
TERMS AND CONDITIONS

Land Speed Records, LLC (“Broker”) is in the business of arranging transportation of property by third-party motor carriers and holds authority from the Federal Motor Carrier Safety Administration under DOT 4202277 / MC-1621395, to engage in operations as a transportation broker in interstate or foreign commerce.

You (“You” or “Client”) understand and acknowledge that (1) Broker is not a motor carrier, (2) Broker is a broker which arranges for the transportation of freight by third-party motor carriers and (3) Broker intends to engage and contract with one or more Carriers (as defined below) for purposes of satisfying obligations under these Terms and Conditions.

By authorizing Broker to arrange for the transportation of your property, You agree to be bound by these Terms and Conditions.

AGREEMENT

1. **SCOPE OF WORK.** Broker agrees to arrange for transportation of your freight (“Property”) by third-party motor carriers (“Carrier(s)”) in compliance with all federal, state and local laws and regulations. Broker’s responsibility is limited to arranging for, but not actually performing, transportation of Property.

2. **NO EXCLUSIVITY.** You are not restricted from tendering freight to other brokers, freight forwarders, third-party logistics providers, or directly to motor carriers. Broker is not restricted from arranging transportation of freight for other parties.

3. YOUR RESPONSIBILITIES.

A. Client Written Instructions.

i. You must provide necessary shipping instructions and properly identify all Property at the time of booking. You will not tender any oversize or overweight shipments, coiled or rolled products, or commodities requiring protection from heat or cold, or commodities requiring other special handling without properly identifying such shipments and making necessary prior arrangements for transportation.

ii. At the time of booking, and prior to loading the Property, You must further specify in the booking request all instructions to be followed by the Carrier to maintain the safety of the Property, including, without limitation, all temperature control requirements and temperature control documentation requirements, including an operating temperature for the transportation when necessary, together with any design specifications and cleaning procedures necessary for the safe transportation of your Property (“Written Instructions”).

B. Packaging and Securement by Client. Client certifies that all shipments tendered for transport will be properly secured and ready for transport by tractor-trailer at the time of pick up. Broker's contracted carrier shall not be responsible for any loss, damage, penalty, or fine that may be caused by the Client's failure to properly secure the shipment, or from the Client's failure to provide Carrier with any necessary shipping instructions or documents.

C. Client Load and Count.

Broker's contracted Carrier shall not be responsible for verifying the count or amount of freight on any shipment tendered to Carrier loaded by the Client, or its agent, on which a seal is placed. The Client agrees to indemnify and hold Broker and Carrier harmless for all damages, costs, claims, and expenses (including attorneys' fees) incurred by Broker or Carrier as a result of a claimed loss due to undercount on a shipment loaded by Client on which a seal is placed and remains intact through delivery. On Shipments where a seal has been affixed to Carrier's trailer and the seal remains unbroken, Carrier shall have no liability for claims of shortage or claims of damage due to shifting in the Trailer.

D. Prohibited Items and Items of Extraordinary Value: You will not tender any restricted commodities including Letters, Articles of Extraordinary Value, Mobile Telephones, Museum Exhibits or Articles of Antiquity, Asbestos, Notes, Bank Bills, Coins, Money, Postage Stamps, Currency, Precious Stones, Deeds, Revenue Stamps, Drafts, Guns and ammunition, Tickets, Fireworks, Hazardous Materials and Hazardous Waste, Household Property and Video gaming machines. As used herein, Articles of Extraordinary Value shall include commodities and/or items tendered to Carrier with an invoice value exceeding \$100,000.00 per truckload shipment. Commodities inadvertently accepted by Carrier with an invoice value exceeding \$100,000.00 per truckload without a specific written request by Client and express written acceptance of an increased valuation negotiated by Broker and accepted by Carrier, will be considered released to Carrier by the Client at \$0.50 per pound or a value not to exceed the amount of insurance maintained by the Carrier, whichever is less. Client agrees to defend, indemnify, and reimburse Broker and Carrier for any physical harm, expenses (including reasonable attorneys' fees), fines, damage, or liability that results in any way from the transportation of any prohibited or restricted article as identified above.

E. Mitigating Damages. None of the provisions in these Terms and Conditions in any way limits your obligation to mitigate damages, including by refurbishing, repairing and/or selling Property.

4. BROKER'S RESPONSIBILITIES.

A. Broker will select Carriers, using the following criteria:

- i. Verifying the Carrier's operating authority (state and/or federal) through SAFER or other third-party vendors with access to information furnished by the Federal Motor Carrier Safety Administration ("FMCSA").
- ii. Verifying the Carrier's insurance coverage, with coverage not less than: \$1,000,000 per occurrence for Auto Liability and Property Damage; \$100,000 per occurrence for Motor Truck Cargo Liability; and workers compensation or occupational accident in such amounts and as required by applicable state law.
- iii. Insurance information will be verified through a Certificate of Insurance supplied by Carrier or its retail insurance agent. In addition, Broker will verify minimum financial security requirements

(auto only) are on file with the FMCSA. Broker makes no representation or warranty that the coverages maintained by the selected Carriers will be sufficient in scope or in such limits necessary to cover claims. You acknowledge that whether insurance coverage pays out on a claim is subject to the policies' terms and conditions, and that the best way to protect Your interest is to purchase insurance coverage to address Your own risk exposures.

B. Broker will require by written contract, that each Carrier providing transportation services agree:

- i. That it is duly and legally licensed under applicable state, provincial and federal law to provide transportation services, that it does not have an unsatisfactory safety rating issued by the United States Department of Transportation or any state or provincial authority with jurisdiction over its operations and that it will comply with all applicable federal, state, provincial and local laws,
- ii. That it is performing services pursuant to contract, and
- iii. That it will obtain a receipt showing the kind and quantity of product delivered to the consignee of each shipment at the destination.

5. RECEIPTS AND BILLS OF LADING. If requested by You, Broker agrees to provide You with proof of acceptance and delivery of shipments in the form of a signed bill of lading or proof of delivery via US Mail, courier, or electronically by fax or email. Your insertion of Broker's name on the bill of lading will be for your convenience only and will not change Broker's status as a property broker. The terms and conditions of any freight documentation used by You or Carrier will not supplement, alter, or modify these Terms and Conditions.

6. PAYMENTS. Broker will invoice You for its services in accordance with the rates, charges and provisions set forth herein, and any written supplements or revisions that are mutually agreed to between the Parties in writing. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates will be considered "written," and will be binding, upon Broker's invoice to You and your payment to Broker. You agree to pay Broker's invoice within 30 days of invoice date without deduction or setoff. Broker will indemnify You from and against any claim for freight payment brought by Carrier against You if You have paid Broker and Broker has failed to pay Carrier. Unpaid invoices will accrue interest at a rate of eighteen percent (18%) per annum.

7. CLAIMS.

A. Cargo Claims. Broker is a broker, not a motor carrier or freight forwarder, and has no liability for loss of or damage to Property. Broker shall contractually require Carrier to assume the liability of a motor carrier (i.e. Carmack Amendment liability) for loss of or damage to the Property while in transit, subject to a maximum liability of \$100,000 per shipment unless otherwise agreed to in writing between the Parties. As a mandatory and non-waivable condition precedent for filing suit and a condition precedent to any recovery, You must file claims for cargo loss or damage with Broker or Carrier within nine (9) months from the delivery date or, in the event of non-delivery, the scheduled delivery date. You must file any civil action against Carrier in a court of law within 2 years from the date Carrier or Broker provides written notice to You that any part of the claim is disallowed. If payment of a claim is made by Broker to You, You automatically assign your right and interest in the claim to Broker. In no event will Broker or Carrier be liable to You or any other party for special, incidental, or consequential damages for any reason whatsoever.

B. All Other Claims. The Parties shall notify each other of all known material details of any claims within 60 days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available. Civil actions must be commenced within two (2) years from the date either party provides written notice to the other Party of such a claim.

9. **SURETY BOND.** Broker shall maintain a surety bond or trust fund agreement as required by the FMCSA in the amount of at least \$75,000 or as otherwise required by the FMCSA and furnish You with proof upon request. Broker, may in its sole discretion, maintain other optional forms of insurance coverage. Broker makes no representations or warranties regarding the coverages it maintains, or that such coverage will protect You in the event of a loss.

11. **INDEMNIFICATION.** You must defend, indemnify and hold Broker, Broker's employees and agents and Carriers harmless against any losses caused by or resulting from (i) your or your employees' or agents' negligence or intentional misconduct, (ii) your breach of these Terms and Conditions, or (iii) your or your employees' or agents' violation of applicable laws or regulations. You must also indemnify Broker from any attempts to recover from Broker by your insurance carrier or any other party. The obligation to defend includes payment of all reasonable costs of defense, including attorney fees, as they accrue.

12. **LESS THAN TRUCKLOAD (LTL) FREIGHT.** Where Broker provides LTL services, the following additional terms and conditions apply and supersede and control over any conflicting provisions of these Terms and Conditions.

A. **Tariff Applicability.** You acknowledge and agree that LTL shipments will be subject to those Carrier tariff terms applicable based upon the nature of services requested and the Property tendered including, without limitation, those tariff provisions required to rate shipments or adjudicate Carrier liability for the same.

B. **Cargo Claims.** If less than a full truckload of Property is being transported, Carrier liability for loss or damage to Property shall be subject to the lowest of \$100,000 per shipment, \$10 per pound times the weight of the Property lost or damaged, or the lowest liability provided in the National Motor Freight Classification or Carrier's Tariff.

13. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither Party may assign or transfer these Terms and Conditions, in whole or in part, without the prior written consent of the other Party.

14. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of these Terms and Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of these Terms and Conditions for any reason.

15. **INDEPENDENT CONTRACTOR.** It is understood between Broker and You that Broker is not an agent for Carrier or You and shall remain at all times an independent contractor. You do not

exercise or retain any control or supervision over Broker, its operations, employees, or Carrier. Broker does not exercise or retain any control or supervision over Carrier, its operations, employees or independent contractors.

16. **NONWAIVER.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions of these Terms and Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of these Terms and Conditions, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. **NOTICES.** Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under these Terms and Conditions shall be made in writing and shall be delivered via fax with machine imprint on paper acknowledging successful transmission or email with confirmed receipt), and shall be effective when so delivered.

18. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under these Terms and Conditions during any time in which such performance is prevented by fire, flood, or other natural disaster, war, pandemic, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of You or Broker, provided that the Party so prevented uses its best efforts to perform under these Terms and Conditions and provided further, that such Party provide reasonable notice to the other Party of such inability to perform. Performance requirements are extended by the amount of the delay except for payment obligations.

19. **CHOICE OF LAW.** All questions concerning the construction, interpretation, validity and enforceability of these Terms and Conditions, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the federal laws regarding transportation, where applicable, and otherwise by the laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

20. **DISPUTES.** The parties expressly consent to the exclusive jurisdiction and venue in the Federal courts for the United States District Court for the District of Arizona or the state Courts in Maricopa County, Arizona. Accordingly, any action or proceeding brought by either party which is based on, or derives from, this Agreement will be brought in such courts. In the event of any litigation between the parties, the prevailing party shall be entitled to its reasonable attorneys' fees, plus court costs. The provisions of this Paragraph shall survive the expiration or earlier termination of this Agreement and shall survive completion of the Services.

21. **CONFIDENTIALITY.** Other than as required to comply with the law or legal process requiring disclosure, the Parties agree to the following:

A. The Parties agree that all of their financial information, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected,

freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties, shall be treated as confidential, and shall not be disclosed or used for any reason without prior written consent. You specifically waive any rights You may have under 49 CFR Section 371.3.

B. In the event of a violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of these Terms and Conditions in which case the non-prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

22. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.