

**GULF WINDS INTERNATIONAL, INC.,
BROKER TERMS AND CONDITIONS FOR SHIPPER/CUSTOMERS**

The following Terms and Conditions Shall Govern all Broker Services Provided by Gulf Winds International, Inc. to SHIPPER/CUSTOMERS or other Customers (except Motor Carriers providing Transportation or related services), unless such services are subject to a separate executed written agreement between the parties.

WHEREAS, GULF WINDS INTERNATIONAL, INC. (hereinafter referred to as "BROKER") is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) or by appropriate Federal or State agencies, and as a licensed broker, arranges for freight transportation.

WHEREAS, SHIPPER/CUSTOMER or CUSTOMER (hereinafter referred to as "SHIPPER/CUSTOMER/CUSTOMER"), to satisfy some of its transportation needs, desires and/ has elected to utilize the services of BROKER to arrange for transportation of SHIPPER/CUSTOMER's freight.

1. **BROKER SERVICE.** BROKER agrees to arrange for transportation of SHIPPER/CUSTOMER's freight pursuant to the terms and conditions of these Terms and Conditions and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by these Terms and Conditions. BROKER's responsibility under these Terms and Conditions shall be limited to arranging for, but not actually performing, transportation of SHIPPER/CUSTOMER's freight. It is understood that BROKER is retained by SHIPPER/CUSTOMER to arrange for freight transportation by Gulf Winds International, Inc., as a motor carrier, or by third party motor carriers, and that BROKER performs the services under these Terms and Conditions only as a broker and not as a carrier. BROKER may place the shipments with another transportation intermediary or Broker who may ultimately place the shipment with a motor carrier or rail carrier.

2. **SHIPPER/CUSTOMER WARRANTIES.** SHIPPER/CUSTOMER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including any special handling or security requirements, for any shipment. SHIPPER/CUSTOMER warrants it shall provide a full and accurate description of goods to be transported and that such goods are marked and packaged in a manner suitable for transport and in conformance with all rules and regulations, including those pertaining to hazardous materials, where applicable. SHIPPER/CUSTOMER further warrants that any trailers, containers or equipment are not over dimension or overweight, unless specified in the Load Confirmation and Rate Agreement or other written agreement between the parties and SHIPPER/CUSTOMER shall be liable for any damages or permit expenses sustained by Carrier or BROKER for breach of such warranty.

3. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER/CUSTOMER, BROKER agrees to provide SHIPPER/CUSTOMER 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/CUSTOMER. Any insertion

of BROKER's name on the bill of lading or delivery documents shall be for SHIPPER/CUSTOMER's convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any freight documentation used by BROKER or any motor carrier selected by BROKER may not supplement, alter, or modify the terms of these Terms and Conditions (unless such services are governed by a separate written agreement executed between the parties, in which case the terms and condition of such agreement shall prevail).

4. RATES AND PAYMENTS. BROKER shall invoice and collect freight and broker charges from SHIPPER/CUSTOMER in accordance with the rates, charges and provisions set forth in any Load Confirmation and Rate Agreement and any written supplements or revisions that are mutually agreed to between the PARTIES. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon BROKER's invoice to SHIPPER/CUSTOMER and SHIPPER/CUSTOMER's payment to BROKER. SHIPPER/CUSTOMER shall pay BROKER the rates and charges set forth in the Load Confirmation and Rate Agreement or other writings or communications pursuant to these terms. SHIPPER/CUSTOMER agrees to pay BROKER's invoice within 30 days of invoice date without deduction or setoff. In the event of a claim or lawsuit for collection of such charges, SHIPPER/CUSTOMER agrees to pay all reasonable, attorney's fees and court costs. SHIPPER/CUSTOMER agrees it shall not have the right of set off for any compensation due to BROKER or Carrier under any Load Confirmation or Rate Agreement or under these Terms and Conditions against any amount in dispute with Carriers or BROKER concerning claims of any kind.

The Rates set forth in the Load Confirmation and Rate Agreement do not include accessorial services, including but not limited to detention charges, equipment ordered and not used (dry run), re-delivery, and inside pickup/delivery. Such accessorials are subject to the transporting Carrier's standard rates or tariff terms and conditions and shall be billed separately and in addition to the rates reflected in the Load Confirmation and Rate Agreement, unless specified therein. In the event SHIPPER/CUSTOMER cancels a scheduled load before the movement thereof, SHIPPER/CUSTOMER shall pay BROKER a flat fee of \$250.

Payment of the freight charges to BROKER shall relieve SHIPPER/CUSTOMER or other responsible party of any liability to the Carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify SHIPPER/CUSTOMER or other responsible party against such liability.

5. CLAIMS.

A. Freight Claims: SHIPPER/CUSTOMER must file claims for cargo loss or damage with Carrier within nine months from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER/CUSTOMER must file any civil action against the Carrier in a Court of Law within two (2) years from the date the Carrier provides written notice to SHIPPER/CUSTOMER that the Carrier has disallowed any part of the claim in the notice. No claims or allowances for

shortages, damage or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery.

It is understood and agreed that the BROKER is not a Carrier and that the BROKER shall not be held liable for claims including but not limited to (1) loss, damage or delay in the transportation of cargo, or (2) bodily injury or property damage claims asserted by third parties against BROKER, Carrier or SHIPPER/CUSTOMER. All cargo loss, damage or delay claims will be handled by SHIPPER/CUSTOMER directly with the Carrier and its insurance representatives. If payment of any claim is made by BROKER to SHIPPER/CUSTOMER, SHIPPER/CUSTOMER automatically assigns its rights and interest in the claim to BROKER.

SHIPPER/CUSTOMER agrees that only the Carrier shall be liable for cargo loss, delay or damage and that the Carrier's prevailing tariff or terms and conditions shall apply to all such claims, including any limitation of liability. In no event shall BROKER or Carrier be liable to SHIPPER/CUSTOMER for special, incidental, consequential damages that relate to loss, damage or delay to a shipment, or any action, proceeding or dispute arising out of or relating to these Terms and Conditions or its performance or non-performance by either party, including but not limited to loss of sales, income, interest, profit, attorney's fees or other costs.

B. All Other Claims: The PARTIES shall notify each other of all known material details within sixty (60) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available.

C. Limitation of Liability: Unless otherwise agreed in writing, all shipments are subject to a maximum cargo liability (including but not limited to claims for cargo loss, delay or damage) of \$2.50 per pound per article or \$100,000 per truckload shipment, whichever is less. SHIPPER/CUSTOMER/ Customer may obtain rates for shipments with higher released value by accepting and agreeing to payment of excess liability charge, which is available upon request. Otherwise, all shipments are deemed released, and the Carrier's maximum liability is limited to a maximum value not exceeding \$100,000, unless the SHIPPER/CUSTOMER/ Customer declares a lesser value on the bill of lading or other shipping documentation, in which case Carrier's liability shall not exceed said lesser value declared by SHIPPER/CUSTOMER/ Customer. In no event shall BROKER or Carrier be liable for any claim for damages of any sort in excess of available insurance policy limits

6. INDEMNITY. SHIPPER/CUSTOMER shall indemnify BROKER and Carrier and its directors, officers, employees, agents, subsidiaries and other affiliates for, and hold each of them harmless from and against, any and all Losses, Claims or Damages of any nature whatsoever arising from or in connection with (i) the breach of any covenant or agreement of SHIPPER/CUSTOMER contained herein, or (ii) any wrongful or negligent act or omission of SHIPPER/CUSTOMER or with respect to SHIPPER/CUSTOMER'S cargo, including but not limited to claims for bodily injury or property damage to any person arising out of SHIPPER/CUSTOMER'S failure to properly pack, load, stow or otherwise adequately describe or prepare the goods for shipment.

7. **HAZARDOUS MATERIALS.** SHIPPER/CUSTOMER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and §397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER/CUSTOMER is obligated to inform BROKER immediately if any such shipments constitute hazardous materials. **SHIPPER/CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD BROKER HARMLESS FROM ANY PENALTIES OR LIABILITY OF ANY KIND, INCLUDING REASONABLE ATTORNEY FEES, ARISING OUT OF SHIPPER/CUSTOMER'S FAILURE TO COMPLY WITH APPLICABLE HAZARDOUS MATERIALS LAWS AND REGULATIONS.**

8. **HOMELAND SECURITY.** As applicable to each, respectively, BROKER and SHIPPER/CUSTOMER shall comply with state and federal Homeland Security related laws and regulations.

9. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of and these Terms and Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the TERMS shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of these Terms and Conditions for any reason.

10. **INDEPENDENT CONTRACTOR.** It is understood between BROKER and SHIPPER/CUSTOMER that BROKER is not an employee of the Carrier or SHIPPER/CUSTOMER and shall remain at all times an independent contractor. BROKER does not exercise or retain any control or supervision over SHIPPER/CUSTOMER OR CARRIER, its operations, employees, or carriers.

11. **NONWAIVER.** Failure of BROKER to insist upon performance of any of the terms, conditions or provisions of these Terms and Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of these Terms and Conditions, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

12. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under these Terms and Conditions during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER/CUSTOMER or BROKER, provided that the Party so prevented uses its best efforts to perform under these Terms and Conditions and provided further, that such Party provide reasonable notice to the other Party of its inability to perform.

18. **CHOICE OF LAW AND VENUE.** The parties agree that these Terms and Conditions shall be deemed to be entered into in Harris County, Texas and services will be deemed to have been

performed there. All questions concerning the construction, interpretation, validity and enforceability of these Terms and Conditions, whether in a court of law or in arbitration, shall be subject to and governed by the laws of the State of Texas or applicable federal law, irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The Parties agree that any and all disputes under these Terms and Conditions shall be filed in the appropriate state and federal courts located within the State of Texas. Jurisdiction and venue shall be proper in the State of Texas for any and all claims or disputes arising out of any transactions between BROKER and SHIPPER/CUSTOMER. SHIPPER/CUSTOMER agrees that BROKER may, at its option, commence or transfer any legal actions or proceedings to courts having situs within the State of Texas, SHIPPER/CUSTOMER hereby submits itself to the personal jurisdiction of the state of federal courts in Texas and venue for any cause of action shall be in the courts within Texas. SHIPPER/CUSTOMER hereby waives any claims or objections that such courts will be improper or inconvenient forums.

19. DISPUTE RESOLUTION. With the specific exception for Cargo Liability claims whenever any party intends to assert any breach of these terms and conditions, the complaining party shall provide a thirty day written notice that will clearly state the claimed violation or failure and specify the requested remedy sought. Thereafter, should Carrier and SHIPPER/CUSTOMER/Customer not be able to resolve the issue(s) then all parties will commit, within thirty days of the written notice, to have representatives with full authority to resolve the issue, attend a full day mediation in Houston, Texas by a qualified mediator, to resolve any dispute as a condition precedent, before any party may proceed with the filing an action in a court of law. The cost of the mediator will initially be borne equally with recovery of the cost of the mediator to possibly be recovered by agreement.

20. LITIGATION. In the event of a dispute arising out of these Terms and Conditions, the Party's sole recourse after proceeding in good faith with mediation as set forth herein, shall be litigation which shall be filed in accordance with paragraph 8 above within two years from the date of the alleged loss. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief.

21. CONFIDENTIALITY; BACK-SOLICITATION. In consideration of the Broker locating Carriers and arranging for Carrier's to transport SHIPPER/CUSTOMER's freight and in further consideration of disclosing confidential information to SHIPPER/CUSTOMER in the form of vendors, contacts and the like, and other good and valuable consideration, the sufficiency of which SHIPPER/CUSTOMER acknowledges by its signature below, except upon a material breach of these Terms and Conditions by Broker, SHIPPER/CUSTOMER shall refrain from directly soliciting transportation services from Carrier's contracted by Broker during the term of these Terms and Conditions, or for 12 months thereafter, from any Carrier which (i) was not solicited by SHIPPER/CUSTOMER prior to the Effective Date and (ii) actually tenders at least 1 shipment to SHIPPER/CUSTOMER during the term of these Terms and Conditions. In the event of breach of this provision, BROKER shall be entitled, for a period of 12 months following delivery of the last shipment transported by a Carrier referenced above, to a commission of fifteen percent (15%) of the gross transportation revenue (as evidenced by freight bills).

22. **ENTIRE AGREEMENT:** These Terms and Conditions, including the accepted Quote issued by BROKER, Rate Confirmation and Load Sheet to such documents, if any, if any, constitutes the entire agreement intended by and between the PARTIES.