

# COGISTICS TRANSPORTATION LLC

## CARRIER TERMS AND CONDITIONS OF SERVICE

Except to the extent superseded by an individually negotiated Carrier contract, the following Terms and Conditions of Service shall apply to all shipments arranged with a motor carrier by COGISTICS Transportation, a Florida corporation which conducts business as a federally-registered property broker.

### 1. Definitions.

(a) "COGISTICS Transportation" means COGISTICS Transportation, its employees, directors, officers, shareholders, agents, representatives, assigns, affiliated companies, and related entities.

(b) "Customer" means the person or firm on whose behalf COGISTICS Transportation has been hired to arrange transport or storage of goods, as well as their agents and/or representatives and any principal on whose behalf they are acting.

(c) "Shipper" means the person tendering goods to COGISTICS Transportation for transport or storage and the person for whose account goods are being transported or stored, and any and all agents and/or representatives of the Shipper, including, but not limited to, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, and consignees.

(d) "Bailor" means both the owner of the goods and the person entitled to delivery of the Goods, even if not the owner, and shall be presumed to include the importer of the goods when imported Goods are tendered to COGISTICS Transportation for transport or storage, and their agents and representatives.

(e) "Third Party" means the person identified as such on the face of any shipper's instructions, receipt, truck tag, bill of lading or other document as the party responsible for payment of COGISTICS Transportation's charges.

(f) "Consignee" means the person named as the "consignee" on any shipper's instructions, receipt, truck tag, bill of lading or other document, the owner of the Goods, and all other persons lawfully entitled to possession of the Goods upon delivery.

(f) "Carrier" refers to the motor carrier hired by COGISTICS Transportation to transport or store Goods on behalf of the Customer, Shipper, Bailor, Third Party or Consignee.

(g) "Goods" means articles of every kind or description, including their packaging, containers, or other shipping units or materials, tendered to COGISTICS Transportation for handling, packing, securing, transportation, storage and/or delivery as identified on

the face of any shipper's instructions, receipt, truck tag, bill of lading or other document provided to COGISTICS Transportation.

## **2. Representations.**

By accepting the Goods, Carrier represents and warrants that it is duly registered with Federal Motor Carrier Safety Administration (FMCSA) as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. ' 13902. Carrier is currently in compliance with and, so long as it remains in custody of the Goods, shall remain in compliance with all regulations of the FMCSA and of all other federal and state agencies which pertain to its operations as a motor carrier.

COGISTICS Transportation represents and warrants that it is duly registered with FMCSA as a property transportation broker pursuant to 49 U.S.C. ' 13904 and is properly "Bonded". COGISTICS Transportation represents and warrants that it meets the definition of a COGISTICS Transportation as found at 49 U.S.C. '13102(2) and shall function accordingly.

## **3. Tender and Acceptance of Freight for Transport.**

COGISTICS Transportation shall offer loads to Carrier for transport in Carrier's own equipment through issuance of a Carrier Load Tender. Each party shall render all services in a competent and professional manner, and in accordance with all applicable federal and state laws and regulations of the jurisdiction(s) within which the services are rendered.

Carrier shall (a) issue a bill of lading in its own name for each shipment tendered, with the name of the Shipper shown as the consignor and the name of COGISTICS Transportation as the Third Party Payor, and (b) provide COGISTICS Transportation with a copy of the signed bill of lading and delivery receipt upon delivery of the goods.

Carrier, at its sole cost and expense, shall furnish all equipment required for its services hereunder and shall maintain all equipment in good repair and condition. Carrier shall employ for its services hereunder only competent and legally licensed personnel and take all steps necessary to ensure that its drivers adhere to all governing Hours of Service Rules. Without the prior written consent of COGISTICS Transportation, Carrier shall not cause or permit any shipment tendered hereunder to be transported by any other motor carrier or in substituted service by railroad or other modes of transportation without approval of COGISTICS Transportation.

## **4. Relationship of Parties.**

The relationship of Carrier to COGISTICS Transportation shall be that of an independent contractor. The parties have not and do not agree to provide for any

division of profits between Carrier, COGISTICS Transportation and/or any Shipper, or to convey COGISTICS Transportation with joint control over Carrier's performance of the Services, or otherwise to create a de facto or de jure joint venture, joint enterprise or partnership between Carrier, COGISTICS Transportation and/or any Shipper. Under no circumstances shall employees or agents of one party be deemed to be employees or agents of the other party, nor shall either party be liable for any wages, fees, payroll taxes, assessments or other expenses relating to employees or agents of the other party.

Carrier shall not subcontract any Services to third parties without giving prior notice to COGISTICS Transportation and obtaining COGISTICS Transportation's consent. Any such subcontracting, with or without notice and consent, shall not affect Carrier's responsibilities or liabilities to COGISTICS Transportation. As between COGISTICS Transportation and Carrier, all costs of rendering the services (including compensation of subcontractors as well as payment of all taxes or other governmental assessments imposed on Carrier) shall be borne solely and exclusively by Carrier. This prohibition against subcontracting does not apply to an individual with their equipment permanently leased to the Carrier pursuant to the provisions of 49 CFR Part 376.

All Services performed by Carrier pursuant to this Agreement shall be as a motor carrier of property in United States interstate or foreign commerce and shall be rendered as contract carriage within the meaning of 49 U.S.C. " 13102(4)(B) and 14101(b). In connection with contract carriage services, COGISTICS Transportation and Carrier hereby expressly waive all provisions of Chapters 137 and 147 and any other provisions of Subtitle IV, Part B of Title 49, United States Code, to the extent that such provisions are in conflict with express provisions of this Agreement. The Parties do not, however, waive the provisions of that subtitle relating to registration, insurance, or safety and fitness.

Neither party intends to give the other party any exclusive rights or privileges under this Agreement. Except as otherwise stated in this Agreement, either party may contract with or otherwise provide service to any other motor carrier, broker, intermediary or shipper.

#### **5. Insurance Coverage to be Provided by Carrier.**

Carrier shall provide and maintain, at its sole cost and expense, insurance against liability for injuries to or death of persons and damage to property, in combined single limits of not less than \$1,000,000.00 per occurrence, and for loss of or damage to freight, in an amount not less than \$100,000.00 per occurrence, and any additional insurance required by applicable laws, rules and regulations. Carrier shall, upon

reasonable demand, furnish COGISTICS Transportation with a copy of each such insurance policy and written certificates of insurance.

## **6. Rates, Charges, and Terms and Conditions for Services.**

(a) Carrier shall be paid the freight charges for the transportation service to be rendered pursuant to this at the rates set forth in the Carrier Load Tender provided to it for each shipment. No shipment tendered by COGISTICS Transportation to Carrier shall be subject to rates or charges set forth in any tariff or rate schedule maintained by Carrier. Modifications to these rates and charges may be made in writing or verbally, if confirmed in writing prior to loading. Carrier agrees to hold COGISTICS Transportation, Shipper and Consignee harmless from and against any and all charges which are not authorized by COGISTICS Transportation in the manner described in this paragraph.

(b) Except as otherwise provided in customer-specific addenda with respect to particular shippers, invoicing shall be handled as follows:

(i) Carrier shall invoice COGISTICS Transportation for the freight charges owing to Carrier.

(ii) COGISTICS Transportation shall invoice shipper for Carrier's freight charges and COGISTICS Transportation's commissions or other fees and take necessary measures to collect such invoices; and

(iii) COGISTICS Transportation shall remit freight charges owed to Carrier within the time periods set in Carrier's invoices, if payment has been received by COGISTICS Transportation.

(iv) If COGISTICS Transportation pays freight charges owed to Carrier prior to receipt of payment of the charges owed by its customer, Carrier hereby assigns to COGISTICS Transportation its right to recover the freight charges owed from the shipper, third party, consignee and any other party who may be liable for all or any part of the freight charges owed.

(c) If Carrier alleges underpayment of applicable freight rates and charges by COGISTICS Transportation, or if COGISTICS Transportation alleges overcharges, over-collection or receipt of duplicate payments by Carrier, notice of such claims must be given in writing by the aggrieved party to the other party within one hundred eighty (180) days after delivery or the first attempted delivery of the involved shipment(s) by Carrier.

The party receiving any such claim shall process it in accordance with the provisions codified at 49 C.F.R. Part 378 as of the effective date of this Agreement. Any civil action or arbitration proceeding with respect to such a claim shall be filed within eighteen (18) months after delivery or the first attempted delivery of the involved shipment(s) by Carrier.

#### **(7. Carrier's Liability for Loss of or Damage to Freight, Personal Injury and Property Damage and Indemnity Agreement.**

Carrier shall be solely liable for any and all loss, damage, or delay of any freight in its custody. Carrier's liability for cargo loss or damage shall be governed by the provisions of 49 U.S.C. ' 14706 and the terms of the Carrier Load Tender provided by COGISTICS Transportation, or, if the Carrier Load Tender does not specify limits of liability, upon the terms of Carrier's bill of lading and any tariff incorporated therein.

Claims for loss of or damage to cargo shall be filed and processed in accordance with 49 CFR Part 370 as in effect on the effective date of this Agreement. Claims may be filed by COGISTICS Transportation on behalf of its customers within the time frames established in Carrier's bill of lading and governing tariff, to the extent not inconsistent with the requirements of 49 U.S.C. ' 14706(e).

Carrier shall also be solely liable for any and all property loss, property damage, or personal injury suffered by any person as a result of the carriage or storage of the Goods by Carrier.

Carrier shall be responsible for proper blocking and bracing of the cargo unless it is a "shipper load and count" full truckload shipment, loaded and counted by the shipper without the carrier's driver having an opportunity to witness the loading.

Carrier shall hold COGISTICS Transportation, Customer, Shipper, Bailor, Third Party, Consignee and any other person with an interest in the goods harmless from and indemnify them against any liability resulting from loss of or damage to Goods while in the custody of the Carrier, from any personal injury or property loss or damage which results or is alleged to result from Carrier's conduct in the course of transporting or storing the Goods, and from all costs incurred in defending against such claims, including attorneys' fees.

#### **8. Back Solicitation.**

Carrier shall refrain from directly soliciting freight business from any Customer of COGISTICS Transportation for whom a shipment was tendered by COGISTICS Transportation for one year after the most recent shipment tendered to Carrier by

COGISTICS Transportation. In the event of a breach of this covenant, Carrier agrees to pay a 10% commission to COGISTICS Transportation for all shipments handled for such customers during the period that this covenant remains in effect.

**9. Severability.**

In the event any paragraph and/or portion of these Terms and Conditions are found to be invalid or unenforceable, the remaining portions of these Terms and Conditions shall remain in force and effect.

**10. Governing Law.**

These Terms and Conditions of Service and the relationship of the parties shall be governed by the laws of the State of Florida, county of Polk to the extent not pre-empted by federal law or treaties of the United States.