



## DSV ROAD U.S. BROKERAGE TERMS & CONDITIONS

### 1. Interpretation

Below definitions shall apply to Services provided to the Customer:

'**Brokerage Services**' shall mean the arrangement of inland road transportation services in the United States of America, including the selection and retention of motor and rail carriers to perform the transportation of Goods on behalf of Customer.

'**Conditions**' shall mean these DSV Road Standard U.S. Brokerage Terms and Conditions between the Customer and DSV regarding the provision of Services.

'**Customer**' if different from the Owner, shall mean the entity at which request or on whose behalf DSV Road provides Services.

'**Dangerous Goods**' shall mean goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbor or encourage vermin or other pests.

'**DSV**' shall mean DSV Road, Inc., an Oregon corporation.

'**Goods**' shall mean any items and/or containers for which Services are provided for or on behalf of the Customer.

'**Instructions**' shall mean a statement of the Customer's specific requirements.

'**Owner**' if different from the Customer, shall mean the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.

'**Person**' shall mean persons or any corporate body or bodies.

'**Prices**' shall mean the remuneration for the Services rendered by DSV as agreed between the Parties.

'**Services**' shall mean the whole of the services related to Brokerage Services provided by DSV to the Customer and all matters necessarily related to the provision of the Services as well as those ancillary to the provision of the Services.

### 2. Application

2.1. DSV agrees to provide Services for Customer's freight pursuant to these Conditions. These Conditions shall only apply to Services rendered in the United States of Americas.

2.2. Where a bill of lading, delivery order, or other transport document is issued by the Customer, a third party or on behalf of DSV which identifies DSV as a carrier, such designation shall be for the convenience of Customer or such third party only and shall not make DSV thereby liable as a carrier.

### 3. Obligations and warranties of Customer

3.1. The Customer warrants that it is either the Owner or the authorized agent of the Owner of the Goods and that it is authorized to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner.

3.2. The Customer and any Person acting on the Customer's behalf shall give lawful, sufficient and executable Instructions. The Customer warrants that the description and particulars of the Goods are complete and correct.

3.3. The Customer warrants that the Goods are properly packed, packaged, classified and sealed for transport.

3.4. The Customer warrants that it shall adhere to applicable legislation in relation to DSV Services.

3.5. Customer shall be primarily responsible for the payment of all carrier charges, including freight and accessorial charges, for the shipments.

### 4. Rights and obligation of DSV

4.1. Unless otherwise agreed in writing, DSV shall be entitled, without notice to the Customer, to retain motor carriers for the carriage of Goods.

4.2. DSV shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if DSV reasonably considers there is a good reason to do so in the Customer's interest.



- 4.3. DSV may at any time comply with the orders or recommendations given by any government authority. The responsibility and liability of DSV in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 4.4. Where the carrier is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place; DSV (or such carrier) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- 4.5. DSV shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.
- 4.6. DSV will perform all Services in accordance with the DSV Code of Conduct applicable at the time of the performance of Services. The DSV Code of Conduct is based on the values of DSV and signifies DSV's intentions regarding ethical business behavior and applies to all DSV Group entities and employees, including managers and executive officers. The Customer shall conduct its business in an ethical and legal manner. **Customer and Owner understand and accept that DSV shall not be liable for loss, damage or delay of Goods or breach of contract caused by DSV's adherence to the DSV Code of Conduct.**

## 5. **Special instructions, goods and services**

### 5.1. **The Customer's responsibility for correct information**

- 5.1.1. The Customer shall be deemed to have guaranteed to DSV the accuracy, at the time the Goods were taken in charge by DSV's selected carrier of the description of the Goods including but not limited to its marks, number, quantity, dimensions, classification, and weight as furnished by the Customer.
- 5.2. Customer shall comply with all laws and regulations relating to the transportation of hazardous materials. Customer shall advise DSV if any shipment contains hazardous materials. Unless agreed in writing, DSV shall not provide Services for hazardous materials.
- 5.3. If the Customer is in breach of either Clause 5.1 and/or 5.2, then the following shall apply at DSV's discretion:
  - a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising; and
  - b) the Customer shall defend, indemnify and hold harmless DSV against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and/or
  - c) DSV (or the custodian of the Goods) may destroy or otherwise dispose of the Goods, without requirement of notice of same.

### 5.4. **Temperature regulated goods**

- 5.4.1. The Customer undertakes not to tender for transportation of any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained. In case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that:
  - a) the Container has been properly pre-cooled or pre-heated as appropriate;
  - b) the Goods have been properly pre-cooled or pre-heated and properly stuffed in the Container; and
  - c) the Container's thermostatic controls have been properly set by the Customer.

### 5.5. **Time guarantee**

- 5.5.1. DSV accepts no responsibility for departure or arrival dates of Goods. ETA (Estimated Time of Arrival) or ETD (Estimated Time of Departure) shall not be construed as a time guarantee on the part of DSV.



## **6. Selection of Third Parties**

- 6.1 DSV is a Federal Motor Carrier Safety Administration (“FMCSA”) licensed transportation broker that arranges for transportation performed by others on behalf of Customer. It is understood by Customer that DSV is not actually performing the transportation of the Customer’s freight but will be arranging for the transportation of Customer’s freight. DSV shall use reasonable care in its selection of third parties to perform the transportation of the Goods. In the performance of the Services hereunder, DSV has entered into, or may enter into, agreements with entities which will perform the carriage and/or freight forwarding services for the transportation of the Goods. It is understood and agreed that DSV does not assume responsibility as a carrier or freight forwarder of the Goods, and furthermore that the retained Carrier may operate pursuant to limitations of liability.
- 6.2 Notice of Opting out of Carmack Amendment/ICC Termination Act of 1995. Shipper expressly waives all rights and remedies it may have as to DSV under the Carmack Amendment/ICC Termination Act of 1995, et seq; 49 U.S.C. Subtitle IV, Part B (excluding §§ 13703, 13706, 14101 and 14103) to the full extent permitted by 49 U.S.C. § 14101(b)(1), each as amended from time to time. Further, and specifically, all provisions relating to notification of loss and time for suit are expressly waived.
- 6.3 The Customer warrants and represents that any and all claims for damage or loss shall be made only as against the carrier(s) or entities responsible for the transportation of the Goods; and that the sole responsibility for notifications of loss and claim rest with the Customer. Notwithstanding the foregoing, DSV may solely for the convenience of the Customer interpose claims and notification of loss on behalf of the Customer against the carrier(s), provided that this shall in no way operate as a waiver or estoppel of the instant provision. It is the responsibility of the Customer to timely and seasonably advise of any damages to goods to allow for timely submission of claims to carriers.

## **7. Payment terms**

- 7.1. Unless otherwise agreed the Customer shall pay the invoiced amount 14 (fourteen) days from the date of DSV’s issuance of the invoice without deduction or deferment on account of any claim, counterclaim or set-off.
- 7.2. The Prices for the Services are offered exclusive of taxes, duties and charges charged by government entities. These costs and taxes shall be the sole responsibility of the Customer.
- 7.3. DSV will charge interest in case of late payment. These will be levied from the due date of the overdue invoice until payment is made in full. If no legislation applies regarding interest for late payment DSV may charge 9% (nine percent) per annum, or the highest rate allowed by law, whichever is less, from the due date of the overdue invoice.
- 7.4. If any outlay is made by DSV on behalf of the Customer related to any charges, including, but not limited to freight, storage, and government charges then these outlays shall be paid by the Customer on demand of DSV.
- 7.5. DSV may charge the Customer for additional direct or indirect costs such as but not limited to waiting time, demurrage, additional or unexpected storage or handling redirection of goods during transit or failed attempts of pick-up or delivery of Goods not attributable to DSV.
- 7.6. If DSV is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall remain responsible for these amounts; and shall pay these amounts to DSV on demand where these amounts have become due and have not been paid by such other person. Customer shall remain primarily liable for the payment of all freight and accessorial charges assessed by the carrier(s) retained to transport Customer’s Goods.

## **8. Insurance**

- 8.1. Unless specifically agreed in writing DSV shall be under no obligation to maintain insurance, or to procure on behalf of Customer any insurance, covering the Goods or Services. As DSV’s liability is limited in accordance with these Conditions, DSV encourages the Customer to take out Cargo Insurance to cover the Goods during transport, handling and storage; as noted, the carriers retained by DSV may operate under limitations of liability; DSV is under no obligation to increase any such limitations of liability for the benefit of Customer.
- 8.2. DSV shall not assume any responsibility or obligation to verify the existence or extent of insurance coverage of any carrier or third party selected or retained to perform the transportation of the Goods.



## **9. General indemnities**

- 9.1.** The Customer and Owner shall indemnify, hold harmless, and at DSV's request, defend DSV, its officers, directors and employees, against: damages, suits, demands or claims by any non-party due to the negligence, gross negligence or willful misconduct by the Customer causing damage to the non-Party's property or injury or death of the non-Party. Such indemnity shall include all expenses, costs and attorney's fees.
- 9.2.** Moreover, the Customer and Owner shall defend, indemnify and hold harmless DSV against liability, loss, damage, delay, costs and expenses (including attorney's fees) due:
- a)** to the nature or inherent vice of the Goods;
  - b)** from duties, taxes, imposts, levies, deposits and outlays levied by any government authority in respect of the Goods and/or Container, and for all liabilities, payments, fines, costs, expenses, loss and damage sustained by DSV in connection therewith;
  - c)** out of DSV acting in accordance with the Customer's or Owner's instructions; and
  - d)** from a breach of warranty or obligation by the Customer herein or arising from the negligence of the Customer or Owner.

## **10. Liability**

- 10.1.** DSV shall only be liable for loss, damage or delay of the Goods which are the direct and proximate result of DSV's negligence or gross negligence.
- 10.2.** Regardless of Clause 10.1 DSV shall not be liable for loss, damage or delay arising from the special risks inherent in one or more of the following circumstances:
- a)** the act or omission of the Customer or Owner or any person acting on their behalf;
  - b)** compliance with the instructions given to DSV by the Customer, Owner or any other person entitled to give them;
  - c)** insufficiency of the packing or labelling of the Goods;
  - d)** handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
  - e)** inherent vice of the Goods;
  - f)** riots, civil commotions, strikes, lockouts, stoppage or restraint of labor from whatsoever cause;
  - g)** fire, flood, storm, explosion or theft; or
  - h)** any cause which DSV could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

**10.3.** In no event shall DSV's liability for any claim, damage, loss or delay exceed \$100,000.00 per shipment or transaction.

**10.4.** Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any indirect or consequential loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other Party; or for any loss of actual or anticipated profits, loss of revenue, loss of goodwill and/or business, loss of savings or any other pure economic loss whether direct or indirect.

## **11. DSV acting as Independent Contractor.**

**11.1.** At all times, DSV shall be considered an independent contractor with respect to the performance of all Services behalf of Customer and neither DSV nor anyone employed by DSV shall be deemed to be the employee, agent, servant or representative of Customer in the performance of any Service. It is understood that DSV is not an agent for the carriers and shall remain at all times an independent contractor. DSV does not exercise or retain any control or supervision over the carriers, their operations, employees, or agents. To the extent that DSV provides the Services on behalf of Customer, DSV



does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by retaining such third parties so that direct contractual relationships are established between the Customer and such third parties.

## **12. Miscellaneous**

### **12.1. Amendments**

At any time DSV shall have the right to unilaterally amend these Conditions by publishing the amendments on DSV's website. In case any contract was concluded by DSV after such publication, those will be subject to the amended Conditions.

### **12.2. Notices**

Notifications shall be made in writing, by mail, via e-mail or by fax according to the data exchanged between the parties. Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to DSV to be the address of the recipient of the notice.

### **12.3. Headings**

Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

### **12.4. Legislation**

If any legislation is compulsory applicable to Services undertaken – in whole or in part – these Conditions shall, as regards such Services, be subject to such legislation. However, nothing in these Conditions shall be construed as a surrender by DSV of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

## **13. Dispute resolution and applicable law**

**13.1.** All questions concerning the construction, interpretation, validity and enforceability of these Conditions, performance hereunder, or breach of any of the Conditions, shall be governed by the laws of New York.

**13.2.** Unless otherwise agreed in writing or stipulated by mandatory law any dispute arising out of or in connection with the Services shall be brought exclusively in the State or Federal courts located in New York County, New York. Customer expressly agrees to the exclusive jurisdiction of such courts for any such suit or claim and waives any objection to personal jurisdiction in such courts.

**13.3.** Notification of Claim. All claims against DSV for a potential or actual loss, must be made in writing and received by the Company, within one hundred eighty (180) days of the event giving rise to claim (however, such notice **MUST** be made as soon as practicable). Timely notice shall be deemed to be a condition precedent to the maintenance of any action; and the failure to give DSV timely notice shall be a complete defense to any suit or action commenced by Customer. If any term in the instant provision is deemed unenforceable, the time for claim period shall be reduced to the shortest allowable by law.

**13.4.** Time for Suit. All suits against DSV must be filed and service of process properly completed and affected on DSV within one (1) year from the date of the loss; if any term in the instant provision is deemed unenforceable, the time for suit period shall be reduced to the shortest allowable by law.