



CONTRACT OF CARRIAGE - Pinch Intermodal, LLC

1. Subject to the terms and conditions of this Bill of Lading (the "Bill of Lading"), Pinch Intermodal, LLC. (hereinafter referred to as the "Carrier"), accepts the specified cargo (the "Cargo") for transportation from the specified origin to the specified destination. This Bill of Lading sets forth the complete agreement between the parties, including the duties, rights, and obligations of the Shipper, Consignor, Consignee, and any beneficial owners of the Cargo, and specifies the Carrier's responsibilities and limits of liability for the Cargo and services provided under this Bill of Lading.
2. In tendering the Cargo, Shipper acknowledges and agrees to the terms and conditions of this Bill of Lading, which no agent or employee of the parties may alter, and that this Bill of Lading is non-negotiable and has been prepared by Shipper, or on Shipper's behalf, by Carrier.
3. It is mutually agreed that the Cargo is accepted on the date hereof, in apparent good order and condition (except as noted on this Bill of Lading) marked, consigned, and destined for carriage as specified herein. It is expressly acknowledged and agreed that Carrier shall not be responsible for concealed damages and Carrier makes no representations or warranties with respect to the condition or contents of packaged or containerized Cargo.
4. Carrier's routing shall apply unless Shipper provides specific routing instructions to Carrier in writing.
5. All Cargo is subject to inspection by Carrier; however, Carrier shall never be obligated to inspect the Cargo.
6. The Cargo is subject to charges for actual or dimensional weight, whichever is greater, in accordance with Carrier's applicable rules and tariffs. For and in consideration of the transportation services to be provided, Shipper agrees to pay Carrier the applicable freight charges as set forth in Carrier's written rate circulars and tariffs, unless otherwise specified in writing.
7. Unless pre-paid, all freight charges are due and shall be paid upon delivery of the Cargo. By tendering the Cargo to Carrier, the Shipper, Consignee, or Bill-To party, agrees to pay Carrier within thirty (30) days of Carrier's invoice date for all charges, including freight and accessorial charges, due and owing with respect to each shipment tendered to Carrier. Charges not paid within thirty (30) days of the invoice date shall be subject to interest charges at the rate of one and one-half percent (1.5%) per month.
8. Carrier reserves the right to demand payment of all outstanding and past due charges as a precondition for releasing the Cargo. Carrier also reserves the right to require payment upon delivery of any shipment at any time.
9. **CARRIER'S LIEN: SHIPPER AGREES THAT CARRIER SHALL HAVE A LIEN ON ALL CARGO IN ITS POSSESSION FOR UNPAID OBLIGATIONS ARISING FROM THIS OR PRIOR SHIPMENTS. CARRIER MAY KEEP**

POSSESSION OF THE CARGO UNTIL ALL OUTSTANDING FREIGHT CHARGES, PLUS OTHER EXPENSES AND/OR FEES INCURRED, HAVE BEEN PAID. ANY AND ALL CLAIMED DAMAGES RESULTING FROM THE DETENTION OF THE CARGO SHALL BE THE RESPONSIBILITY OF THE SHIPPER AND SHIPPER AGREES TO DEFEND AND INDEMNIFY CARRIER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS AND/OR CAUSES OF ACTION RELATING IN ANY WAY TO DAMAGES ALLEGED TO HAVE BEEN CAUSED AS A RESULT OF SUCH DETENTION.

10. Shipper shall comply with all applicable laws and other regulations of any jurisdiction to, from, or through which the Cargo may be carried, including those relating to the packing, carriage, and/or delivery of the Cargo. Shipper shall furnish all information and attach all documentation to this Bill of Lading as may be necessary to comply with all such laws and regulations. Carrier shall not be obligated to inquire into the correctness or sufficiency of such information or documents, and Carrier shall not be liable to Shipper for any loss or expense due to Shipper's failure to comply with this provision.

11. By tendering the Cargo to Carrier, Shipper, for itself and all parties having an interest in the Cargo, agrees to the conditions, terms, and limitations set forth in this Bill of Lading and Carrier's tariff, and affirms that the Cargo is not hazardous or of a nature unsuitable for carriage. Unless otherwise noted on this Bill of Lading, Shipper warrants and represents that the Cargo is properly packaged to withstand the rigors of transportation; will not contaminate other cargo with which it may be loaded; and contains no toxic or controlled substances, or hazardous materials subject to regulations by any governmental authority or agency.

12. Carrier shall not provide any temperature-controlled services for the Cargo.

13. Carrier shall not be liable if it refuses to carry Cargo based on Carrier's understanding of any applicable laws, regulations, demands, orders, or other requirement.

14. Carrier shall not be liable for any loss, delay, or other damage caused by:

a. Acts of God; public enemies; public authorities acting with actual or apparent authority; quarantine; riots; unavailability in whole or in part of fuel; strikes; civil commotions; hazards or dangers incident to the state of war; nuclear risk; or any other condition or event beyond Carrier's reasonable control;

b. Shipper's or Consignee's default under any agreement with any third-party;

c. The nature of the Cargo, or any defect, characteristic, or inherent vice thereof;

d. Shipper's or Consignee's violation of any of the provisions of this Bill of Lading, including, but not limited to: improper or insufficient packaging, securing, marking, addressing, or labeling, and/or failure to observe any laws, regulations, or rules relating to the Cargo or the shipment thereof;

e. Compliance with Shipper's or Consignee's delivery instructions or noncompliance with Shipper's or Consignee's special instructions which violate the terms and conditions of this Bill of Lading or any laws, regulations, or rules of any governmental or regulatory authority. Carrier does not guarantee that delivery will be effectuated to meet any particular market, dispatch, exhibition, selling, or pre-set delivery parameter; or

f. Shortage of Cargo loaded and sealed in containers stuffed by Shipper or Shipper's agent.

15. Carrier's liability shall be limited to:

a. For Cargo without a value declared on this Bill of Lading, Carrier's total liability shall in no event exceed fifty cents (\$0.50) per pound, or the actual value of the Cargo, whichever is less;

b. For Cargo having a value declared on this Bill of Lading, Carrier's total liability shall in no event exceed the declared value of the Cargo or the actual value of the Cargo, whichever is less.

c. If Shipper has requested Carrier to obtain insurance for the Cargo, Carrier's total liability shall in no event exceed the insurance amount requested or the actual value of the Cargo, whichever is less. In no case will Carrier be liable for damages in excess of Ten Thousand Dollars (\$10,000.00) per shipment, regardless of the value declared. When insurance is requested, Shipper shall be obligated to Carrier for payment of \$1.00 per \$100.00 declared value, in addition to the applicable transportation and accessorial charges from Carrier's Tariff.

d. Carrier shall not be liable in any event for any consequential or special damages or for delays in delivery, whether or not Carrier had knowledge that such damages might be incurred.

16. Receipt of the Cargo by Consignee, without written notations regarding any claimed damages on the delivery receipt and/or Bill of Lading shall be prima facie evidence that the Cargo was delivered in good order and in the same condition as it was received by Carrier.

17. Carrier shall not be liable to Shipper in any action brought to enforce a claim arising under this Bill of Lading, unless the of following conditions precedent have occurred or have been met by Shipper or Consignee:

a. All claims, except for overcharges, must be made in writing within one hundred twenty (120) days of the date that the Cargo was delivered. Claims for overcharges must be made in writing within one (1) year of the date that the Cargo was delivered.

b. Damage and/or loss discovered by Shipper or Consignee after delivery must be reported in writing within fifteen (15) days of delivery of the Cargo. Carrier retains the right, but not the obligation, to inspect the Cargo and any container or packaging within fifteen (15) days of receiving Shipper's notice. If loss or damage is not reported within fifteen (15) days from the date of delivery, Consignee shall show good cause why the loss or damage was not discovered earlier and timely notification given.

c. While awaiting inspections by Carrier, Consignee must hold the Cargo in the same condition as it is claimed the loss or damage was discovered insofar as it is possible to do so; and

d. All transportation and related charges for the Cargo must be paid in full to the Carrier.

18. Carrier shall not be liable in any action brought to enforce a claim arising under this Bill of Lading, except for overcharges, unless Carrier's claim procedures have been fully complied with, and unless such action is brought within one hundred eighty(80) days of the date that written notice was given to the claimant that Carrier has disallowed the claim, in whole or part. In the event that any applicable federal or state law requires that a longer period of time be provided in which to file a claim or bring an action, the time period specified herein shall be deemed amended to comply with such law.

19. SHIPPER SHALL INDEMNIFY, DEFEND, AND HOLD CARRIER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, FEES, CHARGES, AND/OR OTHER EXPENDITURES, INCLUDING ATTORNEYS' FEES, RESULTING FROM SHIPPER'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS BILL OF LADING.

20. Shipper and Consignee shall be liable, jointly and severally, to pay or indemnify Carrier for all claims, fines, penalties, costs, and/or other sums which may be incurred, suffered, or dispersed by Carrier by reason of any violation or breach of any of the terms and conditions in this Bill of Lading, Carrier's tariff, or any other default with respect to the Cargo.

21. This Bill of Lading shall be binding upon Shipper and Consignee as well as their successors and assigns, if any, and all undertaking to transport the Cargo between its origin and destination, including the original destination, reconsignment, or return, and shall inure also to the benefit of any other person, firm, or corporation performing services for Carrier, including pick-up, delivery, or other ground service(s) in connection with the shipment. This Bill of Lading shall apply at all times that the Cargo is being handled by or for Carrier, including pick-up and delivery, and other services rendered by or for Carrier in connection with the Cargo.

22. Any and all claims, disputes, or litigation arising under this Bill of Lading or the carriage of the Cargo shall be construed and interpreted exclusively in accordance with the laws of the State of Texas, to the extent such laws are not inconsistent with the federal laws of the United States of America, in which case such federal laws of the United States of America shall apply, and the parties expressly consent and agree to the exclusive jurisdiction of the United States District Courts for the Southern District of Texas, Houston Division, for any and all such disputes.