

# **Dimerco Express (U.S.A.) Corp. Property Broker Terms and Conditions of Service**

Dimerco Express (U.S.A.) Corp. (hereinafter "Company") is a licensed property broker as defined by 49 U.S.C. § 13102 (12) operating under FMCSA MC No. 579353, U.S. DOT No. 2237570. Company **only** undertakes to arrange for the transportation of shipments on behalf of its customers (the "Customer") from various origins and destinations throughout the United States. The transportation is furnished by carriers selected by Company. The Terms and Conditions of Service set forth herein are applicable to the transportation of any shipment for which Company is retained to arrange transportation and related services on Customer's behalf.

Company reserves the right from time to time to modify, amend or supplement its Terms and Conditions of Service without notice. Copies of Company's most recent Terms and Conditions of Service may be obtained by contacting Company and are available on Company's web site.

**1. Company as Independent Contractor.** The Company is authorized to act on behalf of the Customer in order to effectuate the selection of Third Parties as set forth in paragraph 3. Said Third Parties may limit their liability and may operate under terms and conditions further defining the rights, obligations, and defenses of those Third Parties. The Company is also authorized to agree to those terms on behalf of the Customer. As to all other services, the Company acts as an Independent Contractor.

**2. 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 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 two (2) years from the date of the loss or damage.

**3. No Liability for the Selection or Services of Third Parties and/or Route.** It is expressly understood that, in the performance of its duties, Company shall retain, select and/or subcontract the transportation and related services required by Customer to motor carriers that are duly authorized to transport such shipments pursuant to all applicable regulatory authority. It is understood and agreed that the selected motor carriers are independent contractors with the exclusive control over their respective drivers and employees, and are not agents, employees or authorized representatives of Company, its agents or affiliated entities. 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 actions(s) and/or inaction(s) of such third parties and/or its agents, and Company shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the 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 any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

**4. Declaring Higher Value to Third Parties.** Third Parties to whom the goods are entrusted may limit liability for loss or damage. Company will request excess valuation coverage only upon specific written instructions from the Customer, for which Customer must agree to pay. Customer expressly acknowledges that there is a distinction between excess valuation coverage, which increases the legal liability amount of the subject service provider beyond a released value rate, and a request for insurance (insurance is covered in paragraph 5 below). In the absence of written instructions from the Customer, and/or in instances in which the Third Party does not agree to a higher declared value, at the Company's discretion the goods may be tendered to the Third Party subject to the terms of the Third Party's limitations of liability and/or terms and conditions of service.

**5. 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. Unless otherwise agreed in writing, the third-party motor carriers selected by Company to perform the transportation and related services shall maintain insurance covering loss or damage to cargo in the amount of \$100,000. In no event, however, shall Company be responsible for any motor carrier's failure to maintain such insurance or for the accuracy of any documentation furnished by such motor carrier to Company or Customer evidencing said insurance coverage.

**6. Disclaimers; Limitation of Liability.** Except as specifically set forth herein, **Company makes no express or implied warranties in connection with its services and any and all warranties, whether statutory, express or implied are hereby deemed waived and specifically disclaimed;** subject to the terms below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and 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 Third Parties. In any event, Company's liability for any loss or damage shall be limited to \$50.00 per shipment or transaction. In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages, including any and all loss or damages arising from delay of services.

The Company shall have no liability if it is prevented from or delayed in performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network including reduction in bandwidth, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or any other force majeure event. In any event, however, the Company's liability (if any) is limited in accordance with this paragraph 6.

The Customer agrees that the Company shall in no event be liable for any loss, damage or expense incurred by the Customer, whether or not arising out of delay or physical damage to the goods, or other damage to goods or property belonging to Third Parties, or any other damages including but not limited to documentary error(s), mis-delivery, loss of property, tender to unauthorized parties, or any other act or omission or other cause resulting from the negligence or other fault of the Company for any amount in excess the limitations of liability set forth in this paragraph 6.

**7. Opting out of the Carmack Amendment (49 U.S.C. § 14706).** Where the Carmack Amendment might otherwise be applicable, the parties hereto; or any other intended beneficiary of the services provided by the Company, together with the Company, hereby specifically and expressly agree to opt out of the application of the Carmack Amendment. Said parties specifically and expressly agree to waive any and all rights and remedies under the Carmack Amendment which would otherwise be subject to the Carmack Amendment. Specifically the aforementioned parties hereby agree that the provisions of the Carmack Amendment which pertain to notice of claim requirements, time for suit provisions, and limitations of liability provisions are without application. All services relating to the transportation of goods, or other services provided hereunder will be subject to the liability limiting provisions of Paragraph 6 herein, as well as the other terms and conditions contained herein.

**8. Packing and Marking.** All shipments tendered by Customer must be prepared and packaged to ensure safe ground transportation. By tendering a shipment to the motor carrier, Customer certifies that the shipment is sufficiently packaged to withstand the normal rigors of truck transportation. Each package must be legibly marked, prior to the shipment being tendered for transportation. Any article susceptible to damage by ordinary handling must be adequately protected and packaged and marked in such a way as to alert Company or the carriers of the possibility of damage from ordinary handling and must bear appropriate labels. Customer shall notify company of any danger inherent in the shipment, including, but not limited to, whether the shipment is flammable, explosive, corrosive or hazardous in any manner. Customer agrees to indemnify and hold Company harmless for any loss, injury, death or damage, including all expenses and attorney's fees, occurring as a result of such condition of the shipment, regardless of whether Customer had notified Company prior to the shipment.

**9. 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 Company.

**10. Overcharge, Duplicate Payment and Over-Collection Claims.** Any overcharge, duplicate payment or over-collection claim made by Customer must be filed, in writing, with Company within one hundred eighty (180) days from the date of Company's invoice.

**11. 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.

**12. Severability.** In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

**13. 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 Illinois, without giving consideration to principles of conflict of law. Customer and Company irrevocably consent to the jurisdiction of the State of Illinois; agree that any action relating to the services performed by Company, shall only be brought in said courts; consent to the exercise of *in personam* jurisdiction by said courts over it, and further agree that any action to enforce a judgment may be instituted in any jurisdiction.