

NICHOLSON TERMINAL AND DOCK COMPANY
BILL OF LADING TERMS AND CONDITIONS

Nicholson Terminal & Dock Company ("Nicholson"), as agent for the shipper named on the face of the Bill of Lading ("Shipper") and Carrier (the carrier identified in the Bill of Lading) agree that all shipments of freight tendered for transportation and accepted by Carrier are subject to Nicholson's Bill of Lading and unless otherwise agreed in writing in a separate Shipper/Carrier contract, are governed by the following terms and conditions, which are incorporated into the Bill of Lading by reference:

1. INTERMEDIARY:

In the event a freight broker, freight forwarder, third-party logistics company, or any carrier collectively defined herein as "Intermediary", arranges the transportation of freight hereunder, and does not actually transport the freight, delivering Carrier agrees that the Intermediary is neither Nicholson's nor Shipper's agent, and agrees that the Intermediary shall be solely responsible for payment of all delivering carrier's freight and related charges, and waives its rights to seek payment from Nicholson, Shipper and consignee. Under no conditions shall Nicholson, Shipper or consignee be liable for double payment of such charges

2. AGREEMENT TO SHIP ACCORDING TO BILL OF LADING:

Carrier agrees to transport Shipper's freight, subject to the separate Shipper/Carrier contract (if any), and this Bill of Lading, from the origin(s) to the destination(s) shown on front side of the bill of lading.

3. RATES:

Transportation rates negotiated between the parties may be located on the face of bill of lading or an appendix to the bill of lading, or as expressly agreed upon by Shipper and Carrier as clearly evidenced in another writing by fax, mail or e-mail specifying the rates. Only those rates are applicable, and no other rates, released rates, rate limitations, tariffs, circulars, rules, credit rules, classifications, practices, accessorial charges, or other rates, charges, or publications shall be applicable, unless specifically identified in the bill of lading, attached as an appendix to the bill of lading, or mutually agreed upon in another writing by fax, mail or e-mail. Additional rates or modifications or amendments to rates may only be established by mutual written agreement. Full payment of freight charges to Carrier under the terms of this Agreement shall relieve Shipper of any further liability for such charges. Unless otherwise agreed in writing, Carrier shall furnish Shipper with a copy of the bill of lading or other delivery receipt signed by the consignee evidencing delivery to the consignee as a condition of Shipper's obligation of payment for freight charges. Notwithstanding any other provision of the Bill of Lading, Nicholson shall not be liable for the payment of any freight charges associated with the transportation of the freight under the terms of the Bill of Lading, it being understood that Nicholson is only acting as an agent of the Shipper whose name appears on the Bill of Lading.

4. TERMS AND CONDITIONS OF CARRIAGE:

- a. Carrier's liability for loss, damage and delay to freight shall be governed by 49 U.S.C. §14706 (Carmack Amendment).
- b. Carrier's liability shall not be subject to the rules of contributory or comparative negligence.
- c. Carrier shall be liable solely as a warehouseman for loss, damage or delay occurring after actual or attempted tender of the freight for delivery at destination. When tender of delivery of the freight to the party entitled to receive it has been made, but delivery has been refused, or if Carrier is unable to make delivery, Carrier's liability as a warehouseman will begin when Carrier has placed said freight in a warehouse or storage facility under reasonable security and notified Shipper by phone, fax, or email.
- d. In the event that the freight has been refused by consignee, or Carrier is unable to deliver the freight for any reason, Carrier shall immediately notify Shipper by phone or fax or email in accordance with the instructions on the face of the Bill of Lading. Said notice shall be confirmed in writing by Carrier to Shipper, stating the time and date that free time shall expire and the storage charges (if any) which are applicable upon expiration of free time. Storage charges may begin not sooner than 48 hours after Carrier's notification, exclusive of Saturdays, Sundays and business holidays declared by any of the parties.
- e. Shipper shall give freight disposition instructions to Carrier within five (5) business days of Shipper's receipt of notice of Carrier's inability to deliver the freight. If disposition instructions are not received, Carrier shall send a "Final Notice of On-Hand Freight" via facsimile transmission to Shipper. If disposition instructions are not received by Carrier from Shipper within five (5) business days of the "Final Notice of On-Hand Freight"," Carrier shall (publish) in two newspapers of general circulation, once a week, for two consecutive weeks that the freight on hand will be offered for sale at a general auction, stating the time and place of said sale. Not later than ten (10) days prior to the auction sale, Carrier shall send a copy of the published auction notice to Shipper via facsimile transmission.
- f. The proceeds of any sale received under the procedure in paragraph 3. e. shall be applied by the Carrier to the payment of freight, demurrage, storage, and any other lawful charges; to the expense of notice, advertisement, publication, sale and other necessary expense; and to the expense of caring for and maintaining the freight, if proper care of the freight requires special expense. In the event that there are any proceeds remaining after all charges and expenses are paid, said proceeds shall be paid to the Shipper of the freight within seven (7) days of completion of the sale.
- g. Carrier shall not assign this Agreement, or interline, broker, or otherwise transfer the freight hereunder to any other carrier without prior written consent of Shipper or Nicholson. Carrier assumes all risk of loss and shall indemnify and hold Nicholson and

Shipper harmless from any liability arising out of any violation of this paragraph, including consequential damages, costs, expenses and reasonable attorney's fees. Shipper, in its sole option, may, and not in limitation of any other remedy, directly pay the delivering carrier in lieu of payment to Carrier.

- h. Freight loss or damage claims must be mailed to Carrier within nine (9) months of delivery or failure to make delivery.
- i. Lawsuits for loss, damage or delay of the freight shall be instituted against any Carrier no later than two (2) years and one (1) day from the day when written notice is received by the Shipper from the Carrier or its insurance company that the Carrier and/or its insurance company has disallowed the claim.
- j. If upon inspection it is determined that the articles shipped are not accurately described in the Bill of Lading, the freight charges must be paid upon the articles actually shipped.
- k. Claims for loss, damage, delay, and salvage shall be processed in accordance with the procedures set forth in 49 C.F.R. §370 et seq., unless otherwise agreed in writing. In addition, Shipper and/or Nicholson may recover its administrative expenses incurred in connection with said claims.
- l. Notice of any loss or damage to freight shall be given to Shipper by phone as soon as possible and by notation (description) on the bill of lading, or freight bill. Concealed loss or damage shall be reported to Shipper by Carrier within fifteen (15) working days after delivery unless the consignee explains why the loss or damage could not reasonably have been reported within fifteen (15) days. Carrier shall provide a detailed report of all loss and damage to freight to Shipper immediately upon discovery in writing.
- m. Carrier shall be liable for the number of shipping units or packages noted on the Bill of Lading for all shipments, and shall deliver them in the same condition as tendered at origin. If Carrier's driver is not able or is not given an opportunity to inspect and count the shipment prior to acceptance by the Carrier, the Bill of Lading must be noted "SL & C" (Shipper's Load & Count).
- n. LTL (less than truckload) shipments shall be inspected and counted by Carrier upon loading and at its first place of delivery. Any discrepancies shall be reported immediately to Shipper by phone and in writing, fax and or e-mail.
- o. Carrier certifies that it is in and shall remain in compliance with all applicable federal, state and local laws relating to the provision of its services, including, but not limited to: owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations, including, but not limited to, hiring, controlled substances, hours of service regulations, sanitation and temperature requirements for transporting food and other perishable products, qualification, licensing and training of drivers for any hazardous materials and shipments; implementation and

maintenance of equipment safety regulations; maintenance and control of the means and method of transportation, including, but not limited to, performance of its drivers; and insurance laws and regulations, including but not limited to those related to workers' compensation. Carrier also certifies that it has a "satisfactory" safety rating with the Federal Motor Carrier Safety Administration (FMCSA).

- p. Carrier's driver or representative is authorized to sign the Bill of Lading and enter into this Agreement on behalf of Carrier.
- q. Carrier agrees to provide, at its own cost and expense, qualified drivers to operate its equipment and shall procure and maintain such licenses and permits as are required by local, state and federal authorities and shall comply with all laws and regulations applicable. Carrier specifically represents that its drivers do and will comply with all applicable safety laws and regulations, local, state and federal.
- r. Unless expressly superseded by a written Shipper/Carrier Agreement, this Bill of Lading, and these terms and conditions (including any written rate confirmations), and any other written modifications hereof supersede all prior agreements, written or verbal, and may not be amended, modified, or altered except by mutual written agreement. Any conflict between the terms hereof and a written Shipper/Carrier Agreement shall be controlled by the terms of the Shipper/Carrier Agreement.

5. INSURANCE:

- a. Carrier acknowledges that: (a) it has valid, effective insurance which complies with Federal Highway Administration, U.S. Department of Transportation regulations, as well as any applicable state or regulatory agency or such other amount as agreed upon by Carrier and Shipper; (b) the freight transported is not excluded from risk of loss or damage and/or theft by any exclusions of conditions in the policy; (c) evidence of insurance shall be in a form providing for at least thirty (30) days prior written notice of cancellation and termination; (d) Carrier shall furnish Shipper or Nicholson with evidence of insurance upon request.
- b. Carrier's driver's signature on the Bill of Lading shall constitute prima facie evidence that the freight was received from Nicholson in good order and condition, unless otherwise specifically noted. In addition, Carrier shall become responsible for the freight when the Carrier's trailer has been loaded and is ready for transportation, regardless of whether a Bill of Lading has been signed.

6. INDEMNITY:

Carrier shall defend, indemnify and hold Nicholson, Shipper and/or their designees harmless from any and all losses, including, but not limited to, theft, economic damages (including lost profits and incidental and consequential damages), reasonable attorney's fees and expenses or liability of any kind, for: (a) injuries to persons including death, or damage to property arising

out of Carrier's operations, (b) any failure on Carrier's part to comply with all applicable laws and regulations, federal, state and/or local; and (c) damages arising out of Carrier's conduct under and/or violation of any of the terms of this Bill of Lading. Except for damage to freight, damages under this paragraph shall constitute "special damages", the risk for which is expressly assumed by Carrier.