

PROPERTY BROKER TERMS AND CONDITIONS OF SERVICE

These Property Broker Terms and Conditions of Service (“Terms”) shall apply to all shipments tendered to WIT FREIGHT SERVICES, LLC (“WFS”) and/or WALKER INTERNATIONAL TRANSPORTATION, LLC (“WALKER”) (WFS and WALKER are collectively referred to herein as “WIT”) for property brokerage services by a customer/shipper (“Customer”). By tendering a shipment to Broker, Customer agrees that these Terms shall apply to the shipment and create a legally binding agreement applicable to all shipments arranged by WIT for Customer.

1. Property Broker.

WIT is authorized to perform services as a Property Broker (“Broker”) by the Federal Motor Carrier Safety Administration (“FMCSA”) under Docket No. MC-795990 (“WFS”) and Docket No. MC-438497 (WALKER”). A Broker is a person or entity that arranges, or offers to arrange, the transportation of property by an authorized motor carrier for compensation. Motor carriers, or persons who are employees or agents of motor carriers, are not considered Brokers when they arrange or offer to arrange the transportation of shipments which they are authorized to transport. 49 C.F.R. § 371.2.

2. Services.

WIT is performing services for Customer as a Broker. Accordingly, WIT arranges for the transportation of property by authorized motor carriers under authority granted by the FMCSA. WIT is solely responsible for the selection of motor carriers. The service provided by WIT is limited to arranging for transportation and WIT does not provide the actual transportation service, nor does WIT consolidate, take possession of, or assume custody or control of Customer’s goods. WIT performs all brokering duties and generally does not “re-broker” or “double broker” cargo. Customer must provide WIT with timely and accurate delivery instructions and description of the cargo, including any special handling instructions. WIT may refuse any shipment from Customer in its sole discretion.

3. Motor Carriers Selected by Broker.

WIT represents and warrants that it has vetted and entered into, or will enter into, separate contracts with selected motor carriers and that those contracts are compliant with all applicable federal and state laws and regulations. WIT will require, and shall take commercially reasonable measures to ensure that, no motor carrier has a safety rating from the FMCSA of either “unsatisfactory” or “conditional” and, in the event an “unsatisfactory” or “conditional” safety rating is reported to WIT, WIT will discontinue the use of such motor carrier forthwith. Furthermore, WIT will require that all motor carriers with which WIT contracts have agreed to the following provisions:

- (a) Motor carrier will defend, indemnify and hold WIT and Customer harmless from and against any and all liabilities, losses, damages, claims, suits, demands, fees (including attorneys’ fees), fines, penalties, costs and/or judgments arising out of the motor carrier’s transportation of Customer’s cargo, including specifically cargo loss and damage, property damage, theft, delay, injury or death;
- (b) Motor carrier’s liability for cargo loss or damage shall be that of a Common Carrier as that term is defined in 49 U.S.C. § 14706 (the “Carmack Amendment”) and limitations contained in the motor carrier’s insurance coverage shall not have any affect on the liability of the motor carrier;
- (c) Motor carrier will process all claims for loss, damage or delay to Customer’s cargo in accordance with the

provisions of 49 C.F.R. Part 370;

- (d) Motor carrier shall at all times maintain the following insurance policies with insurance companies authorized to operate in the states where the services are performed and having an A.M. Best rating of A- or better:
- (i) comprehensive general liability insurance (including bodily injury, property damage and contractual liability) with a combined single limit per occurrence of \$1,000,000 and \$2,000,000 aggregate;
 - (ii) comprehensive commercial automobile liability for all owned and non-owned vehicles of motor carrier covering bodily injury and property damage with a limit of not less than \$1,000,000 combined single limit coverage;
 - (iii) cargo liability insurance covering loss or damage to goods in transit or while in the motor carrier's care, custody and control with coverage limits of not less than \$100,000; and
 - (iv) workers' compensation insurance as required by law in the jurisdictions in which the motor carrier operates. WIT shall require that no insurance policy maintained by a motor carrier has a deductible exceeding \$5,000.

4. Transit Times.

Unless otherwise specifically agreed in writing, transit times provided by WIT are estimates and specific delivery dates and times are not guaranteed. Upon request, certain motor carriers may provide service/transit time guarantees for an additional charge.

5. Invoicing and Payment Terms.

WIT shall invoice Customer in accordance with the rates and charges contained in the written quote provided by WIT to Customer. Broker will use commercially reasonable efforts to invoice Customer within seven (7) days after delivery of Customer's cargo (excluding weekends and holidays). All charges are due within fifteen (15) days from the date Customer receives the invoice. Invoices shall be paid in full without setoff or deduction. Past due invoices shall accrue interest at the rate of one percent (1%) per month until the invoice is paid in full. If Customer disputes any portion of an invoice, Customer shall provide WIT with a written description of the reason(s) for the dispute within fifteen (15) days of receipt of the invoice and shall pay the undisputed portion(s) of the invoice. Any invoice not disputed by Customer within fifteen (15) days shall be deemed valid. WIT will apply sums received from Customer to the oldest open invoices.

6. Bills of Lading.

Any reference to WIT in the bill of lading or other shipping document does not alter WIT's status as a Broker. Nothing contained in any tariff, delivery receipt or other document used by WIT or any motor carrier appointed by WIT will modify, supplement, amend or cancel any provision contained in these Terms. In the event of an inconsistency between these Terms and any documentation issued by WIT or any motor carrier selected by WIT, the provision contained in these Terms shall apply.

7. Freight Claims and Limitation of Liability.

WIT is not acting in the capacity of a motor carrier and shall not be liable for loss, damage or delay in connection with the transportation of Customer's cargo. Any claim for loss, damage or delay must be presented to the

responsible motor carrier directly. In the event a claim for loss, damage or delay is submitted to WIT the claim will be promptly forwarded to the responsible motor carrier and WIT is not responsible for processing the claim or for any loss related to delay in processing the claim by the motor carrier. WIT will provide commercially reasonable assistance in resolving the claim between Customer and the motor carrier. Claims must be presented to the motor carrier within nine (9) months of the date of delivery or, in the case of non-delivery, the date of expected delivery. 49 U.S.C. §14706(e). Claims will be processed by the motor carrier are governed by 49 C.F.R §370 et. seq. It is understood and agreed that the filing of a claim for loss, damage or delay does not affect Customer's obligation to make timely payment to WIT, and Customer shall not deduct any portion of the claim amount from WIT's charges. WIT SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM THE PERFORMANCE OF SERVICES FOR CUSTOMER, EVEN IF WIT IS AWARE OF THE POTENTIAL FOR SUCH DAMAGES. The aggregate liability of WIT to Customer or any third party is limited to the amount paid by Customer to WIT for any particular shipment.

8. Hazardous Materials.

Customer shall comply with all applicable laws, regulations or ordinances relating to the transportation of Hazardous materials as that term is defined in 49 C.F.R. Part 172.800 and Part 173 et. seq. or any successor regulation to the extent that any shipments contain Hazardous Materials. Customer shall notify WIT if any shipment contains Hazardous Materials at the time Customer requests a quote from WIT and WIT shall select motor carriers duly qualified to handle Hazardous Materials. Customer shall indemnify, defend and hold WIT and the motor carrier harmless from and against any and all liabilities, losses, damages, fines, penalties, costs, fees (including reasonable attorneys' fees), costs and/or judgments arising from Customer's failure to comply with any law, regulation or ordinance relating to the transportation of Hazardous Materials.

9. Surety Bond.

As required by FMCSA regulations, WIT shall at all times maintain a surety bond in the amount of \$75,000 or such other amount that may hereafter be required by the FMCSA. WIT shall provide Customer with a copy of its surety bond upon request.

10. Indemnification.

Customer shall indemnify, defend and hold WIT harmless as well as WIT's officers, directors, members, partners, employees, agents and subcontractors from and against any and all third party liabilities, losses, damages, claims, demands, fees (including reasonable attorneys' fees), fines, penalties, costs, and/or judgments arising from (i) breach of these Terms by Customer; (ii) the negligence or willful acts or omissions of Customer or its officers, directors, members, partners, employees, agents or subcontractors; or (iii) violation of any applicable law, regulation or ordinance by Customer.

11. No Exclusivity of Minimum Volume Commitment.

The arrangement between WIT and Customer is non-exclusive and WIT is free to provide similar services to any other customer. Similarly, Customer is free to contract with other brokers for similar services. Unless otherwise set forth in writing, Customer is not obligated to provide WIT with any minimum quantity or volume of shipments.

12. Force Majeure.

Neither WIT nor Customer shall be liable under these Terms for any default or failure to perform its obligations

if such default or failure to perform is caused by fire, flood or other unusually severe weather event, earthquake, act of public enemy, act of God, war, civil unrest, strike or other labor dispute, act of terrorism, prolonged power outage, government shutdown, trade embargo, epidemic, pandemic or other cause beyond the reasonable control of the party claiming an inability to perform, provided the default or failure to perform is not caused by the acts or omissions of the party claiming inability to perform. Upon the occurrence of a Force Majeure event, the party claiming an inability to perform shall promptly give written notice to the other party of the nature and consequences of the Force Majeure event. If the Force Majeure event continues for thirty (30) consecutive days, the other party may terminate the agreement.

13. Representations and Warranties of Customer.

Customer represents and warrants that it (i) holds legal title to all goods tendered to WIT and/or is legally authorized by the holder of such legal title to tender the goods to WIT for transport; and (ii) will provide complete and accurate information to WIT regarding all cargo tendered and understands that WIT and motor carriers will rely on the accuracy of such information in the performance of their services to Customer.

14. Lien.

WIT has a lien on all cargo and documents tendered to WIT for amounts due from Customer for a current shipment or any prior shipment.

15. Independent Contractor.

The relationship of WIT and Customer is that of independent contractor and nothing contained in these Terms shall be construed to create any other relationship between the parties including that of principal and agent.

16. Choice of Law and Forum Selection.

Any dispute arising under these Terms shall be governed by the federal laws of the United States and laws of the State of New York without regard to the conflicts of law rules of any jurisdiction. The venue for any dispute arising under these Terms shall exclusively be the federal or state courts located in the State of New York, County of Nassau and the parties irrevocably consent to the jurisdiction of the courts located in Nassau County, New York for that purpose.

17. Entire Agreement.

These Terms along with all quotes, addendums and schedules, constitute the entire agreement and understanding of the parties with respect to the subject matter set forth herein and supersede and replace all other prior or contemporaneous agreements, understandings, representations and/or warranties with respect to the subject matter contained herein. These Terms may be prospectively modified or amended by WIT at WIT's sole discretion.

18. Severability.

In the event any provision contained in these Terms is held to be invalid or unenforceable by a court or regulatory agency of competent jurisdiction, such provision shall be severed from these Terms and the remainder of these Terms shall not be affected by such holding.

19. No Waiver.

No waiver of any right under these Terms shall be effective unless such waiver is in writing and signed by an authorized representative of the party waiving such right. No delay or omission by either Broker or Customer in

the exercise of any right it has under these Terms shall impair or be construed as a waiver of such right. Any waiver by either Broker or Customer of a breach of these Terms or failure to insist on strict adherence to any provision of these Terms by either party shall not operate as a waiver of any future breach.

20. Assignment.

Customer shall not assign or delegate any of its rights or obligations under these Terms to any third party without the prior written consent of WIT.