



**PFS LOGISTICS**  
PREFERRED FREEZER SERVICES

## Terms and Conditions

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**1. APPLICABILITY** These Terms & Conditions and agreed upon pricing documents apply to all transportation services (the "Services") provided by Preferred Freezer Logistics, LLC ("BROKER") to a third party shipping company ("SHIPPER"). These Terms & Conditions shall constitute the entire agreement ("Agreement") between the parties and no other provisions shall apply to the Services provided by BROKER to SHIPPER under these Terms & Conditions. Performance of any work by BROKER for SHIPPER shall constitute acceptance by SHIPPER of these Terms & Conditions. No further documents or signatures are required to confirm the terms of these Terms & Conditions. BROKER objects to any terms proposed in SHIPPER's acknowledgment or other form of acceptance of BROKER's offer to perform services which add to, vary from, or conflict with these Terms & Conditions. Any such terms proposed by SHIPPER shall be void and these Terms & Conditions constitute the complete and exclusive statement of the terms and conditions between BROKER and SHIPPER. These Terms & Conditions may be modified only by a written instrument executed by authorized representatives of both parties. If BROKER's offer to perform service has been issued in response to SHIPPER'S offer and if any of the Terms & Conditions herein add to, vary from or conflict with any terms of SHIPPER's offer, then the acceptance by SHIPPER of BROKER's tender to perform services shall constitute an acceptance of SHIPPER's offer subject solely to the express Terms & Conditions set forth herein, and any additional, different or conflicting terms in SHIPPER's offer are rejected by BROKER, so that these Terms & Conditions and agreed upon pricing documents constitutes the entire Agreement between SHIPPER and BROKER with respect to the subject matter hereof and the subject matter of SHIPPER's offer.

- 1.2 If either party violates any material provision of this Agreement or a petition in bankruptcy is filed by or against either party, or either party becomes insolvent or makes a general assignment to the benefit of creditors, either party may terminate this Agreement immediately without notice.
- 1.3 In the event of a termination of this Agreement, SHIPPER shall be responsible to pay any and all charges accrued up to and including the effective date of such termination.

## **2. Services**

- 2.1 Subject to the terms and conditions of this Agreement, BROKER agrees to arrange for the transportation of freight (except household goods) through other licensed brokers, motor carriers or intermodal and other related services as mutually agreed upon by the parties from time to time (collectively, the "Services"). It is understood and agreed that BROKER is not a carrier and that the BROKER's responsibility under this Agreement shall be solely limited to arranging for (as further defined in Section 2.2. below), but not actually performing transportation of SHIPPER's freight.
- 2.2 In arranging for Services, the sole requirement of BROKER will be to solely identify and arrange for licensed motor carriers that qualify as satisfactory or unrated pursuant to the Federal Motor Carrier Safety Administration (FMCSA). SHIPPER agrees (i) BROKER has a right to rely on the information received from FMCSA and (ii) BROKER shall have no further obligation to separately verify the information obtained from FMCSA.
- 2.3 BROKER represents it will require proof of insurance and operating authority from each carrier.
- 2.4 Without expanding the responsibility and obligations of BROKER as set forth in Section 2.1 above, and to the extent possible, BROKER will arrange for the motor carrier to: (i) inspect the condition of goods being shipped and/or secure the goods when offered by SHIPPER or SHIPPER's agent for transportation; and (ii) furnish SHIPPER with appropriate receipts showing the kind, quantity and condition of the goods received by the motor carrier. However, if the SHIPPER or its agent loads the trailer or otherwise the motor carrier cannot verify the condition of the goods and/or to secure the goods (e.g. contents and condition of contents of packages are unknown or not readily observable), then the goods shall move under the SHIPPER's load and count in accordance with standard operating procedures.

- 2.5 If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertion of BROKER's name on the Bill of Lading shall be for SHIPPER's convenience only and shall not change BROKER's status as a property broker or broaden the scope of Broker's liability. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement.
- 2.6 BROKER agrees it will notify SHIPPER promptly by telephone, fax or email after it becomes aware of any accident or other event, which prevents the carrier from making a timely or safe delivery.
- 2.7 If a carrier is unable to deliver goods because a consignee refuses to take some or all of the goods, SHIPPER agrees to take back such goods and to pay the reasonable freight charges in connection with the return of the goods to the SHIPPER. In the event that the SHIPPER refuses to take back the goods, the BROKER and the carrier shall have the right to salvage such goods.
- 2.8 BROKER shall arrange for the transportation of all kinds of freight except the following freight as referenced in National Motor Freight Classification ("NMFC"): Packing Group I material of any hazard class; Class 1.1, Explosives; Class 1.2, Explosives; Class 1.3 Explosives; Class 2.3, Poison Gas; Class 4.2, Spontaneously Combustible; Class 4.3, Dangerous When Wet Material; Class 6.2, Infectious Agents; Class 7, Radioactive Material; Hazardous Waste of any Hazard Class; Asbestos; Carbon Black; any material containing Cyanide; any material containing Paraquat; any material classified as "Poison by Inhalation"; Polychlorinated Biphenyls (PCB); any material in a container with over 1,000 gallon capacity and Garbage or waste of any type and Household Goods.
- 2.9 The SHIPPER shall provide prior notice to the BROKER in connection with shipping (i) Used Equipment (as defined in the NMFC) and (ii) cargo that requires temperature controlled shipping by the motor carrier.
- 2.10 Any and all spot rates, contracts or agreements must be in writing and must be subject to all of these Terms and Conditions.
- 2.11 The SHIPPER shall comply with all the requirements of The Intermodal Safe Container Act and in addition be responsible for payment of or reimbursement to Broker for any fines and other costs including attorney fees resulting from excess weight of any shipment that causes BROKER to be in violation of any local, state, or federal law.

### **3. Rates and Services**

- 3.1 BROKER shall arrange for the Services, and SHIPPER shall pay for such Services according to the rates, charges and rules mutually agreed to between the parties.

### **4. Payment**

- 4.1 BROKER shall invoice SHIPPER promptly following delivery of freight.
- 4.2 SHIPPER agrees to pay all amounts due under BROKER's invoices timely and in full upon receipt of BROKER's invoice, free and clear of any claim, deduction, set-off, counterclaim or defense that SHIPPER may have. Payments shall be made to BROKER, PFS Logistics, LLC, 200 Polar Way, Jersey City, NJ 07305 or such other address as BROKER may designate in writing.

## **5. Liability For Loss, Damage Or Delay**

- 5.1 Notwithstanding anything to the contrary, BROKER shall not under any circumstances be liable to SHIPPER (i) for the performance or non-performance by any carrier with whom BROKER arranges transportation or related services for the benefit of SHIPPER, including, but not limited to, any loss, damage or delay to goods in transit or the carrier's delay in picking up or the failure to pick up any shipment, including, without limitation any demurrage costs or penalties associated with any such delay or (ii) for seal integrity, loss, damage or destruction of cargo at or across the US/Mexico border. In addition, under no circumstances shall BROKER be liable to SHIPPER or anyone else for any incidental, special, consequential, and/or punitive damages, including, but not limited to, loss of profits, loss of revenue or attorneys' fees, even if BROKER had been advised in advance of the possibility of any such losses
- 5.2 Notwithstanding anything to the contrary, SHIPPER agrees and understands BROKER's liability, if any, to any person shall in no event be higher than (i) the lowest limitation of liability in the carrier's tariff, or (ii) the applicable amount set forth on our Certificate of Insurance.

## **6. Filing And Processing Of Claims**

### 6.1 Freight Claims.

SHIPPER agrees and understands it must file claims for cargo loss or damage directly with the applicable carrier. BROKER may assist SHIPPER in SHIPPER's filing of its claim against the carrier, but is under no duty and has no obligation or liability to so assist SHIPPER. It is agreed and understood BROKER assumes no liability, duty or responsibility in connection with SHIPPER making a claim with the carrier or the ultimate outcome of any/all claims made by SHIPPER against the carrier. SHIPPER agrees and understands the carrier's cargo liability for any one vehicle per occurrence shall not exceed the amount set forth on Schedule A attached hereto, unless BROKER is notified by SHIPPER of the increased value prior to shipment pickup and with reasonable advance notice to allow BROKER and/or the carrier to procure additional insurance coverage. If payment of a claim is made by BROKER to SHIPPER, and BROKER is under no obligation to do so, SHIPPER automatically assigns its rights and interest in and to the claim to BROKER in order to allow BROKER to subrogate the loss.

### 6.2 All Other Claims.

The parties shall notify each other in writing (which notice in writing shall include letter via U.S. mail or private courier, facsimile and/or e-mail) within sixty (60) days of learning of any such claims, other than cargo loss or damage claims, and shall file any such claims with the other party within one hundred eighty (180) days from the date of notice. Subject to Paragraph 20, herein, civil action, if any, shall be commenced in a Court of law within two (2) years from the date either party provides written notice to the other party of such a claim. If either party fails to serve a written claim upon the other party within the one hundred eighty (180) day period set forth in this Paragraph, then, in that event, it shall constitute an absolute bar to any and all lawsuits or dispute resolutions, as the case may be, on the subject.

## **7. Insurance**

- 7.1. BROKER represents, warrants and covenants that in selecting motor carriers to perform Services on the SHIPPER's behalf, BROKER shall obtain proof of the carrier's insurance coverage, which coverage shall not be less than the coverage set forth on Schedule A attached hereto; provided, however, with respect to any particular shipment, if agreed to in writing by the parties hereto (the "Insurance Rider"), the amount of insurance maintained by the carrier with respect to such shipment shall be the amount set forth in such Insurance Rider. The BROKER shall provide the SHIPPER with one or more certificates that such insurance is in force and that SHIPPER is named as additional insured on all such insurance.

## **8. Payment Of Freight Charges/Indemnification**

- 8.1 Provided that SHIPPER pays BROKER's invoices timely and in full, the parties agree that: (i) BROKER will be solely responsible to its designated motor carrier for payment of any freight charges, service charges, etc. of motor carrier under this Agreement; and (ii) motor carrier will have no recourse against SHIPPER, consignee, or the owner of the transported goods for payment of such freight charges, service charges, etc.
- 8.2 BROKER shall indemnify SHIPPER and hold SHIPPER harmless from and against any claims for non-payment or underpayment by such carrier; provided, however, that SHIPPER has completely fulfilled its payment obligations to BROKER pursuant to this Agreement in connection with the services of such carrier.
- 8.3 SHIPPER shall indemnify and hold harmless the BROKER, its successors, assigns, shareholders, officers, directors, agents, representatives, employees and/or each of them (collectively referred to herein as the "Indemnified Party") from and against any and all claims, liabilities, costs, expenses, suits, losses, damages, recoveries, obligations, disbursements (including, without limitation, reasonable attorney's fees and disbursements), including interest (collectively referred to herein as "Loss"), incurred by the Indemnified Party as a result of the provision of services to SHIPPER hereunder, except to the extent that such Loss directly arises out of the negligence of BROKER.

## **9. Independent Contractor/Agency**

- 9.1 In the performance of the Services, BROKER shall be an independent contractor and shall not act as an agent or employee of SHIPPER; provided, however, that BROKER shall act as agent for SHIPPER in contracting with any and all carriers, and BROKER is hereby authorized by SHIPPER to execute any and all transportation agreements on behalf of the SHIPPER. SHIPPER shall be obligated for the payment of all freight charges and reasonable accessorial charges incurred on its behalf by BROKER and shall be responsible for the payment of said charges. No employee, agent or other representative of either party shall at any time be deemed to be under the control of both parties. Each party shall be fully liable for all workers' compensation premiums and liability, Federal, State, and local withholding taxes or charges with respect to its respective employees, and each agrees to hold the other harmless from any claims brought against the other in relationship thereto.
- 9.2 It is understood and agreed BROKER shall have no right, whether direct or indirect, to control, supervise, monitor or in any way regulate a carrier's performance of its duties including but not limited to the carrier's selection of routes, speeds of transit, delivery or pick up times, locations, hours of service, dates of service, equipment to be utilized, employees to be assigned or any other mode, manner, method or time of transport and further shall have no control nor right of control, either directly or indirectly, over the carrier's employees or independent contractors.

## **10. Force Majeure**

- 10.1 Neither party shall be liable for failure or delay in performance under this Agreement to the extent that such failure or delay is due to fire, flood, other natural disaster, war, embargo, riot, carrier's equipment breakdown, unavailability of carrier's equipment, error of carrier's driver, civil disobedience, or the intervention of any government authority, or any cause not within their reasonable control. The affected party's obligations under this Agreement shall be suspended during the period of such liability to perform, but for no longer period, to the extent that they are affected by such causes.

## **11. Severability**

- 11.1 If any provision of these Terms and Conditions, whether a paragraph, a section, sentence or any portion thereof, is determined by a court of competent jurisdiction to be illegal or unenforceable, such illegality or unenforceability shall not affect the remaining provisions of this agreement, and such remaining provisions shall be construed as if such illegal or unenforceable provision(s) had not been incorporated herein.

## **12. Interpretation**

- 12.1 In interpreting and construing these Terms and Conditions, the fact one or the other of the parties may have drafted this Agreement or any provision hereof shall not be given any weight or significance, each of the parties having had adequate opportunity to review all the provisions hereof. The parties agree that any shipping documentation issued by BROKER or SHIPPER that conflicts with this Agreement is null and void and shall not in any way override the provisions of this Agreement. For purposes of this Agreement, the definition of "Agreement" shall be construed to include the "Terms and Conditions".

## **13. Confidentiality/Back Solicitation**

- 13.1 As used herein, the term "Confidential Information" shall mean all information which either party each a "Recipient"), directly or indirectly, acquires from the other (including their respective affiliates and subsidiaries) (each an "Owner") in connection with this Agreement and the Services, including any and all information concerning or pertaining to confidential technical data, rates charged hereunder knowhow, trade secrets, technical and business activities, processes, products and the present and future general business plans and operations of the Owner.
- 13.2 With respect to any such Confidential Information which becomes known to a Recipient, the Recipient agrees to (i) hold such Confidential Information in strict confidence, (ii) not disclose such Confidential Information to any third party, and (iii) disclose such Confidential Information only to Recipient's employees who have a need to know same in order to carry out the Services and only after each such employee has been advised by the Recipient of the existence of this Agreement and only after each such employee has agreed to be bound by the terms hereof.
- 13.3 A Recipient has no right in or to the Owner's trademarks, service marks and/or trade names. Recipient shall not use an Owner's trademarks or trade names in any manner or for any reason whatsoever without first obtaining Owner's prior written consent.
- 13.4 SHIPPER hereby covenants and agrees not to circumvent, avoid, bypass or obviate BROKER, either directly or indirectly, in any freight transaction with any of BROKER's designated motor carriers or any other entity or individual revealed by BROKER (collectively referred to herein as "BROKER Carriers") which may have the effect of interfering with BROKER's contractual and/or business relationship to arrange for transportation services on behalf of SHIPPER with any such BROKER Carriers, or BROKER's ability to invoice SHIPPER directly. In the event of a breach of this provision, BROKER shall be entitled to a commission of five percent (5%) of gross transportation revenue (as evidenced by freight bills) received by BROKER's Carrier for the transportation of the SHIPPER's freight for a period of 18 months as liquidated damages.
- 13.5 BROKER hereby disclaims any and all responsibility associated with any demurrage costs resulting from the Services rendered pursuant to these Terms and Conditions ("Demurrage Costs"). The party responsibility for payment of the Services ("Payment Party") (i) shall be solely responsible for any Demurrage Costs, and (ii) shall solely monitor the arrival and availability of the Container. The Payment Party shall indemnify and hold PFS Logistics, LLC harmless from the Demurrage Costs, including any claims, liabilities, expenses, suits, losses, damages, recoveries, obligations, disbursements (including, without limitation, reasonable attorney's fees and disbursements), including interest associated therewith.
- 13.6 The provisions of this Paragraph 13 shall survive expiration or termination of this agreement.

#### **14. Applicable Law**

- 14.1 To the extent not governed by the Interstate Commerce Act or other applicable federal statutes, the laws of the State of New Jersey shall govern the validity, construction and performance of this Agreement. All controversies and claims arising hereunder, and all actions and proceedings shall be brought exclusively in the United States Federal District Court for the District of New Jersey or, as applicable, depending upon federal subject matter jurisdiction, The Superior Court of New Jersey, Bergen County. Both parties irrevocably waive any and all objections to personal jurisdiction and/or venue.

#### **15. Dispute Resolution for Claims \$25,000 or Under**

- 15.1 The parties agree this agreement being entered into in good faith and that if a dispute arises in its application or interpretation that:
- (a) They shall attempt to resolve said dispute between themselves or upon mutual agreement by the intervention of an experienced mediator and upon the terms and cost allocation agreed upon.
- (b) If a dispute is not resolved voluntarily, the dispute shall be submitted to final and binding arbitration through the Transportation Lawyers Association or a like organization with experienced transportation intermediaries before a single arbitrator according to the laws of New Jersey or federal law whichever is applicable in Bergen County, New Jersey. The award of the arbitrator may be enforced in any court of competent jurisdiction.
- 15.2 The foregoing Dispute Resolution Procedure shall not apply to claims in excess of \$25,000.00.

#### **16. Entire Agreement.**

- 16.1 These Terms and Conditions, the Schedules and the documents referenced herein contain the entire agreement between the parties with respect to the subject matter hereof, and all previous contracts, purchase orders, proposals, discussions and communications relating to the subject matter hereof are superseded hereby. Except as specifically provided herein, no change or modification of any of the provisions of this agreement shall be effective unless in writing and signed by both parties.

### **SCHEDULE A**

#### **INSURANCE REQUIREMENTS**

- 1.0 Occurrence based cargo insurance with limits of liability not less than \$100,000 per vehicle and for each occurrence or in such greater amount as may be required by regulatory bodies having jurisdiction;
- 2.0 Occurrence based Trucker's Policy or Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence, and Hazardous Materials coverage of not less than \$2,000,000 per occurrence;
- 3.0 Worker's Compensation and Employer's Liability Insurance with limits of liability under the latter of not less than \$1,000,000.
- 4.0 Occurrence based commercial General Liability Insurance, including blanket contractual coverage, for bodily injury and property damage in the amount of \$1,000,000 combined single limit per occurrence, and 5. Any other insurance required by DOT, or any other governmental agency whose rules and regulations may apply to carrier's performance under this Agreement.

#### **CARGO LIABILITY**

The carrier's cargo liability for any one vehicle per occurrence shall not exceed \$100,000.