

## BROKER-SHIPPER TERMS AND CONDITIONS

TALKE Transport Solutions, INC. is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-1651436 ("TALKE"), or by appropriate state agencies, and as a licensed Broker, arranges for transportation of freight and related logistics services.

Shipper, to satisfy some of its transportation and logistics needs, desires to utilize the services of TALKE to arrange for transportation of Shipper's freight and/or other related logistics services, which may include rail transportation ("Intermodal").

Shipper, by executing a Credit Application Agreement which incorporates this Terms and Conditions Agreement ("Agreement") by reference, or by accepting TALKE's proposal or quotation which incorporates this Terms and Conditions Agreement ("Agreement") by reference, agrees to be bound by the Credit Application Agreement and this Agreement unless the parties otherwise agree in writing not to be bound by them. "Shipper", as the term is used herein shall mean the contracted party signing the Credit Application Agreement or accepting proposal or quotation, whether the entity is the Beneficial Cargo Owner (BCO), consignee, actual shipper, or third-party firm.

As a condition of conducting business with TALKE, Shipper agrees to complete TALKE's Credit Application Agreement. The Credit Application Agreement must be received and approved prior to arrangements for transportation of freight or related logistics services.

"Broker," as that term is used herein, means TALKE which is licensed to arrange for the transportation of freight and related logistics services.

"Motor Carrier," as that term is used herein, shall include local draymen. Local draymen are motor carriers who pick up and deliver freight to railroads and/or ports and/or pick up freight from the railroad and deliver to designated consignees/receivers.

**PARAGRAPH 21 OF THIS AGREEMENT CONTAINS PROVISIONS FOR WAIVER OF THE RIGHT TO JURY TRIAL SHOULD A DISPUTE ARISE BETWEEN THE PARTIES. YOUR ACCEPTANCE OF THIS AGREEMENT INCLUDES YOUR ACCEPTANCE OF AND AGREEMENT TO SUCH PROVISION.**

1. **TERM.** Subject to Paragraph 12, the term of this Agreement shall be one (1) year, commencing on the date the Credit Application Agreement has been completed, received, and approved as described above, and shall automatically renew for successive one-year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE.** TALKE agrees to arrange for Motor Carrier, Intermodal, or Railcar transportation of Shipper's freight, and/or any related logistics services, pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state, and local laws and regulations relating to the brokerage of the freight covered by this Agreement. TALKE's responsibility under this Agreement shall be limited to arranging for, but not actually performing, services with respect to Shipper's freight.
3. **VOLUME.** There is no obligation for Shipper to tender a minimum number of shipments per year to TALKE, and TALKE is not obligated to arrange for the transportation of any shipments offered by Shipper. Shipper is not restricted from tendering freight to other brokers and TALKE is not restricted from arranging services for other parties.
4. **SHIPPER DELIVERY INSTRUCTIONS.** Shipper shall be responsible to TALKE for timely and accurate delivery instructions and description of the cargo, including, but not limited to, dimensions, weights, and any special handling blocking or bracing requirements, for any shipment.
5. **SHIPPER'S OBLIGATIONS (Intermodal Shipments).** (See railroad website for applicable service directory)
  - a. **Application of Rail Circulars.** Shipper acknowledges that (1) Rail Carriers provide transportation services subject to the provisions, restrictions and limitations in their Rail Circulars, (2) the Rail Circulars' address, among other matters, standards for loading, blocking and bracing standards, prohibitions and restrictions on certain types of commodities, limitations of liability, requirements for shipping hazardous materials, procedures and limitations on cargo claims, and requirements for proper descriptions of commodities, (3) applicable provisions of a Rail Carrier's Rail Circular in effect on the date of shipment will apply to any shipments transported by the Rail Carrier, (4) the Rail Circulars are generally available through the Rail Carrier's website, and (5) persons and entities that use Intermodal transportation provided by the Rail Carriers should be familiar and comply with the provisions, restrictions and limitations of the Rail Circulars.
  - b. **Loading.** Unless Shipper has requested in writing and TALKE agrees in writing to arrange for the Motor Carrier to provide loading services before dispatch, Shipper will be responsible for ensuring that cargo is properly and safely loaded, supported, blocked, braced, and secured, in accordance with the publications and standards of the Association of American Railroads ("AAR") and any other applicable Rail Circulars. Furthermore, Shipper will be responsible for expenses and cargo loss and damage arising out of any load shift that occurs during transportation due to improper or insufficient loading, blocking, and bracing.

- c. Shipping Instructions. Shipper will not tender any commodities restricted under the Rail Circulars, including but not limited to hazardous materials and waste; shipments valued more than the cargo insurance limits set forth in rail circulars or rail service directories; oversize or overweight shipments; coiled or rolled products and commodities requiring protection from heat or cold, and assumes all risk of loss for failure to properly identify such shipments and making necessary prior arrangements for transportation, including, but not limited to, timely written notice to TALKE.
- d. Count, Load and Seal. Unless Shipper has requested in writing and TALKE agrees in writing to arrange for the Motor Carrier to provide driver count services prior to dispatch and the Carrier performs such driver count services, Shipper is responsible for ensuring all contents of shipments transported under this Agreement to be properly counted and recorded and to have a protective seal applied to the loaded equipment.
- e. Inspection of Equipment. Shipper will ensure that all empty containers or trailers tendered for loading will be inspected before loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the cargo during transportation. Shipper will immediately notify TALKE in writing of any rejected equipment.
- f. Use of Equipment. If Shipper requests in writing that TALKE arrange for Intermodal Equipment to be held at a location for Shipper's convenience and left unattended by the Motor Carrier, Shipper will be liable for all loss, damage, or misuse.
- g. Rejected/Refused Shipments:
  - (1) In instances where TALKE has hired a drayman and delivery of Shipper's freight has been rejected or refused by consignee for any reason, or drayman is unable to deliver the freight for any reason, Shipper on receipt of notice of rejection or non-delivery, shall provide TALKE and carrier with disposition instructions (by fax or email) within 48 hours after receipt of the notice, exclusive of Saturdays, Sundays and national holidays.
  - (2) If disposition instructions are not so received, TALKE is authorized to instruct Carrier to place the freight in a public warehouse, or the carrier's storage facility if equivalent to a public warehouse subject to disposition instructions from Shipper. If disposition instructions are not received by TALKE, or carrier from Shipper within five (5) business days of storage, TALKE is instructed to request carrier issue a "Final Notice of On- Hand Freight," to Shipper and publish in a newspaper of general circulation, once a week, for two consecutive weeks that the freight on hand will be

offered for sale at a general auction, stating the time and place of said sale. Not later than ten (10) days prior to the auction sale, Carrier will be instructed to send a copy of the published auction notice to Shipper and TALKE via facsimile transmission or EDI.

- (3) The proceeds of any sale received under the procedure above shall be applied by the Carrier to the payment of freight charges, demurrage, storage, and any other lawful charges; to the expense of notice, advertisement, publication, sale and other necessary expense; and to the expense of caring for and maintaining the freight, if proper care of the freight requires special expense. In the event that there are any proceeds remaining after all charges and expenses are paid, said proceeds shall be paid to the Shipper of the freight within seven (7) days of the sale.
- (4) TALKE's contract(s) with Motor Carriers who are draymen will contain the above disposition and sale instructions.
- (5) Motor Carriers, who are draymen, are subject to railroad, instructions and procedures for dealing with rejected and/or non-delivered freight as provided in terms and conditions in applicable railroad circulars.

## 6. SHIPPERS OBLIGATIONS (TRUCKLOAD SHIPMENTS)

- a. Loading: Unless Shipper has requested in writing and TALKE agrees in writing to arrange for the Motor Carrier to provide loading services before dispatch, Shipper will be responsible for ensuring that cargo is properly and safely loaded, supported, blocked, braced, and secured. Furthermore, Shipper will be responsible for expenses and cargo loss and damage arising out of any load shift that occurs during normal rigors of transportation due to improper or insufficient loading, blocking, and bracing. Motor carrier shall be responsible for loss or damage when its actions exceed the normal rigors of transportation. At no time shall TALKE be liable for loss or damages due to load shift or lack of blocking and bracing of the shipment.
- b. Shipper must provide all information and instructions that are reasonably necessary for TALKE to effectively arrange for the performance of the transportation and related services requested by Shipper in accordance with any applicable laws, rules, regulations, or conventions. Shipper will provide detailed and accurate descriptions of any Goods tendered for transportation and their accurate weights. Shipper is responsible to be aware of and comply with applicable customs and import, export and transportation laws, rules, practices, and regulations of the governmental authorities of the countries involved in a shipment; to complete and provide all required documentation; and to apply and pay for all licenses, permits or authorities required by governmental authorities to conduct the business and transportation contemplated by Shipper. If a hazardous materials shipment is tendered to TALKE the actual shipper must provide the proper placards to the motor carrier at the time of pick up. In no event will Shipper tender any Goods that will or would reasonably be expected to contaminate, taint, corrode, or otherwise adversely impact the quality or condition of other Goods being transported, or the Trailer used in transporting the Goods.
- c. Shipper warrants that it is either the owner or the authorized agent of the owner of the Goods tendered for Services and that it has the authority to, and does, accept these Conditions for itself and where applicable, as agent for and on behalf of the owner. The Shipper further warrants and agrees these terms and condition are binding to any other person involved in the transportation, including but not limited to any consignor or consignee, logistics providers, freight forwarders, or insurers.
- d. Except to the extent that the TALKE has accepted instructions and explicitly accepted responsibility with respect to the preparation, packing, loading, labeling or marking of the Goods, Shipper warrants that all Goods have been properly and sufficiently prepared, packed, stowed, are fully and accurately described, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or

transactions affecting the Goods and the characteristics of the Goods. TALKE's or its Carrier's acceptance of any shipment will not be a waiver of Shippers obligation to comply with the aforementioned conditions listed above.

- e. Shipper will obtain all necessary permits and authorizations required to ship the Goods, including, but not necessarily limited to, export and import licenses, permits and hazardous material placards, and agrees to comply with all applicable laws, including, but not limited to, any prohibitions on selling to any person on a U.S. or Canadian export control list.
7. **SEALED SHIPMENT.** If Shipper loads and seals the cargo and the Carrier does not have the opportunity to count the cargo being loaded and the seal is intact upon delivery and unless agreed upon in writing as set forth in Section 5d, then TALKE and the Carrier are absolved from any liability for shortages or any damage to the cargo except when proximately caused by independent action of TALKE or the Carrier. Such absolution of liability will also occur if the seal is broken at the direction and under the supervision of an agent of a governmental authority, or the carrier equipment is preloaded, and the Carrier's representative cannot practically determine the adequacy of loading or count of the cargo in or on such Intermodal Equipment. TALKE will direct the Carrier to request any governmental authority that breaks a seal in connection with an inspection to reseal the trailer or container and/or make appropriate notation on the cargo documentation form. Shipper agrees that the Carrier engaged by TALKE may break the seal on a trailer or container if, upon its determination, it becomes reasonably necessary to do so to inspect, reposition, or protect the cargo from damage or causing damage or the transportation equipment or to comply with federal, state, and municipal, laws, rules, and regulations. Shipper's consignee may not refuse delivery of a shipment solely because the seal on a Motor Carrier or Intermodal Equipment is broken.
8. **CARGO LOSS AND DAMAGE CLAIMS.** (a) In the event TALKE hires a Motor Carrier who is a drayman to transport the shipment to and from a rail yard, cargo loss and damage claims which occur while the freight is under the control and possession of the draymen, will be subject to 49 USC 14706 Carmack Amendment; (b) Where the railroad provides the drayage service, the loss and damage claims, will be subject to applicable railroad circulars or service directories which may limit liability of the railroad to released rates/rates per pound. Shipper must have its own insurance and assumes all risk of loss to extent that railroad liability does not cover value of the freight. It is understood and agreed that TALKE is not a Carrier and that TALKE shall not be held liable for loss, damage or delay in the transportation of Shipper's freight except as may be caused by TALKE's failure to comply with its obligations in the performance of this Agreement; and (c) If payment of claim is made by TALKE to Shipper, Shipper automatically assigns its rights and interest in the claim to TALKE.

- a. All rates provided by TALKE to the Shipper are predicated on the railroad and Motor Carrier's release rates, \$250,000 per shipment (\$100,000 per shipment on consumer electronics) for rail shipments, and \$100,000 per shipment on Motor Carrier shipments. The Shipper can elect higher released rate coverage limits for its shipment(s) for an additional premium by contacting TALKE. In the absence of a written agreement to a higher released rate by TALKE and Shipper, Shipper releases its cargo for rail shipments at a rate not to exceed \$250,000 per shipment (\$100,000 per shipment on consumer electronics), and for Motor Carrier shipments at a rate not to exceed \$100,000 per shipment. Shipper assumes all risk of loss for shipments with value exceeding the above limits.
  - b. Cargo liability coverage for shipments transported into Mexico is limited to \$100,000 per shipment for an additional charge.
9. **LIMITATION OF LIABILITY AND CLAIM NOTIFICATION PERIOD.** In no event shall TALKE or TALKE's Motor or Rail Carrier be liable to Shipper for special, incidental, consequential, punitive, or exemplary damages, including but not limited to any damages that relate to loss, damage or delay to a shipment, any business interruption, loss of business information, or other pecuniary loss. For purposes hereof, the notification period for any damages claimed by Shipper ("Notification Period") is forty-five (45) days from the date of occurrence. Notice of any claim must be provided in writing to TALKE by certified mail, return receipt requested, or a nationally recognized overnight carrier. TALKE is not liable for any claims made by Shipper after the Notification Period. Notwithstanding anything in this Agreement to the contrary, the maximum aggregate amount of TALKE's liability for any and all damages, if any, shall be limited to the value of services arranged by TALKE.
10. **RECEIPTS AND BILLS OF LADING.** If requested by Shipper in writing, TALKE agrees to provide Shipper with proof of delivery in the form of a signed Bill of Lading or other Proof of Delivery, as specified by Shipper. Shipper's insertion of TALKE's name on the bill of lading shall be for Shipper convenience only and shall not change TALKE's status as a broker. The terms and conditions of any freight documentation used by TALKE or carrier selected by TALKE may not alter or modify the terms of this Agreement or the relationship between the Parties unless the Parties agree in writing.
11. **PAYMENTS.** TALKE shall invoice Shipper for the arranged services in accordance with mutually agreed upon rates and charges set forth in writing, including the rates and charges set forth in the Shipper/Customer Accessorial Charges attached hereto as **Exhibit A incorporated herein by reference.** When rates are negotiated between the Parties they must be confirmed in writing, and shall be binding, upon receipt of TALKE's invoice by Shipper and Shipper's payment to TALKE. Shipper agrees **to** pay TALKE's invoice within 30 days of invoice date without deduction or

setoff. TALKE shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to TALKE shall relieve Shipper, Consignee, or other responsible party of any liability to the carrier for non-payment of its freight charges; and TALKE hereby covenants and agrees to indemnify Shipper, Consignee, or other responsible party against such liability. Shipper agrees to be bound to the terms of TALKE's Credit Application Agreement which are incorporated herein by reference. Interest shall accrue monthly at a rate of One and Half Percent (1.50%) or the highest permissible rate under applicable law if such highest permissible rate is less than 1.50% per month on any unpaid balance. Shipper shall also be responsible for all additional charges imposed by the servicing motor carrier, which were (a) not anticipated by TALKE at the time TALKE arranged for service with Servicing Motor Carrier, and/or (b) which were not otherwise included in the rate set forth in the load confirmation. If any information provided by Shipper is inaccurate or incomplete, TALKE may, in its sole discretion, revise the agreed-upon rates to reflect the freight and services actually tendered.

12. **DEFAULT.** TALKE and Shipper will discuss any perceived deficiency in performance of this Agreement and will promptly endeavor to resolve all disputes in good faith. However, if either Party materially fails to perform its duties under this Agreement, the Party claiming default may terminate this Agreement on ten (10) days prior written notice to the other Party. Shipper shall be responsible to pay TALKE for any services arranged by TALKE prior to the termination of this Agreement and for shipments or services not yet completed and/or not yet invoiced to Shipper. If any past due balance owed by Shipper to TALKE is referred to outside collections or an attorney, Shipper agrees to pay all collection costs, including, but not limited to, court costs and reasonable attorneys' fees. Additionally, in any action, lawsuit, or proceeding arising out of or relating to this Agreement, the Credit Application Agreement, or the services arranged by TALKE for Shipper, if TALKE is the prevailing party, TALKE shall be entitled to reimbursement of all reasonable attorneys' fees and expenses incurred in connection with the action, lawsuit, or proceeding.
13. **INDEMNIFICATION.** Shipper shall defend, indemnify and hold TALKE harmless against any claims of liability, actions, or damages, including, but not limited to, cargo loss, damage, or delay, property damage, personal injury or death, and payment of rates and/or accessorial charges to Carriers, arising out of Shipper's performance under this Agreement. Neither Party shall be liable to the other Party for any claims of liability, actions, or damages due to the negligence of the other Party. The obligation to defend shall include all costs of defense as they accrue.
14. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither Party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other Party. No amendment or modification of the terms of this Agreement or the Credit Application Agreement shall be binding unless in writing and signed by the Parties.

15. **SEVERABILITY/SURVIVABILITY**. In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of this Agreement for any reason.
16. **FORCE MAJEURE**. Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, strikes, embargo, riot, civil disobedience, disruption to the transportation network, or the intervention of any government authority, or any other cause outside of the reasonable control of the Shipper or TALKE, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provides reasonable notice to the other Party of such inability to perform.
17. **INDEPENDENT CONTRACTOR**. It is understood and agreed that the relationship between TALKE and Carrier is that of independent contractor. None of the terms of this Agreement, or any act or omission of either Party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, employer/employee relationship between the Parties. Shipper agrees that Carrier shall provide the sole supervision and shall have exclusive control over the operations of Carrier's employees, contractors, subcontractors, agents, as well as all vehicles and equipment used to perform Carrier's transportation and related services for Shipper. TALKE has no right to discipline or direct the performance of any driver and/or employees, contractors, subcontractors, or agents of Carrier. Shipper agrees that at no time and for no purpose is Carrier anything other than an independent contractor in its relationship to TALKE. Carrier, not TALKE, is responsible for performing any services arranged by TALKE.
18. **THIRD PARTY BENEFICIARIES**. Except as expressly specified in this Agreement, the parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right or benefit by, such third party under this Agreement with respect to either TALKE or Shipper.
19. **NONWAIVER**. Failure of either Party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein shall not be construed as waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred. Any waiver must be in writing and signed by the waiving party.



20. **NOTICES.** Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing and shall be addressed as follows:

TALKE Transport Solutions, INC.	Shipper:
Attn: President	Attn:
Address: PO BOX 115	Address:
City/St/Zip: MONT BELVIEU, TX, 77580	City/St/Zip
Phone:	Phone:
Email:	Email:

Unless Shipper provides alternate contact information above, the address provided by Shipper in the Credit Application Agreement shall constitute the proper address for providing notice under this Agreement.

21. **JURY WAIVER.** IN ANY DISPUTE BETWEEN THE PARTIES CONCERNING OR RELATING TO THIS AGREEMENT AND ANY TRANSPORTATION OR LOGISTICS SERVICES CONTEMPLATED HEREBY, TALKE AND SHIPPER VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO SUCH DISPUTE TO THE FULLEST EXTENT ALLOWED BY LAW.

22. **CHOICE OF LAW AND VENUE.** All questions concerning the performance, construction, interpretation, validity, and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. Venue of any litigation action shall be in any competent court of jurisdiction in Chambers County, Texas.

23. **CONFIDENTIALITY.**

- a. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.
- b. In the event of violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, is inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this

Agreement in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorneys' fees.

24. **ENTIRE AGREEMENT.** This Agreement, including the Credit Application Agreement, any Load/Rate Confirmations, and the accessorial charges attached hereto and incorporated herein by reference, constitute the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.
25. **DATA PROTECTION.** TALKE and its affiliated companies use your data and information of your employees only for the accomplishment of orders. Disclosure of information to third parties is exclusively for order fulfillment or if required by law. Shipper agrees to inform its employees about the use and disclosure of this information with a conforming amendment in its Contract of Employment. If Shipper fails to do so and TALKE is sued for a fine or contract penalty, Shipper agrees to bear the resultant costs.