

1. APPLICABILITY

These Terms & Conditions and agreed upon pricing documents apply to all broker services (the "Services") provided by BZS Transport Inc. (hereafter "BROKER") to SHIPPER. These Terms & Conditions shall constitute the entire agreement between the parties and no other tariff provisions shall apply to the Services provided by BROKER to SHIPPER under these Terms & Conditions. Performance of any work by BROKER for SHIPPER shall constitute acceptance by SHIPPER of these Terms & Conditions. BROKER objects to any terms proposed in SHIPPER's acknowledgment or other form of acceptance of BROKER'S offer to perform services which add to, vary from, or conflict with these Terms & Conditions.

These Terms & Conditions may be modified only by a written instrument executed by authorized representatives of both parties. If BROKER's offer to perform service has been issued in response to SHIPPER's offer and if any of the Terms & Conditions herein add to, vary from or conflict with any terms of SHIPPER's offer, then the acceptance by SHIPPER of BROKER's tender to perform services shall constitute an acceptance of SHIPPER's offer subject solely to the express Terms & Conditions set forth herein, and any additional, different or conflicting terms in SHIPPER's offer are rejected by BROKER, so that these Terms & Conditions and agreed upon pricing documents constitutes the entire agreement between SHIPPER and BROKER with respect to the subject matter hereof and the subject matter of SHIPPER's offer.

2. PAYMENT FOR SERVICES

A. SHIPPER shall pay BROKER for the Services provided by BROKER under these Terms & Conditions at the rates and charges as agreed between the parties. All payments by SHIPPER shall be remitted to BROKER at the following address:

BZS Transport Inc. 816 Myrtle Ave. Brooklyn, NY 11206

B. BROKER shall invoice by the load. SHIPPER may require submittal of a bill of lading and/or proof of delivery with invoice as a condition of payment. Payment of invoices shall be made by SHIPPER within thirty (30) days after receipt of invoice. All amounts not paid by SHIPPER within thirty (30) days shall be subject to interest at the rate of 1.5% per month.

C. Except as may be later disclosed in a records review or audit, each party shall have one year from the date of shipment to file a claim with the other party for overcharges or undercharges relating to such shipment.

D. Except as otherwise provided in these Terms & Conditions, each party must bring a civil action to recover damages or amounts claimed under these Terms & Conditions within two (2) years from the date of shipment. Any matters not filed within the above limitations period shall be barred.

E. Except as otherwise provided in these Terms & Conditions, all lawsuits concerning disputed invoices, including lawsuits by BROKER against SHIPPER for unpaid invoices, shall be commenced in the Supreme Court of the State of New York. SHIPPER shall pay BROKER all reasonable expenses of litigation, including attorney's fees, costs and expenses, in all successful actions by BROKER to collect unpaid invoices from SHIPPER.

F. In the event that BROKER accepts and provides Services to SHIPPER before reaching an agreement with SHIPPER on pricing, SHIPPER agrees to pay BROKER the last pricing quoted by BROKER to SHIPPER for that

load or, in the event that no pricing has been provided by BROKER, SHIPPER agrees to pay for BROKER's Services based on BROKER's standard pricing model.

G. It is expressly agreed, as a condition of BZS's provision of freight services to Shipper, that BZS shall have a lien on all of Shipper freight in BZS's possession for the total amount owed to BZS for all freight charges, storage and charges for related services, including charges related to freight previously delivered upon the promise of Shipper to pay such charges. No further notice of this lien shall be provided to Shipper.

3. **BROKER'S OBLIGATIONS**

A. General.

(1) **Compliance with Laws, Rules and Regulations.** BROKER shall have authority from the Department of Transportation to act as and provide services as a property broker. BROKER shall comply with all applicable provisions of the Interstate Commerce Act, related laws, rules and regulations of the FMCSA, and all applicable state and local laws, rules and regulations to the extent they govern BROKER's operations.

(2) **Prompt Service.** BROKER shall promptly and efficiently retain and contract with Carriers as necessary to meet SHIPPER's transportation needs.

(3) **Delay; Accidents.** BROKER shall notify SHIPPER of any accidents, spills, theft, hijacking or other events which impair the safe and prompt delivery of SHIPPER's goods in its control.

(4) **On Hand Freight.** BROKER shall notify SHIPPER of any refused freight at SHIPPER and/or third party locations and request additional instructions regarding delivery or storage of the refused goods. Such notice by BROKER shall, as soon as reasonably practical.

B. Delivery Receipts and Bills of Lading

(1) **Delivery Receipt.** Except as otherwise provided in an Exhibit, BROKER shall obtain an acknowledgement of delivery for all shipments by notation on the bill of lading. At the request of SHIPPER, BROKER agrees to provide copies of same to SHIPPER in sufficient detail to substantiate billing for the services provided. BROKER shall retain such records for two (2) years after delivery of the involved shipments or for such greater period of time as may be required by federal or state laws, rules, or regulations.

(2) **Conflict Between Terms & Conditions and Bill of Lading.** The parties agree that bills of lading and delivery receipts shall be used solely as receipts for shipment and to identify the kind and quantity of goods, place of pickup and delivery, shipper and consignee and other information as required by SHIPPER. References to classifications, tariffs, service guides or other publications and/or contractual terms and conditions on the face or reverse side of such documents shall be null and void, and these Terms & Conditions shall govern the rights and obligations of the parties hereto.

C. Carrier Insurance Requirements

Broker shall only broker Shipper loads to those Carriers that maintain policies of insurance as follows:

(i) cargo insurance with minimum limits of liability of \$100,000 per occurrence;

(ii) automobile liability insurance with minimum limits of liability of \$1,000,000 combined single limit for bodily injury and property damage;

(iii) comprehensive general liability with contractual liability insurance with minimum limits of liability of \$1,000,000 per occurrence

(iv) worker's compensation insurance with minimum limits as may be required by statute; and (v) any other insurance required by the Department of Transportation or any other federal, state or local regulatory agency.

4. **MILEAGE**

Where rates are based on mileage, mileages will be determined through the use of the most current version of PC Miler Practical Miles (Zip Code to Zip Code, with the 53-foot option turned on) at the time the load is tendered.

5. **BROKER/CARRIER LIABILITY; SHIPPER LIABILITY**

A. BROKER Liability is Limited. BROKER shall not be liable, under any circumstances, to SHIPPER for the loss or damage to SHIPPER's goods. Liability, if any, for such losses and damages to SHIPPER shall be borne solely by the Carriers.

B. BROKER'S liability to SHIPPER, if any, for any breach of representation, warranty or covenant under these Terms & Conditions shall be limited to the total compensation for services provided by BROKER under these Terms & Conditions in connection with such services.

C. Claims; Processing. BROKER shall, without assuming any liability for loss or damage Claims, assist SHIPPER in its pursuit of SHIPPER Claims against liable Carriers.

C. Shipper Liability. SHIPPER shall be directly liable to BROKER and its Carriers for costs and accessorial charges incurred by either as the result of an order being canceled by SHIPPER or as required to perform pick-up or delivery of SHIPPER orders.

6. **INDEMNITY**

A. Indemnity by BROKER. BROKER shall indemnify and defend SHIPPER, its affiliated and associated companies, and their respective agents, officers, directors, and employees from and against any liability, loss, cost, claims, and expenses, including attorneys' fees and costs of defense, arising out of the negligent acts or omissions of BROKER, its third party contractors, agents or employees; notwithstanding the above, under no circumstances shall BROKER be obligated to indemnify SHIPPER from or against any liability or loss caused in any manner by a Carrier.

B. Indemnity by SHIPPER. SHIPPER shall indemnify and defend BROKER, its affiliated and associated companies, and their respective agents, officers, directors, and employees from and against any liability, loss, cost, claims, and expenses, including attorneys' fees and costs of defense, arising out of the negligent acts or omissions of SHIPPER, its third party contractors, agents or employees. The above indemnity shall extend to all claims, liabilities and losses that in any way arise from or out of the loading or unloading by SHIPPER of any trailer of a Carrier. SHIPPER shall hold BROKER harmless from and against any claim, loss or damages to person or property caused in any manner by a Carrier.

7. NONEXCLUSIVE TERMS & CONDITIONS

It is understood and agreed between the parties hereto that BROKER shall be free to accept freight for transportation from shippers other than SHIPPER and that SHIPPER shall be free to tender freight for transportation to BROKERS other than BROKER.

8. INDEPENDENT CONTRACTOR BROKER

Shall perform the services hereunder as an independent contractor and shall have exclusive control and direction of all persons operating equipment or otherwise engaged in providing transportation services. BROKER assumes full responsibility for the acts and omissions of such persons and, when applicable, shall have exclusive liability for the payment of local, state and federal payroll taxes or contributions or taxes for unemployment insurance, workers' compensation, old age pensions or other social security and related protection, and agrees to comply with all applicable rules and regulations pertaining thereto.

9. GOVERNING LAW

To the extent not governed by the Interstate Commerce Act or other applicable federal statutes, the laws of the State of New York shall govern the validity, construction and performance of these Terms & Conditions. All controversies, claims, actions, suits or proceedings arising hereunder shall be brought in the Supreme Court of the State of New York.

10. FORCE MAJEURE

A. Except for SHIPPER's obligations regarding the timely payment of freight charges to BROKER, neither party here to shall be liable to the other for default in the performance of any of the terms and provisions of these Terms & Conditions if caused by fire, strikes or labor disputes, riot, war, Act of God, governmental order or regulation, or other similar contingency beyond the reasonable control of the respective parties.

B. The party claiming force majeure shall notify the other party within twenty-four (24) hours of when it learns of the existence of such a condition and shall similarly notify the other within a period of two (2) working days after the condition is remedied. However, if such condition of force majeure is not remedied within 20 days, the unaffected party shall have the right to terminate any obligations created by these Terms & Conditions upon notice to the other party.

11. SEVERABILITY AND WAIVER

If any phrase, clause, sentence, or other provision contained in these Terms & Conditions violates any applicable statute, ordinance, rule or law, such phrase, clause, sentence or provision shall be ineffective to the extent of such violations without invalidating any other provision of these Terms & Conditions. The waiver by either party of any breach or default hereunder, or the failure of either party to enforce any of the terms and conditions herein, shall not affect, limit or waive the right of either party thereafter to enforce and compel strict compliance with these Terms & Conditions.

12. ENTIRE AGREEMENT/AMENDMENTS

These Terms & Conditions represents the entire understanding of the parties with respect to the subject matter herein and cannot be amended except in writing signed by both

parties. All prior discussions, understandings, negotiations and Agreements regarding the subject matter herein, are merged herein.

13. LIMITATION OF LIABILITY

Except as otherwise expressly provided in these Terms & Conditions, in no event will either party be liable to the other for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.