



# Terms and Conditions

**(1) Parties.** Customer is a Shipper and/or Consignee of certain goods it wishes to have transported. Cargo Express Freight Corp. is registered as a transportation freight broker with the FMCSA under docket number MC-747777, with offices at 741 E Ball Road, Suite 202, Anaheim, CA 92805. Cargo Express Freight is not acting as either a Motor Carrier, or Common Carrier, or Contract Carrier within the meaning of USC Title 49. Cargo Express Freight contracts with various freight carriers (“Carriers”) on behalf of Customer for the purpose of arranging transportation of Carrier’s goods in interstate and foreign commerce.

**(2) Freight Brokerage:** Cargo Express Freight is a Freight Logistics Company which is also known as a “Freight Broker.” At no time does Cargo Express Freight hold, handle, store or transport freight. Customer acknowledges that Cargo Express Freight is a “freight broker” and NOT a “freight carrier”.

**(3) Freight Carrier:** The freight carrier is a duly licensed and registered company that provides all or part of the actual transportation of Customer’s Shipment. Such freight carrier or carriers will be subject to all state and federal laws and regulations applicable to the transportation of the Shipment and, therefore, will be exclusively liable for the Shipment. Customer understands and agrees that the freight company or companies that actually transport the Shipment (“Carrier”) will be exclusively responsible for the transportation and delivery of the Shipment. **Cargo Express Freight is not a freight carrier.**

**(4) Customer is responsible for providing accurate weights, sizes and descriptions of the Shipment including the freight class and National Motor Freight Classification (“NMFC”) code. Customer understands that all freight rates are quoted for a business to business delivery and from dock to dock. Residential services are available and are charged as an accessorial service. If residential pickup and/or delivery are requested by Customer, Customer warrants the locations will be accessible to carrier equipment. Customer agrees to provide the means to load and unload the Shipment unless these services have been arranged for as an accessorial service. Customer agrees to ensure the Shipment is properly prepared for transport by freight carrier (with NMFC-compliant packaging and a proper address), and to ensure that any flatbed cargo is properly secured and tarped by the Carrier, unless these services have been arranged for by Customer with Cargo Express Freight as an accessorial service. Customer also agrees to ensure that the Carrier has obtained any necessary permits for oversize or overweight shipments, unless permitting services have been arranged for by Customer with Cargo Express Freight as an accessorial service. Customer AGREES TO PAY FOR ALL SERVICES AS ACTUALLY PROVIDED by Cargo Express Freight and the Carrier.**

**(5) Bill of Lading (“BOL”).**

**(a) On Less-than-Truckload (“LTL”) Shipments:** Customer is required to use the Cargo Express Freight system generated BOL, which is issued by Cargo Express Freight as agent of the Customer. Customer agrees to sign that BOL prior to pick up. Customer must then provide, or cause its cosigner to provide, two (2) copies of the signed BOL to the Carrier at the point of pick-up. Customer, or an agent of Customer, shall consign the shipment directly to the actual transporting Carrier. UNDER NO CIRCUMSTANCES SHALL Cargo Express Freight BE SHOWN ON THE BOL AS THE “CARRIER”. Accordingly, Customer agrees to hold such Carrier exclusively liable for loss or damages.

**(b) On Truckload (“TL”) Shipments:** A BOL is required, which Customer will print from Cargo Express Freight’s customer portal. If not issued by the Carrier, it may be issued by Cargo Express Freight as agent for Customer or by Customer itself. In all other respects, the provisions of paragraph 5(a) above shall apply to BOLs for LTL and TL shipments alike.

**(6) Necessary Documentation:** If Customer does not complete all the documents required for carriage, or if the documents which it submits are not appropriate for the Services, Customer hereby instructs Cargo Express Freight, where permitted by law, to complete, correct or replace the documents for it at the expense of Customer. However, Cargo Express Freight is not obligated to do so. If a substitute form of BOL is needed to complete delivery of this shipment and Cargo Express Freight completes that document, the terms of the substitute BOL will govern. Cargo Express Freight is not liable to Customer or to any other person for any actions taken on behalf of Customer under this provision.

**(7) BOL and Shipment Terms:** Any BOL generated under these Terms and Conditions is NON-NEGOTIABLE, has been prepared by the enrolled Customer itself, or by the Carrier or Cargo Express Freight on behalf of Customer, and shall be deemed, conclusively, to have been prepared by Customer. The General Rules Tariffs issued by the Carrier actually providing the transportation of the Shipment will in every instance take precedence over any BOL terms and over Cargo Express Freight’s Terms and Conditions stated herein, except that any attempt to designate Cargo Express Freight as a “Carrier” shall be void, and provided that the following shall be allowed only under such circumstances as may be specified in Cargo Express Freight’s agreement with Carrier: (a) direct billing of rates and charges by Carrier to Customer, (b) recourse by Carrier against any other party to the Shipment for payment of such rates and charges, and (c) exercise by Carrier of any statutory or common-law lien it otherwise might have upon Customer’s freight. In the case of conflict between these Terms and Conditions and those set forth by the Carrier’s General Rules Tariff, the Carrier’s General Rules Tariff shall control with exception and provisos just stated. If a matter is not covered by such General Rules Tariff,

however, these Terms and Conditions shall control. Any applicable provisions of the Carrier's General Rules Tariff and Cargo Express Freight's Terms and Conditions including, but not limited to, all liability limitations shall apply not only to the selected Carrier but to its agents and subcontracted carriers.

**(8) Customer's Warranties:** Customer acknowledges its responsibility to comply with, and warrants its compliance with all applicable state and federal laws, rules, and regulations including, but not limited to, customs laws, import and export laws, economic sanctions (if recognized by the U.S. Government) and governmental regulation of any country to, from, through or over which the Shipment may be carried. Customer agrees to furnish such information and complete and attach to its Bill of Lading such documents as are necessary to comply with such laws, rules and regulations. Cargo Express Freight assumes no liability to Customer or to any other person for any loss or expense due to the failure of Customer to comply with this provision. Any individual or entity acting on behalf of Customer in scheduling shipments hereunder warrants that it has the right to act on behalf of Customer and the right to legally bind Customer.

**(9) Cargo Express Freight may cancel this Agreement and refuse to undertake any service on behalf of Customer if any of the following occur: BOL is not signed by Customer, BOL attempts to designate Cargo Express Freight as the "Carrier," unauthorized alteration or unauthorized use of the BOL, shipments tendered to any carrier other than that designated by Cargo Express Freight, and LTL shipments tendered with any BOL not issued by Cargo Express Freight.**

**(10) Calculation of Rates and Charges:** Shipments are rated according to applicable pricing provisions offered by the Carrier, based on shipment information provided by Customer and approved by Customer. Rate calculation includes the type of item(s) being shipped (class), weight, size, volume, type of packing, number of items and commercial or residential pick-up or delivery, type of service requested and transit time. Shipping charges may include discounts from published carrier rates and are conditional based on payment within the Carrier's payment terms. Pricing information in paragraphs (10) and (11) below is based on terms typically available under Cargo Express Freight's agreements with Carriers frequently selected by Cargo Express Freight's customers. If these terms are unacceptable to Customer, please notify Cargo Express Freight before tendering a shipment, specify desired terms, and Cargo Express Freight will make commercially reasonable efforts to find a Carrier meeting such terms. All amounts due for services purchased from Cargo Express Freight are payable at P.O. Box 25408, Anaheim, California 92825, no later than the due date specified on Customer's invoice (normally 15 days following date of purchase). The services purchased from Cargo Express Freight are not payable in instalments but are payable in full. Late payments are subject to finance charges up to the maximum rate allowed by law.

**(11) LTL Service:** Rates for LTL Shipments are based on origin and destination zip codes, distance, commodity freight class per NMFC, net shipping weight (including all packing materials, crating and/or pallets) as a cost per pound and volume of space required for transit as cost per cubic foot and/or length of truck.

**(12) TL Service:** Rates for TL Shipments are based on Dock Door Pick-up/Dock Door Delivery and Shipper Load/Consignee Unload and are state to state and mileage based. Full truckload Shipments include two hours of detention time at pick-up and delivery. Additional charges may apply under the Carrier's pricing provisions, including but not limited to Tractor Detention, Trailer Detention, and Driver Assistance. Additional detention time typically will be charged by Carriers at \$85 per hour, up to \$600 per day. A cancellation charge typically will be assessed for all TL shipments cancelled less than four hours prior to the scheduled day and time of pick-up at the rate of \$350 or 20%, whichever is greater. Expedited rates are based on actual or dimensional weight. If an expedited Shipment contains oversize freight, additional charges and transit days may apply. Blanket Wrap/High Value Goods rates are determined by state to state/mileage, weight (actual or density) and commodity/product type. Flat-bed rates are based on equipment type, state to state/mileage and weight. If a flat-bed shipment contains oversize freight, as determined by the state or states it will transport through, additional charges and transit days may apply.

**(13) Guaranteed Transit Time Services:** Unless Guaranteed Service is specifically listed as a chargeable accessorial service, delivery times are estimates only. When Guaranteed Service is included as an accessorial service, it is inclusive of transit times only as noted by the Carrier selected. Guaranteed Service transit times do not include holiday and/or no-service days as defined by the individual Carrier. This service is not a guarantee for a particular pick-up time. Pick-up Day is not included in the qualification and calculation of transit time. Delays caused by an Act of God, war, weather or delays due to State or Federal intervention negate the Guaranteed Transit Time service. Carrier liability for Guaranteed Transit Time shall, at no time, exceed the additional accessorial charge as noted on the invoice. In no case shall Customer hold the Carrier or Cargo Express Freight liable for losses, lost profits, lost opportunity, economic damages, expense, or special, consequential or incidental damages Customer may have experienced as a consequence of transit times greater than expected. In the event of Carrier's failure to comply with the Guaranteed Service requested, Customer is permitted 10 business days from the date of invoice to file a claim request in writing with the Carrier in care of Cargo Express Freight. If Cargo Express Freight does not receive a claim request or receives the request after the allowable 10 business days, the service provided by the Carrier will be deemed to have met all Guaranteed Service standards and the claim request will automatically be considered invalid and denied. In the event a Carrier fails to provide the Guaranteed Transit Time service as arranged, Cargo Express Freight will credit the account of said Customer within 48 hours after Carrier has acknowledged liability. In no event shall Cargo Express Freight be liable for failure to meet the Guarantee, nor will any account be credited if Customer does not use Cargo Express Freight's Bill of Lading.

**(14) Because Cargo Express Freight is not a common carrier, it reserves the right, in its sole discretion, to refuse any shipment at any time.**

**(15) Delay of Shipment:** Neither Cargo Express Freight nor the selected Carrier shall be held liable for delays in delivery caused by accidents, governmental intervention, weather conditions, other acts of God, other causes referenced in the first sentence of paragraph 20 below, or any other circumstances that are beyond the control of Cargo Express Freight and/or the Carrier.

**(16) Preparation of Shipment:** Unless otherwise stated in a special agreement accepted by both Parties, Customer is responsible for proper preparation, packing, load securement and addressing of the Shipment. Unless otherwise stated, Customer is responsible for providing the means to load and unload the Shipment.

**(17) Claims and Limitations of Liability:** Cargo Express Freight does not insure or indemnify Customer against losses, damages, delays or other liability resulting from or incurred in connection with Shipment. In the event of a claim, Customer shall look solely to the Carrier and/or Customer's own insurance in the event of a claim for damage or loss. If Customer is not the consignee, it agrees to cause the consignee to inspect the shipment at the time of delivery, and to document any damage on the delivery receipt prior to signing. Because the transportation of Customer's freight is performed exclusively by the Carrier and not by Cargo Express Freight, the Customer agrees to hold Cargo Express Freight harmless for services (i.e. transportation of freight) performed by the Carrier. Customer agrees to pay Cargo Express Freight as per this Agreement regardless of any disputes that may or may not occur with the Carrier. Customer further understands and agrees that it will be subject to, and bound by, the Carrier's specific limitations as to claims, losses and/or damages, and that it will not be able to recover any damages or losses in excess of such limitations.

**(18) Third Party Coverage:** Although Cargo Express Freight is not an insurance company or insurance agent, it will endeavor to assist Customer, on Customer's request, in obtaining third-party coverage through insurers with which Cargo Express Freight maintains commercial relationships. Should Customer purchase such third-party coverage through the assistance of Cargo Express Freight and subsequently decide to cancel the Shipment after the coverage has been purchased, the fees for third-party coverage are non-refundable and will not be credited to Customer's account.

**(19) Although Cargo Express Freight is not a carrier and does not assume liability for cargo loss or damage in connection with Shipments it arranges, it will endeavor to assist Customer, on Customer's request, with cargo loss and damage claims as Customer's agent.** If Customer desires such assistance, it must file a cargo claim in writing with Cargo Express Freight within 48 hours of delivery. Cargo Express Freight will assist Customer in the submission of Customer's claim to the Carrier, but is in no event responsible for payment of such claims and makes no representation, warranty or guaranty as to the outcome of such claims or the availability of insurance coverage from which the Carrier may pay such claims. The filing of a claim does not relieve Customer of its responsibility for payment of freight charges. Customer's account must be paid in full prior to Cargo Express Freight providing assistance to Customer in processing a claim against the Carrier for loss or damage.

**(20) Exclusions of Liability:** Cargo Express Freight is not liable for any loss, mis-delivery or non-delivery caused by the act, default or omission of Customer or any other party who claims interest in the Shipment, or caused by the nature of the Shipment or any defect thereof. Cargo Express Freight is not liable for losses, mis-delivery or non-delivery caused by violation(s) by Customer of any of the Terms and Conditions (as applicable), other applicable provisions in the Bill of Lading, or the requirements of the Carrier's General Rules Tariff. This disclaimer of liability includes, but is not limited to, improper or insufficient packing, securing, marking or addressing, or Customer's failure to observe any of the rules relating to shipments unacceptable for transportation or shipments acceptable only under certain conditions. In order to prevent mis-delivery through tender of freight to imposters purporting to act for a selected Carrier, it is the responsibility of Customer to see that the identity of the pickup driver and the markings on his/her equipment are checked at the point of pickup.

**(21) Cargo Express Freight is not liable for losses, mis-delivery or non-delivery caused by the acts of God, perils of the air or sea, public enemies, public authorities, acts or omissions of Customer or quarantine officials, war, riots, terrorism, strikes, labor disputes, weather conditions or mechanical delay or other failure of aircraft or other equipment.** Cargo Express Freight is not liable for failure to comply with delivery or other instructions from Customer or for the acts or omissions of any person other than employees of Cargo Express Freight. Subject to the applicable limitations of liability contained in these Terms and Conditions, the Bill of Lading and the Carrier's General Rules Tariff, Cargo Express Freight shall only be liable for loss, damage, mis-delivery or non-delivery caused by Cargo Express Freight's own gross negligence. In any event, Cargo Express Freight's liability shall be limited to fees that Cargo Express Freight has been paid with respect to the subject Shipment. Cargo Express Freight MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO DELIVERIES OR WITH REGARD TO ITS WEBSITE, INFORMATION PROVIDED ON ITS WEBSITE OR SERVICES RELATED TO TRANSACTIONS CONDUCTED ON ITS WEBSITE. Cargo Express Freight CANNOT GUARANTEE DELIVERY BY ANY SPECIFIC TIME OR DATE. IN ANY EVENT, Cargo Express Freight SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR INCOME, WHETHER OR NOT Cargo Express Freight HAD KNOWLEDGE THAT SUCH DAMAGES MIGHT BE INCURRED.

**(22) Venue, Forum Selection and Choice of Law:** Customer acknowledges that Cargo Express Freight is a Freight Broker based in and operating within the State of California. Except where pre-empted by applicable federal laws and regulations, this Agreement is governed by the laws of the State of California, without regard to its choice of law doctrines. Cargo Express Freight, Customer and the selected Carrier (pursuant to its separate agreement with Cargo Express Freight) agree that the venue for any legal action relating to Services provided by Cargo Express Freight or its websites, shall be exclusively in the courts of Orange County, California or in the United States District Court for the Central District of California, Southern Division. In the event Cargo Express Freight is the prevailing party in any legal action to enforce these Terms and Conditions or to collect payment from Customer, Cargo Express Freight shall be entitled to recover its reasonable attorney fees and expenses from Customer.

**(23) Payment for Services:** Customer accepts full responsibility for a correct and accurate BOL. Customer agrees to pay for all Services as actually provided. Billing will be based on the actuality of the following; Actual commodity shipped, actual shipping weight including packing, crating and pallet, actual dimensions, actual volume, NMFC commodity code, actual freight class, number of items, type of service requested and other

applicable accessorial charges, including, but not limited to all duties, customs assessments, governmental penalties and fines, taxes, and Cargo Express Freight's attorney fees and legal costs allocable to this Shipment and/or all disputes related to the Shipment.

**(24) All Services are charged to Customer's account at the time of dispatch for our prompt-pay discount rates.** If payment is not received for Services within Customer's agreed-to terms of account, (a) a one-time reprocessing charge of \$50 will be applied to the account and (b) late fees will be 10% of the total amount past due. All funds received by Cargo Express Freight will be applied to the oldest (based on pickup date) outstanding invoice.

**(25) Should the actual Shipment's description or the actually required Services prove to be different than shown on the BOL, additional charges will be assessed and charged to Customer's account.** When paying by credit card or electronic funds, Customer agrees it will be responsible for all charges payable, including any adjustments, on account of such Customer's shipment. These charges and adjustments, if any, will be automatically debited to Customer's credit card or bank account.

**(26) Because Cargo Express Freight is not the actual carrier, Customer agrees that it will not withhold payment or deny liability for payment to Cargo Express Freight for reasons related to disputes with the Carrier.**

**(27) Method of Payment:** Unless Customer is registered under a plan offering a specialized payment method, Customer must provide a credit card account number which is issued in Customer's name or which Customer is authorized to use when registering for the Services. This card will be used as Customer's primary method of payment. All payments shall be made pursuant to the terms of the pricing and other information relating to the Services selected. By agreeing to these Terms and Conditions, Customer is authorizing and directing Cargo Express Freight to automatically charge any amounts payable by Customer in connection with Customer's use of transportation services to the credit card Customer provided in the registration process or such credit card number Customer may provide thereafter. It is Customer's responsibility to update the credit card information that Customer uses to pay for the services. If Customer bills its use of Cargo Express Freight's Services to its credit card, Customer's right to use the Services is subject to any limits established by Customer's credit card issuer. If Customer does not update its credit card information, Cargo Express Freight may suspend Customer's use of the Services or, at Cargo Express Freight's option, may automatically move Customer onto another bill payment arrangement. Cargo Express Freight may also make other billing options available. If Cargo Express Freight makes other billing options available, Customer agrees to abide by terms and conditions applicable to those options.

**(28) Changes in Terms and Conditions:** Cargo Express Freight shall have the right at any time to change or modify the terms and conditions applicable to Customer's uses of Cargo Express Freight's Services, or to impose new conditions, including, but not limited to, adding fees and charges for use. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to electronic or conventional mail, or by any other means by which Customer obtains notice thereof. Any use of Cargo Express Freight's Services by Customer after such notice shall be deemed to constitute acceptance by Customer of such changes, modifications or additions.

**(29) Severability:** In the event that any term, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall be unaffected.

**(30) No Waiver:** The failure of Cargo Express Freight to insist upon the prompt and punctual performance of any term or condition in this Agreement, or the failure of Cargo Express Freight to insist upon or exercise any right or remedy under this Agreement on any one or more occasions, shall not constitute a waiver of that or any other term, condition, right or remedy on that or any subsequent occasion.

**(31) INDEMNIFICATION:** IN THE EVENT ANY LEGAL ACTION OR CLAIM IS MADE AGAINST Cargo Express Freight, OR ANY FINES OR PENALTIES ARE ASSESSED AGAINST Cargo Express Freight, ARISING OUT OF ANY ACT, OMISSION OR NEGLIGENCE OF CUSTOMER, CUSTOMER AGREES TO INDEMNIFY AND DEFEND Cargo Express Freight AGAINST ANY AND ALL SUCH CLAIMS, DEMANDS, LOSSES, COSTS, OBLIGATIONS, FINES, PENALTIES AND LIABILITIES.

**(32) Binding Effect:** The individual purchasing the goods and/or services on behalf of Customer acknowledges and agrees that he/she has the express and actual authority to bind Customer to this Agreement. This Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.