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## **TERMS AND CONDITIONS OF BROKERAGE SERVICE**

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY, THOSE WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND TO THE CLAUSE GRANTING THE COMPANY A LIEN IN THE GOODS. NOTICE IS HEREBY GIVEN THAT NO PERSON, OTHER THAN AN OFFICER OR DIRECTOR OF THE COMPANY, HAS OR WILL BE GIVEN AUTHORITY TO AGREE TO ANY VARIATION, CANCELLATION, OR WAIVER OF THESE TERMS AND CONDITIONS.

These Terms and Conditions of Brokerage Service (these "Terms and Conditions") apply to arrangement of motor or rail transportation with respect to cargo moving to, from and between points in the United States and Canada for Customer by Company. Other services not covered by these Terms and Conditions, including without limitation, arrangement of transportation within Mexico, regardless of whether the shipment in question also moves to or from the United States or Canada, shall be outside the scope of these Terms and Conditions and shall be subject to the Company's Standard Trading Conditions, which can be accessed on Company's website.

### **1. Definitions**

- a) "Company" shall mean BNSF Logistics, LLC, BNSF Logistics International, Inc., BNSF Logistics Canada, Inc.
- b) "Provider" as used herein shall mean a licensed for-hire motor carrier, rail carrier, property broker, freight forwarder and intermodal marketing company which is authorized to transport or arrange for the transport of shipments via motor or rail carriage as an independent contractor to, from and between points in the United States and Canada.
- c) "Customer" shall mean the owner of the goods (including any packaging, containers or equipment) to which any business conducted under these Terms and Conditions relates and any other person who is or may become interested in them as well as any person at whose request or on whose behalf the Company undertakes any business, or provides advice, information or Services.
- d) "Services" shall mean arrangement with underlying independent contractor Providers of motor carrier and rail carrier service with respect to shipments moving entirely via motor or rail transportation to, from and between points in the United States and Canada. These Terms and Conditions do not apply to arrangement of surface transportation with respect to shipments having an ultimate origin or destination in countries other than the United States or Canada.
- e) "Rail Provider" shall mean rail carriers or third-party freight forwarders or intermodal marketing companies arranging for the provision of service by rail.

### **2. Application.**

Unless superseded by a written agreement signed by an authorized representative of Company which agreement expressly disclaims these Terms and Conditions, these Terms and Conditions apply to and govern Company's provision of Services. These Terms and Conditions apply only to the specific legal entity providing the Services and shall not create any additional rights for or obligations against any legal entity other than the specific legal entity performing each particular service hereunder; the liability of each legal entity included in the definition of "Company" shall be several and not joint. Any and all activities of the Company in the course of providing the Services including any advice, information or service provided by the Company whether for compensation or not are undertaken subject to these Terms and Conditions. For rules applicable to any services provided by Company other than the Services governed by these Terms and Conditions, please refer to [www.bnsflogistics.com](http://www.bnsflogistics.com).

**3. Customer's Warranties**

Customer warrants and represents that it is either the owner of the goods, or that it is otherwise authorized to arrange for the transportation of goods and to bind the owner thereof to these Terms and Conditions. Customer warrants that the description and particulars, including but not limited to their marks, number, weight, volume and quantity, of any goods furnished by or on behalf of the Customer are full and accurate. Except where the Company has accepted special instructions in writing, and has issued written acknowledgement of its acceptance thereof, the Customer warrants that the goods do not require insulated, refrigerated, ventilated or other special storage or handling not disclosed to the Company at or before the time of Customer's request for Services with respect to such goods. Customer further warrants that the goods do not require any special licenses, permits or authorizations in order to store, handle, possess or otherwise provide services related to the goods. Customer shall be responsible for and warrants compliance by it and all consignors and consignees with applicable laws, rules, and regulations, including, but not limited to, customs laws, import and export laws, anti-corruption laws and governmental regulations of any jurisdiction to, from, through or over which the shipment may be carried. Company 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.

**4. Customer Responsibilities**

Customer warrants that all goods have been properly and sufficiently prepared, packed, packaged, stowed and labeled and/or marked for normal handling, including any special handling requested by the Customer if applicable, and that the goods have been properly loaded in a suitable transport unit in suitable condition to carry the goods. Except where the Company has accepted special instructions in writing, and has issued written acknowledgement of its acceptance thereof, Customer warrants that: (i) the consignor shall be responsible for loading, blocking and bracing the shipment in the Provider vehicle in such proper and timely manner to prevent shifting of the shipment during normal transportation and to comply with highway weight limits and (ii) consignee will unload shipments from the underlying motor carrier vehicle in a timely manner and within free time allowed by Provider. Detention beyond allowed free time may cause assessment of additional charges. All shipments shall be treated as "Shipper load and count, consignee unload" if the shipment is sealed at origin. Except under special arrangements previously agreed to in writing by the Company, Customer will not tender or attempt to tender any consignment containing any waste or fertilizers; any goods of a noxious, dangerous, hazardous or flammable or explosive nature; or any goods likely to cause damage. Any specially arranged consignment must be packaged, tendered and labeled in accordance with the hazardous material regulations of the U.S. Department of Transportation, applicable Dangerous Goods Regulations ("DGR") or any other applicable governmental or industry rules and regulations, and such consignments must be identified as such at the time of Customer's request for Services and again at the time of tender. Should any Customer deliver any such goods to the Company or cause the Company to handle or deal with any such goods, otherwise than under special arrangements previously agreed to in writing by Company, the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the goods however arising and hereby indemnifies the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith WHETHER AS A RESULT OF COMPANY'S NEGLIGENCE or not and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously agreed to in writing, they may nevertheless be so destroyed or otherwise dealt with on account of risk to other goods, property, life or health, though the Company will where reasonably practicable contact the Customer. The expression "goods likely to cause damage" includes goods likely to harbor or encourage vermin or other pests and goods which are liable to taint or affect other goods.

**5. Rates and Payment**

Company shall charge and Customer shall pay the rates and charges set forth in an individual rate agreement (the "Spot Quote") signed by the parties, or such rates as otherwise agreed in writing prior to

commencement of the Services (including, without limitation, by email). Customer shall also be responsible for any additional applicable accessorial service charges, including, but not limited to, charges for detention, loading and unloading, and equipment ordered but not used. Company agrees to submit to Customer an invoice for all services provided together with proof of delivery, if applicable. If Company has, in its sole discretion, extended credit to Customer, Customer agrees to pay all such invoices for rail services within 15 days of receipt without offset and for all other services within 30 days of receipt without offset unless agreed to otherwise in writing. Otherwise, all amounts due and owing will be paid prior to performance of Services. Invoices not paid within this time limit will be subject to interest at the rate of 1 ½% (or, if less, the maximum rate permitted by applicable law) per month or any part thereof plus attorney's fees or other costs of collection. Payments shall be made by Customer to Company using ACH transfers, unless agreed otherwise in writing.

**6. Shipping Documentation**

In no event shall any terms or conditions of any bill of lading, cargo receipt, proof of delivery or other shipment specific documentation (other than the Spot Quote) relating to a shipment apply to any Services provided by Company or otherwise be binding on Company. Any bill of lading issued by Customer or Provider shall constitute a delivery receipt only. Customer will not insert Company's name as the "carrier" on a bill of lading, and Company's inclusion as the "carrier" on any bill of lading shall not impact Company's status as a property broker.

**7. Responsibility For Freight Charges**

Upon payment by Company of freight charges to its retained Provider, Customer assigns, and Company acquires by assignment, all collection rights of its Provider. Upon payment by Customer to Company for all associated freight charges, Company shall indemnify and hold harmless Customer for all freight charge claims from Provider.

**8. Independent Contractor**

Company and all Providers are and will remain separate independent contractors with respect to Customer and the Services being performed hereunder. Nothing herein shall be construed as creating a legal partnership or joint venture between any parties.

**9. Insurance**

Company shall procure and maintain, at no cost to Customer, and with reputable and financially responsible insurance underwriters, the following insurance coverage:

- a) Comprehensive general liability insurance in an amount not less than US\$1,000,000 combined single limit per occurrence, US\$2,000,000 aggregate;
- b) Employer's liability insurance with a minimum coverage limit of US\$500,000 for each accident;
- c) Worker's compensation insurance as required by applicable law; and
- d) Any additional insurance required under any and all applicable federal, state, provincial and local laws, rules and regulations.

**10. Indemnification, Warranties and Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER THE PARTY TO BE CHARGED HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF COMPANY WITH RESPECT TO ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED SERVICES PROVIDED PURSUANT TO THESE TERMS AND CONDITIONS WILL BE FOR THE AMOUNT CHARGED BY COMPANY WITH RESPECT TO THE SERVICES SPECIFICALLY GIVING RISE TO SUCH CLAIMS OR DAMAGES. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY

CUSTOMER OF THESE TERMS AND CONDITIONS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF CUSTOMER, ITS REPRESENTATIVES, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS REPRESENTATIVES, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULES OR REGULATIONS; OR (iv) COMPLIANCE WITH OR RELIANCE ON ANY INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES AS TO WORKMANSHIP OR FITNESS FOR A PARTICULAR PURPOSE.

**11. Cargo Liability and Claims**

In the event of a cargo loss, damage or shortage claim, Broker may facilitate claims filing and processing with the Provider if Customer submits to Company, within eight (8) months of the date of delivery, a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage. Customer understands and agrees that the underlying Provider may have a limitation of liability in place that limits Customer's recovery with respect to such claims. Customer shall have a duty to mitigate damages for all claims. Provider's liability for full-truckload over-the-road shipments shall be limited to the lesser of the actual value of the damaged commodities or one hundred thousand dollars (\$100,000) per occurrence, less applicable salvage, unless otherwise agreed upon in writing. Provider's liability for less-than-truckload over-the-road shipments shall be subject to the limitations found in the Provider's tariffs. Provider's liability for rail shipments shall be subject to the limitations found in Provider's rules and tariffs. Company may, in its sole discretion and without liability to Customer, discontinue pursuit of claims with the Provider if such claim is not resolved within sixty (60) days of receipt by Customer. Company shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused by Company's negligent acts or omissions, in which event, Company's liability shall be limited to the amount owed to Company by Customer with respect to the services provided by Company that relate to the commodities at issue. Customer is responsible for filing a claim with Company alleging Company's liability for cargo loss and damage within nine (9) months of the date of delivery of the cargo in question (or, if none, within nine (9) months of the date cargo should have been delivered). Failure to do so will result in an absolute bar to any such claim and will relieve Company of any and all liability with respect thereto. In no event will Company have any liability arising from or related to Provider's refusal to accept full value liability or the Provider otherwise limiting its liability for cargo loss and damage. Company shall be under no obligation to arrange, and Provider shall be under no obligation to provide, service in accordance with any set pick-up or delivery schedule; Company's sole obligation is to ensure Providers provide services with reasonable dispatch. Any lawsuit arising from such claim must be commenced within eighteen (18) months of denial of all or any part of such claim. Customer acknowledges and agrees that the sole liability of Company with respect to loss, damage or delay to cargo shall be as set forth in this provision and Customer warrants and represents that if it is not the owner of such cargo, Customer holds authority from such owner to bind the owner to the provisions of these Terms and Conditions.

**12. Intermodal Rail Service**

Notwithstanding anything to the contrary set forth in Section 11 above, in the event any cargo tendered for transportation hereunder is transported by rail, Customer acknowledges and agrees that the services, including, but not limited to, liability for loss or damage to cargo, and terms and conditions of services are governed by tariffs, circulars or similar documents maintained by the Rail Provider (the "Rail Conditions") and Customer is bound by and will comply with the Rail Conditions. Customer shall be solely responsible for proper packing, blocking and bracing of all cargo in accordance with the Rail Conditions, and shall further be responsible for compliance with any and all obligations or charges imposed by the Rail Provider with respect to tender of cargo for rail and/or intermodal transportation, including any and all obligations set forth in the Rail Conditions. Any additional charges levied on Company by the Rail Provider not accounted for in the rate agreed upon by the parties will be passed through to and be the responsibility of Customer. CUSTOMER SHALL INDEMNIFY AND HOLD COMPANY AND ITS OFFICERS, DIRECTORS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, FINES, PENALTIES, COSTS, CLAIMS, INTEREST AND EXPENSES (INCLUDING COST OF DEFENSE, SETTLEMENT AND REASONABLE

ATTORNEY FEES), ARISING FROM OR RELATED TO CUSTOMER'S FAILURE TO COMPLY WITH, OR BREACH OF, THE RAIL CONDITIONS.

**13. Undercharge and Overcharge Claims**

The time limit for Customer or Company to file initial claims for alleged undercharges or overcharges related to Services under these Terms and Conditions shall be one hundred and eighty (180) days from the date of delivery of the shipment. Failure to file a claim challenging initial charges within said one hundred and eighty (180)-day period shall forever bar any action at law for recovery of same. Any action at law by Company or Customer to collect alleged undercharges or overcharges with respect to Services provided under these Terms and Conditions shall be commenced not later than eighteen (18) months after delivery of the shipment. Expiration of said eighteen (18)-month term shall be a complete and absolute defense against any such claim, regardless of any extenuating or mitigating circumstances or excuses of any nature whatsoever.

**14. Waiver**

Company and Customer expressly waive all rights and remedies allowed under 49 U.S.C. § 14101 to the extent that such rights and remedies conflict with these Terms and Conditions. Failure of Customer or Company to insist upon the other party's performance under these Terms and Conditions or to exercise any right or privilege herein, will not be a waiver of any rights or privileges.

**15. Force Majeure**

Neither Customer nor Company will be liable for any delay in the performance of their respective obligations under these Terms and Conditions resulting directly or indirectly from or contributed to by any acts of God, acts of government or other civil or military authorities, acts of terrorists, fires, accidents, floods, war, riot or other circumstances beyond such party's reasonable control. This provision shall not excuse Customer from its obligation of timely payment as set forth herein.

**16. Severability**

In the event any paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

**17. Choice of Law**

These Terms and Conditions and the relationship of Customer and Company shall be governed by applicable Federal law of the United States and by the law of the State of Texas and any dispute arising out of any such act or contract shall be within the exclusive jurisdiction of the federal or state courts sitting in Fort Worth, Texas without giving consideration to choice of law principles thereof. Customer and Company hereby irrevocably: consent to the jurisdiction of those courts; agree that any action relating to the services performed by Company shall be brought only in said courts; consent to the exercise of in persona jurisdiction by said courts over them; and further agree that any action to enforce a judgment may be instituted in any jurisdiction.