

BNSF LOGISTICS TRANSLOADING AND CROSS-DOCKING PROVIDER TERMS AND CONDITIONS

The following Terms and Conditions are applicable to the transloading or cross-docking of any pallet, container, package, piece, or any other item tendered by BNSF Logistics, LLC, BNSF Logistics Canada, Inc. or BNSF Logistics International, LLC (hereinafter referred to as BROKER), or their designees, to an independent contractor providing transloading or cross-docking services (hereinafter referred to as PROVIDER). For purposes of these Terms and Conditions, the term “transloading” shall generally mean transfer of cargo from one mode to another mode (for instance, rail to road) and “cross-docking” shall generally mean transfer of cargo from one transport vehicle to another during the course of a single through movement from ultimate origin to ultimate destination (meaning transportation to the ultimate destination intended at the time cargo is tendered for transportation without regard to intermittent stopping points in the course of such transit), and may include short-term storage in transit of cargo.

PROVIDER acknowledges and agrees that all transloading or cross-docking services PROVIDER provides to an individual BROKER entity shall be subject to and governed by these Terms and Conditions, all of which will be construed and governed as if there were separate written agreements between each BROKER entity and PROVIDER. PROVIDER further acknowledges and agrees that (a) its rights and remedies under these Terms and Conditions related to any given consignment shall be pursued only against the specific BROKER entity to whom the transloading or cross-docking services in question were provided; and (b) only the specific legal entity included in the definition of BROKER which actually tenders the merchandise to PROVIDER for transloading or cross-docking shall have any obligation under these Terms and Conditions or otherwise with respect to such merchandise. All such services will be performed in a good and workmanlike manner in accordance with governing industry standards and applicable laws, rules and regulations. Without limiting the foregoing, PROVIDER will perform all loading, including blocking and bracing, in a manner so as to avoid loss or damage related thereto, and will also comply with applicable rules regarding loading, blocking and bracing required by carriers to which cargo is transported. By way of example, in the United States, loading of containers to be used for intermodal rail transportation will be conducted in accordance with the applicable rules of the American Association of Railroads.

If there is a conflict between these Terms and Conditions and the terms or conditions of any warehouse receipt or other storage or service documentation, these Terms and Conditions will control.

BROKER reserves the right to unilaterally amend, modify or supplement any portion of these Terms and Conditions at any time. The current version of these Terms and Conditions may be found at any time at the www.bnsflogistics.com website and supersedes all previous versions and statements concerning the terms and conditions of the PROVIDER's service being provided to BROKER and its customers. In the event PROVIDER is also providing or arranging for-hire motor carrier service in North America under the BNSF Logistics Transportation Provider Terms and Conditions, PROVIDER's services will be subject to the BNSF Logistics Transportation Provider Terms and Conditions and not these Terms and Conditions and any cross-docking and transloading services will be considered to be included in the highway transportation being performed or arranged by PROVIDER.

1. **RELATIONSHIP.** BROKER is authorized by its customers to negotiate and arrange for the transloading or cross-docking of the customers' merchandise. Upon accepting any merchandise for transloading or cross-docking, PROVIDER warrants and agrees not to utilize any subcontractor to perform services hereunder. The foregoing notwithstanding, if PROVIDER subcontracts such services in violation of these Terms and Conditions, PROVIDER shall ensure that any

subcontractors are in full compliance with these Terms and Conditions, including but not limited to, the insurance provisions, and PROVIDER is responsible for all acts and omissions of any subcontractor utilized by PROVIDER to fulfill its obligations or otherwise provide services under these Terms and Conditions as if such acts or omissions were taken directly by PROVIDER. PROVIDER agrees to transload and/or cross-dock merchandise under these Terms and Conditions without delay, and any occurrences which would be probable or certain to cause delay shall be immediately communicated to BROKER by PROVIDER. PROVIDER shall, at its sole cost and expense:

- a) furnish or arrange for all equipment necessary or required for the performance of its obligations hereunder (the "Equipment");
- b) pay or be responsible for all expenses related, in any way, with the use and operation of the Equipment;
- c) maintain or be responsible for maintaining the Equipment in good repair, mechanical conditions and appearance; and
- d) utilize or be responsible for utilizing only competent, able, properly trained and legally licensed personnel.

PROVIDER shall have full control of such personnel; shall perform the services hereunder as an independent contractor; and shall assume complete responsibility for all state and federal taxes, assessments, insurance (including, but not limited to, workers' compensation, unemployment compensation, disability, pension and social security insurance) and any other financial obligations arising out of the transloading or cross-docking performed hereunder. Failure by PROVIDER to comply with the terms of this Section 1 will result in non-payment of service charges. To the extent that these Terms and Conditions are incorporated into any agreement between PROVIDER and BROKER, failure by PROVIDER to comply with the terms of this Section 1 may also result in termination of such agreement by BROKER with no liability to BROKER resulting from such termination.

2. **DOCUMENTATION.** Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contract are inapplicable to services provided under these Terms and Conditions. PROVIDER agrees that invoices not submitted within thirty (30) days of the ship date specified on the applicable outbound bill of lading shall be deemed conclusively waived. PROVIDER shall notify BROKER immediately of any exception made on the bill of lading or delivery receipt. All shipments accepted for transloading or cross-docking by PROVIDER shall be governed solely by these Terms and Conditions (including its appendices), and no provision of any other pre-printed publication or agreement, such as any warehouse receipt, shall apply.
3. **DETENTION.** PROVIDER agrees to pay any detention or demurrage charges caused by PROVIDER's negligence or willful misconduct. BROKER shall pay reasonable demurrage charges only to extent caused by BROKER's acts or omissions.
4. **PAYMENT TERMS.** Upon the transloading or cross-docking of each shipment made hereunder, PROVIDER shall submit, if applicable, a clear signed proof of delivery for the inbound merchandise and a clear signed bill of lading for the outbound merchandise with invoices to BROKER as agent

for the shipper. Invoices will be in an amount equal to the agreed rates and accessorial charges. Documents must show the kind and quantity of merchandise tendered to the PROVIDER for cross-docking or transloading. BROKER shall transmit payment of service charges to PROVIDER upon receipt from BROKER's customer and shall endeavor to transmit payments within thirty (30) days of invoice, unless otherwise agreed upon in writing. If BROKER, in its sole discretion, elects to advance payment to PROVIDER prior to receipt from BROKER's customer, such advance is with recourse. Interest and penalties shall not apply to late payments.

5. **INSURANCE.** PROVIDER warrants to BROKER (and its customers) that it meets the following criteria:
 - a) PROVIDER and each of its subcontractors shall maintain all risk property insurance covering property and cargo with respect to which cross-dock and transloading services (including coverage for loss or damage during or arising from loading and unloading) are provided in the amount of not less than \$1,000,000 per occurrence as well as warehouseman's legal liability coverage in an amount of not less than \$1,000,000 per occurrence covering property and cargo while in storage, if applicable. Such insurance policy shall provide coverage to BROKER, BROKER's customer and the owner for any loss, damage or delay related to any property coming into the possession of PROVIDER or any subcontractors under these Terms and Conditions. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to claims anticipated under these Terms and Conditions.
 - b) PROVIDER and each of its subcontractors shall maintain workers' compensation insurance or similar industrial accident insurance as well as employer's liability insurance in accordance with applicable laws, rules and regulations.
 - c) PROVIDER and each of its subcontractors shall have commercial general liability coverage in the amount of not less than \$1,000,000 per occurrence.
 - d) All insurance policies required by these Terms and Conditions shall, as applicable, be primary and shall waive subrogation and contribution against BROKER. PROVIDER shall furnish to BROKER written certificates obtained from the applicable insurance carriers showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to BROKER at least thirty (30) days prior to such cancellation or modification. In addition, BROKER shall be named as an additional insured on PROVIDER's and each of its subcontractor's commercial general and property insurance policies, as evidenced by an endorsement on the certificates of insurance as well as loss payee on PROVIDER'S and each of its subcontractor's cargo insurance policies. Upon request of BROKER or its designated insurance consultant, PROVIDER shall provide BROKER, BROKER's consultant, or BROKER's customer with copies of the applicable insurance policies.
6. **OPERATING AUTHORITY/SAFETY.** PROVIDER warrants that its facilities have received any necessary approvals, such as clearances from fire inspectors and occupational health and safety inspectors, or equivalent and is otherwise authorized to provide the proposed services. PROVIDER and all subcontractors shall at all times be in compliance with all applicable laws.

7. **GOVERNING RULES.** These Terms and Conditions contain the entire agreement between the parties and may be modified only by written agreement signed by an authorized representative of BROKER. Failure of BROKER to insist upon PROVIDER's performance under these Terms and Conditions or to exercise any right or privilege shall not be deemed a waiver of any of BROKER's rights or privileges herein. The following rules shall apply:
- a) Claims may be filed at any time within the applicable statute of limitations period for contracts under applicable law;
 - b) Claims for liability for merchandise that is lost, stolen or damaged while in the care, custody or control of PROVIDER shall be for the full value of the merchandise so lost, stolen or damaged without limitation;
 - c) Destination market value shall be the measure for lost, stolen or damaged merchandise;
 - d) Claims may be filed by BROKER or BROKER's customer with PROVIDER;
 - e) BROKER's customer is a third-party beneficiary of these Terms and Conditions; and
 - f) BROKER shall have the right to offset from PROVIDER's service charges the amount of any actual or potential Claims (as defined in Section 9 below), including but not limited to Claims for loss, delay or damage to transloaded or cross-docked goods, provided such Claims are reasonably substantiated or anticipated. Any such offset is fully authorized by PROVIDER.
8. **LOSS, DAMAGE OR DELAY.** PROVIDER shall have the sole and exclusive care, custody and control of customer's property from the time it is delivered to PROVIDER until the time that it is tendered to BROKER's selected motor carrier for transportation to the consignee. PROVIDER assumes all liability for the full value of any loss, delay, damage to or destruction of any and all of customer's goods or property while under PROVIDER's care, custody or control and no limitation of liability shall apply with respect thereto. These liability provisions expressly apply to any of PROVIDER's or its subcontractors' activities, and PROVIDER assumes full responsibility for any loss or damage occurring while in the care, custody or control of PROVIDER's subcontractors. PROVIDER shall pay to BROKER (for BROKER's customer), or allow BROKER to deduct from the amount BROKER owes PROVIDER, the full actual loss for the kind and quantity of commodities so lost, delayed, damaged or destroyed. In the event a claim is not resolved to the satisfaction of BROKER or its customer within ninety (90) days of presentation or PROVIDER is unable to demonstrate the loss is properly insured, BROKER in its sole discretion may elect to offset the claimed amount against charges otherwise due and owing to PROVIDER, placing such sums in reserve until the merits of the claim are resolved.
9. **INDEMNIFICATION.**
- a) PROVIDER shall be liable for, and shall defend, indemnify and hold harmless BROKER, its customer, the owner of the property, and all officers, members, directors, employees, stockholders, partners, affiliates and agents thereof (collectively the "Indemnified Parties" as intended third-party beneficiaries) from and against, all claims, demands, costs, damages

(including special, indirect or consequential damages), losses, liabilities (including reasonable attorneys', accountants', and experts' fees and disbursements and other costs of defense, investigation and settlement, costs of containment, cleanup and remediation of spills, releases or other environmental contamination, and costs of enforcement of indemnity obligations), judgments, penalties, fines and other amounts (collectively "Claims") relating to or arising out of: (a) injury to persons (including injury resulting in death) and damage to property arising out of or in connection with the transloading and cross-docking services performed by PROVIDER hereunder, or by any third parties or PROVIDER subcontractors performing services directly or indirectly on PROVIDER's behalf hereunder, (b) PROVIDER's or PROVIDER's subcontractor's performance or non-performance of any of the obligations under these Terms and Conditions, including without limitation any acts or omissions related to the loading, unloading, handling, movement, possession or custody of merchandise handled hereunder, (c) PROVIDER's breach, either directly or indirectly by any subcontractor or other third party providing services on PROVIDER's behalf, of these Terms and Conditions or any warranty or representation herein, (d) negligence or misconduct of PROVIDER or any PROVIDER representative or subcontractor, (e) any claim (including by governmental authorities) that PROVIDER or any PROVIDER representative, subcontractor or other third party providing services on PROVIDER's behalf is an employee of BROKER, or (f) breach by PROVIDER or any PROVIDER representative or subcontractor of applicable law. PROVIDER shall not be obligated to indemnify an Indemnified Party to the limited extent a court of competent jurisdiction determines that the Claim directly and proximately results from the negligence or willful misconduct of such Indemnified Party.

- b) If a Claim is made against an Indemnified Party alleging that the negligent or intentional actions or inactions of the Indemnified Party were the sole or a contributing cause of the event giving rise to the Claim, PROVIDER shall defend the Indemnified Party, without limitation until such time as a final adjudication or settlement has been reached. If the Claim against the Indemnified Party is reduced to a judgment, award or settlement wherein it has been determined (by a court of competent jurisdiction or in arbitration) or agreed upon by the Indemnified Party by way of settlement, that, on a comparative basis, the Indemnified Party's negligence or willful misconduct was a cause of the event giving rise to the Claim, PROVIDER shall not be obligated to indemnify the Indemnified Party to the extent (on a comparative basis) of such determination, it being understood, for the purposes of this exception to PROVIDER's indemnification obligation, that "BROKER's negligence" will not include BROKER's negligent hiring or negligent entrustment in engaging PROVIDER to perform the transloading or cross-docking services giving rise to the Claim. For instance, by way of example and clarification, if the total award for a Claim is \$100,000 and BROKER's negligence is determined to have caused 20% of the event giving rise to the Claim, then PROVIDER would be responsible for only \$80,000 of the Claim.
- c) PROVIDER will assume the defense of Claims by sending notice of assumption to the Indemnified Party and BROKER, by assuming the defense, and by acknowledging the duty to indemnify in accordance with the provisions above. Promptly after sending such notice, PROVIDER will retain independent and competent legal counsel acceptable to the Indemnified Party. If any Indemnified Party determines that there may be a conflict between its position and that of PROVIDER in connection with the defense of a Claim or that there may be defenses available that differ from or are in addition to those available to PROVIDER, then, at the expense of PROVIDER, counsel for the Indemnified Party will be entitled to conduct a defense

to the extent the Indemnified Party determines is necessary to protect its interests. PROVIDER, in the defense of any Claim will not, except with the Indemnified Party's express written permission, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term the giving by the claimant or plaintiff to the Indemnified Party a release from all liability with respect to the Claim. The Indemnified Party will have the right at all times to accept or reject, subject to a reasonableness standard, any offer to settle a Claim.

10. **SERVICE CHARGE COLLECTION.** PROVIDER agrees that BROKER has the exclusive right to handle all billing of charges to BROKER's customers for the services provided herein, and, as such, PROVIDER agrees to refrain from all collection efforts against any customer of BROKER unless authorized in writing by BROKER.
11. **WAIVER OF PROVIDER'S LIEN.** PROVIDER shall not withhold any goods of any customer of BROKER on account of any dispute as to rates or any alleged failure to receive payment of charges incurred under these Terms and Conditions. PROVIDER further agrees that BROKER has the discretionary right to offset any payments owed to PROVIDER hereunder for liability incurred by PROVIDER pursuant to Sections 8 and 9 of these Terms and Conditions. PROVIDER waives any warehouseman's or contractor's lien it may have. PROVIDER shall pay and completely satisfy all claims for labor, equipment, rentals and material employed or used by it or its subcontractors in connection with any and all work performed when those claims become due and payable. PROVIDER shall ensure that no liens of any kind are fixed upon or against the property of BROKER'S customer by PROVIDER'S employees, subcontractors or subcontractor's employees. PROVIDER shall indemnify, defend and hold BROKER and its customer harmless from all such claims and liens.
12. **BACK SOLICITATION.** PROVIDER will not solicit or provide transloading and cross-docking services, either directly or indirectly, to any customer of BROKER where the availability of such business first became known to PROVIDER as a result of BROKER's efforts. If PROVIDER breaches these Terms and Conditions and, without utilizing the services of BROKER, performs transloading and cross-docking services for such parties during the term of any agreement that is subject to or incorporates these Terms and Conditions or within a period of eighteen (18) months from either the expiration of any such agreement or the most recent transaction governed by these Terms and Conditions, PROVIDER shall be obligated to pay BROKER, for a period of eighteen (18) months thereafter, commissions in the amount of fifteen percent (15%) of the gross revenue resulting from transloading and cross-docking services in violation of this provision, and PROVIDER shall provide BROKER with all documentation requested by BROKER to verify such revenue.
13. **SEVERABILITY.** In the event that the operation of any portion of these Terms and Conditions are in violation of any applicable law, the parties agree that such portion shall be severable and that the remaining provisions of these Terms and Conditions shall continue in full force and effect.
14. **CONFIDENTIALITY.** In addition to confidential information protected by law, statutory or otherwise, the parties agree that all of their financial information and that of their respective customers shall be treated as confidential, and shall not be disclosed or used for any reason without prior written consent. In the event of violation of this Section 14, 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 prevailing party shall be liable for all costs and expenses incurred, including, but not limited to, reasonable attorney's fees.

15. **GOVERNING LAW.** These terms and conditions will be construed, to the extent not preempted by applicable federal law of the United States, under the laws of the State of Texas, without giving effect to any choice or conflict of law rules. All lawsuits between PROVIDER and BROKER shall be brought exclusively in the State of Texas; provided, however, (a) actions for recovery of loss and damage claims may be commenced (at the option of BROKER or claimant) in such other jurisdiction and venue as may be authorized under the law of the state where the loss or damage occurred, and (b) actions brought by third parties requiring PROVIDER's indemnification under these Terms and Conditions may be adjudicated in the courts where the third-party claim is filed. PROVIDER consents to the jurisdiction and venue of any court adjudicating the dispute in accordance with the foregoing sentence. BROKER AND PROVIDER WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES UNDER THESE TERMS AND CONDITIONS.