

BLAKEMAN TRANSPORTATION, INC. TERMS AND CONDITIONS OF SERVICE

This explains the services provided by BLAKEMAN TRANSPORTATION, INC. (“BTI”) and the terms, conditions, restrictions and requirements under which those services will be rendered. These terms, conditions, restrictions and requirements have been incorporated through reference on BTI’s offering to the public via its website, and through its documents, including but not limited to the Credit Agreement, initial rate offers, rate confirmation sheets, invoices or service orders, where applicable.

Though effort has been made to present a uniform and consistent statement of the terms and conditions of service for BTI to the extent that any conflict exists or arises between the terms and conditions of the shipping, warehousing or other documents, these Terms and Conditions of Service shall control. To the extent applicable, and allowable by law, those provisions of the Interstate Commerce Act which are inconsistent with these Terms and Conditions of Service are expressly waived.

If any portion of these Terms and Conditions of Service are found unenforceable by the courts or by any other agency having jurisdiction over the parties, such portions shall be deemed stricken, however, the remainder will remain valid and enforceable.

1. BTI AUTHORITY. BTI operates as a transportation broker of general commodities pursuant to a license issued by the Interstate Commerce Commission (now the Federal Motor Carrier Safety Administration) under MC-214825. The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. (49 U.S.C. §13102(2)). BTI undertakes to operate within the regulations set forth at 49 C.F.R. §371, and as otherwise promulgated by State and Federal authority.

Blakeman Transportation, Inc. (“BTI”) is not a motor carrier, but acts exclusively as a property broker licensed by the FMCSA and defined at 49 USC 13102. Reference to BTI as “carrier” is strictly for the convenience of the parties and does not create or imply a holding out or assumption by BTI of motor carrier authority, equipment, personnel, capabilities, insurance, or liabilities, nor do such provisions apply to BTI. As a federally licensed broker, BTI shall arrange for transportation with motor carriers and BTI shall contractually require such carriers to have proper equipment and personnel in compliance with the Sanitary Transportation Food Act, and all other Federal and State laws.

2. BTI OPERATIONS. BTI operates through a central office, a regional office, and through sales agents and independent contractors. BTI personnel, employees and sales agents are only authorized to perform, provide or arrange for transportation service consistent with these Terms and Conditions of Service. Customer understands and agrees that any statements, promises, or agreements made by such employees, agents or contractors that conflict with the terms and conditions of this Service Guide are not binding upon BTI.

3. APPLICABILITY. These Terms and Conditions of Service apply to all services provided by BTI to or for the Customer, which term shall include the shipper, exporter, importer, sender, receiver, owner, consignor, consignee, transferor or transferee of the shipments and can only be altered by written agreement signed by BTI prior to shipment.

4. **CUSTOMER AUTHORIZATION.** Customer authorizes BTI to arrange for motor carriers, forwarders, customs brokers, shipping agents, warehousemen and others (“service providers”), as required, to receive, transport, store, assemble, consolidate, break-bulk and deliver the goods. Unless Customer instructs BTI, in writing, prior to shipment to use a specific service provider, BTI may utilize any available service provider. Customer is defined as any person or entity that requests services from BTI whether for its own account or on behalf of others, or any person or entity to whom BTI has extended credit.
5. **INDEPENDENT CONTRACTORS.** All service providers, including but not limited to motor carriers, drayage carriers, rail carriers, warehousemen, are independent contractors, unless required to act as the agent of Customer for U.S. Customs purposes. Customer’s goods shall be tendered to such service providers subject to their rules, tariffs and terms and conditions. BTI will supply or direct Customer to Service Providers’ specific rules, tariffs, and terms and conditions upon Customer’s written request.
6. **QUOTATIONS.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by BTI to the Customer are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon BTI unless BTI in writing specifically undertakes the handling or transportation of the shipment at a specific rate.
7. **CUSTOMER’S DUTY.** Customer warrants the accuracy of shipment descriptions, weights, dimensions, written vehicle sanitary or temperature requirements (subject to ¶12 below), invoices, documents and other information furnished to BTI by the Customer or its agent for export, entry or other purposes and the Customer agrees to indemnify and hold harmless BTI against any increased rates, charges, duty, penalty, fine or expense including attorneys' fees, resulting from inaccurate, incomplete statement, omission or any failure to make timely presentation, even if not due to any negligence of the Customer.

It is the responsibility of the Customer to know and comply with the marking requirements of the U.S. Customs Service, the regulations of the U.S. Food and Drug Administration and all other requirements, including regulations of Federal, state and/or local agencies pertaining to the merchandise. It is understood and agreed that Customer bears all responsibilities of the “Shipper” and/or “Loader” under the FDA Sanitary Food Transportation regulations, and must provide specific written requirements as to vehicle sanitary requirements and/or temperature requirements to BTI prior to shipment and to the motor carrier at the time of physical tender. Customer shall be responsible for assessing vehicle cleanliness and/or trailer temperature at pick-up. BTI shall not be responsible for action taken or fines or penalties assessed by any governmental agency because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Customer by any such agency.

Shipper provided and applied Cargo Security Seals may be used at time of loading of Full Truck Load shipments only. When Cargo Security Seals are applied by Shipper, “Shipper Load and Count” will prevail. LTL shipments are not required to have a Security Seal or Continuous Security Seal Record due to the inherent nature of LTL shipments. (See Claims)

8. **INDEMNIFICATION.** In the event that a carrier, other person or any governmental agency makes a claim or institutes legal action against BTI for ocean or other freight, duties, fines, penalties, liquidated damages or other money due rising from a shipment of goods of the Customer, the Customer agrees to defend, indemnify and hold harmless BTI for any amount BTI may be required to pay such carrier, other person or governmental agency together with reasonable expenses, including attorneys' fees, incurred by BTI in connection with defending such claim or legal action and obtaining reimbursement from the Customer. The confiscation or detention of the goods by any

governmental authority shall not affect or diminish the liability of the Customer to BTI to pay all charges or other money due promptly on demand.

- 9. ADVANCING PAYMENT.** BTI shall not be obliged to incur any expense, guarantee payment or advance any money in connection with the importing, forwarding, transporting, insuring, storing or cooperating of the goods, unless the same is previously provided to BTI by the Customer on demand. BTI shall be under no obligation to advance freight charges, customs duties or taxes on any shipment, nor shall any advance by BTI be construed as a waiver of the provisions hereof.
- 10. REASONABLE DISPATCH.** Motor carriers are required to pick-up and deliver with “reasonable dispatch”. BTI does not guarantee nor warrant exact delivery times or days. The acceptance of freight for delivery does not grant Customer a warranty (actual or implied) to delivery times. While every effort is made to meet customer and shipper needs and expectations, no delivery guarantee is given nor will BTI or any service provider accept liability or penalty including but not limited to financial claims or restitution for late deliveries.
- 11. C.O.D. SHIPMENTS.** BTI does not accept C.O.D. (“Cash On Delivery”) shipments, nor will BTI or its Carriers perform services related to C.O.D. shipments, and BTI shall not be liable for damages related or arising from C.O.D. shipments regardless of notations on a bill of lading or other shipping document placed thereon without BTI’s knowledge and consent.
- 12. TEMPERATURE CONTROL.** Temperature Controlled Frozen Products shall be transported in a non-specific range of 0°F to +10°F; For Chilled Products the range is +28°F to +38°F. BTI and its Carriers will not be responsible for Temperature Variance on LTL (Less Than Truckload) shipments packaged in glass, plastic, aluminum or any other metal container, nor can the temperature range be expanded or narrowed by notation on the bill of lading. Shipments requiring specific temperatures must be presented to BTI at least 48 hours prior to pick-up and subject to written acceptance by BTI. Customer shall include temperature recorders in all such shipments and shall have the burden of showing temperature abuse.
- 13. DECLARATION OF VALUE.** Customer may request, in writing at least 24 hours prior to shipment, additional insurance or coverage from the service provider, however such higher declared value is subject to additional charges and shall not apply unless and until agreed to in writing by BTI or the service provider otherwise the maximum value is \$2.50 per pound for all LTL shipments and \$100,000 for truckload shipment. Values stated on the bill of lading, invoice or other shipping documents shall be used solely for export or customs purposes, and shall not constitute the specific written agreement required above, and shipment shall be subject to the service providers’ ordinary limitations of liability.
- 14. BTI’s LIABILITY.** As a broker, BTI is not liable for cargo loss, damage or delay. BTI is not liable for any loss, damage, expense or delay to the goods tendered to, or in the care, custody, possession or control of service providers. It is specifically agreed that BTI shall only be liable for loss, damage or delay directly attributable to or resulting solely from BTI’s gross negligence, and the applicable service provider’s ordinary limitations of liability for the commodity shall apply. BTI’s maximum liability shall be limited to \$2.50 per pound on LTL shipments or \$100,000 on truckload shipments therein unless a Higher Value is declared, accepted in writing and charged and paid for subject to the conditions in paragraph 13 above. Regardless of BTI’s actual or presumed knowledge, in no circumstance shall BTI be liable for special, consequential, indirect damages, nor penalty fees or non-compliance chargebacks, however named. BTI shall only be liable for liquidated damages or

chargebacks of any kind, if BTI specifically agrees in writing to the type and amount of such damages prior to shipment.

- 15. REDELIVERY LIABILITY.** BTI when acting as a broker that is arranging either redelivery services or return services, for another Carrier, Shipper, Agent, Broker or Customer, where the cargo or delivery was previously rejected or may/does have a Cargo Claim on it, will not be responsible for the Cargo Claim or any subsequent damages or claims regarding the respective cargo. BTI will only act as a go between (Broker) and does not accept any responsibility for damages, claims or financial loss.
- 16. CLAIMS.** Notice of loss or damage should be brought to BTI's attention immediately, but no later than 48 hours after occurrence. All claims must be filed in writing with the actual carrier within 180 days of either the date of loss or incident giving rise to the claim with documentation as required under 49 C.F.R. §370, with a copy to BTI. In regard to truckload or container shipments only, the receiver must immediately notify either the origin or destination carrier when damage or shortage is noted. The carrier must be given a reasonable time to inspect the container, trailer or shipment while still loaded. In certain limited circumstances, BTI may accept notification and arrange for inspection on behalf of the carrier.

BTI will reasonably assist and cooperate with Customer, or other party entitled to recover under the bill of lading/shipping order, to investigate and help process freight loss or damage claims against the Carriers. Freight and other charges must be paid in 10 days from receipt of invoice, and no offsetting is permitted for any claim or allegation, however, BTI shall supervise the processing and administration of claims with the underlying carriers. However, in no circumstance will such assistance imply or create a duty from or for BTI in regard to claims. If claims are not reported to BTI in accordance with the foregoing provisions, BTI will not be liable, regardless of BTI's actual negligence. To the extent inconsistent with the foregoing terms, the provisions of the Interstate Commerce Act (49 U.S.C. 13101 et seq.) specifically the Carmack Amendment (49 U.S.C. §14706) the regulations promulgated there under (49 C.F.R. §300 et seq.) are hereby waived under 49 U.S.C. §14101(b).

Neither BTI nor any service provider shall be liable for alleged loss or damage unless BTI or carrier is given an opportunity to actually count package units at origin or expressly waives such right (and such waiver is noted on the bill of lading and signed by carrier) and any loss or discrepancy is noted on the bill of lading at destination. Claims for concealed loss, damage or "subject to count" not made within 5 days of delivery are invalid and denied. Claims made within the 5 day period are subject to customer's burden of proof to demonstrate that such loss or damage occurred while shipment was in BTI's carrier's possession.

Carrier will take all reasonable measures, as may be required, to ensure the physical integrity and security of all shipments; trailers will be secured with a Pad-Lock to prevent tampering or unauthorized entry during transit and/or under the Carrier's Drivers control. However, as LTL shipments involve multiple pick-ups and stops neither Blakeman nor carriers shall be responsible for claims based only on a "broken seal", actual loss, damage or tampering with the shipment must be shown.

Blakeman Transportation, Inc. will not be responsible for return, rework, or product costs /cargo claims when only the Ambient Air Temperature recorded history is used to accept or reject a "TCS" (Temperature Control Safety) classified shipment. A full investigation, using objective

measures, of Air & Product Temperature must be fully reviewed and documented to determine that a Food Safety issue possibly exists and refusal of the shipment is necessary.

17. CREDIT and PAYMENT. At its discretion BTI may extend credit to Customer. All invoices are due and payable in full in ten (10) days from invoice date at BTI's office, 2350 Cold Springs Rd., Fort Worth, TX 76106 or at its postal mail box, PO Box 4340, Fort Worth, TX 76164. Bills unpaid after 30 days from due date, including dishonored drafts, will be subject to a service charge of one and one half percent per month (18% per annum) or fraction thereof. Such service charge shall begin to accrue on the 31st day after the date of invoice. Furthermore, BTI reserves the right to withhold delivery, or deliveries, at the customer's expense, for payment of all unpaid or past due charges. In such event, BTI shall have a possessory lien on all inventory, cargo, freight, shipments and/or tangible commodities tendered to BTI, or any of BTI's contracted carriers or other service providers, for all unpaid, past due and other charges for transportation, distribution or storage. BTI may also add its reasonable attorney fees, collection costs or service charges incurred in attempting to collect transportation, handling or storage charges. The compensation of BTI for its services shall be included with and is in addition to the rates and charges of all service providers arranged for by BTI to transport and handle the goods and such compensation shall be exclusive of any brokerage, commissions, dividends or other revenue received by BTI from carriers, insurers and others in connection with the shipment. No offsetting is permitted for any claim or allegation, however, BTI shall supervise the processing and administration of claims with the underlying carriers.

18. COLLECTIONS. Customer is primarily responsible for all charges and fees relating to a shipment, including but not limited to transportation charges, handling, storage, detention, and service charges, regardless of any payment instructions to the contrary. In the event of default by Customer, and in addition to the lien rights set forth above, (See Credit and Payment Section above) BTI reserves the right to collect all such charges from the Shipper, Consignor, Consignee, Beneficial Owner or other party to the transaction, and such parties' liability for freight and other charges shall be joint and several, regardless of the payee designated on the bill of lading or other documents. The provisions of "Section 7" of the National Motor Freight Classification's ("NMFC") Uniform Straight Bill of Lading shall not apply. BTI may, at its sole discretion, initiate collections (with or without discount application) as provided above.

By special arrangement, as a courtesy to the Customer, BTI may undertake "Collect" or third party payable shipments, though such shipments may be subject to additional charges or a different scale of rates. Collect or third party freight charges shall be issued to the party specified on the shipping documents, including, but not limited to, bills of lading. Any unpaid collect or third party freight charges remain the responsibility of the Customer regardless of any notations to the contrary on the bill of lading. The Customer warrants payment shall be made to BTI within 10 days of presentation of its freight charges.

Payment of freight or other charges is not subject to deductions, offset or withholding for any reason whatsoever.

19. INJURY TO PERSONS OR PROPERTY. BTI shall not be liable to Customer or any other entity for injury to persons or property unless such injury is the direct result and solely attributable to BTI's acts or omissions. To the extent that Customer causes or contributes to such injury it shall defend, indemnify and hold BTI harmless from any claims, suits, causes of action, including reasonable attorney fees and costs. Additionally, BTI shall be entitled to reasonable attorney fees and costs for enforcement of these terms.

20. FEES AND COSTS. The Customer shall be liable for all attorneys' fees and expenses incurred by BTI to collect payment from the Customer for services provided or to otherwise enforce BTI's rights pursuant to these terms and conditions.

21. GOVERNING LAW AND JURISDICTION. The validity, construction, enforcement and interpretation of the foregoing terms and conditions shall be governed by the substantive laws of the State of Texas, unless the application of federal law is required. The services provided by BTI pursuant to these terms and conditions are to be provided, in whole or in part, in Tarrant County, Texas. Any legal proceeding instituted against BTI relating to the services provided by BTI to the Customer must be instituted in Tarrant County, Texas.