

PUREFREIGHT INC. TERMS AND CONDITIONS OF SERVICE

Please read these Terms and Conditions carefully. By agreeing to use our services, you agree to be bound by the Terms and Conditions below with respect to any and all shipments ("Agreement").

You ("Customer") and PureFreight Inc., a California corporation ("PureFreight Inc."), hereby agree as follows:

1. **Parties.** Customer is a Shipper and/or Consignee and/or Forwarder and/or Broker of certain goods it wishes to have transported. PureFreight is a freight broker (as that term is defined in 49 U.S.C. § 13102[2]), operating under DOT Freight Broker License number 2538042. PureFreight is not acting as a Motor Carrier or a Common Carrier. PureFreight contracts with various, third party freight carriers and/or brokers and/or freight forwarding services ("**Carriers**") on behalf of Customer for the purpose of obtaining discounted rates for transportation of cargo. PureFreight reserves the right, in its sole discretion, to refuse any shipment at any time. In this Agreement, PureFreight and Customer may be collectively referred to as the "**Parties**" or each may be referred to as a "**Party**."
2. **Tariffs.** In the event of a conflict in the terms of this Agreement and an applicable Carrier's Tariff then in effect with a selected carrier (the "**Tariff**"), in every instance the Tariff shall take precedence and control in the interpretation of the rights and obligations of the Parties. If no conflict exists with respect to the Carrier's Tariff, this Agreement shall control. PureFreight is not obligated to provide copies of Tariffs, or any information contained therein, to Customer.
3. **Customer's Responsibilities.**
 - a. **Shipping Instructions.** Customer shall be responsible for providing PureFreight with timely and accurate delivery instructions and description of the cargo, including weight, dimensions, any special handling requirements, for any shipment.
 - b. **Hazardous Materials.** Customer shall 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. Customer is obligated to inform PureFreight immediately if any such shipments do constitute hazardous materials.
 - c. **Classification.** Customer shall be responsible for the accurate freight classification for all shipments and for the actual freight classification as determined by the carrier, including any corresponding freight charges.
4. **Bills of Lading/Documents.** All Bills of Lading ("**BOL**") are non-negotiable. The BOL shall be accurately prepared by Customer or by PureFreight on behalf of Customer in accordance with Customer's instructions and the information provided by Customer. Customer is required to provide the BOL to the Carrier designated by PureFreight. Customer shall cause to be timely and accurately completed all other documents required for carriage, in light of the services being sought and the pick-up or destination requested. If Customer fails to timely and properly complete the appropriate documents, Customer hereby authorizes and instructs PureFreight, where permitted by law, to correct or replace the documents for Customer, at Customer's expense. If a substitute form of BOL is needed to complete delivery of a shipment for any reason and PureFreight completes that document, the terms of the substituted BOL will govern and PureFreight will be exonerated from all liability for undertaking such actions on behalf of Customer including specifically liability for, in whole or in part, negligence by PureFreight. Any failure to provide the proper BOL to the designated Carrier shall render the entire transaction void ab initio. PureFreight shall have no obligation to make any payments or honor any rate quotes in any of the following instances: (i) the unauthorized alteration or use of bill of lading, or (ii) tendering of shipments to any carrier other than that designated by PureFreight, or (iii) the use of any BOL not authorized or issued by PureFreight. The insertion of PureFreight's name on the BOL and/or delivery receipt shall be for the Customer's or Carrier's convenience and shall not alter PureFreight's status as a property broker or otherwise make it liable as a carrier of the shipment.
5. **Customer Representations and Warranties to PureFreight.** Customer represents and warrants that, at all times, it will be in compliance with all applicable laws, rules and regulations or any governmental authority ("**Laws**") including applicable Laws relating to customs, import and export required by country to, from, through or over which the shipment may be carried. Customer agrees to furnish such information and complete and attach to the BOL such documents as are necessary to comply with such Laws. Any individual or entity acting on behalf of Customer in scheduling shipments or undertaking any other performance hereunder warrants and represents that he, she or it has the right to act on behalf of and legally bind Customer. PureFreight assumes no liability for any loss or expense due to the failure of Customer to comply with this paragraph.
6. **Payment.** PureFreight's compensation shall be included with, and in addition to, the rates and charges of all carriers and other agencies selected by PureFreight or Customer to transport Customer's shipments and is exclusive of any brokerage commission or other compensation received by PureFreight from any carriers and others. PureFreight shall invoice Customer. All invoices shall be due and payable within fifteen (15) days from the invoice date (net/15) unless other terms are mutually agreed. Past due payments shall be subject to an additional charge at the rate of 1 ½% per month of the average outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less. With respect to any payments received by PureFreight, where no remittance (i.e., instructions on where to apply payments) was provided by Customer, PureFreight will apply the payments to the oldest outstanding invoice.
7. **Credit Approval.** Payment terms and credit limits are subject to credit approval, which shall be determined from time to time, in the sole and absolute discretion of PureFreight. Customer grants PureFreight the right to perform such credit and background searches as PureFreight deems necessary. When paying by credit card or electronic funds, Customer agrees it will be responsible for all charges due and owing, including any adjustments, on account of such Customer's shipment. Customer authorizes PureFreight to charge Customer's credit card or bank account for any charges.
8. **Determination of Charges.** Customer shall be liable for all charges payable on account of Customer's shipment. Such charges may include transportation, fuel and other applicable accessorial charges, all adjustments issued by the carrier(s) after the shipment, and all duties, customs assessments, governmental penalties, fines and taxes. PureFreight reserves the right to amend or adjust charges and to re-invoice Customer in the following events: (i) if the original quoted amount was based upon incorrect information provided by Customer, or (ii) if additional services by the carrier were required, or (iii) if Customer authorized the carrier to perform the pick-up, transportation and delivery functions other than contemplated by the BOL. Any dispute of any invoice shall be made in writing, specifically indicating the nature of the dispute and delivered to PureFreight within thirty (30) days from the date of the invoice or any such dispute will be deemed waived and the invoice will be conclusively presumed to be valid.

Customer authorizes PureFreight to advise third parties of asserted liens and to hold possession of any shipment against which a lien is asserted.

9. **Lien.** PureFreight shall have a lien on all of Customer's shipments for all sums owed by Customer to PureFreight.

10. **Claims and Limitations of Liability.** PureFreight is not liable for loss, damage, delay or injury to any shipment, and acts solely as broker for placement of cargo with carriers. PureFreight is not liable for any loss, damage, mis-delivery or non-delivery including, but not limited to when caused by: (i) the international or negligent act, default or omission of any person (including, but not limited to any carrier, warehousemen, customs brokers, Customer or any other party performing services related to the transportation of the shipment); (ii) the nature of the shipment or any defect therein; (iii) a violation by Customer of any provision of this Agreement, the BOL, the Tariff (including, but not limited to improper or insufficient packing, securing, marking or addressing); (iv) the failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions; (v) any acts of God, public enemies, public authorities, acts or omissions of Customs or quarantine officials, perils of the air or sea, war, riots, strikes, labor disputes, shortages, weather conditions or mechanical delay or failure of vehicles, aircraft or other equipment; or (vi) the selection of a carrier for a particular shipment. Customer acknowledges that in order to provide competitive rates for the services, the parties have agreed as a material term of this Agreement that, unless Customer obtains insurance through PureFreight (as provided for in Section 12), in which case Customer will be responsible for any corresponding premium and deductible, the burden of any loss or damage incurred as a result of PureFreight's alleged liability has been shifted to Customer. Insurance deductible is \$500.00 in aggregate

11. **Indemnification.** Customer shall defend, indemnify and hold PureFreight, its officers, employees, agents and insurers harmless from and against any and all charges, third party claims, damages, costs, judgments, decrees, losses, expenses (including reasonable out-of-pocket legal fees), penalties, demands, liabilities and causes of action of any kind or nature whatsoever by reason of, based upon, relating to or arising out of Customer's (a) failure to timely pay any rates or charges to any carrier; (b) breach or alleged breach or failure of any of the covenants, agreements, representations or warranties under this Agreement; (c) the contents of any shipment; or (d) failure to comply with applicable laws and regulations.

12. **Insurance.** Unless requested to do so in writing and confirmed in writing to Customer, PureFreight is under no obligation to procure insurance on Customer's behalf. In all other instances, Customer will look solely to insurance provided by the carrier for damage to or loss of goods in transit. Each Tariff will determine the standard liability cargo insurance coverage offered on any shipment, subject to any exception value. If the shipment contains freight with a predetermined exception value, as determined by the respective carrier, the maximum exception liability will override the liability coverage otherwise provided by the Tariff. Customer acknowledges a claim for damages does not relieve it for payment under the terms of this Agreement. Client agrees that the payment of freight charges may not be postponed or offset due to loss or damage. Freight charges must be paid to PureFreight before a claim shall be reviewed or honored by the carrier. Timely payment is a condition precedent to the processing of any damage or insurance claim. All freight cargo claims should be submitted immediately to PureFreight to help ensure timely resolution. PureFreight will attempt to assist in the resolution of freight claims, but has no responsibility or liability therefore. Where a damage claim is submitted with carrier on behalf of Customer, PureFreight shall have a lien on any amounts recovered to the extent of open past due invoices on Customer's account. PureFreight may have optional Shippers Interest Contingent Cargo Liability Insurance ("**Third Party Insurance**") available for purchase by Customer. PureFreight has no responsibility or liability with respect to the issuance or denial of Third Party Insurance, or in the payment or denial of claims.

13. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PUREFREIGHT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO SHIPMENTS, WAREHOUSED GOODS, ITEMS IN TRANSIT OR DELIVERIES OR WITH REGARD TO THE INFORMATION PROVIDED ON ITS WEBSITE OR SERVICES RELATED TO TRANSACTIONS CONDUCTED ON ITS WEBSITE. PUREFREIGHT CANNOT GUARANTEE DELIVERY BY ANY SPECIFIC TIME OR DATE. IN NO EVENT, SHALL PUREFREIGHT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFITS OR INCOME, WHETHER OR NOT SUCH DAMAGES WERE REASONABLY FORESEEABLE. PUREFREIGHT'S ENTIRE LIABILITY TO CUSTOMER FOR ACTUAL DAMAGES FROM ANY CAUSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, its NEGLIGENCE) SHALL NOT EXCEED \$50.00 PER SHIPMENT.

14. **Rates.** "Less than Load" Rates ("**LTL**") rates are based on the freight class as determined by the National Motor Freight Classification ("**NMFC**") and are weight based. All displayed transit times are estimates only and do not include day of pickup. LTL pickup dates are not guaranteed. Truckload rates ("**TL**") rates are based on Dock Door Pickup/Dock Door Delivery and Shipper Load/Consignee Unload and are state to state and mileage based. Additional fees may apply for charges including, Tractor Detention, Trailer Detention, and Driver Assistance. Customer must tender this load to carrier at the agreed upon rate, or pay a "truck ordered, not used" penalty. Air Freight rates are based on the greater of actual or dimensional weight. If an Air Freight shipment contains oversize freight, additional charges and transit days may apply. Van Line rates are driven by state to state/mileage, weight (actual or density) and commodity/product type. Flatbed rates are based on equipment type, state to state/mileage and weight. If a flatbed shipment contains oversize freight, additional charges and transit days may apply. All displayed transit times are estimates only and do not include day of pickup. Pickup dates are not guaranteed.

15. **Guaranteed Services.** PureFreight will provide LTL Guaranteed Services for additional charge, if requested by Customer. LTL delivery times generally do not begin to run until the day after the pickup of the shipment, except as otherwise noted by the carrier selected. Guaranteed Service transit times do not include holiday and/or "no service" days as defined by the individual carrier. Customer is liable for all charges related to the shipment. In the event of a carrier's failure to comply with the guaranteed service requested, Customer shall have fourteen (14) days from the actual delivery date of shipment to deliver a written claim request to PureFreight. If PureFreight does not timely receive a claim request within said fourteen (14) days, the service provided by the LTL carrier will be deemed to have met all guaranteed service standards and the claim request will automatically be considered invalid and denied. In the event of the carrier's failure to comply with the guaranteed service requested and after the carrier has agreed to liability and has paid the amount awarded to Customer to PureFreight, PureFreight will credit the account of the said Customer with such amount awarded and paid by the carrier. In no event shall PureFreight be liable nor will any account be credited if Customer does not use PureFreight's BOL.

16. **Attorneys' Fees.** Should any proceeding (including arbitration or litigation) be commenced between the Parties hereto concerning the terms of this Agreement, or the rights and duties of the Parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to recover its attorney's fees and costs.

17. **Binding Nature of Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns, except that no party may assign, delegate or transfer any of its obligations under this Agreement without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld.

18. **Headings.** The titles used in this Agreement are for convenience only and are not to be considered in construing or interpreting the Agreement.
19. **Execution.** This Agreement shall become binding upon written acceptance by PureFreight of Customer's acknowledgement of its intent to be bound thereby, as evidenced by its designation of acceptance on PureFreight's web page or by its execution of this Agreement, or by acknowledgement by Customer.
20. **No Other Parties to Benefit.** This Agreement is for the sole benefit of the Parties hereto and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the Parties hereto and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
21. **Remedies.** In the event of a breach of this Agreement or any term hereof by any party, the other Party shall have all rights and remedies available at law, in equity, or under the terms of this Agreement, except as otherwise limited herein. All rights and remedies are cumulative.
22. **Construction.** This Agreement is intended to express the mutual intent of the Parties hereto, and irrespective of the identity of the Party or counsel who prepared this document, no rule of strict construction shall be applied against any Party.
23. **Governing Law; Forum; Venue.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of laws. The Parties agree that any proceeding relating to this Agreement will take place in the State and Federal courts located in Los Angeles, California; and both Parties hereby waive the right to object to that choice of law, personal jurisdiction or venue.
24. **Modification and Waiver.** No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the Parties hereto.
25. **Materiality.** All covenants, agreements, representations and warranties made herein shall be deemed to be material and to have been relied on by the Parties in entering into this Agreement and shall survive the acceptance of this Agreement.
26. **Severability.** This Agreement shall be enforced to the full extent permitted by law. In case any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable then such provision shall be inapplicable and deemed severed, but only to the extent of such prohibition or unenforceability, without affecting the validity, legality and enforceability of the remainder of this Agreement.
27. **Entire Agreement.** This Agreement, including any documents referenced herein, contains the entire understanding of the Parties relating to the subject matter hereof, and supersedes all previous agreements or arrangements between the Parties relating to the subject matter hereof. This Agreement cannot be changed or modified except by a writing signed by the Parties. A waiver by either Party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the Parties
28. **Survival of Term.** The representations, warranties and covenants included or provided in this Agreement which, by their terms and context, show the parties intended them to survive, will survive the termination of this Agreement for any reason.
29. **Indulgence Not Waiver.** Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence.
30. **Additional Instruments and Acts.** The Parties to this Agreement shall promptly execute and deliver any further or additional instruments, and shall perform any acts, which are or may become reasonably necessary to effectuate and carry out the purposes of this Agreement, without the necessity of incurring any additional expense.
31. **Authority.** By execution of this Agreement, the signatories hereto represent and warrant their authority to act in the capacity stated. By execution of this Agreement each Party represents and warrants its right, power and authority to enter into and to perform its obligation under this Agreement.