

ESTES FINAL MILE

TERMS AND CONDITIONS OF BROKERAGE SERVICES

All shipments to or from the CUSTOMER, which term shall include the CUSTOMER, exporter, importer, sender, consignor, consignee, transferor or transferee of the shipments, will be handled by Estes Final Mile, LLC, the transportation broker arranging transportation services for this shipment (hereinafter "EFM"), on the following terms and conditions.

1. ROLE OF EFM

- 1.1 EFM is a Virginia corporation operating as a licensed property broker pursuant to Docket Number MC962797, with its principal place of business at 41650 Gardenbrook Road, Suite 120, Novi Michigan 48375. EFM performs all services hereunder as defined by 49 U.S.C. §13102(2), arranging for the transportation of goods of all kinds on behalf of its CUSTOMER-clients.
- 1.2 EFM is not a motor carrier and will not bind itself to actually perform motor carriage of Customer's goods. EFM has no liability for loss or damage to cargo arising from motor carriage or discovered after the moment of tender of cargo to motor carrier. The term "motor carrier" as used throughout these terms and conditions shall mean the trucking company responsible for making delivery at destination.

2. EFM'S DUTIES AND OBLIGATIONS

- 2.1 EFM is a property broker licensed by the U.S. Department of Transportation. EFM arranges for transportation of goods on behalf of CUSTOMER, but does not actually carry, consolidate, possess, or otherwise take dominion over the loads that it brokers.
- 2.2 EFM agrees to provide CUSTOMER with transportation services, including the locating, hiring, qualifying, rate negotiation, and tendering of a carrier, who will perform the actual carriage of the CUSTOMER'S goods at the direction of EFM.
- 2.3 CUSTOMER is aware and acknowledges that EFM is not a motor carrier, and will not ever take actual possession, custody or control over the shipments being arranged for on CUSTOMER'S behalf.
- 2.4 EFM will only utilize the services of motor carriers who have demonstrated their qualification by providing proof of operating authority.
- 2.5 EFM will be solely responsible for invoicing and collecting freight charges from the CUSTOMER, and all carriers utilized by EFM to carry CUSTOMER's goods have expressly waived any and all rights to collect from or make demands upon the CUSTOMER, consignor, or consignee directly.
- 2.6 EFM'S invoice will, upon request written request from the CUSTOMER, be accompanied by a copy of the bill of lading.
- 2.7 EFM may, but is not required, to send text messages to CUSTOMER's mobile device advising of shipment status. Message charges may apply.

3. CUSTOMER'S DUTIES AND OBLIGATIONS

- 3.1 CUSTOMER shall provide a full description of the goods for which transportation is being arranged, accurate information regarding the origin and destination for such shipments, and all other information necessary to complete the transportation of the shipment. In the event CUSTOMER requests deliveries to be made without regard to whether CUSTOMER is present at time of delivery ("Unattended Delivery"), the motor carrier's delivery manifest or similar document showing delivery to CUSTOMER's desired location shall constitute conclusive proof of proper delivery.. A request for Unattended Delivery service may be made through EFM's website.
- 3.2 CUSTOMER may authorize Estes Express Lines, or Estes Final Mile and its motor carriers (EFM), to leave any shipment unattended at the delivery location specified by the company from whom the goods were purchased (Shipper). CUSTOMER shall be required to represent and warrant that CUSTOMER is at least eighteen (18) years of age and, as owner of the goods, has the authority to permit EFM to complete delivery without requiring a signature evidencing receipt of shipment. CUSTOMER agrees that it is solely responsible for the shipment left at the delivery address and that neither EFM nor the Shipper shall be held responsible for damage or theft arising from the goods being left unattended. The motor carrier's delivery manifest or similar document showing delivery to CUSTOMER's desired location shall constitute conclusive proof of proper delivery. CUSTOMER agrees to indemnify and hold EFM harmless from all claims for liability and expenses related to Unattended Delivery, including any attorney's fees or other litigation costs arising by reason of loss or damage to any Unattended Delivery shipment handled by EFM.
- 3.3 EFM'S standard payment terms require receipt of cash payment in advance of services. If EFM chooses to extend credit to CUSTOMER, CUSTOMER shall make payment of the full invoiced amount for all loads arranged for by EFM within 10 days of invoice date. In the event that CUSTOMER fails to timely pay EFM'S invoice as required herein, CUSTOMER shall be liable for fifteen percent (15%) late payment fee, as well as any and all attorneys' fees or collection fees expended by EFM in an effort to collect those charges.
- 3.4 CUSTOMER agrees to be bound to any additional charges which may become due, including equipment repair, accessorial charges, waiting times, or unnecessary delay caused by the CUSTOMER.
- 3.5 Except as provided herein, all claims will be filed and resolved in accordance with the provisions of 49 CFR Part 370. Except as provided herein, liabilities and burdens of proof will be governed by federal law and by the provisions of 49 U. S. C. § 14706.
- 3.6 All overcharge, duplicate payments, and over collection claims will be filed and resolved in accordance with the provisions of 49 CFR Part 378.

4. **NOTICES**

- 4.1 EFM as a licensed property broker does not have any legal liability for loss, damage, or delay in the transportation of CUSTOMER's property. EFM'S liability is extinguished by the tendering of a qualified carrier to the location designated by CUSTOMER for pickup.
- 4.2 Any and all claims for loss, damage, or delay are to be made directly with the motor carrier. EFM will provide all necessary information and documentation to assist CUSTOMER in the handling of such a claim with the motor carrier, but such action does not create any liability on the part of EFM or waive any term of these Terms and Conditions.
- 4.3 Regardless of any of the foregoing, EFM'S maximum liability in any regard or for any cause whatsoever, to any person, party or property, shall be limited to the total sum of fifty dollars (\$50.00) per shipment.

5. **DOCUMENTATION OF CARRIAGE**

- 5.1 All bills of lading, delivery receipts, or other transportation documentation, aside from estimates and load confirmations exchanged directly between CUSTOMER and EFM, shall be the sole responsibility of CUSTOMER, and shall not bind EFM in any manner.
- 5.2 CUSTOMER's designation of EFM on any bills of lading or delivery receipts shall be for informational purposes only and will not modify the terms of these Terms and Conditions. No representations made by the handling motor carrier will bind EFM in any manner.
- 5.3 Upon the request of CUSTOMER, EFM will provide copies of delivery receipts and bills of lading from carrier, where CUSTOMER has instructed carrier to retain copies of such documentation or have such documentation executed by consignee.
- 5.4 The terms and conditions of any freight documentation used by CUSTOMER and/or the motor carrier selected by EFM may not supplement, alter, or modify the terms of these Terms and Conditions. In the event of any conflicts, these Terms and Conditions shall control as to EFM.
- 5.5 However, CUSTOMER is solely responsible for determining the terms (including limitations of liability) of any contract of carriage it enters into with the motor carrier provided by EFM. Such terms bind CUSTOMER and motor carrier, but have no effect upon the duties, rights, and obligations of EFM

6. **INDEMNIFICATION**

- 6.1 To the full extent permitted by law, CUSTOMER agrees to indemnify, defend and hold harmless EFM, its partners and affiliates, as well as all of their officers, directors, attorneys, agents, insurers, and employees from and against any and all claims, demands, actions, liabilities, judgments, losses, damages, expenses, costs, penalties, and fines, including third party

claims for contribution, attorney's fees for injury or alleged injury of any kind to any person, including death, and/or damage or alleged damage of any kind to any property arising from the negligent acts or omissions of CUSTOMER, related to the tendering of hazardous materials, or improper packaging, loading, or latent defects in goods tendered for carriage.

- 6.2 In addition to its agreements set forth hereinabove, EFM and CUSTOMER shall indemnify and save harmless each other, their subsidiaries and their respective officers, directors, and employees, from and against all liabilities, obligations, losses, damage, penalties, claims, actions, suits, costs, charges and expenses, including without limitation, reasonable fees and expenses of legal counsel and expert witnesses, which are the result of or arising out of any or all of the respective obligations of the parties or which may be imposed or incurred by or asserted against EFM or CUSTOMER by reason of actual or alleged; (i) injury or death to persons; (ii) damage to the property of any person or legal entity; (iii) violation of any law, ordinance or regulation of any federal, state or local governmental authority by either EFM or CUSTOMER or any of the parties set forth above; provided, however, the foregoing agreement to indemnify and hold harmless each other shall only be applicable to the extent that such liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges and expenses are attributable to the sole negligence of either EFM or CUSTOMER.

7. **HAZARDOUS MATERIALS**

- 7.1 CUSTOMER hereby agrees to comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and §173 et seq. to the extent that any shipments constitute hazardous materials.
- 7.2 CUSTOMER hereby acknowledges and agrees that CUSTOMER will not tender to EFM's designated motor carrier any hazardous materials for shipment. Notwithstanding, CUSTOMER is obligated to inform EFM immediately if any such shipments tendered by error do constitute hazardous materials.

8. **FORCE MAJEURE**

- 8.1 Neither EFM nor its designated motor carrier shall be liable to CUSTOMER for failure to perform any of its obligations under these Terms and Conditions 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 EFM or motor carrier, provided that the Party so prevented uses its best efforts to perform under these Terms and Conditions and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.

9. **INSURANCE**

EFM shall require that all motor carriers used to provide the transportation services outlined herein maintain a policy or policies of insurance with coverage as follows:

Comprehensive general liability to include bodily injury, personal injury, advertising injury, and property damage, including without limitation, products and completed operations, and contractual liability, all as those terms are defined by standard CGL policies, with a combined single limit per occurrence of \$1,000,000 and \$2,000,000 aggregate;

Workers' compensation coverage as statutorily required with a limit of not less than \$500,000 per accident, \$500,000 policy limit, \$500,000 per employee;

Comprehensive, commercial automobile liability for all Carriers' owned, hired and non-owned vehicles covering Bodily Injury and Property Damage, with a limit of liability not less than \$1,000,000 Combined Single Limit and with a deductible of no greater than \$5,000; and

Cargo Liability Insurance covering loss or damage to items in transit or within Carrier's care, custody and control with coverage limits of not less than \$100,000.

- 9.1 In those circumstances where, due to the value of any shipment, CUSTOMER requires greater cargo coverage, CUSTOMER may either acquire a greater amount of insurance on its own, make some arrangements as to declared value or coverage directly with motor carrier, or may choose to release the goods for transportation at a value not to exceed the coverage outlined herein.
- 9.2 Regardless of the foregoing, EFM is not an insurer of shipments for which it arranges transportation, and any failure of any policy to provide coverage shall not affect EFM's liability.
- 9.3 EFM has no liability for the failure of a motor carrier's insurance policy to timely or reasonably pay claims. However, EFM has contractually required that such coverage is in place for each motor carrier used prior to assignment of such motor carrier to any loads.

10. **LOSS AND DAMAGE CLAIMS**

- 10.1 Claims may not be made upon or to EFM. EFM responds to claims by providing CUSTOMER with the name and contact information for the motor carrier and its insurer(s). EFM has no duty beyond the provision of that information.
- 10.2 EFM may at its sole discretion assist their customers in the filing of claims with motor carriers under these Terms and Conditions, and EFM has required that motor carriers will upon receipt of a claim in writing from

- either EFM or CUSTOMER, acknowledge receipt of such claim within thirty (30) days of receipt of the claim.
- 10.3 All claims must be filed with the motor carrier within 9 months of delivery or the date of anticipated or expected delivery of an undelivered shipment, pursuant to 49 U.S.C. §14706(e).
- 10.4 The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. §370 et seq. to the extent not modified herein.
- 10.5 Any assistance by EFM in facilitating the claims process shall not change the liability of SEFM as outlined herein.
- 10.6 CUSTOMER may not deduct the amount of any claim from the freight charges due and owing to EFM.
- 10.7 CUSTOMER may not set off any amount of owed freight charges by the amount of any pending or unpaid claim.

11. MAXIMUM LIABILITY REGARDLESS OF CAUSE

- 11.1 EFM limits its legal liability for any and all alleged failings in the provision of its transportation services, regardless of whether broker is found to have acted as a broker or a motor carrier, and regardless of whether the theory of liability lies in tort or contract. The maximum amount of legal liability assumed by EFM (commonly called “released value”) will under no circumstances exceed ten cents (\$0.10) per pound per article lost or damaged, one hundred dollars (\$100.00) per shipment, or the actual value of such piece, whichever is less, with a maximum liability in all transactions not to exceed the dollar amount of the charges for those services.

12. DISCLAIMER OF WARRANTIES

- 12.1 Except as expressly provided in this agreement, EFM makes no warranties, express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose, with regard to shipments, warehoused goods, items in transit or deliveries or with regard to the information provided on the website or services related to transactions conducted on this website. EFM cannot guarantee delivery by any specific time or date. In no event shall EFM be liable for any special, incidental or consequential damages, including damages relating to loss of profits or income, whether or not such damages were reasonably foreseeable or made known to EFM.

13. BOUND BY ACCEPTANCE/NO EXECUTION REQUIRED

- 13.1 These terms and conditions shall be binding upon CUSTOMER by acquiescence. CUSTOMER’s acknowledgment of its intent to be bound hereby, is evidenced by its use and acceptance of EFM's web page, alternatively by tender of goods to any carrier appointed by EFM, or alternatively by its execution of any Bill of Lading provided by any carrier appointed by EFM, or alternatively by the payment of any EFM invoice, or alternatively by other acknowledgment by the CUSTOMER.

14. CONFIDENTIALITY AND NON-SOLICITATION:

- 14.1 CUSTOMER may disclose the terms of these Terms and Conditions to a third party without the written consent of EFM except: (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential.
- 14.2 CUSTOMER further agrees not to solicit the services of, or directly engage, the carrier(s) tendered by EFM pursuant to the terms of these Terms and Conditions. Furthermore, CUSTOMER shall not disclose the terms of these Terms and Conditions or the rates agreed upon between CUSTOMER and EFM to any third party unless required by law.

15. NO THIRD PARTY BENEFICIARIES

- 15.1 EFM and CUSTOMER hereby expressly state that they are the only parties to these Terms and Conditions and that neither EFM nor the CUSTOMER intend for any third party to specifically benefit from these Terms and Conditions.

16. NONWAIVER

- 16.1 Failure of EFM to insist upon performance of any of the provisions of these Terms and Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of these Terms and Conditions, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. ASSIGNMENT

- 17.1 These Terms and Conditions shall not be assignable by either party, in whole or in part, without the written consent of the other party, which consent shall not be unreasonably withheld.

18. GOVERNING LAW/ ATTORNEY'S FEES

- 18.1 These Terms and Conditions shall be governed by federal law where applicable, or otherwise Virginia law, without regard to its principles of conflict of laws. Venue shall be as provided by law.
- 18.2 EFM and CUSTOMER agree that in any litigation arising from or related to these Terms and Conditions between the parties to these Terms and Conditions, the prevailing party shall be entitled to recover reasonable attorneys' fees, both trial and appellate, including court costs.

19. NOTICE

19.1 All notices, requests, consents, approvals and other communications required in these Terms and Conditions shall be in writing, including electronic format, and shall be deemed to have been duly given if hand-delivered, sent by facsimile, sent by overnight delivery service, sent by United States Mail, certified or registered, return receipt requested, or entered via EFM's website.

20. SEPARABILITY/SEVERABILITY

20.1 If any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable under the present or future laws effected during the terms of these Terms and Conditions, such provision shall be fully severable from the remaining provisions of these Terms and Conditions, and it shall not affect the validity of the remaining provisions, which provisions shall be given full force and effect as if the illegal, unenforceable, or invalid provision had not been included in these Terms and Conditions. In lieu of an illegal, unenforceable, or invalid provision, there shall be substituted a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

21. ENTIRE AGREEMENT

21.1 These terms and conditions embody the entire understanding between EFM and CUSTOMER covering the services to be performed hereunder, and there are no other agreements, understandings, conditions, warranties, or representations, oral or implied with reference to the subject matter hereof.

21.2 In the event of any conflict between these Terms and Conditions and any term or provision in any other document related to or used in the process of arranging the transportation of goods by EFM for CUSTOMER, these Terms and Conditions shall govern to the extent of the conflict.