

Terms and Conditions 12302020

Smart Choice Transportation Corp. (SCT)

MC Number: 1245125

Terms and Conditions of Service

Statement of Application:

The following Terms and Conditions of Service are binding upon Smart Choice Transportation (**"BROKER"**) and any shipper (**"SHIPPER"**) using the services of Smart Choice Transportation Corp., unless that shipper shall have in place, prior to the date of service a written, countersigned agreement with Smart Choice Transportation Corp. in which case that signed agreement shall supplement these terms and control in place of conflict. For all other shippers, these Terms and Conditions shall control. Use of the website www.smartchoicetransportation.com and/or any communication with an email address at that domain, and or the booking of any transportation services with BROKER shall demonstrate use and acceptance of these Terms and Conditions. In consideration of the mutual covenants hereinafter set forth, SHIPPER engages BROKER and BROKER agrees to perform the services set forth herein, upon the following conditions:

1. ROLES OF PARTIES

- BROKER is a transportation broker as defined by 49 U.S.C. §13102(2), arranging for the transportation of goods of all kinds on behalf of its shipper-clients.
- SHIPPER is a corporation or limited liability company seeking to engage a transportation broker to assist it in locating motor carriers to transport SHIPPER's goods.
- SHIPPER certifies that it has title, interest, or rights (including those of an agent) to bind the goods and any owner of beneficial owner thereof to these terms and the terms of any underlying motor carrier to whom the cargo is eventually tendered.
- BROKER is not a licensed customs broker and does not directly provide customs clearance services. If BROKER does provide assistance in obtaining customs brokerage services,

BROKER does so solely as an intermediary, by utilizing the services of a custom's broker at SHIPPER's knowing request.

- BROKER is not a licensed or authorized insurance company or insurance agency. Upon request from SHIPPER, BROKER may provide assistance as an intermediary by helping SHIPPER obtain insurance coverage from a properly licensed and authorized insurance seller or re-seller.

2. **BROKER'S DUTIES AND OBLIGATIONS**

- BROKER is a licensed property broker with the U.S. Department of Transportation.
- BROKER arranges for transportation of goods on behalf of SHIPPER, but does not actually carry, consolidate, possess, or otherwise take dominion over the loads that it brokers.
- BROKER agrees to provide SHIPPER with transportation services, including the locating, hiring, qualifying, rate negotiation, and tendering of a carrier, who will perform the actual carriage of the SHIPPER'S goods at the direction of BROKER.
- Qualifying a carrier shall be defined under these terms as receiving a certificate of insurance from the carrier showing at least the statutory minimum amount required for valid authority and confirming the valid motor carrier authority.
- SHIPPER is aware and acknowledges that BROKER is not a motor carrier, and will not ever take actual possession, custody or control over the shipments being arranged for on SHIPPER'S behalf.
- BROKER will only utilize the services of carriers who have demonstrated their qualification by providing proof of operating authority and cargo insurance coverage as demonstrated by a declaration page showing active coverage. BROKER does not warrant particular coverages or exclusions.

- BROKER will be solely responsible for invoicing and collecting freight charges from the SHIPPER, and all carriers utilized by BROKER to carry SHIPPER's goods have expressly waived any and all rights to collect from or make demands upon the SHIPPER, consignor, or consignee directly.
- BROKER agrees to pay CARRIER's freight charges on behalf of SHIPPER, and to invoice SHIPPER directly for payment of said freight charges.
- BROKER's invoice will, upon request written request from the SHIPPER, be accompanied by a copy of the bill of lading.
- In the event that SHIPPER does not approve of a particular carrier, once a request in writing is delivered to BROKER to no longer use said carrier on SHIPPER's loads, BROKER will cease use of that carrier on BROKER's loads or request a waiver of said bar prior to transport.

3. **SHIPPER'S DUTIES AND OBLIGATIONS**

- SHIPPER shall provide a full description of the goods for which transportation is being arranged, accurate information regarding the origin and destination for such shipments, and all other information necessary to complete the transportation of the shipment. Complete the Bill of Lading with Dims and Weight and properly classify the shipment for class rating purposes. Any discrepancies found by the carrier will be the shippers responsibility.
- BROKER'S standard payment terms require receipt of cash payment in advance of services. If BROKER chooses to extend credit to SHIPPER, SHIPPER shall make payment of the full invoiced amount for all loads arranged for by BROKER within fifteen (15) days of invoice date. In the event that SHIPPER fails to timely pay BROKER'S invoice as required herein, SHIPPER shall be liable for fifteen percent (15%) late payment fee, eighteen percent (18%) interest, as

well as any and all attorneys' fees or collection fees expended by BROKER in an effort to collect those charges.

- All payments made via credit card will be subject to a convenience fee of 2.99%.
- SHIPPER agrees to be bound by any additional charges which may become due, including equipment repair, accessorial charges, waiting times, or unnecessary delay caused by the SHIPPER.
- Except as provided herein, all claims will be filed and resolved in accordance with the provisions of 49 CFR Part 370. BROKER may assist SHIPPER with claims to carrier, but all claims must be made against carrier and not BROKER, who expressly bears no liability for any loss or damage or delay to any shipment arranged by BROKER for SHIPPER. Except as provided herein, liabilities and burdens of proof against carrier will be governed by federal law and by the provisions of 49 U. S. C. § 14706.
- All overcharge, duplicate payments, and over collection claims will be filed and resolved in accordance with the provisions of 49 CFR Part 378.

4. **RATES AND RULES**

- The rates set forth in rate confirmations or quotations are designed to meet the distinct needs of the parties to these Terms and Conditions. Each shipment should be accompanied by a rate confirmation and/or quotation which is expressly subject to these Terms and Conditions.
- It is the duty of the SHIPPER to inquire directly to any carrier tendered hereunder as to any applicable rules or tariffs, and how they might affect liability, claims, or other duties and rights between SHIPPER and carrier. BROKER has no role in regard to such items, and merely arranges for a carrier to perform the requested carriage at a specific rate agreed upon.

5. **ELECTRONIC PAYMENT**

- BROKER may submit invoices electronically. SHIPPER agree to receive invoices electronically. SHIPPER may transfer funds electronically to the bank designated by BROKER.
- BROKER and SHIPPER each agree to utilize their best efforts to utilize electronic invoicing and payment systems as soon as possible.

6. **NOTICES**

- BROKER as a licensed property broker does not have any legal liability for loss, damage, or delay in the transportation of SHIPPER'S property. BROKER's liability is extinguished by the tendering of a qualified carrier to the location designated by SHIPPER for pickup.
- Any and all claims for loss, damage, or delay are to be made directly with the motor carrier. BROKER will provide all necessary information and documentation to assist SHIPPER in the handling of such a claim with the motor carrier, but such action does not create any liability on the part of the BROKER or waive any portion of these Terms and Conditions.
- Regardless of any of the foregoing, BROKER's maximum liability in any regard to or for any cause whatsoever, to any person or party, shall be limited to the total sum of fifty dollars (\$50.00) per shipment.

7. **DOCUMENTATION OF CARRIAGE**

- All bills of lading, delivery receipts, or other transportation documentation, aside from estimates, quotes and rate confirmations exchanged directly between SHIPPER and BROKER, shall be the sole responsibility of SHIPPER, and shall not bind BROKER in any manner.
- SHIPPER's designation of BROKER on any bills of lading or delivery receipts shall be for informational purposes only and will not modify these Terms and Conditions. Any

representations made by the motor carrier do not bind BROKER in any manner.

- Upon the request of SHIPPER, BROKER will provide copies of delivery receipts and bills of lading from carrier, where SHIPPER has instructed carrier to retain copies of such documentation or have such documentation executed by consignee.
- The terms and conditions of any freight documentation used by SHIPPER and/or the motor carrier selected by BROKER may not supplement, alter, or modify these Terms and Conditions. In the event of any conflicts, these Terms and Conditions shall control.

8. **INDEMNIFICATION**

- To the full extent permitted by law, SHIPPER agrees to indemnify, defend and hold harmless BROKER, its partners and affiliates, as well as all of their officers, directors, attorneys, agents, insurers, and employees from and against any and all claims, demands, actions, liabilities, judgments, losses, damages, expenses, costs, penalties, and fines, including third party claims for contribution, attorney's fees for injury or alleged injury of any kind to any person, including death, and/or damage or alleged damage of any kind to any property arising from the negligent acts or omissions of SHIPPER, related to the tendering of hazardous materials, or improper packaging, loading, or latent defects in goods tendered for carriage.
- In addition to its agreements set forth hereinabove, BROKER and SHIPPER shall indemnify and save harmless each other, their subsidiaries and their respective officers, directors, and employees, from and against all liabilities, obligations, losses, damage, penalties, claims, actions, suits, costs, charges and expenses, including without limitation, reasonable fees and expenses of legal counsel and expert witnesses, which are

the result of or arising out of any or all of the respective obligations of the parties or which may be imposed or incurred by or asserted against BROKER or SHIPPER by reason of actual or alleged; (i) injury or death to persons; (ii) damage to the property of any person or legal entity; (iii) violation of any law, ordinance or regulation of any federal, state or local governmental authority by either BROKER or SHIPPER or any of the parties set forth above; provided, however, the foregoing agreement to indemnify and hold harmless each other shall only be applicable to the extent that such liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges and expenses are attributable to the sole negligence of either BROKER or SHIPPER.

9. HAZARDOUS MATERIALS

- SHIPPER hereby agrees to comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and §173 et seq. to the extent that any shipments constitute hazardous materials.
- SHIPPER hereby acknowledges and agrees that SHIPPER will not tender to BROKER or BROKER's designated motor carrier any hazardous materials for shipment. Notwithstanding, SHIPPER is obligated to inform BROKER immediately if any such shipments tendered by error do constitute hazardous materials.

10. 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 BROKER or SHIPPER 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 such inability to perform.

11. **INSURANCE**

Smart Choice Transportation, is not an insurance company, insurance agency, or re-seller of insurance. Instead, Smart Choice Transportation is a transportation intermediary or freight broker, providing assistance to shipper customers at their direction and request. Smart Choice Transportation's role is limited to providing referral and general customer assistance in locating and obtaining an insurance policy from a duly licensed and authorized insurer. Shipper waives any and all potential liability of Smart Choice Transportation in regard to any assistance, act, or omission in relation to the obtaining of insurance coverages. It is the duty of the Shipper to ensure that coverages obtained meet their needs.

- BROKER shall require that all motor carriers used to provide the transportation services outlined herein provide to broker a declaration page or pages evidencing insurance with coverage as follows:
 - Cargo liability insurance with minimum limits of \$100,000 per occurrence, with a deductible of not more than \$5,000.
 - Automobile liability insurance covering its owned, hired and non-owned automobiles with minimum limits of \$1,000,000 per occurrence, with a deductible of not more than \$10,000.
 - Comprehensive general liability insurance, including contractual liability coverage, with minimum limits of

\$1,000,000 per occurrence, with a deductible of not more than \$10,000.

- In those circumstances where, due to the value of any shipment, SHIPPER requires greater cargo coverage, SHIPPER may either acquire a greater amount of insurance on its own or may choose to make arrangements with the motor carrier directly to release the goods for transportation at a particular value. Any such agreement between SHIPPER and carrier shall not bind or affect BROKER.
- Regardless of the foregoing, BROKER is not an insurer of shipments for which it arranges transportation, and any failure of any excess policy to provide coverage shall not affect BROKER's liability.
- BROKER has no liability for the failure of a motor carrier's insurance policy to timely or reasonably pay claims. However, BROKER has contractually required from carriers that such coverage is in place for each motor carrier used prior to assignment of such motor carrier to any loads.
- BROKER is not required to obtain copies of the full policy of insurance of carriers, but instead will simply acquire a declaration page. BROKER makes no representations as to any coverages or exclusions beyond what appears on the face of the declaration page provided, and BROKER will forward such information on to SHIPPER upon request. It is SHIPPER's duty to perform any investigation into policies and specific exclusions therein.

12. **CUSTOMS BROKERAGE**

13. Smart Choice Transportation does not hold a customs brokerage license or directly performs customs brokerage services. Instead, Smart Choice Transportation serves as a transportation intermediary, and as part of its portfolio of services to clients we will arrange for custom's brokerage services with a duly licensed custom's broker in exchange for a fee.

14. LOSS AND DAMAGE CLAIMS

- BROKER may assist their customers in the filing of claims with motor carriers, and BROKER has required that motor carriers will upon receipt of a claim in writing from either BROKER or SHIPPER, acknowledge receipt of such claim within thirty (30) days of receipt of the claim.
- All claims must be filed with carrier within 9 months of delivery or the date of anticipated or expected delivery of an undelivered shipment, pursuant to 49 U.S.C. §14706(e).
- The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. §370 et seq. to the extent not modified herein.
- Any assistance by BROKER in facilitating the claims process shall not change the liability of the BROKER as outlined herein.

13. CONFIDENTIALITY AND NON-SOLICITATION:

- SHIPPER may not disclose the terms of any specific quotations, estimates, or rate confirmations to a third party without the written consent of the other party except: (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms confidential.
- SHIPPER further agrees not to solicit the services of, or directly engage, the carrier(s) tendered by BROKER pursuant to the terms of this Agreement. Furthermore, SHIPPER shall not disclose the terms of this agreement, or the rates agreed upon between SHIPPER and BROKER to any third party unless required by law.

14. NO THIRD-PARTY BENEFICIARIES

- The BROKER and SHIPPER hereby expressly state that they are the only parties to this Agreement and that neither the

BROKER, nor the SHIPPER intend for any third party to specifically benefit from these Terms and Conditions or any services performed pursuant to them.

15. **NONWAIVER**

- Failure of either party to insist upon performance of any of these terms, conditions or provisions or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions, 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.

16. **GOVERNING LAW/ ATTORNEY'S FEES**

- Without regard to the principles of conflicts of law, these Terms and Conditions shall be construed in accordance with, and any and all disputes arising between BROKER and SHIPPER, shall be governed by federal law where applicable, or otherwise California law. Venue shall be in Los Angeles, County.
- SHIPPER hereby asserts that it is and does conduct business in Los Angeles County, California and is subject to the personal jurisdiction of Los Angeles County Courts.
- This Agreement is entered into in Los Angeles County, California.
- BROKER and SHIPPER agree that in any litigation arising from or related to the breach of these Terms and Conditions and any dispute between the parties to this Agreement, the prevailing party shall be awarded reasonable attorney fees and court cost.

17. **SEPARABILITY/SEVERABILITY**

- If any provision of hereof is held to be illegal, invalid or unenforceable under the present or future laws effected during the term of this agreement, such provision shall be

fully severable from the remaining provisions, and it shall not affect the validity of the remaining provisions, which provisions shall be given full force and effect as if the illegal, unenforceable, or invalid provision had not been included. In lieu of an illegal, unenforceable, or invalid provision, there shall be substituted a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

18. Prohibited Articles:

The following items are not accepted for transportation: In the event that any of this items are tendered, broker will help to assist in recovering the freight from the carrier. Additional fees might be added in order to recover the freight, shipper will be responsible for the additional charges.

- Animal carcasses including taxidermy items
- Bank bills, currency, deeds, drafts, notes
- Carbon black or activated carbon
- Firearms
- Freight requiring protection from heat
- Fresh cut flowers
- Human corpses or remains
- Jewelry other than costume or novelty
- Letters with or without stamp affixed (see Note 1)
- Live plants, animals, insects or fish
- Hookah, CBD, vaping products, e-cigarettes, and vaping liquids
- Cigarettes, cigars, snuff, and other tobacco, subject to completion of Roadrunner's compliance process regarding the same
- Marijuana products, hemp, or illegal drugs
- Museum exhibits or articles of antiquity
- Original works of art
- Perishable food items
- Postage or revenue stamps

- Precious stones or metals
- Unlawful animal products (e.g., Ivory, fur, skin, fins)

In addition to all items listed above, the items listed below will not be accepted for shipment nor as premiums accompanying other articles when shipped between the USA and Canada:

- Hazardous Materials (only applicable for Canada cross border shipments)
- Household Goods shipments
- Fireworks, explosives and weapons or parts thereof (only applicable for Canada cross border shipments)
- Items restricted by IATA (International Air Transport Association) or ICAO (International Civil Aviation Organization) (only applicable for Canada cross border shipments)

19. **ENTIRE AGREEMENT**

- This Agreement, along with any quotations, estimates, or rate confirmations (when executed by both parties), embody the entire understanding between BROKER and SHIPPER covering the services to be performed hereunder, and there are no other agreements, understandings, conditions, warranties, or representations, oral or implied with reference to the subject matter hereof.
- In the event of any conflict between these Terms and Conditions and any term or provision in any other document related to or used in the process of arranging or transporting of goods by BROKER and SHIPPER or by the underlying carrier these Terms and Conditions shall govern to the extent of the conflict.