

## **Terms and Conditions**

**Last Updated: April 19, 2023**

The following Terms and Conditions apply on each shipment tendered to and accepted by Clay Transport Solutions Inc., ("company", "we", "us", or "our"), including the use of our website, and constitute a binding agreement between Clay Transport Solutions Inc. on the one hand, and, you, the party tendering the shipment ("Shipper, Customer, or You"), on the other hand. In accordance with 49 U.S.C. Section 14101(b) You and Clay Transport Solutions Inc. expressly waive any and all rights and remedies that each may have under 49 U.S.C. §§ 13101 through 14914 that are contrary to specific provisions of these Terms and Conditions.

Please read the following Terms and Conditions carefully before using our services. By using and/or contracting our services, you accept these Terms and Conditions. Said terms may not be changed except in writing signed by a duly authorized executive employee of Clay Transport Solutions Inc.

### **1. Parties**

Clay Transport Solutions Inc. is engaged in the business of arranging for the transportation of goods, with carriers by motor vehicles, tendered to it by shippers, regulated by the Federal Motor Carrier Safety Administration ("FMCSA"), under contract with such carriers; and Clay Transport Solutions Inc. represents that it is duly authorized to perform such services under its license as a property broker issued by the FMCSA in Docket Number MC-1515603, and that it holds an effective surety bond or trust fund agreement under 49 U.C.R. and 49 C.F.R. 1045; Clay Transport Solutions Inc. is not a freight forwarder, common carrier, or contract carrier.

You are a customer, shipper and/or consignee, to satisfy some of its transportation needs, desires to utilize the services of Clay Transport Solutions Inc. to arrange for transportation of some of customer's freight; and Clay Transport Solutions Inc. desires to provide transportation services on behalf of Customer.

**The Parties intend that these Terms and Conditions shall not be exclusive. Nothing herein shall grant Clay Transport Solutions Inc. any exclusive right to perform property brokerage services on behalf of customer or obligate customer to tender any minimum amount of cargo to Clay Transport Solutions Inc.**

## **2. Services**

Clay Transport Solutions Inc.'s responsibility is limited to arranging for, but not actually performing transportation of goods, packing, crating, handling, loading, unloading, or storage of goods. These Terms and Conditions apply to all transportation services arranged by Clay Transport Solutions Inc. on Your behalf.

## **3. Independent Contractors**

The relationship between You and Clay Transport Solutions Inc. is and will remain that of independent contractors and no employer/employee or principal-agent relationship exists or is intended.

## **4. Payment and Charges**

Payment by customer to any Clay Transport Solutions Inc.'s invoice must be made within 30 days of the invoice date. Customer agrees to pay the freight bills without deduction or setoff.

Failure to meet this requirement may result in a loss of credit. Should no payment be received within 30 days of the invoice date, interest in the amount of 1.5% per month may be assessed commencing with the 31st day following the invoice date. In the event that Clay Transport Solutions Inc. deems it necessary to use the services of a collection agency or attorney to collect any amounts due, customer agrees to pay all reasonable collection costs, attorney fees, and court costs.

You agree that Clay Transport Solutions Inc. has the right to pursue reimbursement for any unpaid freight charges from the receiver or shipper if payment from you remains outstanding for more than 30 days past the date of invoice. You further agree that this right supersedes any contrary provision contained in any contract or bill of lading.

When Clay Transport Solutions Inc. has received payment or credit for transportation services under these Terms and Conditions, Company will indemnify and hold harmless Customer and its Customers from any and all claims by Carriers or their subcontractors for such transportation charges.

#### **5. Receipts and Bills of Lading**

If requested, Company agrees to provide Customer with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by Customer. Customer's insertion of Company's name on the bill of lading shall be for Customer's convenience only and shall not change Clay Transport Solutions Inc.' status as a property broker. The Terms and Conditions of any freight documentation used by you, any shipper, or carrier will not supplement, alter, or modify the terms of this Terms and Conditions.

#### **6. Cargo Loss or Damage**

Clay Transport Solutions Inc. does not assume liability for any cargo shortage, loss, or damage; however, if requested by You and agreed to by Clay Transport Solutions Inc., we agree to assist you in documenting and filing all cargo claims with the responsible carrier.

No claims or allowances for shortages, damage, or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery.

Upon request by Customer, Company shall assign its rights against the carrier to Customer. Nothing herein shall be construed to restrict any right or cause of action Customer may have against any carrier involved with the transportation of Customer's shipment.

Carriers are not liable for the following: (1) damage to the Goods to the extent due to packaging, loading, unloading, blocking, bracing or securing of the Goods (unless Carrier has provided loading or unloading services at Your request, in which case such Carrier may be liable for cargo damage caused by such loading or unloading services), (2) inherent vice or defect in the Goods, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, or deterioration of perishable products; (3) an act of God or the public enemy; (4)

any act or default of You, consignee, consignor, or beneficial owner of the Goods; (5) any act taken under authority of law; or (6) any act of war or terrorism.

Any claim for cargo loss, damage, or delay must be filed against the responsible Carrier within 9 months of the date of delivery of Goods, or in the case of non-delivery, within 9 months of the date delivery should have been made. Notice to Clay Transport Solutions Inc. does not constitute filing of claim with a Carrier. Any suit or other legal action to recover for cargo loss, damage, or delay, must be commenced against a Carrier no later than 2 years after declination of the cargo claim by the Carrier.

## **7. Surety Bond and Insurance**

Clay Transport Solutions Inc. agrees that it shall maintain a surety bond or trust fund agreement as required by the FMCSA. Company agrees to procure and maintain at its expense, at all times, Contingent Cargo Insurance in a coverage amount of \$ 100,000, and Errors & Omissions in a coverage amount of \$ 50,000.

## **8. Customer Responsibilities**

You are responsible for ensuring that Goods are properly and safely loaded, supported, blocked, braced, and secured. You will be responsible for expenses arising out of any load shift that occurs during transportation due to improper or insufficient loading, blocking, or bracing.

You must provide necessary shipping instructions and properly identify all Goods in the bill of lading or other shipping instructions. You must not tender any restricted commodities, including but not limited to hazardous materials and waste, oversize or overweight shipments, coiled or rolled products or commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation.

Unless You have requested that Clay Transport Solutions Inc. arrange for a Carrier to provide driver count services before dispatch and the Carrier performs such driver count services, You are responsible for properly counting and recording the number of pieces transported and applying a protective seal to the loaded equipment.

You are responsible for checking all empty containers or trailers tendered for loading and rejecting any equipment that is not in apparent suitable condition to protect and preserve the Goods during transportation.

If You request that Clay Transport Solutions Inc. arrange for equipment to be dropped at a location for Your convenience and left unattended by Carrier, You and Your consignors or consignees will not lose, damage, or misuse the equipment and You will pay for loss or damage to the equipment occurring during or as a result of such custody, control, possession or use of the equipment.

You must comply with all applicable laws and regulations governing the safe and secure transportation of food products that will be ultimately consumed by humans or animals ("Food Shipments"), including those required by local, provincial, state and federal laws, regulations, ordinances and rules including, but not limited to, the Food Safety Modernization Act (21 U.S.C. § 2201, et seq.), the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 341, et seq.) ("FD&C Act"), the Sanitary Food Transportation Act (49 U.S.C. 5701, et seq.), the U.S. Food and Drug Administration's Final Rule on the Sanitary Transportation of Human and Animal Food (21 C.F.R. § 1.900, et seq.) and all applicable U.S. Department of Agriculture and Food Safety and Inspection Service regulations (collectively, the "Food Safety Laws"). You represent and warrant that any Food Shipments offered for transportation pursuant to these Terms and Conditions are tendered in safe condition for human or animal consumption, as applicable.

If a Food Shipment is covered under any of the Food Safety Laws that prohibit the sale or distribution of unsafe or "adulterated" food, You must specify the applicable body or bodies of law, statutes and/or regulations on face of the governing bill of lading for the shipment. At the time of booking, and prior to loading the goods, You must further specify in the booking request and on the face of the governing bill of lading all instructions to be followed by the motor carriers to maintain the safety of the food, including, without limitation, all temperature control requirements and temperature control documentation requirements, including an operating temperature for the transportation and, when necessary, the pre-cooling phase, all sanitation requirements and sanitation documentation requirements for the Food Shipment, including those for the motor carriers' vehicle and transportation equipment, any design

specifications and cleaning procedures (“Written Instructions”). Broker will assist You in providing any Written Instructions to the motor carriers transporting Your food cargo. You, including Your consignors and consignees, shall permit the performing motor carrier to verify the temperature of Food Shipments prior to acceptance of tender and upon delivery at destination.

You acknowledge and agree that the definition of “adulterated” as applicable to Food Shipments shall be that provided in the FD&C Act (21 U.S.C. §§ 342(a)(i)(4), 342(i)). In the event of apparent adulteration of any portion of a Food Shipment, You warrant that You will, at Your own expense, obtain a reliable inspection of the Food Shipment by a qualified expert as soon as possible after delivery. You acknowledge that the Carrier will bear no liability for Food Shipments wrongfully refused without a timely and documented determination by a qualified expert of adulteration. You additionally acknowledge that if You fail to provide written instructions, as required above, the Carrier will not be liable for loss or damage to Food Shipments deemed adulterated.

You warrant that You will not directly or indirectly interfere with, or attempt to adversely influence, the Carrier’s safe operation of equipment including performance pursuant to the federal hours of service regulations.

## **9. Hazardous Materials**

You must provide Clay Transport Solutions Inc. with advance notice of the proposed shipment of any hazardous material, as defined in 49 U.S.C. §5101, et seq. (“Hazardous Material”) and provide a copy of the Material Safety Data Sheet for that Hazardous Material. You will indemnify, defend and hold harmless Carriers and Clay Transport Solutions Inc., their officers, employees, agents and insurers, against all claims, liabilities, losses, fines, legal fees and other expenses arising out of contact with, exposure to, or release of any Hazardous Material, including without limitation fines or expenses relating to the removal or treatment of that Hazardous Material or any other remedial action pertaining to that Hazardous Material under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. as amended (“CERCLA”), The Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq, as amended (“RCRA”) or any comparable state law.

## **10. Indemnification**

You must defend, indemnify and hold Clay Transport Solutions Inc., Clay Transport Solutions Inc.'s employees and agents, and Carriers harmless against any losses caused by or resulting from (i) Your or Your employees' or agents' negligence or intentional misconduct, (ii) Your breach of these Terms and Conditions, or (iii) You or Your employees' or agents' violation of applicable laws or regulations. The obligation to defend includes payment of all reasonable costs of defense, including attorney fees, as they accrue.

## **11. Website Use**

By using our website, you agree to use our content only for legitimate and proper purposes. You agree not to use our website for any illegal or prohibited activity as defined by these Terms and Conditions.

## **12. Intellectual Property**

All content on this website, including but not limited to texts, graphics, logos, images, audio clips, video clips, data, code, and software, is the property of Clay Transport Solutions Inc. and is protected by intellectual property laws of the United States. You may not reproduce, distribute, transmit, modify, sell or use the content of this website for any commercial purpose without the prior written permission of Clay Transport Solutions Inc.

## **13. User Responsibility**

You are responsible for any information you provide through our website. You warrant that all information you provide through our website is true, accurate, and complete. You agree to indemnify and hold Clay Transport Solutions Inc., its officers, employees, and agents harmless from any claims or demands, including attorney fees, made by any third party due to or arising out of your use of our website, your violation of these terms and conditions, or your violation of any law or the rights of a third party.

## **14. Applicable Law and Jurisdiction**

These Terms and Conditions are governed by and construed in accordance with the applicable federal laws of the United States, or, alternatively, and depending on jurisdiction, the laws of the State of Texas.

The parties agree to jurisdiction and venue in a United States Federal District Court located in Texas, or if federal jurisdiction is not available, then in a State Court located in Texas.

#### **15. Severability/Survivability**

In the event that the operation of any portion of these Terms and Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Terms and Conditions shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of these Terms and Conditions for any reason.

#### **16. Nonwaiver**

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

#### **17. Notices**

Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under these Terms and Conditions shall be in writing (or digitally) and shall be addressed to the address below:

Clay Transport Solutions Inc.

8300 Cypress Creek Pwwy

Houston, TX 77070

Phone: 832-694-0115



Email: [contact@claytransports.com](mailto:contact@claytransports.com)

### **18. 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 Customer or Company, 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.

### **19. Confidentiality**

As part of the business relationship between You and Clay Transport Solutions Inc., either Party may be in or come into possession of information or data that constitutes trade secrets, know-how, confidential information, marketing plans, pricing, or anything else otherwise considered proprietary or secret by the other ("Confidential Information"). In consideration of the receipt of such Confidential Information and potential business, each Party agrees to protect and maintain such Confidential Information in the utmost confidence, to use such Confidential Information solely in connection with their business relationship, and, to take all measures reasonably necessary to protect the Confidential Information.

You agree that Clay Transport Solutions Inc.'s costs for services is confidential and need not be disclosed to You. You specifically waive any rights You may have under 49 CFR § 371.3.

### **20. Assignment of Agreement**

Neither Party may assign or transfer these Terms and Conditions, in whole or in part, without the prior written consent of the other Party.

### **21. Entire Agreement**

These Terms and Conditions constitute the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, and any information given, whether oral, written,

expressed or implied, with respect to the subject matter hereof. Any modifications to this contract shall be signed by the Parties to be valid.

## **22. Contact Us**

If you have any questions or concerns about these Terms and Conditions, please contact us at [contact@claytransports.com](mailto:contact@claytransports.com) or call us at **+1 832-694-0115**.