

Favorable and Unfavorable Clauses in Manufacturer-Carrier Contracts

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- **EFFECTIVE DATE AND TERMINATION**
- **TRANSPORTATION SERVICES**
- **PERSONNEL REQUIREMENTS**
- **OPERATING LICENSES AND PERMITS**
- **EQUIPMENT**
- **INSURANCE**
- **WORKERS' COMPENSATION**

- **LIABILITY AND CLAIMS**
- **INDEMNIFICATION**
- **TAXES**
- **BILL OF LADING**
- **DEFAULT**
- **CONFIDENTIALITY**
- **COMPLIANCE WITH THE LAW**
- **SUBCONTRACTING**

- **OCCUPATIONAL SAFETY STANDARDS**
- **TRAINING CERTIFICATION**
- **FORCE MAJEURE**
- **CARRIER MONITORING**
- **NON-ASSIGNMENT**
- **INDEPENDENT CONTRACTOR**
- **PAYMENT TERMS**
- **GOVERNING LAW**

- WAIVER
- HEADINGS
- ENTIRE AGREEMENT
- NOTICE
- VALIDITY
- CURRENCY
- SCHEDULE
- INTERNET INTERCHANGE

- **NO LIENS; WAIVER OF CARRIER'S LIEN**
- **TERMINAL LOCATIONS**
- **TRANSPORTATION DOCUMENTATION**
- **CUSTOMER LOCATIONS**
- **DESCRIPTION OF COMMODITIES**
- **CONTACTS**

“One-Sided” Brokerage Agreement – To Be
Challenged

Broker - Standard Trading Conditions – Logistics Services

Application: All business conducted by Broker (referred to as “BROKER”) is accepted and handled subject to these Standard Trading Conditions and subject to the standard terms and conditions of the Canadian International Freight Forwarders Association in existence at the time of any quotation. Where there is any conflict between these terms and CIFFA terms, these terms shall prevail. In these conditions "Client" means the person at whose request or on whose behalf BROKER undertakes any business or provides any service. These conditions shall be read subject to any compulsorily applicable legislation. These conditions shall not be deemed to be a surrender by BROKER of any of its rights or immunities under such legislation. If any part of these conditions are repugnant to such legislation such part shall be severable.

Quotations: Quotations are given by BROKER on the basis of immediate acceptance and are subject to withdrawal or revision. BROKER may after acceptance revise quotations in the event of changes outside its control.

BROKER's Responsibility and Undertaking: Unless otherwise stated **BROKER is acting as agent on behalf of the Client**. Where BROKER is acting as a principle and issues a bill of lading or similar document of title the terms and conditions embodied in such document shall be paramount in governing the relationship between BROKER and the Client. BROKER shall perform its duties with a reasonable degree of care, diligence, skill and judgment within a reasonable time. Except under special arrangements, which shall be in writing, BROKER accepts no responsibility for delay or for departure or arrival dates. BROKER shall be permitted to depart from the Client's instructions where reasonably required. BROKER shall be entitled to reroute goods where reasonably required.

Client's Responsibility and Undertaking

- a) The Client expressly authorizes BROKER to enter into contracts with carriers and other transportation service providers on behalf of the Client for the carriage, storage, packing, handling or customs clearance of the goods by any person, or at any place, and for any length of time.
- b) The Client warrants that the description and particulars of goods furnished to BROKER are accurate and complete.
- c) The Client undertakes to advise and warn BROKER if the goods are liable to taint or affect other goods.
- d) The Client warrants that the goods have been properly and sufficiently packed, labelled, prepared, and marked for the intended mode, method, route and time of transportation.
- e) The Client warrants that the goods are not dangerous or hazardous as defined in any legislation.
- f) The Client warrants that where it supplies the vehicle or container for transportation of the goods such conveyance unit shall be transportation worthy, suitable for the carriage and has been properly and competently loaded.
- g) The Client warrants that the goods are not bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, bank notes, bonds, negotiable instruments, securities or plants. Such goods shall only be offered to BROKER for transportation under special written arrangement.
- h) The Client warrants that the goods are able to withstand the normal rigours of the transportation mode employed.
- i) The Client warrants that it has authority to bind the shipper(s) or consignee(s) as the case may be to the terms of this agreement for the services requested.

Client Indemnification to BROKER: The Client agrees to indemnify and hold harmless BROKER for:

- a) All duties, taxes, payments, fines, expenses suffered or incurred by BROKER in the performance of its obligations;
- b) All losses, damages (including physical damage) and liabilities in excess of the liability of BROKER in accordance with these conditions suffered by BROKER in the performance of its obligations or to which BROKER is claimed against by third parties;
- c) All freight, duties, charges or other expenses whether payable by the shipper or consignee or other person;
- d) All claims of a general average nature and / or maritime salvage and security for same; and
- e) All loss, damage or delay caused by the failure to disclose that the goods are dangerous, hazardous or of a damaging nature. The goods may be warehoused at the client's risk and expense.

Notice: Any claim by the Client against BROKER shall be made in writing as soon as events which may give rise to a claim are known to the Client and in any event the lesser of:

- a) no later than the applicable legislation to the mode of carriage involved;
- b) within 7 days of the loss and/or damage to the goods or the date when the goods should have been delivered or from the date when the event giving rise to a claim arose.

Such notice shall set out particulars of the origin, destination, date of shipment and nature of the goods and the estimated amount claimed. If such notice in writing is not given the claim shall be absolutely barred. All freight must be paid prior to any claim being made, otherwise the claim shall be absolutely barred.

Insurance: BROKER is not an insurer of the goods or services. BROKER shall not, except under special arrangement, effect insurance for the goods or services provided. Where the Client requests BROKER to obtain insurance, BROKER will do so as agent for the Client. Such a request for insurance must be in writing and must be confirmed in writing by BROKER. Even where insurance is obtained these standard terms and conditions shall apply to the relationship between BROKER and the Client.

Liability of BROKER: BROKER shall be liable for loss of or damage to the goods occurring between the time when BROKER physically takes the goods into its charge and the time BROKER physically delivers the goods to the Client, or other party including actual carriers. BROKER shall not be liable for loss of or damage to the goods occurring while the goods are in the care, custody or control of others, including sub-contractors or other transportation providers it engages for or on behalf of the Client. In no event shall BROKER or the carrier be liable for any loss or damage if such loss or damage was caused by an act of God, the Queen's or public enemies, riots, strikes lockouts or restraint of labour, a defect in the goods, inherent vice of the goods, insufficient or defective or improper packaging or labelling or marking of the goods, an act or default of the consignor, owner or consignee, authority of law, or quarantine or difference in weights of grain, seed or other commodities caused by natural shrinkage. No claim shall be made on any grounds whatsoever against any employee, officer or director of BROKER. When BROKER provides warehousing services its Warehousing Terms and Conditions shall apply to the warehousing.

Limitation of Liability: The liability of BROKER shall be the lesser of:

- (a) \$0.50 per pound multiplied by the number of pound or fraction thereof, of each piece(s) of shipment which may have been lost, damaged or destroyed (but not less than \$50.00 per shipment);
- (b) the declared value for carriage, provided such declaration was made prior to the commencement of transit;
- (c) the actual value of such piece(s) at the place of origin including the freight and other charges if paid;
- (d) 2 SDR (SDR=Special Drawing Right) units per kilo of gross weight of the goods lost or damaged;
- (e) the limitation of liability of the actual carrier in whose possession the goods were lost or damaged; and
- (f) the minimum liability as set out in the laws of the provinces of Canada or the laws of the United States of America that are found to be of compulsory application to the contract of carriage.

Consequential Damages: In no event (including but not limited to fundamental breach of contract, breach of fundamental term of a contract and the negligence or gross negligence of BROKER whether arising from damage to the goods, mis-delivery, failure to deliver or delay in delivery) shall BROKER be liable, whether at the suit of the party or parties contracting directly with BROKER, or at the suit of any third party and whether in contract or in tort, for indirect or consequential damages or for damages for the loss of use or for the loss of earnings or profit or for punitive, exemplary or aggravated damages.

Non-Receipt of Goods: Where the Client, or the consignee does not take delivery of the goods at the time and place of delivery contracted for, BROKER shall be entitled to store the goods in a public or licensed warehouse at the expense of the Client or consignee, without liability on the part of BROKER and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. On 21 days notice in writing to the Client or the consignee BROKER shall be entitled to dispose of the goods (by sale or otherwise as may be reasonable).

Moneys Due and Liens: The Client, the consignor, and the consignee are jointly and severally liable for freight. The Client shall pay to BROKER in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off. Despite the acceptance by the carrier or BROKER of instructions to collect freight, duties, charges or other expenses from the consignee or any other person the Client shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such consignee or other person when due. All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies due either in respect of such goods or for any particular or general balance or other monies due from the Client or the sender, consignee or owner to the actual carrier or to BROKER. If any monies due the carrier or BROKER are not paid within one calendar month after notice has been given to the person from whom the monies are due and such goods are being detained, they may be sold by auction or otherwise at the sole discretion of the carrier or BROKER and at the expense of such person, and the net proceeds applied in or towards satisfaction of such indebtedness and the carrier or BROKER shall not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Client, the consignor or the consignee of such be relieved from the liability for payment merely because the goods have been sold.

Carrier Terms: BROKER is entitled to rely on the terms and conditions, including at law or by contract, imposed on or by any carrier which define and limit the obligations and liabilities of the forwarder where such terms are more favourable to BROKER than the terms and conditions specified herein and in so far as those terms are not inconsistent nor contravene any law of the Province of Canada or any law of the United States of America compulsorily applicable to the carriage of the goods. The carrier terms and conditions are available for inspection from BROKER at its offices or upon written request and are deemed to be part of this contract.