

TRANSMODAL GENERAL TERMS AND CONDITIONS OF SERVICE ("General Terms")

These General Terms constitute a legally binding contract between the Company and the Customer, effective as of the date that the Company first provides any services to the Customer, and as amended from time to time in the Company's discretion.

1. Definitions

- (a) "Company" shall mean Freight Savers Shipping Co. Ltd., Transmodal Corporation, its subsidiaries, related companies, agents and/or representatives;
- (b) "Customer" shall mean the recipient of the Company's services, and the recipient's subsidiaries and parent companies.
- (c) "Documentation" shall mean all information received directly or indirectly from Customer, in any format, other than the Power of Attorney and these General Terms.
- (d) "Third Parties" shall include, but are not limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, Ocean Transportation Intermediaries, customs brokers, agents, warehousemen and others to which any goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".
- (e) "Accrual of Claim" shall mean the date or dates that a Customer knew or should have known that a claim against the Company had ripened.
- (f) "Scope of Agreement" shall refer to the inclusion or exclusion of specific terms and conditions specified in any agreement entered into between the Customer and the Company. Unless otherwise specified in writing and signed by the parties, the parties to any agreement entered into between them agree not to construe any agreement(s) in force between them by relying on the terms of any other agreement(s) in force between the parties. Notwithstanding the foregoing, the parties intend to incorporate the General Terms into **ALL AGREEMENTS** entered into and in force between them without exception, unless such other agreement specifically references an objectionable portion of the General Terms by paragraph number, and/or by an objectionable word or phrase surrounded by quotation marks. In such circumstances, both parties must initial that portion of any agreement between them that indicates that one or more provisions of the General Terms are NOT INCORPORATED INTO THE AGREEMENT IN QUESTION, BY REFERENCE.
- (g) "Fraud." For purposes of this General Terms agreement, the substance of which is incorporated into all agreements entered into between Customer and Company, "Fraud" means any misrepresentation of fact made by the Customer as an inducement to the Company to conduct business with the Customer, grant Customer Credit, or take any action in reliance upon statements of fact made by Customer that are later shown to be untrue.

2. Company's Obligations - Generally

- (a) **Scope of Services.** The Company has been retained by the Customer to provide services that are specified in an agreement entered into between the parties that details the scope of the services to be provided by the Company to the Customer, and other terms that are specific to that agreement. Such agreements may include (but are not limited to) credit applications, carrier to carrier equipment release agreements, bills of lading, invoices, statements, powers of attorney, arrival notices or other agreements governing the scope of the Company's obligations to the Customer, and the scope of the Customer's obligations to the Company.
- (b) **Insurance.** Unless required to do so in writing and confirmed to Customer in writing, the Company is under no obligation to procure any form of insurance on Customer's behalf. Where Customer requests insurance in connection with the services to be provided by Company, and assuming the insurance requested can be procured by the Company in a timely fashion and is available in the normal course of business, Customer shall pre-pay all premiums and costs in connection with procuring such insurance. The Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of a third party to agree to a higher declared value. At Company's discretion, any cargo be transported by the Company on behalf of the Customer may be tendered to a third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.
- (c) **Record-keeping.** Unless otherwise agreed in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as "recordkeeper" or "recordkeeping agent" for Customer.
- (d) **Bill of Lading, Company Obligations.** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages, and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. Company shall rely upon and use the cargo weight supplied by Customer.
- (e) **Penalties.** Under no circumstance will the Company be responsible for penalties or damages resulting from a Customer's failure to pay duties owed to U.S. Customs & Border Protection.
- (f) **Post Entry and Additional Services.** Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post-Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s), and/or protests, etc.
- (g) **Customer Information.** Customer agrees to allow Company to share aggregate sales and account data with its subsidiaries, related companies, agents and/or representatives.
- 3. Customer's Obligations**
- (a) **Customer Knows Terms Hereof.** It is the responsibility of the Customer to (i) read and acknowledge that Customer has read the General Terms, (ii) provide notice and copy(s) of these General Terms to all Customer agents or representatives.
- (b) **Duty to Disclose Information.** The Customer has an affirmative, non-delegable duty to disclose any and all information required to Company to allow Company to fulfill its contractual obligations to Customer. The scope of the required information shall be in the Company's sole discretion.
- (c) The Customer has an affirmative non-delegable duty to disclose any and all relevant information required to import, export, or enter the subject goods.
- (d) **Declaration Review.** Customer is required to immediately review all documents and declarations prepared and/or filed with the U.S. Customs & Border Protection, other Government Agencies, and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's behalf;
- (e) **Review Prior to Duty Deposit.** Customer agrees to immediately review each entry summary (CF 7501) prepared by the Company and advise of any errors or discrepancies at least 24 hours prior to estimated duty deposit by the Company to U.S. Customs & Border Protection.
- (f) **Company Lien.** Customer hereby grants Company a general and continuing lien on any and all property of Customer in Company's actual or constructive possession or control for all purposes, including (but not limited to) a lien in an amount sufficient to retire all debts Customer owes to Company for current and/or prior shipment(s).
- (g) **Company Lien Notice.** Company shall provide written notice to Customer of its intent to exercise such lien ("Lien Notice"), the exact amount of monies due and owing, as well as any on-going storage or other charges. Upon receipt of a Lien Notice, Customer shall notify all parties having an interest in its property of the Company's lien rights and the Company's intent to exercise any such lien.
- (h) **Company Right to Sell Customer Property.** Unless, within thirty (30) days of receiving the Lien Notice, Customer posts cash or a letter of credit as sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of the Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued (collectively referred to herein as "Collateral"), Company shall have the right to Customer's property at public or private sale or auction and any net proceeds in excess of the amount stated in the Lien Notice, plus any collection costs as hereafter described ("net Proceeds") remaining thereafter shall be refunded to Customer within a reasonable time.

(i) **Company Can Share Customer Data.** Customer agrees to allow Company to share Customer's aggregate sales and account data with its subsidiaries, related companies, agents and/or representatives.

- (j) **Customer Indemnifies Company.** Customer hereby agrees to indemnify, defend and hold the Company harmless from, against, and in respect of any and all loss, liability, deficiency, penalty, or damage suffered or incurred by the Company resulting from any violation of U.S. law, false representation, breach of warranty, or breach of any covenant or agreement by the Customer contained in the General Terms, or in any other agreement between the parties, certificate, document, or instrument delivered to the Company by the Customer pursuant to any agreement between the parties or in connection therewith.
- (k) **Customer Payment; Customer Late Payment Fees.** Customer agrees to (i) timely pay Company for services rendered strictly in accord with the terms of any agreement by which the Company provides services to the Customer and (ii) pay Company an administrative fee of \$250.00 (in addition to all other collections costs - see below) for each late payment ("Late Payment Fee"). (iii) A Late Payment Fee will be assessed by the Company and Customer shall pay the Late Payment Fee together with the amount of the original invoice (and any other collection fees due) within thirty (30) days following the original due date of the invoice for which the Late Payment Fee was assessed. (iv) Failure to pay the Late Payment Fee, original invoice amount and any other collection costs with thirty (30) days of the original due date shall result in the assessment of an additional Late Payment Fee of \$250.00, payable with the invoice amount within the following thirty (30) days. (v) A Late Payment Fee of \$250.00 will continue to be assessed by the Company in succeeding thirty (30) day intervals against all Customer accounts that remain in arrears, and the Customer agrees to pay all such fees until the invoice and all accrued Late Payment Fees and other applicable collections costs are paid in full.

4. Disclaimers; Limitation of Liability.

(a) **Company Disclaimer of Warranty.** Except as specifically set forth herein or in a separate agreement between the parties, Company makes no express or implied warranties or guarantees in connection with its services, and no such warranties or guarantees shall be implied from the terms of this General Terms agreement, or any other agreement in force between the parties **UNLESS SET FORTH IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY.**

(b) **Limited Company Liability; Gross Negligence.** Subject to paragraph 4(c) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall be liable to Customer only for Company's acts of gross negligence, and only if (i) the Company was contractually bound to provide a duty/service to the Customer, and (ii) the Company willfully or recklessly breached the duty, and (iii) the Company's breach of its duty to Customer was the direct and proximate cause of (iv) actual, compensatory damages to Customer that are calculable in U.S.D. at the actual cost to Customer (e.g. in the event that goods being transported by Company are determined by the Company, in Company's discretion, to be a total loss, the limit of Company's liability shall not exceed the actual cost to the Customer of the property in question, and, (v) all damages claimed by the Customer must be verified by an original, verified commercial invoice generated by the seller of the property to the Customer, or its' substantial equivalent. (vi) under no circumstances will the Company be liable for damages in excess of the commercial invoice value, based upon increased value based on market conditions, such as increased demand for the product and decreased supply.

(c) **Optional Customer Liability Insurance.** (i) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefore, which request must be confirmed in writing by the Company prior to the Company rendering services involving the insured product(s). (ii) Such additional liability coverage will be in effect for a given shipment or service provided a bona fide insurer accepts the risk, in writing, and the Customer pre-pays the premium required for the desired coverage. (iii) Under no circumstances will the additional liability coverage be considered to be in effect by the Company concerning a given loss if the desired coverage is rejected by the insurer selected (whether the insurer is selected by the Company or the Customer) or if the risk is rejected by the insurer prior to or after the loss, or if the Customer provides false documentation to support the loss or fails to provide the proper documentation required by the insurer as a condition to initiate the claims process. In all cases, it shall be the Customer's obligation to initiate the claims process under additional purchased coverage, and to comply with the claims procedure specified in the case of additional liability coverage.

(d) **Maximum Company Liability; \$50.00 USD Per Shipment.** In the absence of Customer's purchase of additional liability coverage under paragraph 4(c) above, the Company's liability for any loss shall be limited to \$50.00 per shipment or transaction.

(e) **Limitation of Company Liability; Direct, Compensatory Damages Only.** In no event shall Company be liable or responsible for anything other than direct, compensatory damages. Excluded damages include, but are not limited to, consequential, indirect, incidental, statutory, or punitive damages, even if the Company has been put on notice of the possibility that the Customer has or may sustain such damages.

5. Indemnification/Hold Harmless.

(a) **Customer Indemnity of Company.** Customer irrevocably covenants, promises and agrees to indemnify and defend Company and to hold Company harmless from and against any and all losses, claims, expenses, suits, damages, costs, demands or liabilities, joint or several, of whatever kind or nature which Customer or third parties may sustain or to which Customer or third parties may become subject arising out of or relating in any way to Company acting as service provider pursuant to contract including, without limitation, attorneys' fees, costs and expenses actually incurred by Customer in defending against or enforcing any such losses, claims, expenses, suits, damages or liabilities. Notwithstanding the foregoing, the Customer may agree to purchase additional liability or other insurance to cover its losses or losses claimed by third parties. In all such situations where Customer purchases additional liability insurance, customer shall name the Company as an additional insured with regards to claims asserted against Company by third parties, and shall supply Company with proof of such insurance in the form of a declaration sheet.

(b) **Customer Standard of Care.** Customer shall employ a standard of reasonable care and due diligence in all dealings with Company. The standard of care shall be equal to or greater than the standard of care employed in the industry in the State of New Jersey generally. The Customer shall represent the correctness of all information supplied by it, its' agents or third parties acting on behalf of Customer, to Company and pertinent third parties (e.g. governmental agencies), and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose required information or providing any incorrect or false statement(s) upon which the Company reasonably relied.

(c) **Government Indemnity.** Customer hereby agrees to indemnify and hold the Company harmless from, against, and in respect of any and all loss, liability, deficiency, penalty, or damage suffered or incurred by the Company resulting from any violation of U.S. law, untrue representation, breach of warranty, or nonfulfillment of any covenant or agreement by the Customer contained in this Agreement or in any certificate, document, or instrument delivered to the Company pursuant hereto or in connection herewith;

6. Payment and Advancing Money. Generally.

(a) **Customer Duty to Pay Company Charges.** All charges for services rendered or to be rendered by Company to Customer must be paid by the Customer (or its designated agent) **in advance** unless the Company agrees, in writing, to extend credit to the Customer (see Credit terms below). If the Company extends credit terms to a Customer in connection with a particular transaction, such credit arrangement **shall not** be considered a waiver of this advance payment provision by the Company.

(b) **Credit Payment Terms.** Where the Company has extended credit terms to the Customer, the Customer agrees that all amounts due for services rendered are payable "Net 15 days" ("Credit Period") from the date of invoice, unless different credit terms are agreed to by the Company in a writing signed by an Officer of the Company.

(c) **Non-Payment and Breach.** In the event (i) the Customer's account becomes delinquent, and/or (ii) any applicable Customer charges are not paid within the designated Credit Period (Net 15 days unless otherwise agreed in writing); and/ or (iii) the Credit Period is exceeded, or the credit limit is exceeded (see definition below) the Customer agrees that the Company (in its' sole discretion) may employ any one, or combination of two or more, or all of the following remedies, with which the Customer will comply :

(i) Customer shall make immediate payment of all outstanding charges due as a precondition for releasing any shipment or Customer property in the Company's possession and/or control. For purposes of this paragraph, "immediate payment" shall mean payment to Company in cash, bank check or wire transfer within forty-eight (48) hours of Company sending notice of default. **Note. Default Terms and conditions may also apply in this situation. See below.**

(ii) Customer shall pay default interest on the balance due at the rate of 1.5 % per month, beginning with the day following the due date of all payments due, and continuing until paid in full.

(iii) Customer shall pay a Late Payment Fee as per paragraph 3(h).

(iv) Company may exercise any applicable lien rights in connection with the including rights to public or private Customer property, auction.

(v) Company may bring a collection lawsuit. In such instance, Customer agrees to pay all collection costs as detailed below including but not limited to a liquidated damage, minimum

collection fee of \$2,500.00, reasonable attorneys fees, court costs, administrative costs, interest and such other damages as may be provided in this General Terms agreement, or specifically provided in one or more other agreements between the parties.

(d) **Collection Costs.** In the event the Account becomes delinquent and is turned over for collection, Customer agrees to pay all costs of collection including reasonable attorney fees and court costs. Customer agrees to pay a minimum collection cost of \$2,500.00

(e) **Customer Financial Condition.** Customer represents that Customer is in sound financial position and is able to meet its monetary obligation toward the Company. Customer agrees to notify the Company by certified mail of any charges in ownership or financial circumstances of Customer and further agrees to be liable for all losses incurred as a result of failure to comply with said notifications.

(f) **Fraud, Defined, Not Dischargeable in Bankruptcy.** (i) any misrepresentation of fact made by Customer verbally or in any writing between the parties shall be defined as Fraud for all purposes. ("Fraud"). (ii) Debtor acknowledges that any act of Fraud shall make the debt represented by the Notes and this General Terms agreement NON DISCHARGEABLE IN BANKRUPTCY by the debtor individually, and any entity owned by the Debtor.

(g) **Disputed Invoices; Statute of Limitations:** If the Customer wishes to dispute any Company invoice, its' right to do so will be forever barred, unless the Customer complies with all of the following:

(i) Customer must notify Company in writing, by email, and by certified mail, return receipt requested, within thirty (30) days from the date of any disputed invoice; (ii) Customer must state with specificity the basis for disputing the invoice, including (but not limited to) the amount in dispute, the reason why the amount is disputed, if it is claimed that the Company was grossly negligent in providing services, all details concerning the negligence including the provisions of any agreement between the parties that the Company allegedly breached, the factual basis for the proximate cause between the breach and any damages alleged, and all documents in Customer's possession and control that support the claim; and (iii) The claim must be signed by the Customer's authorized officer or agent. Failure to comply with these claim conditions shall be a complete defense to Customer's claim. Any part of the invoice not disputed by the Customer must be paid in accordance with the invoice terms. Failure to do so shall provide Company with all remedies available to it under these General Terms in the event that an invoice is not timely paid. In the event that the Customer timely disputes an invoice and complies with all the conditions provided in this paragraph, if the parties come to a resolution of the dispute, the amount agreed upon must be paid within the time agreed upon. Failure to pay a disputed and later settled invoice in the time agreed upon, shall result in Company employing any of the remedies available to it in the event of a breach of this General Terms agreement, including late fees, liquidated damages, collection costs and lien remedies.

(h) **Remittance of Duties.** Payment for duties not directly transmitted by the Customer to U.S. Customs and Border Protection shall be remitted to the Company within ten (10) days of release of the cargo by U.S. Customs & Border Protection.

(i) **Credit for Duties.** Where credit has been granted for duty payments, Customer agrees to reimburse the Company the amount of duties initially deposited with Customs, regardless if the initial amount deposited is correct or not.

7. Miscellaneous; Claim Procedure

(a) In addition to the foregoing claim procedures (and for purposes of repeating these procedures so that the Customer understands what is required), all claims against the Company for a potential or actual loss, must include the following:

- (i) Be made in writing
- (ii) Be received by the Company within thirty (30) days of the Invoice date
- (iii) Be delivered at the Company's Ramsey, NJ office
- (iv) Be made by persons with knowledge of events giving rise to the claim
- (v) Include a statement of dates and facts supporting the Customer claim
- (vi) Include the name and title of the claimant
- (vii) Be signed by the claimant.

(b) An incomplete claim will result in non-compliance of the terms & conditions and shall be a complete defense to any suit or action commenced by Customer.

(c) Should any valid federal, state or local law or final determination of any administrative agency or court of competent jurisdiction affect any provision of this Agreement, the provision affected shall be automatically conformed to such law or determination and otherwise this Agreement shall continue in full force and effect.

(d) The terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of New Jersey without giving consideration to the principles of conflict of law.

(e) Customer and Company

(i) irrevocably consent to the jurisdiction of the United States District Court and the State courts of New Jersey, Bergen County;

(ii) agree that any action relating to the services performed by Company, shall only be brought in said courts;

(iii) consent to the exercise of *in personam* jurisdiction by said courts over it, and

(iv) further agree that any action to enforce a judgment may be instituted in any jurisdiction.

(f) Terms of this contract shall not be construed against its drafter.

(g) Non-enforcement of any term of this contract by the Company shall not constitute waiver of the term.

(h) This Agreement contains the entire understanding of the parties concerning the subjects it covers, and supersedes all prior relevant understandings and representations.

(i) Nothing shall prevent the Company, at its sole discretion, from revising the terms and conditions of this General Terms agreement.

(k) For customers granted credit, the terms of the Credit Agreement control when in conflict with these Terms and Conditions

(l) The Customer acknowledges, as the importer of record, payment to the broker (Company) will not relieve the Customer of liability for customs charges (duties, taxes, and other debts owed to CBP) in the event the charges are not paid by the Company. Therefore, if the Customer pays by check, customs charges may be paid with a separate check payable to the "U.S. Customs and Border Protection" which shall be delivered to CBP by the Company.

8. Credit, Payment Terms.

(a) **Place of Payment.** The Customer agrees that all amounts due for services provided Customer by Company as detailed in Company invoices ("Charges") and/or any of its subsidiaries or affiliates, are payable at 48 S Franklin Turnpike, Suite 202-204 Ramsey, NJ 07446.

(b) **Method of Credit Payments.** Where Company has granted Customer credit ("Credit Terms"), Customer agrees that all Charges are not payable in installments, but are payable Net 15 days from the date of invoice, unless different terms are agreed to in writing.

(c) **Credit Limit; Overdraft.** The amount of credit authorized by the Company ("Credit Limit") is the maximum amount of Charges which may be outstanding at any one time. When the total dollar amount of Charges exceeds the Credit Limit, the Customer agrees to pay the portion of the Charges exceeding the Credit Limit immediately (*viz. within 48 hours*).

(d) **When Payment Deemed Made.** Payment of Charges shall not be considered received by Company until the amount of the payment is unconditionally and irrevocably transferred to Company in cleared funds. Each payment under these Credit Terms shall be made in full without deduction or deferment on account of any claims, counterclaim or set-off.

(e) **Remittance Advice.**

(i) If settlement of Charges is made via bank wire transfer or bank checks, Customer shall also forward a separate remittance advice to Company outlining which invoice the payment(s) are intended to settle ("Remittance Advice"). This requirement is designed to facilitate correct application of the payment to the Charges.

(ii) In the absence of Customer's Remittance Advice, any payment received from Customer shall be applied by the Company (A) first, to all outstanding late charges, collection charges and interest due, and (B) second, to the oldest open invoices, and (C) finally, to the most recent invoices.

(f) **Third-Party Payers; Guarantors.** If the Customer wishes to appoint a third party to settle (pay) Charges on its' behalf, then the Customer must first obtain a written consent from the Company, signed by a Company Officer. The Credit Terms applicable to the Customer (except for the granting of credit) applies in the same manner and effect to the third party settling (paying) the Charges on Customer's behalf. The Customer guarantees performance and payment of its' Charges by the third party chosen by the Customer, and Customer shall indemnify the Company for all consequences, costs and expenses in the event of any default, claim or non-payment by the third party. Conversely, the third party chosen by Customer to settle its' Charges with the Company assumes the Customer's liability for the Charges assumed by the third party, and becomes the Customer's guarantor of payment.

(g) **Non-Payment and Breach**

In the event the Customer breaches any term of this General Terms agreement; and/ or fails to timely pay any Charges in accordance with the Credit Terms; and/or exceeds the Credit Limit, the Customer agrees that the Company may, in its discretion, take any or all of the following actions, and that the Customer shall be bound thereby:

(i) Company may require immediate payment of all outstanding Charges as a precondition for releasing any shipment or other Customer property in Company's possession or control;

(ii) All Charges that have accrued and have not been timely paid in accordance with the Credit Terms shall begin to accrue a default interest rate of 1.5 % per month, beginning with the day following the invoice(s) due date. The interest charges shall continue to accrue until all Charges are brought current;

(iii) Company may charge a Late Payment Fee, as per paragraph 3(h);

(iv) Company may exercise its' lien rights over Customer Property in its' possession, and conduct public or private auctions to satisfy the outstanding Charges;

(v) Company may commence collection proceedings, exposing Customer to all the Company remedies described in paragraphs 6 and 7.

(vi) Any misrepresentation of fact made by Customer verbally or in any other writing between the parties shall be defined as Fraud for all purposes. Customer acknowledges that any misrepresentation of fact made by Customer in this General Terms agreement and in any related agreement was intentionally made by the Customer to avoid paying the Charges properly due and owing the Company, and/or to induce the Company into granting the Customer credit. The Customer understands that debts procured by Fraud are not dischargeable in bankruptcy.

(h) Customer represents that Customer is in sound financial position and is able to timely meet its monetary obligation toward Company on each and every occasion when it requests the Company provide it with services, including granting the Customer a Credit Line.