agreement and to any agreement between Mode Transportation and Shipper that has as its purpose or includes as an element thereof an agreed-to limitation of liability for cargo loss or damage.
6. **Warehousing Terms and Conditions.** In the event Mode Transportation is directed by the Shipper to place any shipment in storage, or in the event Mode Transportation places such shipment in storage as a result of the Shipper's failure to pay Mode Transportation's billed charges in accordance with Section 1 herein, or as a result of Shipper's consignee refusing to accept delivery of the shipment, then (i) at the point at which such shipment is placed into storage Mode Transportation's liability shall be that of a warehouseman and (ii) SHIPPER GRANTS TO MODE TRANSPORTATION A LIEN ON ALL SHIPMENTS SO HELD, SUCH LIEN TO BE NOTICED, EXERCISED AND DISCHARGED IN THE SAME MANNER AS IS APPLICABLE TO THE LIEN DESCRIBED IN SECTION 1 HEREIN. Shipper agrees to release any shipment placed in storage as described to a value of \$0.10 per pound, with such released value taking precedence over any other value or measure of loss stated elsewhere herein and Mode Transportation's liability for loss or damage to all shipments so held shall be limited to \$0.10 per pound.
7. **Restricted & Prohibited Commodities; Hazardous Material; Government Laws & Regulations.**

A. In addition to restricted commodities in the Rail Circulars, tariffs, and other governing documents of the underlying carriers, Shipper shall declare the following restricted commodities: automobiles and motorcycles; machinery; steel sheets, bars, pipes and coils; animal hides; chocolates and confectionery; alcoholic beverages (excluding beverages in bottles or cans); glass, glass products and other fragile goods; musical instruments, including, but not limited to pianos; frozen foods and boats (new and used).

B. In addition to prohibited commodities in the Rail Circulars, tariffs, and other governing documents of the underlying carriers, Shipper shall not tender to Mode Transportation shipments containing any of the following: mobile phones (to include parts of mobile phones such as, but not limited to circuit boards and memory cards); all circuit boards; valuable papers of any kind (including, but not limited to accounts, bills, documents, deeds, notes, securities, evidence of debt, letters of credit, tickets, passports, mechanical drawings or manuscripts); money, currency, bullion, gold, silver and other precious metals, diamonds, precious or semi-precious stones; furs or fur-trimmed garments; fine arts; live animals; used equipment or machinery; tobacco or tobacco products; contraband property in the course of illegal transportation or trade; household goods and personal effects; fresh fish and seafood, fresh cut flowers or plants that have been removed from the root, and ice-cream products.

C. Shipper is responsible to declare any shipment that contains a hazardous material or dangerous good and ensure such shipments comply with all government laws, rules, ordinances or regulations, including, but not limited to, USDOT hazardous material regulations. Shipper shall be solely responsible for complying with all other government laws, rules, regulations or ordinances, including, but not limited to U.S. Department of Transportation regulations applicable to a shipper of goods.

D. If Shipper fails to comply with any of 7 (A) - (C) above or otherwise fails to comply with the requirements of Shipper under this agreement, Mode Transportation shall have no liability for any resulting loss or damage regardless of the cause of such loss or damage and Shipper shall be responsible to indemnify, defend and hold harmless Mode Transportation and its affiliates, subsidiaries and parent for any costs, fines, penalties, losses or damages made against or incurred by Mode Transportation associated with Shipper's failure to so comply, including, but not limited to environmental clean-up costs, legal costs (including attorney's fees), fines, and penalties.

8. Exclusions: Mode Transportation will have no liability whatsoever for damage to or loss of cargo directly or indirectly caused by the following: nuclear activity (meaning nuclear reaction, nuclear radiation or radioactive contamination whether deliberate or accidental, controlled or uncontrolled or whether it contributed to or aggravated a covered loss or damage); terrorism; hidden or latent defects; asbestos (including loss or clean up caused by or resulting from asbestos or asbestos containing material); the presence, release, discharge or dispersal of pollutants; leakage, evaporation or shrinkage; breakage of glass or similar fragile property related to panes of glass; property being scented, discolored, soured or changed in flavor; normal wear and tear or cosmetic denting, marring or scratching to packaging; insufficient or unsuitable packaging material or preparation of goods being shipped; voluntary parting of the cargo whether by fraudulent scheme, trick, device or false pretense or for any event of force majeure, including, but not limited to flood, earthquake, storm and other Acts of God, fire, derailment, accident, strike, lockout, explosion, war, insurrection, riot, embargo, act of government or governmental agency or any cause that is beyond the control of Mode Transportation or the underlying carrier.

9. Additional Provisions.

- A. Except for advancing payment of cargo loss or damage claims as set forth in Section 3 above, Mode Transportation assumes no responsibility for the service or performance of the underlying carrier. Mode Transportation does not guarantee shipment delivery dates or times and shall have no liability whatsoever for delay to shipments transported by the underlying carrier.
- B. Each “in bond” shipment is handled subject to the underlying carrier’s requirements as set forth in tariffs or separate agreements, copies of which can be viewed at the corporate headquarters of Mode Transportation.
- C. Shipper shall immediately notify Mode Transportation of and work to remedy, at Shipper’s own expense, any data security breach or suspected data security breach, and the parties shall coordinate with each other to investigate and resolve the situation.

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