



630 Woodlake Drive, Suite B, Chesapeake, VA 23320

## Terms & Conditions

**1. APPLICABILITY.** These Surface Transportation Logistics Terms and Conditions (“Terms and Conditions”) govern the arrangement, but not performance, by Givens Logistics, LC (hereafter referred to as Givens Logistics) of surface transportation with respect to goods moving to, from or within the United States and Canada by GIVENS LOGISTICS (“Services”). Unless expressly superseded by a written contract signed by an officer of GIVENS LOGISTICS and the shipper, consignor, consignee, or any other entity claiming an interest in goods for which GIVENS LOGISTICS arranges transportation (“SHIPPER”) these Terms and Conditions shall govern the Services. Any terms and conditions in any document exchanged between the parties other than these Terms and Conditions, as revised from time to time, shall not apply to any

Services and shall not be binding on or applicable to GIVENS LOGISTICS. SHIPPER understands and agrees that GIVENS LOGISTICS functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation, and that the actual transportation of shipments tendered to GIVENS LOGISTICS shall be performed by third-party motor carriers (“Servicing Motor Carriers”). GIVENS LOGISTICS and SHIPPER represent and warrant that their relationship is that of independent contractors and that the respective employees are under their respective exclusive management and control. Nothing in these Terms and Conditions shall be deemed to require GIVENS LOGISTICS to provide Services upon request of SHIPPER and GIVENS LOGISTICS reserves the right to accept or decline, in its sole discretion, any particular request for Services.

**2. COMPLIANCE WITH LAW.** GIVENS LOGISTICS represents and warrants that it is duly and legally qualified by the Federal Motor Carrier Safety Administration to provide the Services contemplated herein. GIVENS LOGISTICS agrees to comply with all applicable federal, state and local laws regarding the provision of such Services. SHIPPER warrants and represents that it is authorized to tender the cargo in question to GIVENS LOGISTICS and that all descriptions of the cargo are complete, accurate, and include all information required by applicable law, rules or regulation. Without in any way limiting the foregoing, if SHIPPER tenders for transportation cargo designated as hazardous materials or dangerous goods, SHIPPER shall be solely responsible for complying with any and all applicable laws, rules, regulations, or conventions with respect to classifying, tendering, packaging, labeling and offering such cargo and must provide notice of any such cargo at the time a request for Services is first initiated by SHIPPER to GIVENS LOGISTICS. When requesting service with respect to any shipment containing food that is subject to regulations of the Food and Drug Administration (“FDA”) (hereinafter, “Food”), SHIPPER shall be solely responsible for identifying handling obligations necessary for the safe and sanitary handling of food and, at the time of the initial request for services with respect to the individual shipment, will provide written notice (each a “Food Handling Notice”) to GIVENS LOGISTICS that the consignment contains Food which Food Handling Notice must also include any special instructions or handling requirements to be imposed on the Servicing Motor Carrier. Any such Food Handling Notice shall specifically identify the consignment to which it relates and in no event shall any Food Handling Notice apply to more than one shipment regardless of whether GIVENS LOGISTICS confirms receipt of a Food Handling Notice purporting to apply to multiple conveyances. In no event will GIVENS LOGISTICS have any obligation to provide any instructions to the Servicing Motor Carrier with respect to cargo other than those expressly noted by the SHIPPER on the Food Handling Notice and GIVENS LOGISTICS has no obligation to comply with or pass on to the Servicing Motor Carrier any handling instructions received after the initial request for service. If SHIPPER does not provide a Food Handling Notice, SHIPPER warrants and represents that the cargo is appropriately packaged to ensure safe and sanitary transportation without the need for any specialized handling by the Servicing Motor Carrier.

**3. PAYMENT AND CHARGES.** GIVENS LOGISTICS will charge and SHIPPER will pay the rates and charges set forth in a quote provided by GIVENS LOGISTICS

or as otherwise agreed for services provided by GIVENS LOGISTICS without offset. SHIPPER agrees to pay GIVENS LOGISTICS without offset and within thirty (30) days of receiving the invoice, with interest accruing monthly at a rate of one percent (1%) per month on any unpaid balance. SHIPPER shall also be liable for any expenses, including attorney fees, GIVENS LOGISTICS incurs in collecting its rates and charges. SHIPPER shall also be responsible for any additional accessorial charges imposed by the Servicing Motor Carrier which were not anticipated by GIVENS LOGISTICS at the time GIVENS LOGISTICS arranged for services with Servicing Motor Carrier or which were not otherwise included in the rate set forth in the quote. If any information provided by SHIPPER is inaccurate or incomplete, SHIPPER acknowledges and agrees that agreed upon rates may, in GIVENS LOGISTICS’ sole discretion, be revised to reflect the goods actually tendered. SHIPPER acknowledges and agrees that GIVENS LOGISTICS’ charges may be invoiced by an affiliate of GIVENS LOGISTICS, acting as agent of GIVENS LOGISTICS, which such fact will not impact the applicability of these Terms and Conditions to the Services.

**4. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES WILL GIVENS LOGISTICS BE LIABLE TO SHIPPER, ANY PERSON CLAIMING BY OR THROUGH SHIPPER, ANY SUCCESSOR IN INTEREST TO SHIPPER, OR ANY OTHER PERSON FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THESE TERMS AND CONDITIONS OR OPERATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR DAMAGES ALLEGED TO ARISE FROM BUSINESS INTERRUPTION, FOR ANY REASON WHATSOEVER WHETHER OR NOT THE LIKELIHOOD OR CERTAINTY OF SUCH DAMAGES WAS KNOWN OR SHOULD HAVE BEEN KNOWN TO GIVENS LOGISTICS. NOTWITHSTANDING ANY OTHER LIMITATION OF LIABILITY OR PROVISION GOVERNING CALCULATION OF DAMAGES UNDER THESE TERMS AND CONDITIONS, IN NO EVENT WILL SHIPPER’S RECOVERY AGAINST GIVENS LOGISTICS FOR ANY SINGLE OCCURRENCE, NO MATTER THE CAUSE, EXCEED \$100,000.

**5. INDEMNIFICATION.** SHIPPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS GIVENS LOGISTICS FROM AND AGAINST, AND SHALL PAY AND REIMBURSE GIVENS LOGISTICS FOR, ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY SHIPPER OF THESE TERMS AND CONDITIONS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF SHIPPER, ITS AGENTS, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY SHIPPER, ITS AGENTS, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULE OR REGULATION; OR (iv) SHIPPER’S FAILURE TO PROVIDE, OR GIVENS LOGISTICS’ COMPLIANCE WITH OR RELIANCE ON, INSTRUCTIONS, DIRECTIONS, OR REQUEST OF SHIPPER. THE FOREGOING NOTWITHSTANDING, SHIPPER’S OBLIGATION TO HOLD HARMLESS, DEFEND, INDEMNIFY, PAY AND REIMBURSE SHALL NOT APPLY TO THE EXTENT ANY CLAIM IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF GIVENS LOGISTICS.

**6. SERVICING MOTOR CARRIERS.** GIVENS LOGISTICS sole responsibility with respect to selection and retention of Servicing Motor Carriers is to make reasonable efforts to place SHIPPER’s loads with responsible Servicing Motor Carriers: (i) authorized to perform the services required by SHIPPER; (ii) which such carriers do not hold an “unsatisfactory” or unfit safety rating from the U.S. Department of Transportation; and (iii) that possess all insurance coverages required by applicable law. GIVENS LOGISTICS makes no express or implied warranties or guarantees



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concerning delivery time or the locating of a Servicing Motor Carrier to provide the transportation services requested by SHIPPER..

**7. GIVENS LOGISTICS INSURANCE.** GIVENS LOGISTICS shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain a surety bond or trust fund agreement.

**8. CARGO LOSS, DAMAGE, OR SHORTAGE.** SHIPPER acknowledges that Servicing Motor Carriers may limit their liability for cargo loss, or damage. GIVENS LOGISTICS shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused by GIVENS LOGISTICS' negligent acts or omissions, in which case, GIVENS LOGISTICS' liability shall be limited to the lesser of cost to repair or, replacement value of the lost or damaged cargo and in no event exceeds \$100,000 unless GIVENS LOGISTICS is notified in advance and agrees in writing to accept a higher cargo liability. The foregoing notwithstanding, if and only if GIVENS LOGISTICS has arranged for the consolidation of multiple individual shipments for transportation on a single transporting conveyance, or GIVENS LOGISTICS has arranged for the delivery of multiple individual shipments received on a single transporting conveyance GIVENS LOGISTICS will be liable for cargo loss and damage as a "carrier" pursuant to the Carmack Amendment as currently codified at 49 U.S.C. § 14706 except such liability shall not exceed the lesser of the cost to repair or replace the goods, or \$.50 per pound per package unless GIVENS LOGISTICS is notified in advance and agrees in writing to accept a higher cargo liability. If SHIPPER has requested GIVENS LOGISTICS assume additional liability as set forth above and has paid the additional charges, then GIVENS LOGISTICS shall assume liability up to the lesser of the cost to repair or replace the goods, or the amount as agreed between SHIPPER and GIVENS LOGISTICS. The foregoing notwithstanding, in the event that GIVENS LOGISTICS arranges for the transloading of cargo to be performed by Givens, Inc., SHIPPER agrees that GIVENS LOGISTICS shall have no liability for the actions of Givens, Inc., and that Givens, Inc.'s Transloading Terms and Conditions, located at <https://givens.com/terms-conditions/> shall govern any cargo loss, damage, or shortage that may be attributable to Givens, Inc. Givens Inc. is acknowledged as a third-party beneficiary of these Terms and Conditions. In the event that GIVENS LOGISTICS arranges for the transloading of cargo to be performed by a third-party transload facility, SHIPPER agrees that cargo liability shall be limited to \$.50 per pound, except in the event that cargo is transloaded at a port facility in which case cargo liability shall be limited to \$500. In no event will GIVENS LOGISTICS have any liability arising from or related to the Servicing Motor Carrier's refusal to accept full value liability or the Servicing Motor Carrier otherwise limiting its liability for cargo loss and damage. GIVENS LOGISTICS shall be under no obligation to arrange, and Servicing Motor Carrier shall be under no obligation to provide, service in accordance with any set pick-up or delivery schedule; GIVENS LOGISTICS' sole obligation is to ensure Servicing Motor Carriers provide services with reasonable dispatch. SHIPPER acknowledges and agrees that the sole liability of GIVENS LOGISTICS with respect to loss or damage to cargo shall be as set forth in this provision and SHIPPER warrants and represents that if it is not the owner of such cargo, SHIPPER holds authority from such owner to bind the owner to the provisions of these Terms and Conditions. Any amounts recovered from the Servicing Motor Carrier shall be credited against the liability of GIVENS LOGISTICS, and as a condition to payment from GIVENS LOGISTICS, the claimant must assign all claims against the Servicing Motor Carrier.

**9. CLAIMS FOR CARGO LOSS AND DAMAGE.** SHIPPER acknowledges and agrees that failure or alleged failure by the Servicing Motor Carrier to comply with shipment handling instructions, or a broken trailer seal, shall not, in and of itself, be grounds for rejection of a shipment or filing of a claim for cargo loss and damage without proof of actual loss or damage. In no event will GIVENS LOGISTICS be

liable for any shortage with respect to a trailer that is delivered with the original seal intact. Damage not noted on the delivery receipt at the time of delivery shall be assumed to have occurred subsequent to delivery. For purposes of this provision, a trailer dropped by a Servicing Motor Carrier for subsequent unloading shall be deemed to have been delivered at the time the trailer is dropped. GIVENS LOGISTICS must receive notice of loss, damage or shortage within thirty (30) days of delivery and must be provided with a period of at least fifteen (15) days from the date of such notice to inspect the goods and the associated packaging if desired. SHIPPER is responsible for filing a claim with GIVENS LOGISTICS alleging GIVENS LOGISTICS' liability for cargo loss and damage within nine (9) months of the date of delivery of the cargo in question (or, if none, within nine (9) months of the date cargo should have been delivered). Failure to do so will result in an absolute bar to any such claim and will relieve GIVENS LOGISTICS of any and all liability with respect thereto. Any lawsuit arising from such claim must be commenced within two years of denial of all or any part of such claim.

**10. SHIPPING DOCUMENTS.** Shipments tendered hereunder may be accepted by the Servicing Motor Carrier on a bill of lading or similar transportation document setting forth the respective legal rights and obligations of SHIPPER and the Servicing Motor Carrier. In no event shall the terms or conditions of any such bill of lading or other document used by SHIPPER and the Servicing Motor Carrier apply to GIVENS LOGISTICS' Services or otherwise be binding on GIVENS LOGISTICS. Upon request of SHIPPER, GIVENS LOGISTICS shall request that Servicing Motor Carriers obtain a delivery receipt from the consignee, showing the products delivered, the condition of the shipment and the date of such delivery.

**11. NOTIFICATION OF ACCIDENTS OR DELAYS.** GIVENS LOGISTICS agrees to notify SHIPPER of any accident or other event of which GIVENS LOGISTICS is apprised and which prevents the motor carrier from making a timely or safe delivery.

**12. FORCE MAJEURE.** In no event will GIVENS LOGISTICS be liable for delay or other default in the performance or discharge of any duty or obligation under these Terms and Conditions when caused by circumstances beyond the reasonable control of GIVENS LOGISTICS.

**13. GOVERNING LAW AND DISPUTE RESOLUTION.** These Terms and Conditions shall be deemed to have been drawn in accordance with the statutes and laws of the state of Virginia and in the event of any disagreement or dispute regarding services subject to these Terms and Conditions, to the extent not otherwise governed by federal law, the laws of Virginia shall apply and suit must be brought in Virginia as each party specifically submits to the exclusive personal jurisdiction of such courts for disputes involving Services rendered pursuant to these Terms and Conditions.