

# GEORGIA ATLANTIC TERMINAL SERVICES

## Terms and Conditions

The following contains the general terms and conditions of the contract under which GEORGIA ATLANTIC TERMINAL SERVICES, LLC, a Georgia Limited Liability company ("COMPANY"), will provide services to the company ("CUSTOMER"). In tendering a shipment for service, [CUSTOMER] agrees that these Terms and Conditions will apply.

- Parties** - [CUSTOMER] is a dedicated Ro-Ro vessel transport service. [COMPANY] provides terminal services at the Port of Brunswick, Georgia.
- Services** - The Services provided under this Agreement are set forth in the "Inclusions" section of the [COMPANY'S] Rate Schedule supplied to [CUSTOMER]. Additional service may be provided as agreed to in writing and signed by the Parties.
- Tariffs and Rate Schedules** - These Terms and Conditions are expressly incorporated into the Terminal Rate Schedule ("Schedule") provided by [COMPANY] to [CUSTOMER], and together form the Agreement between the Parties ("Agreement"). In the event of a conflict between these documents, the Schedule will control.
- Term** - The Term of this Agreement is set forth on the Effective Date provided in the Schedule.
- Bills of Lading** - [COMPANY] shall use [CUSTOMER'S] Bill of Lading ("BOL"). [CUSTOMER] agrees that its BOL shall include a clause paramount incorporating by reference the provisions of the US Carriage of Goods by Sea Act ("COGSA"), as well as language, often referred to as a *Himalaya* Clause, that extends to [COMPANY] all defenses and liability limitations which benefit the [CUSTOMER], whether in [CUSTOMER'S] capacity as a "carrier" under US COGSA or Harter Act, or otherwise, which provision and liability limitations under COGSA are expressly incorporated herein by reference and made a part hereof. It is further agreed by [CUSTOMER] and [COMPANY] that said defenses and liability limitations benefiting [COMPANY] under the BOL's clause paramount and *Himalaya* Clause shall apply to all acts or omissions on the part of [COMPANY] in its execution of its responsibilities under this contract, despite the fact those acts or omissions may take place on land. The [CUSTOMER] shall complete all documents required for service. In the event the [CUSTOMER] fails to complete the necessary documents in a timely and proper manner, the [CUSTOMER] hereby authorizes [COMPANY], to the full extent permitted by law, to complete or correct the documents at the expense of the [CUSTOMER] at [COMPANY'S] sole discretion. If a substitute form of BOL is needed to complete delivery of this shipment and [COMPANY] completes that document, the terms of the completed BOL will govern and [COMPANY] will be exonerated from all liability for undertaking such actions on behalf of the [CUSTOMER]. All Bills of Lading are non-negotiable and have been prepared by the [CUSTOMER] or by [COMPANY] on behalf of the [CUSTOMER] in accordance with the [CUSTOMER'S] instructions and approved by the [CUSTOMER], and shall be deemed, conclusively, to have been prepared by the [CUSTOMER]. [COMPANY] shall have no obligation to make any payments or honor any rate quotes where there has been unauthorized alteration or use of bill of lading.
- Representations and Warranties** - [CUSTOMER] is responsible for and warrants its compliance with all applicable laws, rules, and regulations including but not limited to customs laws, import and export laws and governmental regulation of any country to, from, through or over which the shipment may be carried. The [CUSTOMER] agrees to furnish such information and complete and attach to this Agreement such documents as are necessary to comply with such laws, rules and regulations. [COMPANY] assumes no liability to the [CUSTOMER] or to any other person for any loss or expense due to the failure of the [CUSTOMER] to comply with this provision. Any individual or entity acting on behalf of the [CUSTOMER] in scheduling services hereunder warrants that it has the right to act on behalf of the [CUSTOMER] and the right to legally bind [CUSTOMER].
- Payment** - [CUSTOMER] agrees to remit payment for any charges in USD, and agrees to pay any outstanding invoice within fifteen (15) days from the date of billing. Interest shall accrue on past due payments at the rate of one point five percent (1.5%) per month on the outstanding balance due, or at the highest rate of interest permitted by applicable law, whichever is less. In the event that [CUSTOMER] is delinquent on its accounts payable and [COMPANY] retains the services of an attorney or collection agency for the collection of said accounts, [CUSTOMER] agrees to pay, in addition to the account balance, all collection costs including reasonable attorney's fees. The [CUSTOMER] acknowledges that a claim for damages does not relieve it for payment under the terms of this Agreement. Timely payment is a condition precedent to the processing of any damage or insurance claim. All freight cargo claims should be submitted immediately to [COMPANY] to help ensure timely resolution. [COMPANY] will attempt to assist in the resolution of freight claims, but has no responsibility or liability therefore. Where a damage claim is submitted with carrier on behalf of [CUSTOMER], [COMPANY] has a lien on any amounts recovered to the extent of open past due invoices on the [CUSTOMER'S] account.
- Credit Approval** - Credit terms are subject to approval at [COMPANY'S] sole discretion. The [CUSTOMER] grants [COMPANY] the right to perform any necessary credit and background searches. When paying by credit card or electronic funds, the [CUSTOMER] agrees it will be responsible for all charges due and owing, including any adjustments, on [CUSTOMER'S] shipment. The [CUSTOMER] authorizes [COMPANY] to charge the [CUSTOMER'S] credit card or bank account on file for any charges.
- Additional Charges** - The [CUSTOMER] shall be liable for all charges payable for [COMPANY'S] services. These charges may include all adjustments issued by the [CUSTOMER] post-shipment and all duties, customs assessments, governmental penalties, fines and taxes. [COMPANY] reserves the right to amend or adjust charges and to re-invoice the [CUSTOMER] if the original quoted amount was based upon incorrect information provided by the [CUSTOMER], if additional services were required, or if the [CUSTOMER] authorized services other than contemplated by the BOL. Any disputes by [CUSTOMER] of any invoice issued by [COMPANY] shall be made in writing and delivered to [COMPANY] at their offices within 30 days from the date of the invoice. In the event [COMPANY] does not receive timely written notice of the dispute, the charges will be conclusively presumed to be valid.
- Claims** - [CUSTOMER] shall identify any damage to any vehicle(s) by noting the damage on the Bill of Lading received by [CUSTOMER] at the time of delivery. Any claims related to such noted damage must be submitted in writing to [COMPANY] within 2 days of delivery, or, in case of failure of delivery, within 2 days of the date that vehicle was scheduled to be delivered. [CUSTOMER] hereby waives any damage claims that are not noted on the Bill of Lading or for which [CUSTOMER] has not submitted a timely written claim.
- Limitations of Liability** - [COMPANY] is a cargo / logistics services provider to [CUSTOMER], and not a motor carrier. In that capacity as a contractor of [CUSTOMER], [COMPANY] benefits from the limitations of liability applicable to [CUSTOMER] under COGSA by virtue of the clause paramount and *Himalaya* Clause contained in [CUSTOMER'S] BOL governing the shipment of the goods handled or serviced by [COMPANY] (see ¶ 5 above). [COMPANY] shall not be liable for any freight loss, damage, or theft that was not caused by its employees. [COMPANY] is not liable for any loss, damage, mis-delivery or non-delivery caused by the act, default or omission of the Carrier. [COMPANY] is not liable for any loss, mis-delivery or non-delivery caused by the act, default or omission of the [CUSTOMER] or any other party who claims interest in the shipment, or caused by the nature of the shipment or any defect thereof. [COMPANY] is not liable for losses, mis-delivery or non-delivery caused by the [CUSTOMER], including improper or insufficient packing, securing, marking or addressing, or of failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions. [COMPANY] is not liable for losses, mis-delivery or non-delivery caused by the acts of God, perils of the air, public enemies, public authorities, acts or omissions of Customs or quarantine officials, war, riots, strikes, labor disputes, weather conditions or mechanical delay or failure of ships, trains, aircraft or other equipment. [COMPANY] is not liable for failure to comply with delivery or other instructions from the [CUSTOMER] or for the acts or omissions of any person other than employees of [COMPANY]. Subject to the limitations of liability contained in the

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[CUSTOMER'S] Bill of Lading or Agreements, [COMPANY] shall only be liable for loss, damage, mis-delivery or non-delivery caused by [COMPANY'S] own negligence. [CUSTOMER] specifically agrees and hereby waives any other claims against [COMPANY] including, but not limited to minor damages such as scratches, scrapes and chips that result from normal conditions and wear and tear; damages caused by leaking fluids, battery acid and/or cooling system antifreeze solution; industrial fallout; mechanical malfunctions; exhaust assembly; frame; alignment; tire damage; suspension; glass damage; overloaded vehicles; defective or insufficient brakes, parking brake or parking gear; damage to loose, torn or visibly worn convertible tops; damage to vehicle boots, caps, masks, bras or any other type of covering; damage caused as a result of the inoperable condition of the vehicle; damages caused by vandalism; damage caused by tie-downs that break or tear due to vehicle's age or condition; damage that is undetectable due to the vehicle's dirty condition at the time of pickup; or damage caused by Force Majeure events. [COMPANY] shall not be liable for missing navigation disk, additional keys, floor mats or other removable equipment. Additionally, [COMPANY] shall not provide reimbursement for auto rental fees resulting from delay or damage and shall not be responsible for depreciated value resulting from damages or delays. [COMPANY] shall not be liable to [CUSTOMER] or any third party or entity for any special, incidental or consequential damages, including but not limited to loss of profits or income, whether or not [COMPANY] had knowledge that such damages might be incurred.

12. **Disclaimer of Warranties** - [COMPANY] makes no warranties, express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose, with regard to its services, shipments, warehoused goods, items in transit or deliveries. [COMPANY] cannot guarantee delivery by any specific time or date.
13. **Indemnity** - [CUSTOMER] agrees to indemnify, defend, and hold harmless [COMPANY] against any and all claims, including reasonable attorney's fees, arising out of [CUSTOMER'S] negligence or breach of this Agreement.
14. **Insurance** - The [CUSTOMER] will look solely to insurance for damage to goods in transit. Each carrier's governing Tariff will determine the standard liability cargo insurance coverage offered on any shipment, subject to any exception value. If the shipment contains freight with a predetermined exception value, as determined by the selected carrier, the maximum exception liability will override the liability coverage otherwise provided by the Tariff. In the event that [COMPANY] has optional Shippers Interest Contingent Cargo Liability Insurance ("Third Party Insurance") available for purchase by the [CUSTOMER], [COMPANY] will not be liable for the issuance or denial of Third Party Insurance, or in the payment or denial of claims.
15. **Merger and Integration** - This Agreement contains the entire understanding between the parties with respect to the subject matter treated herein, and this Agreement supersedes and cancels all prior letters of intent, agreements, understandings, offers and assurances, oral or written, of either party. This Agreement shall be the sole agreement with respect to the matters involved, except as may be agreed to in writing by subsequent amendments.
16. **Time is of the Essence** - Time is of the essence with respect to the obligations of [CUSTOMER] under this agreement.
17. **Governing Law** - This Agreement is being delivered in and is intended to be performed in the State of Georgia. The terms of this Agreement are subject to the provisions the United States Transportation Code and the Rules and Regulations of the FMCSA, USDOT, and their successors. To the extent that federal law does not govern, this Agreement shall be construed and enforced in accordance with the laws of Georgia.
18. **Successors** - This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their personal representatives, heirs, successors and assigns.
19. **Modification** - No modification of this Agreement shall be valid unless in writing and executed by all the parties.
20. **Waiver** - No breach of any provision of this Agreement shall be deemed waived unless specifically waived in writing by the non-breaching party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach.
21. **Severability** - In the event any provision hereof is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.
22. **Change in Law** - In the event that any federal agency or department, or any state government, agency or department shall by regulation, order or statute, directly or indirectly, require or prescribe the establishment of any rules or provisions inconsistent with the terms of this Agreement, [COMPANY] shall promptly notify [CUSTOMER] and either party may, without prejudice to any other right or remedy, terminate this Agreement after giving at least five (5) days prior written notice of such termination.
23. **Arbitration and Dispute Resolution** - Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Brunswick, Georgia, before one arbitrator. The arbitration shall be administered by JAMS Dispute Resolution Service pursuant to its JAMS Streamlined Arbitration Rules & Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. In the event that any legal proceeding is commenced by either party, the parties agree to jurisdiction and venue in the federal and state courts located in Glynn County, Georgia.
24. **No Third Party Beneficiaries** - Except as expressly provided herein, nothing in this Agreement shall entitle any person other than the parties or their respective successors and mutually accepted assigns to any claim, cause of action, remedy or right of any kind.
25. **Authority** - [CUSTOMER] and [COMPANY] each represent that they have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform their obligations under this Agreement.
26. **Captions** - Titles or captions of Articles and Sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. References in this Agreement to particular Articles or Sections are references to Articles or Sections of this Agreement unless otherwise stated.