



Rates and services are provided subject to the terms and conditions of the "Standard Terms of Service" ("STOS") of Tucker Company Worldwide, Inc. The STOS may be found at [www.tuckerco.com/stos](http://www.tuckerco.com/stos)

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### **Standard Terms of Service (Domestic U.S.A)**

These standard terms of service ("STOS") are effective and shall apply to all shipments arranged or coordinated by Tucker Company Worldwide, Inc. (hereinafter "Tucker" "us" "we" "our" or "Broker"), to the extent that no other written agreement concerning this subject matter is in effect between Tucker and any shipper, or between Tucker and any carrier. In the event that another written agreement is in effect, where any term of that agreement conflicts with these STOS, the other written agreement shall prevail. By using Tucker, you agree to be bound by these STOS for all applicable freight shipments. Please read these STOS carefully. We reserve the right at any time, and at our sole discretion, to modify or delete these STOS without prior notice. A Shipper's tender of freight to Tucker, or a Carrier's accepting a tender from Tucker, constitutes acceptance of Tucker's STOS current as of the date of tender.

The following are the agreed STOS for any shipment arranged by Tucker, where Tucker's arrangement includes hiring a motor carrier to pick up at origin within the U.S. and deliver to destination within the U.S.

#### **A. PARTY DEFINITIONS**

Parties to these STOS include Shipper, Broker (*i.e.*, Tucker), and Carrier.

- 1. Shipper:** A Shipper owns, possesses, or otherwise controls the rights to tangible property (herein also "shipment," "load," "property," "freight" or "cargo"). Shipper may be located at origin, destination, or some other location. Shipper is a person or entity who hires Tucker to arrange for the transportation of freight, such transportation to be performed by a licensed Motor Carrier acting as an independent contractor hired by Tucker. Tucker is not an agent for the Shipper and shall remain at all times an independent contractor hired by Shipper. A Shipper may specify to Tucker required services, service preferences, equipment types, shipment dimensions, special handling requirements, preferences for reports and other data, and/or communication methods ("Shipper Specifications") concerning Tucker's services as a broker and/or concerning Carrier's services as a carrier. Shipper Specifications are recognized by Tucker and Shipper as ordinary customary service preferences only. Shipper Specifications do not in any way impact the independent contractor relationship between Shipper and Tucker, or between Tucker and Carrier, and shall not constitute or imply a Shipper's right to exercise any control whatsoever over Tucker's business operations, or any of Tucker's employees, directors, officers, agents, contractors or servants, including without

limitation any Carrier or any of Carrier's drivers, employees, directors, officers, agents, contractors or servants.

**2. Broker:**

- a. Tucker operates as a federally licensed property ("freight" or "transportation") broker, under authority granted by the U.S. Department of Transportation ("USDOT"), and the Federal Motor Carrier Safety Administration ("FMCSA"), MC number 130735. See 49 U.S.C. §13102(2), *et seq.* Tucker is not a motor Carrier. Tucker holds no ownership interest in any motor Carrier. Tucker has not in the past, and does not now, own, lease, manage, supervise, operate or control any transportation equipment or drivers/operators of such equipment. No interpretation of written or oral remarks in any agreement or document shall be construed to imply Tucker is a motor Carrier, or that Tucker is subject to the regulatory or legal requirements or liabilities of a motor Carrier. Tucker's sole authority, and sole duty, is to arrange for the transportation of freight by a Motor Carrier that is authorized to operate by the federal government or by a state government. As a broker, Tucker does not take possession, custody or control of any freight. Tucker does not assume any possessory rights or obligations, nor assume any financial responsibility whatsoever, for freight, including loss and damage liability.
- b. Tucker arranges for the pick up and delivery of freight tendered by a Shipper. A Carrier, or multiple Carriers, will physically transport the freight. Tucker will operate in compliance with federal, state and local laws and regulations concerning freight brokerage. Tucker's duty shall be limited to arranging for, not actually performing, freight transportation services. Tucker and Shipper may mutually agree in writing for Tucker to perform other services from time to time. Such services may include, without limitation:
  - i. Direct services to Shipper as NVOCC or Ocean Freight Forwarder
  - ii. Arranging for non-trucking services to be performed by an independent contractor, such as rail, air or ocean transportation; intermodal services, drayage, rigging, warehousing, packing, stripping, or similar services.
- c. Other than its directors and officers, who work out of Tucker's headquarters located at 56 North Haddon Ave., Second Floor, Haddonfield, NJ 08033, and Tucker's authorized full-time employees, Tucker does not maintain any relationship with any agent or representative who is authorized to act on Tucker's behalf, including by binding Tucker to any legal agreement.

**3. Carrier:**

- a. Motor Carrier, or Carrier, means a for-hire motor carrier or a private motor carrier with authority issued by the federal government or any state government to haul freight for third-parties. The term includes a Carrier's drivers, whether employees or independent contractors, as well as a Carrier's agents, officers and representatives. A Carrier hired by Tucker is solely responsible for screening, selecting, hiring, training, supervising, managing, assigning, and dispatching drivers. A Carrier hired by Tucker is solely responsible for the inspection and maintenance of motor vehicle equipment and accessories. Motor vehicle means any vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used on the highways and roadways in the transportation of property, as determined by the FMCSA, or other regulatory authority, but does not include any vehicle, locomotive,

or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

- b. Tucker is not an agent for any Carrier. No Carrier is ever an agent for Tucker. As a convenience to customers, and to ensure Tucker is paid correctly and to gain the confidence of Tucker's customers that its customers will not be billed a second time for the same shipment, Tucker's written contract with Carriers contains a limited provision where the Carrier authorizes Tucker as agent solely for the collection of freight payment from Shippers.

The sole purpose of this term is to provide that Shippers' payments are considered paid in full once paid to Tucker, and to provide that Carriers may have no collections recourse to Shippers.

- c. This provision is not intended in any way to create or imply any other agency relationship between Tucker and its contracted Carriers. Accordingly, Tucker is not to be considered anything other than a licensed property broker, operating independently from any motor carrier operations. At all times, Tucker and Carrier shall maintain an independent contractor relationship. From time to time, Tucker or Shipper may request from a Carrier certain services, data, reports, and/or may express preferences relating to Carrier's performance of services. These requests are acknowledged by Tucker and Shipper and Carrier as service requests only. Carrier is solely responsible for its own actions, omissions, training, oversight, compliance with regulatory and safety requirements, and all management of Carrier's equipment, services, drivers, employees, contractors, agents and servants. A Carrier hired by Tucker maintains sole control over the methods and results by which it performs freight transportation services, and retains the sole duty to provide, maintain, manage and control the equipment, personnel, and expertise required to transport a Shipper's freight.

## **B. SHIPPER RESPONSIBILITIES**

1. **Shipper Load & Count:** Unless otherwise agreed in writing, or otherwise specified by law or regulation, it is Shipper's sole responsibility to load, block and brace freight into Carrier's equipment to prevent damage during transit. Likewise, Shipper shall bear sole responsibility to count freight tendered to Tucker and transported by Carrier. Shipper shall be responsible for marking bills of lading as Shipper Load & Count.
2. **Freight Descriptions and Disclosures:**
  - a. **General.** Shipper shall disclose to Tucker all information reasonably necessary for Tucker to arrange transportation in compliance with applicable regulatory, legal and industry standards. Shipper shall also be responsible and liable for providing accurate description of cargo including without limitation commodity type, dimensions and weight, and any special handling requirements.
  - b. **Shipment Value.** Shipper understands and acknowledges (a) Shipper's declared value of any shipment will limit and define Carrier's exposure to liability for cargo loss or damage for that shipment; (b) Carrier has a right to evaluate risk before accepting tender of any freight; and (c) Carrier is not required to maintain

more than \$25,000 in cargo insurance. Unless otherwise agreed in writing between Shipper and Tucker, Tucker will hire trucks that provide proof of at least \$25,000 of cargo insurance. Accordingly, Shipper agrees that, upon tender of any shipment valued in excess of \$25,000, Shipper shall disclose in writing to Tucker the value of that shipment, and allow Tucker time to arrange with Carrier the opportunity to (i) properly insure against cargo loss or damage liability in excess of \$25,000 and/or (ii) limit Carrier's exposure to such liability to a defined dollar amount, or (iii) refuse tender of the shipment.

- c. Shipper must receive from Tucker a written acknowledgement, prior to shipment pick-up, confirming Carrier's acceptance of Shipper's declared value. Shipper's indication of declared cargo value on a bill of lading or shipping receipt, without such written acknowledgement from Tucker, shall not satisfy Shipper's requirement to notify Carrier, and shall not indicate Carrier's acceptance of the declared value of the cargo. Unless otherwise agreed in writing, Shipper assumes risk of loss for value of freight which exceeds Carrier's insurance limit of \$25,000.
  - d. **Hazardous Materials.** Shipper 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.* Shipper is obligated to inform Tucker well before pick up of any tendered shipment that includes hazardous materials, so that Tucker may hire Carriers equipped and licensed to haul hazardous materials. Shipper shall defend, indemnify and hold Tucker harmless from any penalties or liabilities of any kind, including reasonable attorney fees, arising out of Shipper's failure to comply with applicable hazardous materials laws and regulations, and/or Shipper's failure to disclose hazardous materials.
3. **Carrier and Driver Identification Verification:** Prior to loading and releasing Carrier from Shipper's facility, it is Shipper's responsibility to verify that the Carrier's name on the truck matches the Carrier name that Tucker has advised will be picking up the shipment, and matches the Carrier name on the bill of lading. Likewise, it is Shipper's responsibility to verify the identity of the driver. In the event of discrepancy, Shipper shall notify Tucker immediately to resolve any discrepancy before releasing freight to the Carrier. Failing such notice to Tucker, Shipper assumes all risk of loss, delay or damage associated with Shipper's decision to release the freight.
4. **Freight Securement, Block and Brace:** Shipper shall bear the sole responsibility to review and accept or deny the Carrier's trailer for cleanliness, odor, leaks, dirt or other conditions that may be unacceptable to Shipper or Consignee or other interested party. If a trailer or any equipment is unacceptable, it is Shipper's obligation to prohibit loading the trailer. In such event, Shipper shall notify Tucker immediately and request alternative arrangements. Unless otherwise agreed in writing, or otherwise specified by law or regulation, it is Shipper's sole responsibility to load, block and brace freight into Carrier's equipment to prevent damage during transit.

5. **Receipts, Bills of Lading, Shipping Documents:** Shipper's insertion of Tucker's name on a receipt of goods, bill of lading, manifest, or any other shipping document, shall be understood by the parties to be for the Shipper's convenience, or due to Shipper's oversight only, and shall not operate to alter Tucker's status as a property broker, nor the Carrier's status as the responsible Carrier. The signature or stamp or other visible imprint, seal or mark of a Carrier's driver on any such document shall be sufficient evidence that Carrier is the entity taking possession of, and responsibility for, the freight. Physical possession of a Shipper's freight, even without such signature, shall be sufficient evidence that the Carrier is the entity taking possession of, and responsibility for, the freight. The signature of a Carrier's driver on any shipping document shall not be construed in any way to suggest that the driver is an employee, agent or servant of Tucker, or in any way controlled by Tucker. The terms and conditions set forth in any such shipping document used by Tucker, or a Carrier, or a Shipper, shall not supersede, alter, or modify any term of these STOS or add any liability or responsibility to Tucker.
6. **Truck Ordered, Not Used:** In cases where a shipper orders a truck from Tucker and Tucker arranges for a Carrier's equipment and driver to move into place before the shipper subsequently cancels the shipment, Shipper shall be subject to a charge to compensate Carrier for out of pocket costs. "Truck Ordered, Not Used" charges shall not apply in reverse, where Shipper attempts to charge a Carrier for the Carrier not showing up, unless an agreement for such charges, in writing between all parties (Shipper, Tucker and Carrier), was executed before or at the time freight was tendered to Tucker by Shipper.
7. **Detention:** Carriers generally allow up to 2 hours of "free" waiting time at each origin and destination for truckload shipments, to allow for loading and unloading of cargo. Time saved at origin may not be applied to time spent at destination. When a trucker waits past 2 hours, the truck enters "detention," whereby the shipper is responsible for a nominal hourly rate for each hour that accumulates after the expiration of free time. If a Shipper or consignee causes a truck to enter detention, then the entity responsible for hiring Tucker to arrange the freight must also pay detention charges, whether or not that entity caused or contributed to the delay. In other words, Tucker will invoice its Shipper customer for any and all detention relating to its shipments, and will not invoice a third-party. Shipper shall pay Tucker, and may seek reimbursement for such charges from its vendor or customer, if Shipper chooses.
8. **Other Accessorials:** Shipper understands and acknowledges that, from time to time, accessorial charges (in addition to Detention) may be charged by Carrier. In such events, Shipper shall be responsible for such charges. By way of example, and without limitation, accessorials may include fuel surcharge, tolls, demurrage, labor (driver load/unload or lumper services), tarping, permits for over-dimensional freight.
9. **Payment:** Tucker shall invoice Shipper in accordance with the rates, charges and fees agreed to from time to time between Tucker and Shipper. Unless otherwise mutually agreed in writing, Shipper agrees to pay Tucker's invoice on terms of net 10 days from

invoice date (date of pickup), without deduction or setoff by Shipper for any reason, including in cases of loss, damage or delay. Tucker shall apply payment of amount due to the specified invoice, regardless whether there are earlier unpaid invoices. Shipper shall be liable for past due invoices which will accrue interest at 1.5% per month from due date, as well as interest, legal and collection costs, expenses and fees, including, but not limited to, legal fees incurred by Tucker.

**10. Claims for Loss, Damage, Delay:**

- a. Shipper must file any claims for cargo loss, shortage or damage against Carrier with Tucker within the time specified in Carrier's standard terms of service or tariff, and in no event will such claim be allowed if filed later than nine (9) months after the date of such loss, shortage or damage. See 49 U.S.C. §14706(e). To be valid, any claim for loss, damage, delay must meet the three (3) conditions below:
  - 1) It must be filed with Tucker and against Carrier in writing; and
  - 2) It must include a clear demand for payment, and a specified dollar amount of the claim; and
  - 3) It must identify the shipment sufficiently to allow carrier to conduct an investigation. See 49 C.F.R. §370.3 (b)
- b. For purposes of these STOS, date of loss shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. The notation of loss or damage on bill of lading at the time of delivery does NOT constitute the filing of a claim. A claim should be filed immediately in writing with the Carrier and copy to Tucker. Tucker is available to assist the Shipper with the processing of such claims against Carrier. Shipper shall waive its right to file a civil action against Carrier arising from a claim for cargo loss or damage unless Shipper files such an action within two (2) years after the date that Carrier provides written notice to Shipper that Carrier has disallowed or offered settlement of any part of the claim in the notice. See 49 U.S.C. §14706(e).
- c. When receiving freight at time of delivery, it is the Shipper's sole responsibility to carefully inspect the freight for loss or damage and to document the nature of the loss or damage on all copies of the bill of lading before the Carrier's driver leaves the premises. Failure to properly notate loss or damage on the bill of lading may provide grounds for denial of a claim.
- d. When freight is damaged, it is the legal responsibility of both Carrier and Shipper and owner to protect the cargo from further damage until all interested parties have reasonable opportunity to inspect or waive inspection. Destruction and/or repair of freight without prior authorization from Carrier and/or its insurance company may provide grounds for denial of the claim. A Shipper's providing photographs does not waive Carrier's inspection rights. Shipper hereby

acknowledges Shipper's common law duty to mitigate and, after honoring Carrier's right to inspect, Shipper shall make all reasonable efforts to reduce the magnitude of any claim for cargo loss or damage against Carrier.

- e. Though the Carmack Amendment, 49 USC 14706, imposes full value cargo liability on Motor Carriers, FMCSA does not require Motor Carriers to maintain any cargo loss or damage insurance. Tucker will only hire carriers who provide proof of a minimum of \$25,000 in cargo insurance. The lack of coverage due to a policy lapse, exclusions or conditions in the Carrier's insurance coverage shall not exonerate the Carrier from full value liability, subject to the limits set forth herein.
  - f. For rail shipments (intermodal or box car), less-than-truckload shipments (LTL), and airfreight shipments, the "full value rule" under the Carmack Amendment shall not apply. Unless agreed in writing, such shipments are transported at "released" cargo value, or a maximum cargo value, which will not exceed the Carrier's maximum liability for such a shipment. This value may be less than the full value of the cargo. The liability rules published by the Carrier shall govern the liability of the Carrier. Additional insurance may be available, but must be requested in advance and agreed in writing by both Shipper and Carrier. A Shipper's statement of value either orally or in writing, does not imply an agreement or obligation for Carrier to provide additional insurance.
  - g. While Tucker processes cargo loss and damage claims against Carriers on behalf of Shippers (as a free service to both parties), in no case shall Tucker assume liability for any cargo loss or damage claim.
- 11. All Other Claims:** Shipper and Tucker shall each notify the other party of all known material details within sixty (60) days of receiving notice of any claim other than a claim for cargo loss, shortage or damage, and shall update the other party promptly thereafter as more information becomes available. Civil action, mediation or arbitration, if any, shall commence within two (2) years after the date either party provides written notice to the other party of such a claim. Thereafter, such claims shall be barred from litigation, mediation or arbitration.
- 12. Warehousing:** From time to time, a Shipper may ask Tucker to arrange warehouse services in connection with a movement of freight. In such cases, as a courtesy and for Shipper's convenience, Tucker will research, locate and source a warehouse service provider ("WSP") and refer such provider to Shipper. In some cases, for convenience, the Shipper may request that Tucker be the point of contact for communicating service requirements, possibly including billing and payment services between Shipper and WSP. In some cases, the Shipper and WSP may work together directly, without Tucker as a point of contact for service and/or billing. Regardless of the nature of relationship, should Shipper choose to hire the referred WSP, Tucker will require Shipper to enter into a written agreement with the provider setting forth all terms, conditions, and liabilities as

between Shipper and provider – including liabilities for property loss or damage. Tucker may charge a referral commission for sourcing an independent contractor WSP; however, Tucker will not be a party to any agreement between Shipper and WSP, and Shipper will execute such agreement at Shipper's sole discretion and sole risk. Tucker will make no representation or warranty with respect to such provider, will assume no responsibility for the performance of such provider, and will assume no liability for any kind of loss, damage, delay, injury or other claim arising from or relating to the performance of such provider.

**13. Leased Equipment:** From time to time, a Shipper may request or authorize the lease or rental of equipment for use in connection with a Shipper project. Examples include temporary storage trailers or portable refrigeration units to be used by Shipper or a contractor of Shipper's at a work site. In such cases, as a courtesy and for Shipper's convenience, Tucker will research, locate and source a provider of such equipment, and refer such provider to Shipper. In some cases, for convenience, the Shipper may request that Tucker be the point of contact for communicating service requirements, possibly including billing and payment services between Shipper and provider. In some cases, the Shipper and provider may work together directly, without Tucker as a point of contact for service and/or billing. Should Shipper choose to rent or lease equipment from the referred provider, Tucker will require Shipper to enter into a written contract with the provider setting forth all terms, conditions, and liabilities agreed between Shipper and provider – including liabilities for damage to the rented or leased equipment. Tucker may charge a referral commission for sourcing an independent contractor provider; however, Tucker will not be a party to any agreement between Shipper and provider, and Shipper will execute such agreement at Shipper's sole discretion and sole risk. Tucker will make no representation or warranty with respect to such provider, will assume no responsibility for the performance of such provider, and will assume no liability for any kind of loss, damage, delay, injury or other claim arising from or relating to the performance of such provider.

**14. Default and Dispute Resolution:**

- a. In the event of a dispute arising out of these STOS, a party's recourse shall be to arbitration or litigation by agreement of the parties or, where no such agreement is reached, by Tucker's choice. Arbitration proceedings shall be conducted under the rules of the American Arbitration Association (AAA), Transportation ADR Council, Inc. (ADR) or Transportation Arbitration and Mediation PLLC (TAM), as agreed by the Parties, or by Tucker's choice where no agreement is reached.
- b. Upon agreement of the parties, arbitration proceedings may be conducted outside of the administrative control of the AAA, ADR, or TAM. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as

well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at such place as mutually agreed upon in writing by the Parties, or directed by the Arbitration Association, or by teleconference or video conference on agreement of the Parties and consent of the Arbitrator . At any time, either party may apply to a court of competent jurisdiction for injunctive or other equitable relief. In the event that either party is granted equitable relief, the party against whom judgment is entered shall be liable for all costs and expenses incurred by the prevailing Party including, but not limited to, reasonable attorney fees. This paragraph shall not apply to enforcement of an award of arbitration.

- c. The parties may also proceed in Small Claims Court in Camden County, New Jersey to resolve any dispute where reasonably expected damages are less than \$3,000.00. Unless preempted or controlled by federal law and regulations, this agreement shall be interpreted and enforced according to the laws of the State of New Jersey. Shipper and Carrier waive any objection to jurisdiction or venue in New Jersey.
- d. Litigation may be commenced by Tucker in any court in New Jersey, and Shipper and Carrier waive any objection to jurisdiction or venue in New Jersey. Unless preempted or controlled by federal law and regulations, this agreement shall be interpreted and enforced according to the laws of the State of New Jersey.

**15. Back Solicitation:** During the term of this Agreement, where Tucker introduces a Carrier to a Shipper, Shipper agrees to deal with that Carrier only through Tucker's offices, and with the direct involvement and knowledge of Tucker. Tucker's contracts with Carriers prohibit Carriers from soliciting, or accepting any direct, or indirect, dealings initiated by any Shipper first introduced to Carrier by Tucker. This provision shall survive the termination for any reason of any business relationship between Shipper and Tucker for two (2) years.

**16. Indemnity:** Subject to the insurance limits set forth in Paragraph C (3) herein, Tucker and Shipper shall defend, indemnify and hold each other harmless from all claims, actions, damages of any kind, fines and penalties arising out of the parties' respective performances under these STOS, including without limitation cargo loss, shortage, damage or delay, and payments to Carriers provided, however, the indemnified party shall not offer settlement of any such claim without the agreement of the indemnifying party, which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to settlement of any such claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligations. Shipper shall not be liable to Tucker for negligent or intentional acts of Tucker, and Tucker shall not be liable for negligent or intentional acts of Shipper. Neither shall be liable to the other for negligent or intentional acts of Carrier. The obligation to defend shall include all costs of defense, as they accrue, including reasonable attorneys' fees.

17. **Homeland Security:** As applicable to each party respectively, Tucker and Shipper shall comply with all state and federal laws and regulations concerning or relating to Homeland Security.

### **C. TUCKER RESPONSIBILITIES**

1. **Compensation:** Tucker shall pay Carrier within thirty (30) days of receipt of Carrier's undisputed invoice and POD. Unless otherwise agreed in writing, Tucker's sole compensation for services provided under these STOS shall derive from purchasing transportation services for less than Tucker sells the same services to Shipper. The difference between the price paid by a Shipper to Tucker and the price paid by Tucker to Carrier, or other provider(s), represents Tucker's total compensation (or loss) for each shipment.
2. **Carrier Selection:** Tucker establishes and follows written procedures to evaluate Carriers prior to their use by Tucker, and Tucker continues to evaluate certain Carriers at certain intervals, as set forth by Tucker's internal risk management and Carrier selection policies, which may be amended from time to time with or without notice to Carriers or Shippers. Tucker represents that it is not a governmental agency and therefore Tucker cannot and does not in any way guarantee the relative fitness, compliance record of, or current or future safety performance of, any Carrier or its drivers, and Tucker is not responsible in any way for the acts and/or omissions of Carriers or their drivers. The FMCSA, an agency of USDOT, is responsible for licensing, monitoring and enforcing safety and regulatory compliance for interstate Carriers. The respective states are responsible for same with respect to intrastate Carriers. Any Carrier with active operating authority granted by FMCSA or any state, who can provide proof of insurance, who does not have an "Unsatisfactory" safety rating (or its equivalent) from FMCSA, and who does not have an out of service order from FMCSA, is authorized to operate on the nation's roadways. FMCSA, together with other federal, state and local law enforcement agencies, bear sole responsibility for determining the fitness, including the safety fitness, of all authorized carriers, and for enforcing all applicable laws and regulations, including without limitation, those concerning the maintenance and operation of carrier equipment, driver training, licensing, and fitness, hazardous materials, and Hours of Service.

As a condition of hiring any Carrier to transport Shipper's freight, Tucker and Carrier will execute a written contract, wherein Carrier represents and warrants, among other things, the following items intended to protect Tucker and directly or indirectly protect Tucker's Shipper customers:

- a. Carrier shall, throughout the term of its contract with Tucker, comply with all applicable federal, state and local laws and regulations, including without limitation safety regulations, driver requirements and all applicable insurance requirements. At no time will Carrier have an "Unsatisfactory" safety rating (or its equivalent) issued by FMCSA.
- b. Carrier shall provide the proper equipment, personnel, expertise, supervision and oversight required to safely pick up and deliver Shipper's freight.

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- c. Carrier shall defend, indemnify and hold harmless Tucker and Shipper, to the full extent permitted by law, from all damages, claims or losses arising out of Carrier's acts or omissions, including without limitation cargo loss and damage, theft, delay, violations of law or regulation, damage to property, personal injury or death.
  - d. Carrier shall acknowledge that its liability for cargo loss or damage shall be no less than that of a Common Carrier, as provided for in 49 USC 14706 (the "Carmack Amendment"). Carmack provides Shippers with cargo loss & damage protection at full invoice or replacement value. Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability.
  - e. Carrier agrees that Tucker is the sole party responsible for payment of Carrier freight charges for shipments arranged by Tucker. Carrier shall not seek payment from Shipper or from any other party for any shipment arranged by Tucker.
  - f. Carrier agrees that it will neither initiate nor accept any direct or indirect business relationship with any Shipper that was first introduced to Carrier by Tucker, and will rely on Tucker, and respect Tucker's position as Broker, in any dealings with a Shipper first introduced by Tucker to Carrier. A Carrier's legal obligations in this regard extend to instances where the Shipper contacts the Carrier and seeks to establish a business relationship that does not include Tucker.
3. **Broker's Insurance:** Tucker agrees to maintain at its own expense, at all times, at least the following insurance coverage amounts:
- a. General Liability Insurance                   \$ 1,000,000
  - b. Auto Liability Insurance                     \$ 1,000,000
  - c. Contingent Cargo Insurance                 \$ 100,000

Upon request, Tucker may provide insurance coverage amounts that exceed these limits, and the evidence of such shall be in the form of an insurance certificate provided to Shipper. Tucker's maximum liability to Shipper or Carrier for any loss shall be limited to Tucker's insurance policy terms and conditions and the dollar amounts for coverage set forth in this paragraph.

4. **Tucker's Contingent Cargo Insurance:** Tucker's Contingent Cargo insurance ("CCI") is subject to the terms, conditions and certain limitations and/or exclusions as contained in the CCI policy, and the terms, conditions and requirements as outlined within these STOS, which are subject to change at any time. Tucker's CCI is intended to operate when either a Carrier or a Carrier's insurance company, or both, fail(s) to respond to a valid claim for loss, shortage, damage or delay filed by Shipper against a Tucker-hired Carrier. Accordingly, all claims by Shipper for loss, shortage, damage, or delay will be filed with the Carrier directly, with a copy to Broker. In the event that a Carrier and/or its insurer does not to respond to a claim or satisfy a valid claim, Tucker's CCI may be available to help resolve the claim. Any Shipper's name which may be listed as "additional insured" on Tucker's CCI certificate is provided as a convenience only, and does not alter in any way, Tucker's and the Shipper's independent contractor status between one another, nor does it imply the assumption of liability by Tucker.

The existence of Tucker's CCI in no way shifts or places any legal or contractual liability on Tucker, nor does it exonerate the Carrier's duty and liabilities under the Carmack Amendment, the Carrier's contract with Tucker, or these STOS.

5. **Surety Bond**: By law, prior to October 2014, Tucker is required to maintain a USDOT surety bond in the amount of \$10,000 and \$75,000 after October 2014. Tucker currently maintains this bond in the amount of \$100,000, which is available for review upon request of a Shipper or contracted Carrier.
6. **Safe Conduct**: Tucker does not and will not, under any circumstances, knowingly condone, encourage or cause any unsafe and/or illegal conduct by a Carrier or any of its employees, agents or servants, or by any Shipper or any of its employees, agents or servants.

#### **D. CARRIER RESPONSIBILITIES**

1. The Carrier bears the sole responsibility to (a) abide by all applicable laws and regulations; (b) provide and maintain all necessary equipment in a manner that is safe, secure and fit for its purpose; (c) provide the management, training and supervision of drivers and other personnel; (d) determine the routing for each shipment; (e) take reasonable measures to ensure safety, comply with applicable regulations in the operation of its equipment and performance of its drivers, and the safety of the roadway and other public property; (f) maintain compliance with all applicable regulations required by law; and (g) pay all applicable fees and taxes required by law. These responsibilities shall remain solely and exclusively with the Carrier. Any routes, directions or specifications provided by Shipper or by Tucker to Carriers are for convenience purposes only, and therefore shall never supersede or override applicable laws and regulations or the professional judgment of the Carrier, its management or its driver(s).
2. **Suggested Routing**: In cases where Shipper and/or Tucker may suggest driving directions to Carrier, or request specific delivery date or time, at all times Carrier and Carrier alone is solely responsible for determining the routes traveled to origins and between origins and destinations, and complying with applicable laws and regulations.
3. **Insurance**: Unless otherwise agreed in writing, Carrier shall provide proof of \$1-million general liability insurance; \$1-million auto liability (including hired and non-owned); \$100,000 primary cargo insurance; \$5-million for any hazmat shipments, including expenses and costs of remediation.
4. **Haz Mat**: Carrier will maintain compliance with all applicable hazmat state and federal laws regulations and shall indemnify Tucker (and Shipper) from any liability (including, but not limited to, reasonable attorney fees) asserted against or imposed on them arising out of any violation of such laws or regulations.

## **E. GENERAL PROVISIONS**

1. **Acts and Omissions of Shipper:** In no event shall Tucker or any Carrier be liable to Shipper for any claims, damages, penalties, fines, direct or indirect losses, arising out of a Shipper's acts or omissions including, without limitation, claims based on a theory of negligence, breach of contract, noncompliance with any law or regulation, strict liability or otherwise, even in the event that Shipper advises Tucker and/or Carrier of the possibility of such damages.
2. **No Consequential Damages:** In no event shall Tucker or any Carrier hired by Tucker, be liable to Shipper for special, incidental, or consequential damages, loss of profit, loss of revenue or sale, opportunity cost, overtime, penalties or fines, or charges of any kind, arising from or related to cargo loss, damage or delay unless Shipper has provided notice to Tucker, in writing, of the potential for such, the nature and the foreseeable magnitude, and Tucker has acknowledged and agreed to accept responsibility in writing, for such damages, penalties or fines, including their nature and possible amount. Such acknowledgement in writing must be transmitted by Tucker to Shipper prior to ~~or at~~ the time of tendering to Tucker each shipment for which such damages, penalties or fines may arise. Tucker's written agreement to accept such responsibility must be agreed by either the President or CEO. In no other case will Tucker's arrangement of a shipment be deemed as an agreement to accept any liability for Consequential Damages, even if Shipper first discloses the possibility of such damages to Tucker verbally or in writing. The shipper may however make a cargo claim against a Carrier for delay in cases where the Shipper can provide evidence that the Carrier did not exercise reasonable dispatch in the traffic lane used by Carrier in carrying out its duty to deliver freight as agreed. Such claims must follow proper procedures detailed in Section B (10) above.
3. **Law Enforcement:** It is the sole responsibility of local, state, federal and/or other appropriate law enforcement officials to protect public safety, and to remove from service and/or operation any Carrier or driver that may pose a threat to public safety.
4. **Severability/Survivability:** In the event that the operation of any portion of these STOS results in a violation of any law, or if any provision herein is determined by a court of competent jurisdiction to be invalid or unenforceable, Shipper, Tucker and Carrier agree that such portion or provision shall be severable and that the remaining provisions herein shall continue in full force and effect. The terms and conditions set forth herein shall survive the termination for any reason of the business relationship between Shipper, Tucker and Carrier.
5. **Nonwaiver:** Failure of either Tucker, Shipper or Carrier to insist upon performance of any term or condition set forth herein, or failure to exercise any right or privilege set forth herein, or any waiver of any breach, shall not be construed to thereafter waive any such term, condition, right or privilege, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.