



## TERMS & CONDITIONS OF SERVICE

**DEFINITIONS** - "PAH" means Pro American Haulers Inc., its subsidiary, affiliated and related companies, and its agents, representatives and employees in the U.S.A. and overseas. "Customer" means the individual, corporation or other entity which has retained PAH to perform property brokerage Services, as well as all agents, representatives and subcontractors of said individual, corporation or entity, including, but not limited to all shippers and consignees of the Shipment being transported, or the insurers thereof, and any other party claiming a right or interest in the Shipment. The Customer agrees to provide notice of these Terms and Conditions of Service to all parties falling within this definition of "Customer." "Shipment" means the goods which are carried under the terms of a single bill of lading or air waybill, irrespective of the quantity or number of containers, packages or pieces. "Third Parties" shall include, but not be limited to, the following: motor carriers, truckmen, cartmen, lightermen, freight forwarders, agents, warehousemen and others to which the Shipment is entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise.

**1. Contract and Scope of Services** - PAH is a licensed property broker operating under License No. MC-1382632-B, which undertakes to arrange on behalf of Customers, the interstate transportation of Shipments through Third Parties, from and to various origins and destinations throughout the United States, Canada and Mexico (the "Services"). Said Third Parties may limit their liability and may operate under terms and conditions further defining their rights, obligations, and defenses, and PAH is also authorized to agree to those terms on behalf of the Customer. As to all other Services, PAH acts as an independent contractor. Customer agrees that any insertion of PAH's name as the carrier on a bill of lading shall be for Customer's convenience only and shall not change PAH's status as a property broker. All Services provided by PAH to Customer are governed by these Terms and Conditions of Service, which form a contract between PAH and the Customer. These Terms and Conditions of Service supersede all agreements, representations, warranties, statements, promises, and understandings of the parties, written or oral, except as stated herein.

**2. Limited Liability and Claims** (a) PAH agrees to select, on behalf of Customer, the Third Parties to whom the Shipment will be entrusted for transportation, handling, delivery, storage and related Services. However, PAH shall have no liability for any acts or omissions of Third Parties which may damage or delay the Customer's Shipment or cause other loss to the Customer and its interest in the Shipment, or for Shipments illegally obtained by unauthorized persons through



identity theft and other fraudulent schemes. All claims in connection with the acts or omissions of a Third Party shall be brought solely against such party and/or its insurer. All cargo damage claims and supporting documentation must be submitted within 30 days after delivery, which PAH will submit to the Third Party and its insurer. PAH has no liability for any failure of the Third Party or its insurer to pay cargo claims. PAH only agrees to reasonably assist the Customer in bringing cargo claims against Third Parties; however, timely payment of PAH's invoices to the Customer is a condition precedent to such assistance. PAH cannot assist with food damage claims without a USDA inspection report, salvage report, dumping receipt and commercial invoice. (b) THE MAXIMUM LIABILITY OF PAH TO THE CUSTOMER FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND THE CUSTOMER'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO \$50.00 PER SHIPMENT, CUSTOMER AGREES THAT IF IT ARRANGES FIRST-PARTY CARGO INSURANCE PER PARAGRAPH 3, IT WILL ACCEPT THE AMOUNT PAID BY THE SUCH INSURANCE AS THE FULL AND FINAL SATISFACTION OF ANY CLAIMS AGAINST PAH RELATING TO THE GOODS AND SERVICES. EXCEPT AS MAY BE SET FORTH HEREIN, PAH MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING ITS SERVICES. IN NO EVENT SHALL PAH BE LIABLE FOR ANY LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES PROVIDED TO THE CUSTOMER, EVEN IF PAH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (c) In no case will the maximum liability of any Third Party for damages to a Shipment be greater than \$100,000.

**3. Insurance** - Unless otherwise agreed in writing, PAH will select Third Parties which have certificates of insurance showing liability insurance coverage limits for loss or damage to cargo up to \$100,000. In no event, however, shall PAH be responsible for any Third Party's failure to actually maintain such insurance, for any exclusion from coverage which may apply, or for any fraudulent act by Third Parties or any other persons or entities presenting fraudulent or false information to PAH or the Customer. PAH recommends first-party Cargo insurance. Upon request and for a separate charge, PAH can arrange first-party cargo insurance for the Customer's Shipment. However, PAH is under no obligation to arrange such insurance unless it receives specific written instructions from the Customer to do so prior to transportation of the Shipment, and the Customer pays the required premium. The Customer agrees PAH assumes no agency role for the Customer in procuring such first-party cargo insurance coverage; such coverage shall be governed exclusively by the terms of the certificate of insurance coverage and policy issued by the insurance



company to Customer; and the insurance company is solely responsible for the payment of insurance claims.

**4. Credit** - Payment terms and credit limits are subject to credit approval at the sole and absolute discretion of PAH, which shall be determined periodically and after submission of a Credit Application and may be revised if there is a change in Customer's payment history or financial condition. Customer grants PAH the right to perform such credit history and background searches as PAH deems necessary, and will submit a financial statement, if requested.

**5. Cash Collect Shipments** - PAH can assist with Cash on Delivery ("C.O.D") Shipments, but the Customer assumes the sole responsibility and liability for any failure of a consignee or bank to pay, and for any delay in the Shipment or loss to the Shipment that may result.

**6. Payment of Services** - Payment terms for all charges incurred for Services performed or arranged by PAH shall be net thirty (30) days from the date of the invoice issued by PAH. Invoices submitted by PAH to Customer are deemed conclusively accepted and approved and fully payable on the terms contained therein unless disputed in writing by Customer within seven (7) business days of Customer's receipt thereof. Any amount remaining unpaid after thirty (30) days shall accrue interest at a rate equal to the lesser of: (a) one and one-half percent (1.5%) per month; or (b) the highest rate allowed by law. PAH's charges for the Services it performs are in addition to the charges of all Third Parties retained by PAH on the Customer's behalf, which will be invoiced together. The Customer agrees to pay PAH's invoices without reduction or deferment on account of any alleged claim, counterclaim or set-off it believes it has for cargo loss, damage or theft for the shipment at issue in the invoice or for any prior or subsequent shipments, and all charges therein shall be considered as earned by PAH at the moment the Shipment has commenced transportation. Customer agrees to pay any Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges that result from any delays caused by Customer's delay in accepting delivery of the Shipment, devanning the goods from the intermodal container or which are otherwise attributable to any act or omission of the Customer.

**7. Lien on Customer's Goods** - The Customer agrees that PAH has a general, contractual lien on all Shipments which are the subject of Services rendered by PAH while those Shipments are in



possession of any Third Party for any accounts receivable owed by the Customer to PAH arising from the specific Shipment against which the lien is asserted, and/or arising from any previous Shipments. If PAH elects to hold any Shipment based on these lien rights, it will provide written notice of that election to the Customer, and Customer agrees PAH has the authority to direct Third Parties to hold shipments on the basis of these lien rights and to arrange unloading and storage at Customer's expense. If the Customer fails to make payment arrangements or post security to PAH's satisfaction within thirty days of such notice, PAH will have the right to sell the Shipment at private or public sale or auction and will remit to the Customer any net proceeds after the sale which exceeds the total amount owed (including any accrued unloading, loading and storage charges). The Customer shall provide notice to any other parties having an interest in the Shipment of these lien rights and of any exercise of those rights by PAH.

**8. Indemnification** - The Customer agrees to indemnify, defend, and hold PAH, its affiliates, the respective directors, officers, employees, agents and representatives harmless from and against any and all claims and/or liabilities, including, but not limited to attorney's fees and costs, arising from the Customer's acts or omissions in relation to the Shipment, and arising from the manner in which the Shipment was prepared and/or packed for Shipment.

**9. Applicable Law, Venue and Time for Suit** - These Terms and Conditions of Service shall be governed by California law without the application of its conflict of laws principles. Any suit relating to this Agreement shall be instituted in a state or federal court in Alameda County, California, and the parties irrevocably consent and waive all objections to the jurisdiction of any such court. A suit to enforce a judgment against the Customer may be filed in any jurisdiction where the Customer has assets. Any cause of action against PAH relating to or arising out of the Services PAH provides to the Customer will not be valid unless such action is commenced by the filing of a complaint in the required venue within one year of the date of the loss. PAH shall be entitled to recover its courts costs and reasonable attorney's fees from the Customer in any action for collection of any payment due to PAH, or in any other action in which PAH prevails in the enforcement of these Terms and Conditions of Service.

**10. Modification** - No modification of these Terms and Conditions of Service shall be of any force or effect unless (a) reduced to writing and signed by both PAH and the Customer prior to



Shipment, and (b) expressly referred to as being a modification of these Terms and Conditions of Service.

**11. Severability** - The provisions set forth in these Terms and Conditions of Service are severable, and if any particular provision should be held invalid, unenforceable or illegal by a court having competent jurisdiction, the remainder of these Terms and Conditions shall not be affected and shall be construed as if such invalid, unenforceable or illegal provision(s) was (were) omitted.

**12. Arbitration.** In the event of a dispute, the Party's sole recourse shall be to binding arbitration within two years from the date of the alleged loss. Proceedings shall be conducted under the rules of the American Arbitration Association (AAA) at the discretion of the party filing the complaint. Upon agreement of the PARTIES, arbitration proceedings may be conducted outside of the administrative control of the AAA. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at the office of AAA in San Francisco, California or a place mutually agreed upon in writing by the parties involved. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

**13. Force Majeure** - In the event that PAH is prevented from performing Services because of an occurrence beyond its control and arising without its fault or negligence, including without limitation, war, riots, rebellion, acts of God, pandemics, public health emergencies, quarantines and business restrictions by public health authorities and other acts of lawful authorities, fire, strikes, lockouts or other labor disputes, such failures to perform shall be excused for the duration of such occurrence. Whenever possible, in the event of a force majeure event, PAH shall promptly notify the Customer in writing, stating the reasons for the inability to comply with the provisions of this Agreement, and the expected duration of the force majeure event. PAH shall not be liable for any delays or failures in the performance of Services due to circumstances beyond its control.