

**BERNARD FREIGHT SERVICES, LLC**  
**TERMS AND CONDITIONS OF SALE**  
**Effective Date: August 14, 2025**

These Terms and Conditions of Sale (“**Terms**”) govern all freight brokerage and related services (“**Services**”) provided by **Bernard Freight Services, LLC**, a Texas limited liability company (“**Bernard**”), to the party requesting such Services (“**Customer**”). **BY REQUESTING OR ACCEPTING SERVICES FROM BERNARD, CUSTOMER AGREES TO THESE TERMS.**

**1. Definitions**

- 1.1 **Carrier:** Any motor, rail, air, ocean carrier, drayman, or other transportation provider arranged by Bernard to transport a Shipment.
- 1.2 **Customer:** The party requesting Services, including its affiliates, consignors, consignees, shippers, receivers, agents, employees, and representatives.
- 1.3 **Shipment:** Any freight, goods, cargo, or property tendered by or on behalf of Customer for transportation arranged by Bernard.
- 1.4 **Accessorials:** Any charges other than linehaul (e.g., detention, layover, TONU, redelivery, reconsignment, lumper, storage, appointment fees, scale/reweigh, after-hours, liftgate, residential, limited access).
- 1.5 **Force Majeure Event:** Any event beyond Bernard’s reasonable control, including severe weather, disasters, strikes, labor shortages, power/system failures, cyberattacks, riots, acts or omissions of Carriers, governmental actions, pandemics/epidemics, equipment failures, capacity constraints.
- 1.6 **Capacity Crunch Event:** Any period declared by Bernard in good faith due to significant market dislocation or constraint (including but not limited to natural disaster response, holiday peaks, embargoes, strikes, national emergencies, or substantial spot-market volatility).

**2. Broker Status; No Hold-Out**

- 2.1 **Broker Only.** Bernard acts solely as a property broker under 49 U.S.C. § 13102(2); it does not take possession of cargo and does not act as a motor carrier, warehouseman, bailee, or freight forwarder.
- 2.2 **Independent Carriers.** Carriers are independent contractors and not agents or employees of Bernard.
- 2.3 **Administrative Listing.** Bernard shall not be named as “carrier” on any bill of lading; if it appears as carrier, it is for administrative convenience only and does not alter broker status. Customer shall not represent Bernard as a carrier.

**3. Rates, Charges, and Payment Terms**

- 3.1 **Quotes & Adjustments.** Rates are based on information provided and are subject to change for Accessorials, fuel, reweigh/reclass, detention/layover, regulatory changes, and other documented Carrier-assessed or Bernard-published charges.
- 3.2 **Invoices.** Unless otherwise agreed in a signed writing by a Bernard corporate officer, payment is due immediately upon invoice.
- 3.3 **Interest.** Overdue amounts accrue interest at 1.5% per month (18% per annum); if any applicable law requires, the rate shall be reduced to the maximum lawful rate, with the excess treated as principal.
- 3.4 **Application of Payments.** Bernard may apply payments to any invoices/charges in its sole discretion.
- 3.5 **Payment to Third Parties.** Payment to any third party (including any Carrier or factor) does not discharge Customer’s obligation to pay Bernard unless Bernard actually receives the funds.
- 3.6 **Credit; Deposits.** Bernard may condition Services on credit approval, deposits, or other security and may suspend Services for any delinquency.
- 3.7 **Administrative Fees.** Customer shall pay administrative fees where applicable, including Document Preparation (\$35 per set), Rate Confirmation Revision (\$45 per revision after acceptance), Permit Procurement (cost + 20% admin), After-Hours Service (\$75 per after-hours event), and any additional published fees.
- 3.8 **Card Processing Fee.** Payments by credit/debit card may incur a processing fee up to 3.5% of the amount charged, where permitted by law.
- 3.9 **Absolute Payment Obligation.** Customer’s payment obligations are absolute and unconditional, not subject to setoff, counterclaim, deduction, or abatement for any reason, except to the limited extent expressly required by law or as expressly agreed in writing by Bernard.
- 3.10 **Sale/Assignment of Receivables.** Bernard may sell, assign, or factor any receivable or account without notice to

Customer; Customer shall pay the then-holder upon direction, and Customer's obligations remain unchanged.

**3.11 Security & Real Property Liens on Judgment.** In addition to all UCC rights (Section 5), upon obtaining a judgment, Bernard may file abstracts and record judgment liens against Customer's non-exempt real property to the fullest extent permitted by applicable law.

**3.12 Supporting Documentation.** Upon Bernard's request, Customer shall provide delivery receipts, lumper receipts, scale tickets, photographs, temperature logs, and other documentation within 10 days to support invoicing and Accessorials.

**3.13 Deemed Acceptance of Accessorials.** If Customer does not dispute any Accessorials in writing within 15 days of the invoice date, those Accessorials are deemed accepted, valid, and payable.

**3.14 Evidence Standard.** Photographic evidence from driver mobile applications, telematics, ELD data, timestamped GPS pings, and Carrier documents constitute sufficient proof of Accessorials, detention, wait time, redelivery, reconsignment, reweigh, and similar charges.

**3.15 Surge Pricing During Capacity Crunch.** During any Capacity Crunch Event, Bernard may impose a Market Volatility Surcharge (linehaul multiplier or fixed add-on) upon written or email notice prior to dispatch; Customer's tender after notice constitutes acceptance.

#### **4. Accessorials; Reweigh; Reclass**

**4.1 Accessorials Payable.** Customer is responsible for all Accessorials incurred or reasonably assessed based on Shipment circumstances or Carrier documents (e.g., in/out times, scale tickets, lumper receipts).

**4.2 Unilateral Adjustments.** Bernard may increase invoices to reflect Accessorials and reweigh/reclass differences based on Carrier documentation or Bernard's current Accessorial schedule.

**4.3 Detention/Layover.** Detention and layover are due when Carrier reports delays beyond standard free time or when appointments/windows are missed for reasons not solely attributable to Carrier.

#### **5. Security Interest; UCC Remedies**

**5.1 Security Interest.** As security for all obligations to Bernard, Customer grants Bernard a continuing security interest in (a) all Shipments and related documents to the extent permitted by law, and (b) all accounts and proceeds arising from such Shipments. Customer authorizes Bernard to file UCC-1 statements.

**5.2 Remedies.** Upon default, Bernard may exercise all UCC remedies and instruct Carriers or warehouses to hold, store, or redirect freight at Customer's expense until paid in full.

#### **6. Customer Obligations**

**6.1 Accurate Information & Compliance.** Customer shall accurately describe, classify, package, mark, and label goods; comply with all laws (including hazardous materials, weight/size, import/export, food safety, and security); and provide all required documents/instructions in advance.

**6.2 Authority.** Customer warrants it is owner of the goods or authorized agent of the owner and has full authority to tender and route Shipments.

#### **7. Cargo Loss/Damage; Carmack Procedure**

**7.1 Claims Against Carrier.** Customer shall file cargo loss/damage/shortage claims directly with the Carrier in accordance with 49 U.S.C. § 14706 and 49 C.F.R. Part 370. Bernard will reasonably assist as a courtesy only, without assuming liability.

**7.2 Preservation of Rights.** Customer shall note exceptions at delivery and promptly preserve/provide evidence (photos, seal numbers, temp logs, recorder downloads, trailer numbers, damages/weights).

**7.3 Concealed Damage.** Concealed loss/damage must be reported to the Carrier within 10 days after delivery with supporting evidence.

#### **8. Claims Against Bernard; Time Limits**

**8.1 Notice.** Any claim against Bernard (other than for unpaid invoices) must be received in writing within 10 days of delivery (or scheduled delivery if undelivered), stating facts and relief sought, with supporting documents.

**8.2 Suit Period.** Any action or arbitration against Bernard must be commenced within one (1) year after the event giving

rise to the claim.

**8.3 Exclusive Remedy.** These time limits are conditions precedent to any remedy against Bernard.

## **9. Limitation of Liability**

**9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, BERNARD'S TOTAL LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE SERVICES SHALL NOT EXCEED THE LESSER OF (i) 100% OF THE BROKERAGE FEES BERNARD EARNED FOR THE SHIPMENT AT ISSUE, OR (ii) \$10,000.**

**9.2 IN NO EVENT SHALL BERNARD BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, DIMINUTION IN VALUE, OR BUSINESS INTERRUPTION.**

**9.3 Carve-Outs.** Nothing herein limits liability to the extent such limitation is prohibited by law (e.g., fraud, willful misconduct, or gross negligence to the extent non-waivable).

**9.4 Customer Insurance; Waiver of Subrogation.** Customer shall maintain cargo insurance covering its insurable interest in Shipments in commercially reasonable amounts. Customer and its insurers waive all rights of subrogation against Bernard and its affiliates to the fullest extent permitted by law.

## **10. Indemnification**

**TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BERNARD AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, FINES, PENALTIES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEY'S FEES) ARISING OUT OF OR RELATING TO THE SHIPMENTS OR THE SERVICES, INCLUDING TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNIFIED PARTY; PROVIDED, HOWEVER, THAT THIS SECTION DOES NOT APPLY TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY.**

**THIS INDEMNITY IS AUTOMATICALLY LIMITED TO THE MAXIMUM EXTENT PERMITTED IN ANY JURISDICTION THAT RESTRICTS INDEMNITY FOR A PARTY'S OWN NEGLIGENCE IN MOTOR-CARRIER-RELATED CONTRACTS.**

## **11. Right to Withhold/Redirect; Suspension**

**11.1 Instruction to Hold/Redirect.** Bernard may instruct Carriers/warehouses to hold, store, or redirect freight at Customer's cost if amounts are past due or if Bernard reasonably believes payment risk exists.

**11.2 Suspension.** Bernard may suspend/cancel Services and withhold rate confirmations for any delinquency or breach.

## **12. Supremacy of Terms; Conflicting Documents**

**12.1 Exclusive Control.** These Terms exclusively govern all Services, notwithstanding any contrary, additional, or different terms in any purchase order, bill of lading, rate sheet, confirmation, tariff, or other document issued by Customer, Carrier, or any third party, whether issued before, concurrently with, or after these Terms.

**12.2 Rejection.** All such contrary, additional, or different terms are rejected and void, even if Bernard fails to object or performs without reservation.

### **12A. Formation; Conditional Acceptance**

Each Bernard quote, rate confirmation, or acceptance of a Customer order is limited to and expressly conditioned upon Customer's assent to these Terms. Bernard objects to and rejects any additional or different terms in any Customer document (including purchase orders, routing guides, bills of lading, or portal terms). No contract shall arise on any terms other than these Terms; Customer's tender of freight, scheduling, or acceptance of Services constitutes assent. If a court applies UCC §2-207, the parties agree these Terms materially alter any Customer terms and displace any conflicting or additional terms, which shall be excluded.

## **13. Amendments; Incorporation; Electronic Acceptance**

**13.1 Prospective Amendments.** Bernard may amend these Terms prospectively only for orders tendered after the amended Terms are posted on Bernard's website and referenced in Bernard's quote or rate confirmation. Tender after such reference constitutes assent.

**13.2 Incorporation by Reference.** All quotes, rate confirmations, and dispatches incorporate these Terms by reference.

**13.3 Electronic Signatures.** Electronic acceptance and signatures are valid and enforceable.

## **14. Dispute Resolution**

**14.1 Law & Venue.** Texas law governs (without conflicts rules). Exclusive venue lies in state or federal courts in Harris County, Texas, for matters not compelled to arbitration under §14.2 (and for actions to collect undisputed invoices or injunctive relief).

**14.2 Mandatory Arbitration.** Except for actions to collect undisputed charges or to obtain temporary/injunctive relief, all disputes shall be resolved by binding arbitration administered by the AAA Commercial Rules before one arbitrator in Houston, Texas.

**14.3 Expedited Procedures (≤ \$50,000).** For claims \$50,000 or less, the AAA Expedited Procedures apply with a merits hearing within 60 days of arbitrator appointment; decision within 14 days after hearing.

**14.4 Frivolous Claims Fee-Shifting.** If the arbitrator or court determines a party's claim/defense is frivolous or in bad faith, that party shall pay the other's full fees and costs (including expert fees) in addition to any other relief.

**14.5 Service of Process by Email.** To the fullest extent permitted by law, each party consents to service of process by email to its notice address in §20, with a same-day copy by courier.

**14.6 Remote Proceedings.** The parties consent to remote/video hearings and conferences where authorized by the tribunal.

**14.7 Expedited Discovery Limits.** Unless the tribunal orders otherwise for good cause: no more than 10 RFPs, 10 interrogatories, 10 RFAs per side; 2 depositions per side limited to 7 hours each; discovery period capped at 120 days from scheduling order.

## **15. Fees and Costs; Collections & Judgments**

**15.1 Collections.** In any action to collect undisputed freight or related charges, Customer shall pay all of Bernard's attorney's fees, expert fees, collection agency fees, arbitration/court costs, and enforcement expenses, regardless of outcome.

**15.2 Prevailing Party.** In all other disputes, the prevailing party recovers reasonable attorney's fees, expert fees, and costs, including on appeal and post-judgment.

**15.3 Confession of Judgment.** WHERE PERMITTED BY APPLICABLE LAW, Customer authorizes Bernard (or its designee) to enter confession of judgment for unpaid amounts, plus fees/costs, without prior notice or hearing. IF NOT PERMITTED, THIS CLAUSE IS VOID WITHOUT AFFECTING THE REMAINDER OF THE TERMS.

**15.4 Judgment Liens.** Bernard may abstract and record any judgment and pursue all judgment-lien remedies against Customer's non-exempt real property, to the fullest extent permitted by law.

## **16. Liquidated Damages**

**16.1 Late Payment.** In addition to interest under §3.3, any amount more than 15 days past due incurs liquidated damages equal to 15% of the overdue balance.

**16.2 Wrongful Cancellation.** If Customer cancels after booking but before pickup, Customer shall pay liquidated damages equal to 100% of Bernard's projected brokerage fee for that Shipment, as reasonably estimated by Bernard.

**16.3 Reasonableness.** These LDs are a reasonable estimate of harm and not a penalty.

## **17. Non-Circumvention / Back-Solicitation; Load Posting**

**17.1 Carrier Non-Circumvention.** For 12 months after the last Shipment, Customer shall not, directly or indirectly, tender freight to or otherwise use any Carrier introduced or utilized by Bernard for a Bernard-arranged Shipment, except through Bernard. LIQUIDATED DAMAGES: \$25,000 per breach or 25% of gross transportation charges moved in violation during the first year, whichever is greater, plus injunctive relief.

**17.2 No Public Posting / Solicitation.** For any Shipment tendered to Bernard, Customer shall not post such load to public load boards or otherwise solicit carriers directly or via third parties for that Shipment without Bernard's written consent.

**17.3 Employee Non-Solicitation.** During the term and for 12 months thereafter, Customer shall not solicit for employment or hire any Bernard employee with whom Customer had material contact in connection with the Services, except with Bernard's written consent or in response to general, non-targeted solicitations.

## 18. Confidentiality; Trade Secrets

**18.1 Confidential Information.** Rates, carrier identities, network data, margin structures, and operational methods are Bernard Confidential Information/Trade Secrets. Customer shall not disclose or use such information except to receive Services.

**18.2 Injunctive Relief.** Any breach may cause irreparable harm; Bernard is entitled to injunctive relief without posting bond, in addition to other remedies.

## 19. Special Commodities & Conditions

**19.1 Temperature-Controlled / Perishables.** Customer must provide written temperature set-points, tolerances, and loading requirements before dispatch; ensure product is pre-cooled/temperature-stable; verify trailer temps/seals at tender. Absent written tolerances, a  $\pm 2^{\circ}\text{F}$  variance from set-point and reasonable door-open deviations shall not constitute Carrier or Bernard fault.

**19.2 Produce; PACA Trust.** Customer acknowledges its obligations under the Perishable Agricultural Commodities Act (PACA); nothing herein waives Customer's PACA trust obligations to vendors. Customer shall not assert PACA trust claims against Bernard; Bernard is not a buyer, seller, or commission merchant under PACA.

**19.3 Rejection Procedures & Deadlines.** Any rejection or temperature claim must be noted at delivery, with photos, pulp readings, temp logs and notified to Carrier and Bernard within 12 hours of delivery (or scheduled delivery). Failure to follow procedures/timelines is waiver of rejection as to Bernard.

**19.4 High-Value / Security.** For high-value or theft-attractive freight, Customer must disclose value and required security protocols before booking; otherwise standard Carrier practices apply.

**19.5 Appointments; HOS; Queues.** Pickup/delivery windows are subject to facility performance and driver hours-of-service limits. Delays, missed appointments, or facility queues may result in Accessorials.

**19.6 Hazardous / Over-Dimension / Overweight.** Require advance written acceptance and complete regulatory documentation by Customer. All permits/escorts/equipment upgrades are Customer's responsibility and billable as Accessorials.

**19.7 Cross-Border (Mexico/Canada).** Customer is responsible for customs brokerage, clearances, duties/taxes, importer/exporter compliance, and providing all cross-border documentation before dispatch. Bernard is not responsible for border delays, inspections, seizures, or failures of customs documentation. Through-moves may require transloading and additional charges.

**19.8 Port/Rail Drayage.** Customer is responsible for demurrage, per diem, chassis rental, terminal fees, port congestion charges, and appointment fees. Drayage is subject to terminal/rail tariffs and rules; appointments and holds may delay service without liability to Bernard.

## 20. Force Majeure

Bernard shall not be liable for delay, failure, or inability to perform caused by a Force Majeure Event. Customer's payment obligations are not excused by Force Majeure (hell-or-high-water per §3.9). Performance is suspended for the duration of the event, and Bernard may cancel affected Services without liability.

## 21. Notices

**21.1 Permitted Methods.** Notices may be delivered by email to the addresses designated by the parties, by nationally recognized courier, or by certified mail (return receipt requested).

**21.2 Effectiveness.** Email notices are effective upon transmission; courier or certified mail upon delivery or first refusal.

## 22. Non-Reliance; Entire Agreement

**22.1 Non-Reliance.** Customer acknowledges it has not relied upon any statement, representation, or warranty not expressly set forth in these Terms.

**22.2 Entire Agreement.** These Terms constitute the entire agreement regarding the Services and supersede all prior or contemporaneous understandings, whether written or oral.

## 23. Survival

Sections 3–5, 7–8, 9–11, 12–12A, 13–16, 17–19, 20–23, 24 survive termination, expiration, or completion of Services.

#### **24. Miscellaneous**

24.1 **Assignment.** Bernard may assign these Terms (including the right to receive payments) without consent. Customer may not assign without Bernard’s prior written consent.

24.2 **Severability.** If any provision is unenforceable, the remainder remains in effect to the maximum lawful extent; the provision shall be modified to the minimum extent necessary to be enforceable.

24.3 **Waiver.** No waiver is effective unless in a signed writing and shall not be construed as continuing.

24.4 **Headings; Construction.** Headings are for convenience only. No rule of strict construction applies against the drafter.

24.5 **Third-Party Beneficiaries.** Except as expressly stated, there are no third-party beneficiaries.

#### **ACKNOWLEDGMENT OF CONSPICUOUS TERMS**

**CUSTOMER ACKNOWLEDGES THAT SECTIONS 3.3, 3.9–3.15 (PAYMENT/HELL OR HIGH WATER/SURGE/DEEMED ACCEPTANCE), 5 (SECURITY INTEREST), 7 (CARMACK), 8 (TIME LIMITS), 9 (LIMITATIONS & WAIVER OF SUBROGATION), 10 (INDEMNITY), 12–12A (SUPREMACY & FORMATION), 14 (DISPUTES/ARBITRATION), 15 (COLLECTIONS/CONFESSION OF JUDGMENT WHERE PERMITTED/JUDGMENT LIENS), 16–18 (LIQUIDATED DAMAGES/NON-CIRCUMVENTION/CONFIDENTIALITY), 19 (SPECIAL COMMODITIES), AND 20 (FORCE MAJEURE PAYMENT CARVE-OUT) ARE CONSPICUOUS, HAVE BEEN READ, AND ARE AGREED.**

**BERNARD FREIGHT SERVICES, LLC**