



Terms and Conditions

TIER ONE TRANSPORTATION, INC. (henceforth referred to as "Tier One Transport")
BROKERAGE TERMS AND CONDITIONS OF CONTRACT

By tendering Goods to Tier One Transport, You (Shipper, Customer, or You) agree to be bound by these Terms and Conditions. In accordance with 49 U.S.C. Section 14101(b)(1) You and Tier One Transport 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.

1. Parties. You are a shipper and/or consignee of certain general commodities ("Goods") that You wish to have transported by motor carriers ("Carriers") domestically within the United States, between locations within the United States and Mexico, and/or between locations within the United States and Canada. Tier One Transport is a transportation broker licensed by the Federal Motor Carrier Safety Administration ("FMCSA") with MC 079887 to arrange for the transportation of Goods by Carriers. Tier One Transport is not a freight forwarder, common carrier, or contract carrier.
2. Services. Tier One Transport's responsibility is limited to arranging for, but not actually performing, transportation of the Goods. These Terms and Conditions apply to all transportation services arranged by Tier One Transport on Your behalf.
3. Independent Contractors. The relationship between You and Tier One Transport is and will remain that of independent contractors and no employer/employee or principal-agent relationship exists or is intended.
4. Compensation. Tier One Transport will invoice You for its services based on these Terms and Conditions and negotiated rates and charges. You agree to pay Tier One Transport within 30 calendar days of invoice date without deduction or setoff. Tier One Transport may assess a service charge of 1 ½% per month (or the highest lawful rate, if less) on any late payments. If You do not pay the invoiced amounts, Tier One Transport may commence a civil action to recover such invoiced amounts within 24 months of delivery or tender of delivery of the shipments involved.
5. Bills of Lading and Other Shipping Documents. Your insertion of Tier One Transport's name on any bill of lading or shipping document will be for Your convenience only and will not change Tier One Transport status as a broker. The terms and conditions of any documentation used by You, any shipper, or a Carrier will not supplement, alter, or modify the terms of these Terms and Conditions.
6. Loss, Damage, or Delay of the Goods
 - A. Tier One Transport is not liable for loss, damage, or delay in connection with the transportation of Goods. If requested by You and agreed to by Tier One Transport. Tier One Transport may assist You in filing and/or processing claims with Carriers.
 - B. 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 any 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.

C. Carrier's liability for cargo loss, damage, and delay will be the least of the following, unless You declare a higher value with Tier One Transport prior to shipment and pay an additional charge as specified by Tier One Transport:

- (1) The actual value of the Goods,
- (2) \$2.00 per pound.

7. Consequential Damages. Under no circumstances will Tier One Transport or Carrier be liable for consequential, indirect, incidental, or punitive damages of any kind.

8. Your Obligations.

A. 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.

B. 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.

C. Unless You have requested that Tier One Transport 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 seal to the loaded equipment.

D. 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.

E. If You request that Tier One Transport 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.

F. 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. If shipments are moving within Mexico, You must comply with the General Law of Health, the Regulation for the Sanitary Control of Products and Services, the Mexican Official Standard NOM-251-SSA1-2009 (Hygienic practices for processing

food, beverages, and dietary supplements) and any other. Shipments moving within Canada must comply with the Safe Food for Canadians Act and Safe Food for Canadians Regulations, and/or the current applicable federal and provincial food safety laws and regulations. (All of the above regulations are referred to herein as the "Food Safety Laws"). You are responsible for the recordkeeping obligations of a 'Shipper' under the Food Safety Laws. You represent and warrant that any Food Shipments offered for transportation pursuant to the Agreement are tendered in safe condition for human or animal consumption, as applicable.

G. 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 the 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 Carrier to verify the temperature of Food Shipments prior to acceptance of tender and upon delivery at destination.

H. 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 will mitigate damages whenever possible, including by salvaging all portions of a shipment for which there is a secondary market. 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.

I. 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.

J. You represent and warrant that you do and will comply at all times with all laws, rules, and regulations applicable to the cross-border movement of Goods.

9. Hazardous Materials. You must provide Tier One Transport with advance notice of the proposed shipment of any Dangerous Goods as defined in the Transportation of Dangerous Goods Act, 1992 (Canada) and/or in the Transportation of Dangerous Substances Regulations (Quebec) or hazardous material, as defined in 49 U.S.C. §5101, *et seq.* in the United States or in the Law of Roads and the Regulations for Land Transportation of Hazardous Materials and Waste in Mexico ("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 Tier One Transport, 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, *e seq.* as amended ("CERCLA"), The Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, as amended ("RCRA") or any comparable Canadian, Mexican, provincial, or state law.

10. Indemnification. You must defend, indemnify and hold Tier One Transport, Tier One Transport employees and agents, and Carriers harmless against any losses caused by or resulting from (1) Your or Your employees' or agents' negligence or intentional misconduct, (2) Your breach of these Terms and Conditions, or (3) Your or Your employees' or agents' violation of applicable laws or regulations. You shall also indemnify Tier One Transport from any attempts to recover from Tier One Transport by Your insurance carrier or any other party in regard to claims for loss, damage, or delay to Goods. The obligation to defend includes payment of all reasonable costs of defense, including attorney fees, as they accrue.

11. Information Systems. Any management information system or computer hardware or software used or supplied by Tier One Transport in connection with the Services is and will remain Tier One Transport exclusive property. All management information systems and related computer software and documentation used or supplied by Tier One Transport are proprietary to Tier One Transport, and You will treat all such systems as confidential and not copy, use, or disclose them to third parties without Tier One Transport' prior written consent, except as required by law.

12. Jurisdiction and Venue. 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 California. The parties agree to jurisdiction and venue in a United States Federal District Court located in California, or if federal jurisdiction is not available, then in a State Court located in California, County of Orange.

13. Force Majeure. If performance by one Party is affected by any condition beyond the reasonable control of such Party, the performance of obligations under the Terms and Conditions (other than Your obligation to pay for Services performed) affected by such condition will be suspended during the continuance of such condition. The Carriers engaged by Tier One Transport will be permitted an extension period equal to the period of suspension in order to complete shipments adversely affected by the suspension. Neither Party will incur any liability for damages resulting from such suspensions.

14. Notice. Any notices and other communications required or permitted under the Terms and Conditions must be in writing and be (1) delivered personally, (2) sent by facsimile or e-mail transmission if confirmed by notice sent by one of the other notice methods permitted in this paragraph, (3) sent by nationally recognized overnight courier guaranteeing next business day delivery, or (4) mailed by registered or certified mail



(return receipt requested), postage prepaid, to Tier One Transport at the following addresses (or at such other addresses as are specified by like notice):

For USPS:

Tier One Transport, Inc.
23052 H ALICIA PARKWAY 426
MISSION VIEJO CA 92692

Otherwise:

Tier One Transport, Inc.
23052 H ALICIA PARKWAY 426
MISSION VIEJO CA 92692

All such notices and other communications will be deemed to have been given and received (1) in the case of personal delivery, on the date of such delivery, (2) in the case of facsimile or e-mail transmission that is confirmed by notice sent on the same day by one of the other methods permitted, on the date of transmission if sent on a business day (or if sent on other than a business day, on the next business day after the date sent), (3) in the case of delivery by nationally recognized overnight courier, on the business day following dispatch if sent by guaranteed next day delivery, or (4) in the case of mailing, on the third business day following such mailing.

15. Confidentiality. As part of the business relationship between You and Tier One Transport, 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 Tier One Transport 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.