Terms and Conditions

TA Services, Inc. & TA Dispatch, LLC

Unless otherwise specified in a binding written contract between the Customer and a duly authorized representative of TA Services, Inc. and/or TA Dispatch, LLC (collectively referred to herein as “TA Services”), as consideration for the use of TA Services’ services and/or the advancement of credit, Customer and its employees, contractors, agents, representatives, affiliates, parents, and subsidiaries (collectively: “Customer”) hereby agree to the terms and conditions set forth herein (collectively: the “Terms and Conditions”). The Terms and Conditions are expressly incorporated into the credit application executed by the Customer, any ancillary shipping documents, statements of work and letter agreements, and are binding upon the Customer. A copy of the Terms and Conditions can be found online at https://www.taservices.com/terms/ and is available upon written request.

Customer agrees to the Terms and Conditions in their entirety, and no agent or employee of the parties may change, alter, or in any way transform them. The Terms and Conditions shall apply to all shipments by Customer and all services provided by TA Services. TA Services reserves the right to alter or amend the Terms and Conditions, and Customer agrees that TA Services’ provision of services to Customer after any such changes constitutes sufficient consideration for them. Customer shall review the Terms and Conditions on a periodic basis such that it stays informed of any changes.

The parties hereby waive 49 U.S.C. 14706, as provided for under 49 U.S.C. 14101, to the extent necessary to limit TA Services’ liability as provided herein.

I. Payment

A. TA Services must receive payment of all charges within thirty (30) days from the date Customer receives an invoice from TA Services. For purposes of calculating the payment’s due date, Customer will be considered to be in receipt of the invoice upon the earliest of the following: (i) confirmation of receipt by one of the parties; (ii) successful electronic transmission of the invoice; (iii) if sent by mail, after three (3) days have passed from the date listed on the invoice as the invoice date. In the event the payment is not received within thirty (30) days, Customer agrees that interest shall accrue daily and be payable to TA Services at the interest rate of 1.5% per month (18% per annum), together with any and all collection costs, including attorney fees. The invoice shall be paid in full, and shall not be subject to any deduction, counterclaim, delay in payment, or offset by Customer, whether on account of overcharges, cargo loss, damages, amounts owed by TA Services, or otherwise. All disputed charges shall be reconciled separately with TA Services or the non-affiliated broker or carrier. However, if TA Services does not receive a written dispute within thirty (30) business days after the date listed on the invoice as the invoice date, the disputed charge will be denied by TA Services. This paragraph clarifies and supersedes any conflicting language that may be contained in invoices, shipping documents, or carrier tariffs.

B. The Customer is liable for all charges payable on account of its shipment, including but not limited to transportation, fuel and other applicable accessorial charges, including all adjustments issued by the carrier(s) or service provider after the shipment, and all duties, customs assessments,
governmental penalties and fines, taxes, and TA Services’ attorney fees and legal costs allocable to this shipment and/or all disputes related thereto. Customer agrees to pay any convenience fees charged by TA Services or its parents or affiliates related to the payment of services via credit card or other electronic payment methods. TA Services shall have a lien on the shipment for all sums due it relating to this shipment or any other amounts owed by Customer. TA Services reserves the right to amend or adjust the original quoted amount or re-invoice Customer if the original quoted amount was based upon incorrect information provided at the time of the original quote or if additional services by the carrier or service provider were required or otherwise authorized by Customer to perform the pick-up, transportation and delivery functions therein. If TA Services accepts payment by credit card or electronic funds in advance of the shipment (“Pre-Pay”), Customer agrees it will be responsible for all charges payable, including any adjustments, on account of such shipment. These charges and adjustments, if any, may be automatically debited from the Customer’s credit card or bank account. TA Services reserves the right, at its sole discretion, to refuse any shipment at any time.

II. Limitation of Liability and Handling of Claims

A. Customer understands and agrees that TA Services is not a motor carrier or an employee or agent of a motor carrier. It does not physically transport freight. TA Services is an authorized Broker, as that term is defined in 49 U.S.C. 13102. Customer authorizes TA Services to act in its capacity as a Broker, and arrange, or offer to arrange, the transportation of freight by an authorized motor carrier. Customer also authorizes TA Services to act in its capacity as a Freight Forwarder (when such authority is procured by TA Services, and provide services relating to the assembly and/or consolidation of shipments and their transportation by a carrier). Unless Customer is notified in writing that TA Services intends to act in its capacity as a Freight Forwarder relative to Customer’s shipment, Customer understands and agrees that TA Services will act solely in its capacity as a Broker.

B. As the Broker, TA Services has no responsibility, liability or involvement in the issuance of insurance, the denial of insurance, or in the payment of claims. TA Services does not carry insurance for Customer. TA Services is not liable for cargo losses or claims, and Customer shall not pursue TA Services or any of its employees, agents, representatives, affiliates, parents, or subsidiaries (collectively: “TA Services”) in relation to the same. See 49 C.F.R. 370 et seq., as amended. Any insurance purchased for the benefit of Customer is purchased directly by the actual carrier of the freight. Customer shall pursue the actual carrier for its claims and acknowledges that its losses shall be subject to that carrier’s limitation of liability provisions (if any), which may be contained in the carrier’s tariff, terms and conditions, or contract with TA Services. Unless Customer negotiates for a higher value that is agreed to in a signed writing by an authorized representative of Broker, all load tenders to Broker shall be considered to have a value of $100,000 or less for purposes of carrier insurance.

C. TA Services is not liable for any loss, late-delivery, non-delivery, or consequential damages caused by the act, default or omission of the carrier, Customer or any other party who claims interest in the shipment, or caused by the nature of the shipment or any defect thereof. TA Services is not
liable for losses, late-delivery or non-delivery caused by violation(s) by the Customer of any provisions contained in a bill of lading, contract, these Terms and Conditions, or the carrier’s tariff or terms and conditions, nor will TA Services be liable for improper or insufficient packing, securing, marking or addressing, or for failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions. TA Services is not liable for losses, late 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 aircraft or other equipment. TA Services is not liable for failure to comply with delivery or other instructions from Customer or for the acts or omissions of any person other than employees of TA Services.

D. Subject to any applicable limitations of liability or defenses, TA Services shall only be liable for loss, damage, mis-delivery or non-delivery caused by TA Services' own gross negligence. In such event, TA Services' liability shall be limited to the fees that TA Services earned with respect to the subject shipment. TA Services makes no warranties, express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose, with regard to deliveries or with regard to its website, information provided on its website or services related to transactions conducted on its website. TA Services cannot guarantee delivery by any specific time or date. In any event, TA Services shall not be liable for any special, punitive, incidental or consequential damages, including but not limited to business interruptions and/or loss of profits or income, whether or not TA Services had knowledge that such damages might be incurred.

E. Notwithstanding anything in these Terms and Conditions to the contrary, Customer acknowledges and agrees that TA Services and the transporting carrier(s) will not be held liable for cargo loss, damage or delay occurring or arising in Mexico and if it is unclear whether such a claim arose in Mexico there will be a rebuttable presumption that loss, damage or delay arose in Mexico unless rebutted by Customer by clear and convincing evidence.

In the event of a loss, TA Services will make reasonable efforts to provide Customer with the information necessary for Customer to file a claim with the transporting motor carrier or unaffiliated service provider. All cargo claims should be filed immediately and directly with the actual carrier or responsible party, with contemporaneous notice to TA Services, to help ensure timely resolution.

III. Freight Forwarder Liability and Handling of Claims

A. In the event TA Services notifies Customer that it intends to act in the capacity as a Freight Forwarder relative to Customer’s shipment, then the parties engaged by it will be primarily liable for cargo losses attributable to their conduct. In the event that a claim is made against TA Services as a Freight Forwarder and accepted, then such claims shall be governed by 49 C.F.R. 370 et seq., as amended, except as provided herein.

B. TA Services is not liable for any loss, late-delivery, non-delivery, or consequential damages 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. TA Services is not liable
for losses, late-delivery or non-delivery caused by violation(s) by the Customer of any provisions contained in a bill of lading, contract, these Terms and Conditions, or the carrier’s tariff or terms and conditions, nor will TA Services be liable for improper or insufficient packing, securing, marking or addressing, or for failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions. TA Services is not liable for losses, late 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, mechanical delay or failure of aircraft or other equipment, or any other act beyond TA Services’ control.

C. A loss or damage claim must be submitted in writing with all required documentation within 9 months from the delivery date in a damage claim, or within 9 months of the bill of lading delivery date in the event of a loss. Claims submitted after this period will not be accepted under any circumstances. The time limits for filing civil actions for collection of cargo claims shall be two (2) years. TA Services’ cargo liability is limited to $2 per pound, with a maximum liability not to exceed $2,500 per qualifying shipment. If approved, TA Services’ maximum liability for parcel shipments is not to exceed $100 per qualifying shipment.

D. If the loss or damage is apparent at delivery, the consignee must note such loss or damage information, with sufficient detail, on the bill of lading or delivery receipt. At delivery, the consignee must: (i) check each handling unit for visible signs of damage; (ii) open any shipments that show signs of loss or damage while the driver is present; (iii) record an exact, detailed description of the results of the examination on the delivery receipt; and (iv) have the driver sign the consignee’s copy of the delivery receipt. These notated loss or damage rules also apply to drop trailer deliveries. Paperwork is to be signed after offloading of trailer. Terms such as “subject to inspection,” “subject to count,” and “damaged” are not acceptable on a delivery receipt as notations of damage or loss and will not substantiate a claim as they are too vague and unclear.

E. A claim for loss or damage that is concealed at the time of delivery will only be considered if the claimant provides conclusive evidence that the damage or shortage occurred while the shipment was in the possession of TA Services. Furthermore, concealed loss or damage claims must be reported to TA Services in writing within 72 hours of delivery and a request for an inspection must be made at that time. All material must be maintained in the original shipping container and in the same condition it was in when the loss or damage was discovered. In a concealed damage or loss claim, the claimant has the burden of proof. Claimant must prove that TA Services caused the damage, not other parties who handled the goods. Any shipment tendered to TA Services on a plastic shrink wrapped skid shall be signed for as “STC” said to contain. In addition to other limitations of liability contained herein, when a plastic shrink wrapped skid is delivered intact at final destination, TA Services shall not be held liable for loss or damage discovered therein, either at delivery or after delivery has been performed. TA Services also considers these factors in a concealed damage or loss claim:

- Nature of the goods
- Adequacy of packaging
- Movement before pick-up or after delivery
• Retention and condition of the original containers

F. Claimants have the legal obligation to mitigate claims and reduce the damage as much as possible. This may be accomplished by:

• Repair – Claims for repair should reflect only the claimant’s cost for parts and labor.
• Sorting – Claims should only be filed after damaged and undamaged pieces have been sorted through to reduce the quantity being claimed.
• Sale through the most profitable means available (the claim would then reflect the difference of the claim amount and the amount recovered through sale).
• Any other means resulting in a reduction in the claim equal to or greater than that which the carrier may have obtained through salvage of the goods.

G. TA Services will make every effort to meet our published transit times for shipments scheduled for transportation. In the event that the transportation of an individual shipment does not meet our published transit times, however, TA Services will not be liable to Customer, consignor, consignee or their agents for any and all direct, special, or incidental damages or costs claimed to result from this failure to meet published transit times included, but not limited to, plant shut downs, loss of sales and/or loss of profits.

H. The fees charged by TA Services, including freight charges, shall not be subject to deduction, setoff, or delay in payment by Customer due to a claim of loss or damage. The filing of a claim does not relieve Customer or its consignee or intermediary for payment of freight charges. Claims and freight charges are separate transactions. Without payment of freight charges, the transportation contract has not been completed and a claim cannot be considered or paid.

IV. Managed Transportation

A. Claims. It is understood and agreed that the TA Services is not a motor carrier and that TA Services shall not be held liable for loss, damage, or delay in the transportation of Customer’s property unless caused by TA Services’ negligent acts or omissions in the performance of this Agreement. TA Services shall, however, assist Customer in the filing and/or processing of claims with the transporting carrier. Customer must file claims for cargo loss or damage with TA Services within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of these Terms and Conditions shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. Customer must file any civil action in a court of law (or commence arbitration) within two (2) years from the date the carrier or TA Services provides written notice to TA Services that the carrier has disallowed any part of the claim in the notice. If payment of a claim is made by TA Services to Customer, Customer automatically assigns its rights and interest in the claim to TA Services.

In any event, Customer’s recovery for cargo related damages shall not exceed $100,000, unless TA Services is notified by Customer of the increased value prior to shipment pickup and with
reasonable advance notice to allow TA Services and/or the carrier to procure additional insurance coverage, and such coverage has been confirmed by TA Services as procured.

B. **Incorporation.** Unless there is a specific conflict with the terms in this section, the terms and conditions outside of this Section IV shall be incorporated into this Section IV and made a part hereof as though fully set forth herein.

**V. Independent Contractor**

TA Services’ relationship to Customer is that of an independent contractor, not an agent or employee, and nothing in these Terms & Conditions shall be construed as establishing an employment relationship, partnership, or joint venture between the parties.

**VI. Insurance**

Customer shall maintain in full force and effect, policies of insurance, or qualified self-insurance to cover the following:

i. Comprehensive general or commercial liability, including coverage for (i) contractual liability, (ii) property damage, and (iii) personal injury (including bodily injury). The limits for such coverage shall be no less than $1,000,000 combined single limit for personal injury (including bodily injury) and property damage;

ii. Statutory worker’s compensation coverage meeting all state and local requirements;

iii. Employer’s liability coverage with limits no less than $1,000,000; and,

iv. Any other insurance commonly procured in the industry for which Customer is engaged and any other insurance Customer is required by law to maintain.

These Terms and Conditions may be amended to reflect higher levels of insurance coverage agreed to be the parties from time to time. Customer agrees to furnish TA Services certificates showing evidence of such insurance coverage or proof evidencing said self-insurance upon request. TA Services shall be named as an additional insured on the comprehensive general or commercial liability policy. All coverages shall have an endorsement providing that they shall not be cancelled, altered, or amended without 30 days prior written notice having been furnished to TA Services.

**VII. Bills of Lading**

Bills of lading shall be considered non-negotiable and shall act as a receipt only. Any unauthorized alteration or use of bills of lading or tendering of shipments to any carrier other than that designated by TA Services, or the use of any bill of lading not authorized or issued by TA Services shall void TA Services’
obligations, if any, to make any payments relating to the shipment and void all rate quotes. If the Customer or its affiliates do not complete all the documents required for carriage, or if the documents which they submit are not appropriate for the services, pick up or destination requested, Customer hereby instructs TA Services, where permitted by law, to complete, correct or replace the documents for them at the expense of Customer. However, TA Services is not obligated to do so. If a substitute form of bill of lading is needed to complete delivery of the shipment and TA Services completes that document, the terms of the substitute completed by TA Services will govern. TA Services is not liable to Customer or to any other person for any actions taken on behalf of Customer under this provision.

VIII. 
Forum Selection and Choice of Law

Any claim, dispute or litigation (collectively referred to as: “Proceedings”) relating to these Terms and Conditions or services offered or provided by TA Services shall be governed by Alabama state law and applicable Federal law, and exclusive jurisdiction for such Proceedings will lie in the state or federal courts serving Alabama.

IX. 
Indemnification

Customer shall indemnify TA Services for any loss, damage, injury, liability, expense, cost, including reasonable attorney’s fees, fines, penalties, actions and claims, including, but not limited to, claims for injuries to persons (including death), for damage to property, and for damage to third parties arising out of Customer’s negligence, wrongful act or omission, failure to comply with the law, and failure to comply with the terms of this Agreement.

X. 
Customer’s 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. Customer agrees to furnish such information and complete and attach to the bill of lading or similar shipping document such documents as are necessary to comply with such laws, rules and regulations. TA Services 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.

By executing TA Services’ credit application and/or doing business with TA Services, Customer attests to its solvency and ability and willingness to pay TA Services’ invoices in accordance with these Terms and Conditions. Customer also agrees that its employee or representative who is agreeing to these Terms and Conditions and/or completes the credit application has been duly authorized to do so by Customer and therefore binds Customer to the Terms and Conditions set forth herein.