

Dart Advantage Logistics' Terms & Conditions of Brokerage

Dart Advantage Logistics (“DAL” or “Broker”) is a licensed property broker (not a motor, air, water, or rail carrier, and not a freight forwarder) offering personalized services to assist customers in arranging their local, regional, national and international shipping needs. DAL will arrange transportation through carriers selected by and under contract with DAL. These Terms & Conditions of Brokerage supersede all previous contracts and agreements with shipping customers whether express or implied except in the event that DAL and Customer have entered into a written agreement signed by a vice-president or higher of DAL containing terms and conditions different from those set forth herein in which case the conflicting terms and conditions of the written agreement will control. DAL reserves the right from time to time to modify, amend or supplement these Terms & Conditions of Brokerage without notice and any load tendered to DAL will be subject to the Terms & Conditions of Brokerage then effect.

1. Applicability. By tendering freight to Broker, Customer, agrees to the following Terms & Conditions of Brokerage:

2. Definitions.

2.1 “Broker” shall mean DAL who is a licensed BROKER operating under Permit No. 301004 Sub OB, and NOT a CARRIER. As a broker of freight, DAL will undertake to arrange for local, regional, national or international shipments on behalf Customer between various origins and destinations across the globe. To the extent Broker undertakes to arrange international shipments on behalf of Customer, Broker will arrange the shipment in conjunction with a broker or freight forwarder licensed to arrange the transportation of international shipments to the extent required by law. Broker shall comply with any applicable statutory or regulatory surety bond requirements.

2.2 “Carrier” shall mean a motor, air, water, or rail carrier selected by and contracted with Broker who will be utilized to provide Customer with transportation services. All contracted Carriers are licensed and registered to the extent required by applicable law to provide actual transportation of Customer’s freight. Customer understands that Carriers are independent contractors with exclusive control over their respective drivers and employees, and are not agents, employees or authorized representatives of Broker, and, furthermore, Broker is not the agent or authorized representative of the Carriers.

2.3 “Customer” shall mean the party utilizing Broker’s services of arranging for transportation services, including the owner of the goods transported by the Carrier, the shipper, the consignor and the consignee. By accepting brokerage services from Broker, Customer agrees to the Terms and Conditions set forth herein.

3. Independent Contractor and Agency. Customer is and will remain an independent contractor of Broker with respect to the services being performed hereunder. Nothing herein shall be construed to create a legal partnership or joint venture between the parties. Broker shall not be considered an agent of Customer, nor an agent of Carrier for any purpose. Further, Carrier shall not be considered an agent

of Broker, and Customer shall not be considered an agent of Broker. The parties acknowledge and agree that no agency or trust relationship of any kind is created by the use of Broker's services hereunder.

4. Customer's Warranties. Customer warrants to comply with all applicable laws, rules and regulations including but not limited to hazardous material laws, customs laws, import and export laws and governmental regulation of any country to, from, through or over which shipment may be carried. Customer agrees to provide any information required to comply with such laws, rules and regulations and attach to the bill of lading such documents as necessary. Customer warrants that it will not tender freight to Broker any waste of any kind, whether hazardous or non-hazardous without notifying Broker at least seventy-two (72) hours in advance and without fully describing the waste to Broker in writing. Broker assumes no liability to the Customer or to any other person for any loss due to the failure of the Customer to comply with these warranties.

5. Rates and Charges. The rates and charges for the transportation services arranged by Broker shall be in accordance with the rates and charges stated in the Rate Confirmation prepared by Broker and provided to Customer for each individual shipment. To the extent a rate and charge is not agreed to prior to Broker providing its services, Customer and Broker agree that the amount billed by Broker and paid by Customer shall be the rates and charges for that particular service.

6. Payment. All charges for services are payable in US dollars and due within fifteen (15) days of the date of Broker's invoice. If any charges remain outstanding for more than thirty (30) days from the date of Broker's invoice, such charges shall be subject to 1.5% per month interest, or the highest amount allowed by law, whichever is less.

6.1. Freight Charge Indemnification. Broker shall indemnify, defend and hold harmless Customer for any claims for payment for freight charges from Carriers, to the extent Customer has paid Broker in full for the same. Customer shall have no right to offset amounts owed to Broker for any reason.

7. Cancellation Policy. Customer may cancel an arranged shipment up to one (1) business day prior to its scheduled pick up date. There is a \$150.00 cancellation fee for all cancellations made upon less than one (1) business day's prior notice.

8. Bills of Lading. Each shipment tendered by Customer and accepted by Broker shall be evidenced by and subject to the terms, conditions and provisions of a bill of lading or other proof of delivery receipt. If the terms and conditions of the bill of lading or other delivery receipt differ from the Terms and Conditions of Brokerage herein, the Terms and Conditions of Brokerage herein shall govern. Customer warrants that it will not name Broker on the bill of lading as anything other than a broker and agrees that in the event Broker is named on the bill of lading as anything other than a broker it shall not subject Broker to liability above and beyond its liability herein as a property broker. Customer agrees further that naming Broker on the bill of lading is merely an act of convenience for Customer and not in any way intended to change Broker's liability to anything other than a broker. Customer acknowledges and agrees that Broker is not physically hauling any freight and that the Carriers are the ones physically hauling the freight.

9. Hazardous Materials. Customer shall not tender shipments containing hazardous materials (as defined by 49 U.S.C. § 50101, et seq.) for transportation unless Broker is notified of such product prior to its tender and given a Material Safety Data Sheet. Customer agrees to indemnify, defend and hold harmless Broker and its officers, employees, agents and insurers, against all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out of or related to the release of hazardous material, including without limitation, fines or expenses related to the removal or treatment of hazardous material or other remedial action pertaining to the hazardous material under federal or state law. If Customer fails to provide advanced notice prior to tendering hazardous material to Broker or the Carriers, Customer shall be solely liable for any and all claims, liabilities, losses and fines arising out of the transportation of said hazardous material by Carrier.

10. Insurance. Broker warrants that contracted Carriers shall maintain at their own expense, at all times while performing services under these Terms & Conditions of Brokerage, the following minimum insurance coverage:

- i. **Automobile Liability:** \$1,000,000.00 per occurrence.
- ii. **Legal Cargo Liability:** \$100,000 per occurrence.

11. Broker Insurance. Broker warrants that it shall maintain insurance as follows:

- i. **Contingent Automobile Liability:** \$1,000,000.00 per occurrence.
- ii. **Contingent Cargo Liability:** \$100,000.00 per occurrence.

11.1 **Broker Insurance Terms.** Broker's insurance shall be contingent, and secondary to any insurance available to Carriers or Customer. Broker's insurance shall only extend coverage to claims of any kind or nature caused by Broker's negligence. Without admitting liability for any cargo loss, damage, or delay claims, should a court of law or binding arbitration find Broker liable for cargo loss, damage, or delay, Broker's liability shall be the same as if it had been the Carrier under section 13 of these Terms and Conditions of Brokerage, and Broker shall be entitled to the same defenses and liability caps as would have applied to the Carrier under section 13 of these Terms and Conditions of Brokerage.

12. Carrier Access to Facilities. Customer agrees that Carrier shall have no liability for penalties, fines, loss or damage to cargo arising out of improper loading or unloading unless Carrier is given unfettered access to the loading and unloading process.

13. Cargo Claims - Limitation of Liability. Broker and Customer agree that Broker is not a Carrier, and Broker shall not be liable for loss, damage, miss-delivery, non-delivery or delay in transportation with respect to Customer's property arising out of any act, default or omission of the Carrier, Customer or any other person who has an interest in the shipment. The Carrier shall be liable for loss, damage, miss-delivery, non-delivery or delay in transportation in accordance with the provisions below. Notwithstanding the first sentence of this section 13, should Broker be found liable for loss or damage to Customer's property, Broker shall be entitled to the same standard of liability and maximum liability as determined and measured for the Carriers in this Section 13 and below. .

13.1. Truckload Freight Claims. Truckload freight covers shipments where the entire trailer-load is contracted to a single Customer for an over-the-road movement by motor carrier.

13.1.1. Truckload Cargo Loss or Damage. Carrier shall be liable for any loss or damage to shipments that occur while the shipments is in the Carrier's exclusive care, custody and control, and Carrier's liability shall be that of a common carrier under 49 U.S.C. § 14706 (commonly referred to as the "Carmack Amendment") and controlling case law for new equipment, machinery, products or merchandise. The Carrier shall be liable for the full actual value of lost or damaged property; provided, however, that the maximum liability for any single shipment shall not exceed \$100,000.00. For used equipment, machinery, products or merchandise the Carrier shall be liable for the full actual value of the lost or damaged property; provided, however, that the maximum liability for any single shipment shall not exceed \$0.10 per pound.

13.2. Less Than Truckload ("LTL") Freight Claims. LTL freight refers to shipments in which Customer's freight is mixed with the freight of other Shippers/Customers in a single trailer-load.

13.2.1. LTL Cargo Loss or Damage. Broker warrants that all Carriers transporting less than truckload shipments arranged by Broker are covered by Carrier, at Carrier's expense, at a liability limitation level based on the Carrier's current rate classification system. Liability limitations depend on the type of freight, weight, volume, shipping characteristics, lane, packaging, shipment requirements, and rates. Customer may request from Broker the name of the Carrier that will be providing services prior to the dispatch of a load so that the Customer may view the Carrier's liability limitations. In no event shall the Carrier's liability for loss or damage to property exceed \$100,000 per occurrence.

13.3. Water Freight Claims. Water freight refers to shipments while transported via water carrier (including ocean, inland water, and sea) and via any pick up and delivery motor carriers performing pick up and delivery services of a water shipment on a through bill of lading. Water Carriers transporting shipments shall be governed by the Water Carrier's then applicable terms of service document. Customer may request from Broker the name of the Water Carrier that will be providing services prior to the dispatch of a load so that the Customer may view the Water Carrier's liability limitations. In no event shall the Water Carrier's liability for loss or damage to property exceed \$500 per package or customary freight unit.

13.4. Air Freight Claims. Air freight refers to shipments while transported via air carrier and via any pick up and delivery motor carriers performing pick up and delivery services of an air shipment. Air Carriers transporting shipments shall be governed by the Air Carrier's then applicable terms of service document. Customer may request from Broker the name of the Air Carrier that will be providing services prior to the dispatch of a load so that the Customer may view the Air Carrier's liability limitations. In no event shall the Air Carrier's liability for loss or damage to property exceed \$10,000 per occurrence.

13.5. Rail Freight Claims. Rail freight refers to shipments while transported via rail carrier. Rail Carriers transporting shipments shall have the same liability as rail common carriers, and such liability shall be governed by the Rail Carrier's then applicable terms of service document. Customer may request from Broker the name of the Rail Carrier that will be providing services prior to the dispatch of a load so that the Customer may view the Rail Carrier's liability limitations. In no event shall the Rail Carrier's liability for loss or damage to property exceed \$100,000 per occurrence.

13.6 Multi-Modal Freight Claims. Multi-modal freight refers to shipments transported via more than one mode of transportation, such as, but not limited to, a shipment transported via water and motor carrier. Any mode of carrier transporting multi-modal shipments, regardless of the origination or destination of the shipment, shall have the same liability as the lowest maximum liability of any mode used within the transport of the shipment, regardless of where the loss or damage occurred. By way of an example, and not as a limitation, if a shipment is transported by a Water Carrier, a Rail Carrier, and a Motor Carrier, the Motor Carrier's liability and the Rail Carrier's liability shall be the same as the Water Carrier's (\$500 per package or customary freight unit) because the Water Carrier has the lowest maximum liability of any mode used within the transport of the shipment. This section 13.6 shall apply regardless of whether or not any through bill of lading is issued, or if the shipment contains separate bills of lading for each mode.

13.7. Increased Liability Limitation. For any mode of transportation Customer may elect higher liability limitations for claims for cargo loss, damage, miss-delivery, non-delivery or delay by notifying Broker at the time of shipment tender, or at least seventy-two (72) hours in advance of shipment pick-up, whichever is earlier. Customer shall pay \$50.00 per \$1,000.00 of liability protection Customer desires over the limitations outlined above. Declaration of a higher value on a bill of lading or other shipping document without paying the increased liability charge shall not bind Broker or Carrier to any liability limitation other than provided above. In no event shall any carrier of any kind be liable for delay, special, or consequential damages of any kind.

13.8. International Shipments. To the extent any shipments enter into or leave from a sovereign nation including but not limited to Mexico or Canada, Carrier shall not be responsible for any loss or damage to any shipments, or liability of any kind for injury to persons or damage to property, occurring in or caused by transportation or other services provided within the sovereign nation's borders. Customer acknowledges and agrees that foreign laws apply to the foreign portion of any shipment, **and the parties expressly waive all rights, duties, obligations, and standards of liability otherwise applicable under these Terms & Conditions of Brokerage for any such movements or portions thereof.** If Customer wishes to elect higher or more extensive liability coverage from Carrier for any loss, damage, or liability of any kind arising out of or occurring within foreign borders, Customer shall notify Carrier in writing 24 hours prior to tendering the shipment to Carrier and the parties shall negotiate a specific rate and liability limit for that shipment in writing.

14. Filing of Cargo Claim. Claims for loss or damage must be filed with Carrier in accordance with 49 C.F.R. Part 370. Broker may facilitate the processing of claims at the request of the parties, and in such event Customer agrees to provide any documentation requested by Broker. While not obligated to

for any reason, should Broker choose to pay Customer for any freight claims of any kind, by making such payment Customer assigns any and all rights to the property and any claims against Carriers related to the same, and Customer agrees to fully cooperate in such claims against Carriers.

15. Claims for Undercharge, Overcharge or Duplicate Payment. The Provisions of this Section will govern the processing of undercharge, overcharge or duplicate payment claims for freight invoices. Part 378 of Title 49 CFR and in Sections 13710 and 14705 of title 49 USC will govern in the event this Section does not specifically set forth a provision necessary for processing overcharge, undercharge or duplicate payment claims.

15.1 Filing Methods and Time Limit.

15.1.1. Undercharge or Overcharge Claims. Broker or Customer must file proper claim for undercharge or overcharge of the original freight invoice in writing or by electronic communication within one hundred eighty (180) days after receipt of the original freight invoice for the shipment.

15.1.2. Duplicate Payment Claims. Broker or Customer must file proper claim for refund or duplicate payment in writing or by electronic communication within one hundred eighty (180) days after duplicate payment of the disputed invoice of the shipment.

16. Indemnification. Customer agrees to release, indemnify, hold harmless and defend Broker against any and all claims, demands, suits and liability (collectively "Claims") arising from Customer's negligence related to its obligations under these Terms & Conditions of Brokerage and any shipment offered for transportation hereunder. Broker agrees to indemnify, hold harmless and defend Customer against any Claims (except cargo claims which are governed by section 12 above) to the extent Claims are caused directly by the negligence of Broker. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party, nor for any special, or consequential damages (except for claims brought by third parties).

17. Force Majeure. The obligations of the parties under these Terms and Conditions of Brokerage shall be temporarily suspended during any period in which either party is unable to reasonably comply with the provisions of the Terms and Conditions by reason of acts of God, acts of public authority, acts of a public enemy, fire, flood, labor strike or disorder, civil commotion, closing of the public highways, or other contingencies, whether similar or dissimilar to those named, beyond the reasonable control of such party.

18. Signature Authority. Except strictly for the offer and acceptance of rates for services only individuals with titles of Vice-President or higher are authorized to sign for or on behalf of Broker and the signature or authorization of any other individual is not binding on Broker or valid.

19. Governing Law. Broker and Customer agree these Terms and Conditions of Brokerage shall be governed by the laws of the State of Minnesota. Any and all disputes hereunder shall be venued in the

Dakota County District Court, Dakota County, Minnesota, without regard to conflict of laws or venue challenges.

20. Disclaimer. Broker will do its best to provide Customer with transportation services that meet its needs at the best rates for those services; however, Broker makes no guarantee that those rates are the lowest possible prices compared to other brokers or other shippers.

21. Non-Exclusivity. These Terms and Conditions of Brokerage apply on a non-exclusive basis to Customer shipments. Every shipment tendered or caused to be tendered to Broker will be subject to the Terms and Conditions hereof. Broker is free and able to provide brokerage services to any person or entity and Customer(s) are free and able to utilize other persons or entities for brokerage or transportation services.

22. Severability. The invalidity of any term and/or part of these Terms and Conditions of Brokerage shall not invalidate or otherwise affect any other terms and/or parts hereof.

23. Amendment. These Terms and Conditions of Brokerage may be updated at anytime by Broker. Customer's continued use of Broker's services after such update shall be considered Customer's agreement to the updated Terms and Conditions of Brokerage.