

STANDARD TERMS AND CONDITIONS **FOR BROKER SERVICES**

Amino Transport, Inc. ("**Broker**") holds authority from the U.S. Federal Motor Carrier Safety Administration ("**FMCSA**"), as a property transportation broker under FMCSA License Number MC 351837. Unless expressly superseded by a written contract signed by an officer of Broker and the customer, consignor, consignee, or any other entity claiming an interest in goods for which Broker arranges transportation ("**Customer**"), these Standard Terms and Conditions ("**Terms**") shall govern property brokerage services which, for purposes hereof, shall mean the arrangement of motor carrier transportation to be performed by Servicing Motor Carriers (as defined below) and shall include arranging/brokering full truckload ("**FTL**"), less than truckload ("**LTL**"), and intermodal (via a combination of motor carrier and rail) transportation. Broker and Customer are sometimes referred to individually as a "**Party**", and collectively as the "**Parties**."

1. **Tender of Shipments.** Customer agrees to tender and/or cause to be tendered on its own behalf and/or as agent for and on behalf of its customer(s) one or more shipments to Broker for the purpose of having Broker arrange for the transportation of the shipment(s) by third party motor carriers selected by Broker (each a "**Servicing Motor Carrier**"). Customer and Broker agree that these Terms do not restrict Customer from tendering shipments to other property transportation brokers or directly to motor carriers.

2. **Brokerage Services.** For all shipments tendered by Customer to Broker and accepted by Broker in its sole discretion, Broker agrees to arrange for the pick-up, transport, and delivery of the shipments, as Customer may reasonably request, exclusively by Servicing Motor Carrier. In arranging transportation services for Customer, Broker shall not be responsible for packaging, handling or loading of shipments, which shall instead be the responsibility of Customer and/or the Servicing Motor Carrier. Every shipment handled by Broker for or on behalf of Customer will be deemed tendered to Broker pursuant to these Terms. Broker has the sole right to select Servicing Motor Carriers. Broker's sole responsibility with respect to selection and retention of Servicing Motor Carriers is to make reasonable efforts to place Customer's loads with Servicing Motor Carriers that meet the following criteria: (i) **FMCSA Authority.** Servicing Motor Carriers shall agree to have and maintain proper and necessary authority from the FMCSA and any applicable state agency to perform transportation services in intrastate, interstate and/or foreign commerce; (ii) **Safety.** Servicing Motor Carrier shall agree to not have either an "unsatisfactory" or unfit safety rating from the U.S. Department of Transportation. Broker may utilize a Servicing Motor Carrier with a FMCSA safety rating or fitness determination of "Conditional" or the equivalent, if the Servicing Motor Carrier has furnished evidence satisfactory to Broker regarding corrective action taken to correct the safety deficiency(ies) which resulted in such rating. Broker shall only select a Servicing Motor Carrier to transport a shipment if it has agreed to perform transportation of the shipment in full compliance with all applicable safety laws and requirements; and (iii) **Insurance.** Servicing Motor Carriers shall agree to possess all insurance coverages required by applicable law.

3. **Shipment Schedules.** Servicing Motor Carriers shall be required to perform pick-up and delivery of all shipments with reasonable dispatch in accordance with reasonable schedules communicated in writing by Customer to Broker and/or Servicing Motor Carriers providing the actual, physical transportation of such shipments.

4. **CARB Compliance.** To the extent that a shipment subject to these Terms is transported within the State of California in refrigerated equipment, Broker shall require the Servicing Motor Carrier to agree to only utilize equipment that is in full compliance with the California Air Resources Board ("**CARB**") Transport Refrigerated Unit ("**TRU**") Airborne Toxic Control Measure ("**ATCM**") in-use regulations.

5. **Performance of Services.** Broker will arrange the transport of each shipment tendered to it by Customer promptly upon tender of the shipment by Customer. Broker will provide Customer with prompt notification by telephone or electronic communication when this obligation cannot be met for

5. **Performance of Services.** Broker will arrange the transport of each shipment tendered to it by Customer promptly upon tender of the shipment by Customer. Broker will provide Customer with prompt notification by telephone or electronic communication when this obligation cannot be met for any reason. Broker will communicate to each Servicing Motor Carrier any schedule for delivery provided by Customer for a particular shipment. Broker will require the Servicing Motor Carrier to agree to perform the actual physical transportation of the shipment, and agree not to "double broker" such transportation to another motor carrier.

6. **Hazardous Materials.** If Customer tenders for transportation cargo designated as hazardous materials or dangerous goods, Customer shall be solely responsible for complying with any and all applicable laws, rules, regulations, or conventions with respect to classifying, tendering, packaging and labeling such cargo and must provide notice of any such cargo at the time a request for services is first initiated by Customer to Broker. Customer shall defend, indemnify and hold Broker harmless from any penalties or liability of any kind, including reasonable attorneys' fees, arising out of Customer's failure to comply with applicable hazardous materials laws and regulations.

7. **Independent Contractor.** Broker's relationship to Customer is that of an independent contractor, not an agent or employee, and nothing in these Terms shall be construed as establishing an employment relationship, partnership or joint venture between the parties. Broker shall make arrangements it deems appropriate for the transportation of shipments tendered by Customer under these Terms. Customer is not and will not be responsible for any debts or obligations incurred by Broker in the performance of its business. Neither Party shall be liable for any obligation incurred by the other, except as is expressly provided in these Terms.

8. **Compliance with Law.** Customer shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its tendering of shipments for transportation pursuant to these Terms and applicable to Customer's performance obligations pursuant to these Terms. Customer warrants and represents that it is authorized to tender the cargo in question to Broker and that all descriptions of the cargo are complete, accurate, and include all information required by applicable law, rules or regulation. Broker shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its performance of the transportation services to be rendered pursuant to the provisions of these Terms.

9. **Indemnification, Warranties, and Limitation of Liability.** THE TOTAL LIABILITY OF BROKER WITH RESPECT TO ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO SERVICES PROVIDED PURSUANT TO THESE TERMS WILL BE FOR THE AMOUNT CHARGED BY BROKER WITH RESPECT TO THE SERVICES SPECIFICALLY GIVING RISE TO SUCH CLAIMS OR DAMAGES. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BROKER FROM AND AGAINST, AND SHALL PAY AND REIMBURSE BROKER FOR, ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY CUSTOMER OF THESE TERMS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULE OR REGULATION; OR (iv) CUSTOMER'S FAILURE TO PROVIDE INSTRUCTIONS OR DIRECTIONS, OR BROKER'S OR THE SERVICING MOTOR CARRIER'S COMPLIANCE WITH OR RELIANCE ON, INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER. THE FOREGOING NOTWITHSTANDING, CUSTOMER'S OBLIGATION TO HOLD HARMLESS, DEFEND, INDEMNIFY, PAY AND REIMBURSE SHALL NOT APPLY TO THE EXTENT ANY CLAIM IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BROKER. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. BROKER IS NOT LIABLE FOR THE CONSEQUENCES OF IDENTIFY THEFT OR FRAUDULENT CONDUCT OF THIRD PARTIES, INCLUDING UTILIZING THE SERVICES OF ENTITIES REPRESENTING THEMSELVES TO BE SERVICING MOTOR CARRIERS OR REPRESENTATIVES THEREOF.

10. **Consent to Telephone Recording, Confirmation of a Transaction, Taping of Transactions.** Each Party hereby agrees that the other Party or its agents may electronically record all telephone conversations between officers or employees of the consenting Party and the officers or

Transactions. Each Party hereby agrees that the other Party or its agents may electronically record all telephone conversations between officers or employees of the consenting Party and the officers or employees of the other Party who quote on, agree to, or otherwise discuss terms of transactions, potential transactions, or other general business discussions on behalf of the Party. Each Party may, at each Party's respective expense, maintain equipment necessary to record transactions on audiotapes and/or digital recording media ("Transaction Tapes") and retain Transaction Tapes and the electronic evidence of transactions on such Transaction Tapes in such manner and for so long as each Party deems necessary in its sole respective discretion, but is not obligated to do so. The Parties hereby consent to the electronic recording of their telephone discussions. Each Party also (i) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (ii) agrees, to the extent permitted by applicable law, that recordings may be submitted as evidence in any proceedings.

11. **Payment to Broker, Credit Terms.** Customer shall pay Broker the agreed compensation for each shipment tendered pursuant to these Terms, without offset, within **thirty (30)** days from receipt by Customer of Broker's invoice. Customer shall also be liable for any expenses, including attorney fees, Broker incurs in collecting its rates and charges. Customer shall also be responsible for any additional accessorial charges imposed by the Servicing Motor Carrier which were not anticipated by Broker at the time Broker arranged for services with Servicing Motor Carrier or which were not otherwise included in the rate set forth in the load confirmation. In no event will Broker have any responsibility for, and Customer will defend, indemnify, and hold Broker harmless from, and will pay and reimburse, any charges imposed by third parties with respect to use of equipment in which cargo tendered by, to or on behalf of Customer is or has been laden, or for charges assessed with respect to storage or handling of any such equipment, including, but not limited to, charges assessed by steamship lines, rail carriers, rail terminal operators, marine terminal operators or port authorities. Without limiting the generality of the foregoing, Broker shall have no liability for any such charges arising from or related to port congestion, lack of equipment availability, labor shortages, or other situations impacting port or intermodal transportation operations.

12. **Bill of Lading and Receipt.** Broker shall require each Servicing Motor Carrier it selects to transport a shipment tendered by Customer to Broker: (i) to issue a bill of lading at origin evidencing receipt of the shipment tendered to the motor carrier, and (ii) to obtain a receipt for delivery of the shipment from the consignee or other Party accepting delivery. In no event will Broker being shown as the "carrier" on any such document change Broker's status as a property broker. Customer waives access to Broker's records pursuant to 49 C.F.R. Part 371.

13. **Motor Carriers' Charges.** Broker shall be solely and exclusively liable and responsible for the payment of rates and charges to Servicing Motor Carriers engaged by Broker to transport shipments tendered by Customer to Broker pursuant to these Terms, except as otherwise set forth in section 11. Notwithstanding the foregoing, in the event a Servicing Motor Carrier subcontracts, rebrokers, or double-brokers a shipment to a third-party motor carrier, Broker, in its sole discretion, may pay such third-party motor carrier's rates and charges but Broker will have no liability for such third-party motor carrier(s) rates and charges related to such shipment.

14. **Cargo Liability.**

A. **Liability Limits.** The Servicing Motor Carrier (and not Broker) shall have liability for cargo loss or damage. Customer's recovery (as opposed to liability) for cargo loss or damage may be limited to a maximum of one hundred thousand dollars (\$100,000.00) per shipment or per consolidated shipments – unless insurance coverage for increased cargo value has been requested by Customer, and Broker has advised Customer in writing prior to tender of the shipment(s) that it has arranged higher cargo loss or damage coverage. To the extent that multiple shipments or consolidated shipments are tendered by Customer at the same time and at the specific written request of Customer are transported at the same time and in the same vehicle, such multiple shipments or consolidated shipments shall be considered a "single shipment" for the purposes of this section. Notwithstanding the foregoing, Customer acknowledges that Servicing Motor Carriers may limit their liability for cargo loss, damage, or delay. It will be Customer's responsibility to insure product in-transit and Customer acknowledges that if Customer wishes to declare excess value higher than the Servicing Motor Carrier's limitation, Broker will have no responsibility to do so and it will be Customer's

delay. It will be Customer's responsibility to insure product in-transit and Customer acknowledges that if Customer wishes to declare excess value higher than the Servicing Motor Carrier's limitation, Broker will have no responsibility to do so and it will be Customer's responsibility to do so directly with the Servicing Motor Carrier. Further, Customer acknowledges that Servicing Motor Carrier insurance coverage for LTL shipments is limited to the LTL carrier's limited liability coverage and will be less than the limits identified above. However, Customer may obtain, by written request to Broker, excess cargo loss or damage insurance coverage through the LTL carrier in excess of the limited amount provided. In no event will Broker have any liability arising from or related to the Servicing Motor Carrier's refusal to accept full value liability or the Servicing Motor Carrier otherwise limiting its liability for cargo loss and damage.

B. Processing of Cargo Loss or Damage Claims. In processing of cargo loss or damage claims, the Servicing Motor Carrier shall be contractually required to comply with 49 C.F.R. § 370.1, *et seq.* and any amendments and/or any other applicable regulations adopted by the U.S. DOT/FMCSA, or any applicable state regulatory agency, for processing loss or damage claims.

C. Disclaimer of Broker Liability. Broker shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused by Broker's grossly negligent acts or omissions, as determined by a court of competent jurisdiction, in which case, Broker's liability shall be limited to the charges assessed by Broker and paid by Customer with respect to the goods at issue. Customer acknowledges and agrees that the sole liability of Broker with respect to loss, damage or delay to cargo shall be as set forth in this provision and Customer warrants and represents that if it is not the owner of such cargo, Customer holds authority from such owner to bind the owner to the provisions of these Terms.

15. Indirect, Incidental, Consequential, Special or Punitive Damages. Neither Party shall be liable to the other for any indirect, incidental, consequential, special or punitive damages (such as, but not limited to, loss of profits, loss of market, loss of customer goodwill, shutdown, or punitive or exemplary damages) without prior written notification of the risk of loss and its approximate financial amount, and the written agreement of the Party to assume such responsibility.

16. Notice. Any notice and other communication relating to these Terms shall be in writing and be sent: (i) by certified mail, return receipt requested, postage prepaid; (ii) by nationally recognized overnight courier service to the other Party's principal place of business; (iii) by fax, with proof of receipt by the intended recipient; (iv) by email with proof of receipt by the intended recipient; or (v) in such other manner or to such other address as shall have been designated by the Party to which such notice or other communication is to be given.

All such notices and other communications will be deemed to have been given and received in the case of personal delivery, on the date of such delivery; in the case of facsimile or email transmission, on the date of transmission if sent on a business day (or if sent on other than a business day, on the next business day after the date sent); in the case of delivery by nationally recognized overnight courier service, on the business day following dispatch if sent by guaranteed next day delivery; or in the case of mailing, on the third business day following such mailing.

17. Force Majeure. If either Party is prevented from performing its obligations under these Terms because of fire, earthquake, flood, explosion, wind, water, strike, lockout, acts of terror, pandemic, or any other cause beyond the control of the affected Party, such Party shall immediately give notice of such prevention to the other Party, and shall be excused from the performance of any and all its obligations under these Terms for the duration of such specified circumstances. No liability for any loss, damage or delay with respect to freight shipped or transported shall accrue on account of the occurrence of any such special circumstance absent the actual negligence of Broker.

18. Non-Disclosure of Information.

A. Broker and Customer agree to keep confidential any information provided by the other Party relating to such Party's operations or business activities, including, but not limited to: (i) the names of motor carriers, customers, suppliers and vendors, and (ii) freight rates and charges

A. Broker and Customer agree to keep confidential any information provided by the other Party relating to such Party's operations or business activities, including, but not limited to: (i) the names of motor carriers, customers, suppliers and vendors, and (ii) freight rates and charges (collectively "Confidential Information"). Each Party agrees to hold all such information in confidence and shall not use any such information other than for the benefit of the other Party or in performance of its obligations under these Terms. Neither Party shall disclose any Confidential Information, except: (i) as may be required by law or regulation; (ii) as is necessary to effect or further the purposes of these Terms; (iii) when such disclosure is between a parent and its subsidiary or corporate affiliate; or (iv) when required in connection with an audit by an accounting or law firm, so long as the disclosing Party is responsible for ensuring compliance with this confidentiality requirement by the audit or law firm.

B. The restriction against disclosure of Confidential Information as specified in this section shall not apply to information which (i) was already known prior to the time it was imparted to the receiving Party by the other Party, (ii) is available or becomes generally available to the public other than through a breach of these Terms by the receiving Party, (iii) is acquired or received by the receiving Party rightfully and without confidential limitation from a third party, or (iv) is independently developed by the receiving Party without breach of these Terms. If either Party becomes legally required to disclose Confidential Information, or any part thereof, that Party will give the other prompt notice of such requirement. If the non-disclosing Party waives compliance with any of the provisions of these Terms or is unable to obtain a protective order or other appropriate remedy with respect to such disclosure of Confidential Information, then the disclosing Party shall disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.

19. **Choice of Law.** These Terms shall be governed by and construed in accordance with the laws of the State of Texas except to the extent any mandatory federal law is applicable to these Terms.

20. **Assignment, No Third Party Beneficiary.** Neither Party shall assign these Terms or any interest in these Terms, without the prior written consent of the other Party, except if notice is provided and the assignment is to a parent, subsidiary or affiliated entity. Subject to the foregoing, these Terms shall inure to the benefit of and be binding on the successors and assigns of the Parties. Neither a Servicing Motor Carrier nor any other third party shall be a third party beneficiary to this Agreement between Broker and Customer.

21. **Amendment.** These Terms cancel and supplant any and all other written or oral agreements and understandings for property transportation broker services between Broker and Customer, and Broker may, in its sole discretion, amend these Terms from time to time.

22. **Headings.** Any headings or numbering of paragraphs or sections of these Terms are for organizational convenience only, and all terms and conditions herein are intended to take precedence over any such heading or numbering. If any part, term, paragraph or provision of these Terms is found or declared to be invalid or unenforceable for any reason, the remainder shall remain in full force and effect.

23. **Waiver.** The failure of a Party to object to or take action with respect to any breach of any provision of these Terms by the other Party shall not be construed as a waiver of any rights under these Terms by the nonobjecting Party, nor of any claims, past, present or future, for any breach of these Terms.

24. **Disputes.** Unless preempted by or controlled by federal transportation laws and regulations, these Terms shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, these Terms, or the business between the Parties, may be brought only in the courts of the State of Texas, Tarrant County, or in the United States District Court for the Northern District of Texas, and each Party consents to the exclusive jurisdiction of such courts (and the appropriate appellate courts) in any such action and waives any objection to personal jurisdiction or venue in such courts. Process in any action referred to in the preceding sentence may be served upon a Party anywhere in the world. Customer agrees to pay all reasonable expenses, attorney fees and costs (including court costs) that Broker incurs in any such actions in which Broker prevails.

or venue in such courts. Process in any action referred to in the preceding sentence may be served upon a Party anywhere in the world. Customer agrees to pay all reasonable expenses, attorney fees and costs (including court costs) that Broker incurs in any such actions in which Broker prevails.

25. Compliance by Parties with Food Safety Laws. When Customer engages Broker to arrange transportation of cargo regulated under the Sanitary Transportation of Food Rule at 21 C.F.R. §§ 1.900 through 1.934 ("STF Rule"), as adopted by the U.S. Food & Drug Administration ("FDA") under the Food Safety Modernization Act, Pub. L. No. 111-353 ("FSMA"), the duties otherwise assigned to Broker as a "shipper" under the STF Rule are hereby re-allocated under these Terms to Customer and to the Servicing Motor Carriers. Such re-allocation among supply-chain participants by written agreement is permitted by 21 C.F.R. § 1.908(a), subject to applicable recordkeeping requirements under 21 C.F.R. § 1.912(d). By tendering shipments for brokerage by Broker, Customer agrees to the following re-allocations of responsibilities under the STF Rule in accordance with these terms and conditions:

A. Duties Re-Allocated to Selected Motor Carriers. The duties assigned to Broker as a "shipper" under the SFT Rule are delegated to Broker's selected carrier insofar as they relate to assuring that vehicles and equipment are operated in an appropriate sanitary condition, that temperature controls specified by Customer are maintained during transportation, and that previous cargo movements do not render the equipment unsafe for FSMA-regulated shipments.

B. Duties Re-Allocated to Customer. All other duties assigned to Broker as a "shipper" under the SFT Rule are hereby delegated to Customer under these Terms. These duties include, without limitation, providing written instructions to the Servicing Motor Carrier regarding equipment design and dimensional requirements, adequate preparation (including any required pre-cooling) of equipment presented for loading, and specification of any temperatures required to be maintained during transportation.

Customer agrees that when requesting service with respect to any shipment containing food that is subject to FDA regulations (hereinafter "Food"), Customer shall be solely responsible for identifying handling obligations necessary for the safe and sanitary handling of Food and, at the time of the initial request for services with respect to the individual shipment, will provide written notice (each a "Food Handling Notice") to Broker that the consignment contains Food which Food Handling Notice must also include any special instructions or handling requirements to be imposed on the Servicing Motor Carrier. Any such Food Handling Notice shall specifically identify the consignment to which it relates and in no event shall any Food Handling Notice apply to more than one shipment regardless of whether Broker confirms receipt of a Food Handling Notice purporting to apply to multiple conveyances. In no event will Broker have any obligation to provide any instructions to the Servicing Motor Carrier with respect to cargo other than providing to the Servicing Motor Carrier the Food Handling Notice prepared by the Customer and Broker has no obligation to comply with or pass on to the Servicing Motor Carrier any handling instructions received after the initial request for service. If Customer does not provide a Food Handling Notice, Customer warrants and represents that the cargo is appropriately packaged to ensure safe and sanitary transportation without the need for any specialized handling by the Servicing Motor Carrier. Customer acknowledges and agrees that Broker's sole obligation with respect to Food handling and food safety is to pass through to the Servicing Motor Carrier instructions contained in a Food Handling Notice.

The Parties further recognize and agree that the standards prescribed by the STF Rule relate to maintaining the safety and sanitation of Food rather than preserving any particular appearance or market value, and that any suspected departures from such safety and sanitation standards shall be investigated by a "qualified individual" (as per 21 C.F.R. § 1.906(a)(6)) before any determination is made that the Food cargo in question is unsanitary, unsafe or adulterated within the meaning of FSMA.

In order to comply with the recordkeeping requirements of 21 C.F.R. § 1.912(d), both Parties shall retain copies of these Terms in written or electronic form for not less than twelve (12) months after the date on which Customer ceases to tender shipments to Broker hereunder.

after the date on which Customer ceases to tender shipments to Broker hereunder.