

# Freight Rate Pro

## Freight Connect LLC DBA Freight Rate Pro

### Terms and Conditions of Service

**These Terms and Conditions of Service shall constitute a legally binding contract between the "Company" and the "Customer." In the event the Company renders services and issues a document containing its own Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services. These Terms and Conditions of Service are referred to as "this Agreement" herein.**

#### **1. Definitions:**

(a) "Company" shall mean Freight Connect LLC dba Freight Rate Pro, its subsidiaries, related companies, agents and/or representatives.

(b) "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, carriers, secured parties, warehousemen, buyers and/or sellers, shippers agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives.

(c) "Documentation" shall mean all information received directly or indirectly from customer, whether in paper or electronic form.

(d) "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise."

**2. Company as Agent:** Customer is a shipper and/or Consignee of certain goods it desires to have transported. Company contracts with a variety of freight carriers (Carriers) on behalf of the Customer for the purpose of obtaining discounted rates for transportation. Company reserves the right, in its sole discretion, to refuse any shipment at any time. Under limited circumstances and only when the transportation is entirely within the State of Florida, Company may act as a Motor Carrier and issue its own bill of lading. If the transportation crosses state lines, Company will not act as a Motor Carrier or a Common Carrier within the meaning of USC Title 49. Company acts as the "agent" of the Customer for the purpose of arranging the transportation of Customer's goods; as to all other services, Company acts as an independent contractor.

**3. Preparation and issuance of Bills of Lading:** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages, and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. Company shall rely upon and use the cargo weight and dimensions supplied by Customer.

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**4. Limitation of Actions:** All claims against the Company for a potential or actual loss must be made in writing and received by the Company, within thirty (30) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer. All suits against Company must be filed and properly served on Company within thirty (30) from the date of loss or damage

**5. No Liability for the Selection or Services of Third Parties and/or Routes:** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

**6. Disclaimers; Limitation of Liability:** Whether Company acts carrier or freight forwarder or carrier, Company's liability is limited to

(a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services, 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 the website or services related to transactions conducted on the website. Company cannot guarantee delivery by any specific time or date.

(b) Subject to (c) below. Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its grossly negligent acts, which are the direct proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of the third parties;

(c) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment transaction, by requesting such coverage and agreeing to make payment therefore, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s);

(d) In the absence of additional coverage under (c) above, the Company's liability shall be limited to \$50.00 per shipment or transaction, or \$0.50 cents per pound, whichever is less.

(e) In no event shall the Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of such damages.

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(f) Customer will look solely to insurance provided by the carrier for damage to goods in transit.

(g) Customer acknowledges a claim for damages does not relieve it for payment under the terms of this Agreement. Timely payment is a condition precedent to the processing of a damage or insurance claim. All freight cargo claims should be submitted immediately to Company to help ensure timely resolution. Freight Connect, LLC 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, Freight Connect LLC has a lien on any amounts. Recovered to the extent of open past due invoices on the Customer's account.

## **7. Limitations of Liability, When Company Acts a Carrier:**

(a) Company is not liable for any loss, damage, mis-delivery or non-delivery caused by (i) the act, default or omission of Customer or any other party who claims interest in the shipment, including but not limited to, improper or insufficient packaging, securing, marking or addressing, or (ii) the nature of the shipment or any defect therein, or (iii) a violation by Customer of any provision of this Agreement, the bill of lading, or (iv) failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions, or (v) acts of God, perils of the air, public enemies, public authorities, acts or omissions of Customs or quarantine officials, war, riots, strikes, labor disputes, shortages, weather conditions or mechanical delay or failure of vehicles, aircraft or other equipment, or (vi) the acts or omissions of any person other than employees of Company.

(b) Customer acknowledges that in order to provide competitive rates for the services requested, that the parties have agreed as a material term of this Agreement that the burden of any loss or damage incurred as a result of Company's alleged liability has been shifted to Customer, and that in any event the maximum amount of Company's liability is limited to \$50.00 per shipment or transaction, or \$0.50 cents per pound, whichever is less. Customer specifically acknowledges that Company shall have no liability for negligent acts or omissions of its employees except to the extent such actions or omissions constituted gross negligence.

(c) Under these circumstances listed in subsection (a) of this section, Customer will look solely to insurance provided by the Carrier for damage to goods in transit, if Customer has requested Company to procure one.

8. Insurance: Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

9. **Carrier's Charge:** Customer shall be liable for all charges payable on account of such Customer's shipment. Such charges may include transportation, fuel, other applicable accessorial charges, and all adjustments issued by the carrier(s) after the shipment. Company reserves the right to amend or adjust charges and to re-invoice Customer in the following events:

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- (a) If the original quoted amount was based upon incorrect information provided by the Customer, or
- (b) If additional services by the carrier were required, or
- (c) If the Customer authorized the carrier to perform the pick-up, transportation and delivery functions other than directed by the bill of lading.
- (d) If the shipper or consignee requests and/or agrees to additional services that they approve.

Any disputes by Customer of any invoice issued by Company shall be made in writing, specifically indicating the nature of the dispute and received by Company at their office(s) within 15 days from the date of the invoice. In the event Company does not receive timely written notice of the dispute, the charges will be definitively and conclusively presumed to be valid. Customer authorizes Company to advise third parties of asserted liens and to hold possession of any ship

**10. Compensation to Company:** The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and/or other agencies selected by the Company to transport and to deal with the goods and such compensation shall be exclusive if any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. Upon request, Company shall provide a detailed breakdown of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against Customer for monies due Company, upon recovery by Company, Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

**11. Payment:** All charges are payable in US Dollars and are due and payable fifteen (15) days from the date of billing (net/15) unless otherwise agreed. Past due payments shall be subject to an additional charge at the rate of 1.5% per month on the average outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less. All funds received by Company will be applied to the oldest (based on pick up date) invoice that is outstanding. Overpayments do not accrue interest. In the event this Agreement is placed by Company in the hands of an attorney or collection agency for collection, Customer agrees to pay, in addition to the account balance, all collection costs including reasonable attorney's fees, (including such fees and costs incurred in the successful defense of any crossclaim or counterclaim brought against Company.

**12. Quotations Not Binding:** Quotations as to fees, freight charges, insurance premiums or other charges given by Company to Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between Company and Customer.

**13. Credit Approval:** Payment terms and credit limits are subject to credit approval, which shall be determined periodically, at the sole and absolute discretion of Company. Customer grants Company the right to perform such credit and background searches as Company deems necessary. When paying by

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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 Company to charge the Customer's credit card or bank account for any charges or credit card fees that may be associated with the transaction.

**14. Advancing Money:** All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to Customer. The granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by Company.

**15. Indemnification/Hold Harmless:** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or the liability arising from the conduct of the Customer which violates any Federal, State and/or, other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or, expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the customer by mail at its address on file with the Company.

**16. C.O.D. or Cash Collect Shipments:** Company shall use reasonable care regarding written instructions relating to "Cash/Collect on Delivery" (C.O.D.) shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment document and/or instructions regarding the collection of monies but shall have no liability if the bank or consignee refuses to pay for the shipment.

**17. Costs of Collection:** In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 18% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by the Company.

**18. General Lien and Right to Sell Customer's Property:**

(d) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession, or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

(e) Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties of having an interest in its shipment(s) of Company's rights and/or the exercise of such lien;

(f) Unless within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued. Company shall have the right to sell such shipment(s) at public auction or private sale or auction and any net proceeds remaining thereafter shall be returned to customer.

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19. **Warehouseman Lien:** Pursuant to FL statute 677.209 “Lien of Warehouseman” A warehouseman has a lien against the bailer on the goods covered by a warehouse receipt or on the proceeds thereof in his or her possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him or her for such charges and expenses whether or not the other goods have been delivered by the warehouseman. This constitutes notice that Company claims such a lien.

20. **No Modification or Amendment Unless Written:** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

21. **Severability:** In the event any Paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

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. **Interpretation:** In the Agreement the singular includes the plural, and the plural the singular; words importing any gender include the other genders; references to writing include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words including, includes, and include shall be deemed to be followed by the words without limitation.

24. **Headings:** The headings used in this Agreement are for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

25. **Execution:** This Agreement shall become binding upon written acceptance by Company of Customer’s acknowledgment of its intent to be bound thereby, as evidenced by its designation of acceptance on Company’s web page or by its execution of the bill of lading, or by acknowledgment by Customer.

26. **No Other Parties to Benefit:** This Agreement is made for the sole benefit of the Parties hereto and their successors and permanent assigns. Except as expressly provided herein, no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiaries or otherwise.

27. **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.

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28. **Governing Law:** Consent to Jurisdiction and Venue. These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Florida without giving consideration to principals of conflict of law. Customer and Company

(a) irrevocably consent to the jurisdiction of the United States District Court or the State courts of Florida with venue in Broward County;

(b) agree that any action relating to the services performed by Company shall only be brought in said courts;

(c) consent to the exercise of in personam jurisdiction by said courts over it, and

(d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.

29. **Company is not subject to Carmack Amendment Rules:** Customer acknowledges that Company is not an interstate carrier, and Customer agrees that Company is not subject to the requirements and rules of 49 U.S.C. § 14706 et seq (the "Carmack Amendment"). Customer accepts the limitations of liability of the Company as set forth above and in doing business with the Company agrees to be bound by those limitations of liability.