

TOTAL TRANSPORTATION OF MISSISSIPPI, LLC.

MC – 239097-B

BROKERAGE TERMS AND CONDITIONS



Issued By:

TOTAL TRANSPORTATION OF MISSISSIPPI, LLC.

125 Riverview Drive

Richland, MS 39218

INTRODUCTION

TOTAL RESERVES THE RIGHT TO CHANGE AND/OR DISCONTINUE ANY OF THE PROVISIONS SET FORTH HEREIN BY ISSUING NEW TERMS AND CONDITIONS AND PUBLISHING IT AT

[HTTP://WWW.TOTALMS.COM/](http://www.totalms.com/)

Total Transportation of Mississippi, LLC ("Total") is licensed as a Property Broker by the Federal Motor Carrier Safety Administration in Docket Number MC-239097-B. Customers and shippers wishing to use TOTAL to arrange for the transportation of their freight ("Customers") must enter into a written contract covering a series of shipments over a continuing period of time. All shipments arranged by TOTAL other than those transported pursuant to a contract as referenced above are subject to these Terms and Conditions and any succeeding issues thereof. Contracts which are silent as to any of the provisions contained in these Terms and Conditions will be interpreted according to these Terms and Conditions and succeeding issues thereof.

The use of TOTAL to arrange for transportation of a shipment shall be prima facie evidence of agreement on behalf of Customer and/or the party responsible for payment to be bound by these Terms and Conditions as well as any succeeding issues thereof.

If you have any questions regarding the use of TOTAL brokerage services or regarding these Terms and Conditions, please call our offices at (800) 942-2104.

1. BROKER. TOTAL's responsibility shall be limited to arranging for, but not actually performing, transportation of Customer's freight. TOTAL will arrange for the transportation of Customer's freight with motor carriers that are authorized to transport such freight pursuant to applicable regulations. Such motor carriers are independent contractors, have exclusive control over their drivers and employees, and are not agents, employees, or authorized representatives of TOTAL.

2. DELAY. TOTAL shall not be liable for delay, or for damages arising from delay, for any reason and/or under any circumstances, unless agreed to between the parties prior to shipment tender in writing and signed by an authorized representative of TOTAL.

3. FORCE MAJEURE. TOTAL shall not be liable for any loss, damage, delay, or failure to perform caused by acts of God, government or civil authority, inclement weather, fires, floods, construction, highway obstruction, traffic, accidents, interstate shut down, public enemy, inherent nature or vice of the cargo, strikes, labor disputes, lockouts, riot, war, or other causes beyond its control.

4. BILLS OF LADING. All shipments for which TOTAL arranges transportation shall move under and be governed by the terms and conditions of the Standard Truckload Bill of Lading, regardless of any other form or receipt which may be issued by the consignor, and whether or not signed by a driver or agent of the carrier or of TOTAL. Non-conforming bills of lading shall be a receipt for goods only. Carrier, not TOTAL, is to be named on the bill of lading as “carrier of record” and any designation of TOTAL as the “carrier” shall be of no effect. Customer’s or carrier’s insertion of TOTAL’s name on the bill of lading shall be for Customer convenience only and shall not change TOTAL’s status as a property broker.

5. GENERAL COMMODITIES. TOTAL shall arrange for the transportation of general commodities between points in the United States, except household goods, commodities in bulk, and certain hazardous materials as set forth below. TOTAL shall only arrange for the transportation of such commodities if agreed to between the parties prior to shipment tender in writing signed by an authorized representative of TOTAL. Customer shall be responsible to TOTAL for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.

6. GOVERNING PUBLICATIONS. Except as otherwise provided herein, this publication is governed by the following publication(s) and series, including supplements thereto or reissue thereof:

Mileage Guide—ALK Associates PC Miler—Practical Miles (most recent version)

7. RULES AND OTHER PROVISIONS WHICH GOVERN. Except as provided in these Terms and Conditions or contracts governed by these Terms and Conditions, the rules and regulations herein apply in connection with the rates or transportation contracts referring to these Terms and Conditions or reissues thereof. All shipments arranged by TOTAL not transported pursuant to a contract are also subject to the provisions in these Terms and Conditions and any succeeding issues thereof. Contracts which are silent as to any of the provisions contained in these Terms and Conditions will be interpreted according to these Terms and Conditions, and succeeding issues thereof. TOTAL is not bound to arrange transportation with any particular carrier in time for any particular market or markets, other than to arrange for the transportation of the freight with a licensed carrier with reasonable dispatch. Under no circumstances shall TOTAL be held liable for any special, indirect, or consequential damages, regardless of the existence of reasonable foreseeability, unless such liability is specifically and explicitly assumed in writing prior to shipment by an executive officer of TOTAL. TOTAL reserves the right to amend, add, and/or discontinue any of the provisions set forth herein.

8. HAZARDOUS MATERIALS. Customer shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR 171 et seq. to the extent that any shipments constitute hazardous materials. Customer is obligated to inform TOTAL immediately if any such shipments do constitute hazardous materials. Customer shall defend, indemnify, and hold TOTAL harmless from any penalties, damages, or liability of any

kind, including reasonable attorney fees, arising out of Customer's failure to comply with the requirements of this section and/or applicable hazardous materials laws and regulations. Customer is solely responsible for all placarding needed for trailers loaded by Customer containing hazardous materials, waste or substances and radioactive materials, waste, or substances. A minimum of 48 hours advance notice must be given to TOTAL before tendering shipments advising the name of consignor, origin, consignee, and destination. Material Data Safety Sheet Information must be clearly and completely listed on the bill of lading. TOTAL will not arrange for the transport of the following commodities: Class 1.1, 1.2 or 1.3 Explosives; Class 5.2 Peroxides (Temp Control); Class 6.1 Poison Inhalation Hazard (A or B); Class 7 Radioactive (Yellow III Label Only); Class 2.3 Poison Gas; Radioactive Materials; Highway route controlled quantity of Class 7 Materials; Class 4.3 Materials; Dangerous When Wet; Explosives; more than 25kg (55 lbs.) of a Division 1.1, 1.2, or 1.3 material; an amount of a Division 1.5 material requiring a placard under 49 CFR Part 172, subpart F; Toxic by Inhalation (Division 2.3 and 6.1) Materials; Hazard Zone A material in a packaging with a capacity greater than 1 liter (0.26 gallons); Hazard Zone B materials in a bulk packaging (capacity great than 450 liters [199 gallons]); Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons); or compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquid or gases. TOTAL reserves the right to refuse any shipment that it considers unacceptable for transit for any reason.

9. EXTENSION OF CREDIT. TOTAL may extend credit to those Customers who, in the sole judgment of TOTAL, are good credit risks. All charges shall be billed and paid in U.S. Dollars. Where credit is extended, the following provisions for payment of charges for arranging transportation shall apply:

- (a) TOTAL's invoices are due and payable within thirty (30) days of receipt;
- (b) Any unpaid invoice or portion thereof will be subject to a finance charge of one and a half percent (1.5%) perm month or, in the alternative, the maximum rate allowed by law, whichever is greater;
- (c) Customer will be responsible for all costs and expenses associated with collection efforts, including but not limited to reasonable attorney's fees and expenses, if TOTAL has to seek recovery by means of collection process or by litigation; and
- (d) Invoices shall not be subject to setoff under any circumstances.

10. FREIGHT CLAIMS. TOTAL shall assist Customer in the filing and/or processing of claims with the carrier. If payment of claim is made by TOTAL to Customer, Customer automatically assigns its rights and interest in the claim to TOTAL so as to allow TOTAL to subrogate its loss. Customer must file claims for cargo loss or damage within nine (9) months from the date of such loss, shortage, or damage, which for purposes of these Terms and Conditions shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. Customer must file any civil action in a Court of Law within two (2) years and one day from the date the carrier or TOTAL provides written notice to Customer that the carrier has disallowed any part of the claim in the notice.

11. UNDERCHARGE OR OVERCHARGE CLAIMS. Claims for alleged undercharge or overcharge shall be filed with the appropriate party within one hundred and eighty (180) days of the date of TOTAL's invoice. Any action at law by either party to collect alleged undercharges or overcharges under the terms of this Agreement shall be commenced no later than eighteen (18) months after delivery of shipment.

12. LIMITS OF LIABILITY. It is understood and agreed that TOTAL is acting as a broker and is not acting as a carrier and that TOTAL SHALL NOT BE HELD LIABLE FOR LOSS, DAMAGE OR DELAY IN THE TRANSPORTATION OF CUSTOMER'S PROPERTY unless an authorized representative of TOTAL agrees to assume such liability in writing prior to shipment tender. In no event shall TOTAL be liable for any loss, damage, or delay unless such was directly and solely caused by TOTAL's grossly negligent acts or omissions in the performance of this Agreement. TOTAL's liability to Customer for any claim shall be limited to the lesser of (1) Customer's actual damages, or (2) the revenue derived by TOTAL from the single bill of lading accompanying the shipment giving rise to the claim. In no event shall TOTAL's maximum liability for loss or damage to cargo exceed \$100,000 per shipment. In no event shall TOTAL be liable to Customer or anyone else for any special, incidental, indirect or consequential damages (including, without limitation: delay, plant shutdown, extra labor, air cargo, air charter, lost profits or business opportunity). Further, any transportation or billing arrangements made by TOTAL regarding transportation of goods to, from, or within Mexico (including quotation of through rates between points in the United States and points in Mexico) are made by TOTAL solely for the convenience of Customer and Customer releases, and TOTAL shall not be liable for, any cargo loss or damage or events occurring in Mexico. However, if such complete waiver of liability in Mexico is determined to be invalid or unenforceable by any court of competent jurisdiction, TOTAL's liability for cargo loss or damage or events occurring in Mexico shall be valued pursuant to Mexican law as it pertains to damages. Both TOTAL and Customer agree that all rights and remedies under Part B, Subtitle IV of Title 49 U.S.C. are waived to the extent they apply and to the extent they conflict with the provisions of these Terms and Conditions.

13. INDEMNIFICATION. Customer shall defend, indemnify and save TOTAL, its affiliated entities, and the directors, officers, employees and agents of TOTAL from and against any and all damages, losses, costs, expenses, claims, demands, liabilities, suits, or actions (including reasonable attorney fees) arising out of injuries to or the death of any person(s), or arising out of loss or damage to the property of any person(s), or arising out of or resulting from the negligent acts or omissions or willful misconduct of Customer or any of its agents, subcontractors, or employees.

14. CUSTOMER OBLIGATIONS. Customer shall prepare and properly package all shipments appropriately for transportation by motor carrier and Customer warrants that any trailers or equipment tendered for transportation are not overweight or over-dimension. Customer shall ensure that the carriers arranged by TOTAL shall have access to loading and unloading facilities for shipments and that all such facilities shall be maintained in good and safe condition and in compliance with all applicable laws and regulations. Customer shall waive and release TOTAL from any and all liability for any loss or damage or injury to Customer property, Customer personnel, or Customer facilities.

15. TRANSPORTATION OF FOOD. Notwithstanding any other provisions of these Terms and Conditions, with respect to any food intended for human or animal consumption (“Food”) with respect to which services are provided by TOTAL, the provisions of this section shall apply and supersede to the extent in conflict with any other terms and conditions maintained in these Terms and Conditions.

(a) Notice of Consignments Containing Food. Any Customer tendering, receiving or otherwise requesting services with respect to any shipment consignment containing Food shall, at the time of the initial request for services with respect to the individual consignment in question is made, provide written notice to TOTAL that the consignment contains Food (hereinafter, the “Notice”), which Notice must also include any special instructions or handling requirements to be imposed on the underlying motor carrier, including, but not limited to, any requirements related to condition, design, maintenance or type of transportation equipment; sealing of trailers; cross-contaminant restrictions; segregation/isolation of Food consignments; records relating to equipment (such as prior use or cleaning); temperature range requirements; temperature records (including method of measuring, monitoring and documenting temperature); pre-cooling requirements; required transit-times, etc., (any such instructions, hereinafter the “Specialized Instructions”) regardless of whether such requirements are imposed by private parties or by any applicable law, rule, regulation. Temperature requirements must be stated solely in degrees Fahrenheit. Any such Notice shall specifically identify the consignment to which it relates and in no event shall any Notice purporting to apply to multiple consignments (including any Notice purporting to apply to any specifically enumerated commodities, any category of commodities, or commodities moving to or from specified locations) be binding on TOTAL or otherwise apply to services provided by TOTAL, regardless of whether receipt of such general Notice has been confirmed by TOTAL. BY REQUESTING SERVICE WITH RESPECT TO ANY SHIPMENT OF COMMODITIES, CUSTOMER WARRANTS AND REPRESENTS THAT IT HAS INSPECTED THE CONVEYANCE IN QUESTION AND DETERMINED THAT THE EQUIPMENT IS IN COMPLIANCE WITH ANY STANDARDS APPLICABLE TO THE COMMODITIES IN QUESTION. ANY THIRD-PARTY MAKING CUSTOMER’S COMMODITIES AVAILABLE FOR INSPECTION IS FULLY AUTHORIZED TO ACT ON BEHALF OF CUSTOMER WITH RESPECT TO DETERMINING WHETHER THE TENDERED CONVEYANCE IS SUFFICIENT TO MEET CUSTOMER’S REQUIREMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT, AS BETWEEN IT AND TOTAL, CUSTOMER IS SOLELY RESPONSIBLE FOR IDENTIFYING AND IMPOSING ANY SPECIALIZED INSTRUCTIONS AND TOTAL SHALL HAVE NO OBLIGATION TO ARRANGE ANY SPECIAL HANDLING OR SERVICES WITH RESPECT TO ANY CONSIGNMENT, INCLUDING ANY CONSIGNMENT CONTAINING FOOD, UNLESS CUSTOMER HAS PROVIDED NOTICE OF SPECIALIZED INSTRUCTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, AND TOTAL HAS CONFIRMED RECEIPT OF SUCH NOTICE IN WRITING. FURTHERMORE, TOTAL’S SOLE RESPONSIBILITY WITH RESPECT TO ANY SUCH SPECIALIZED INSTRUCTION IS LIMITED TO PROVIDING SUCH SPECIALIZED INSTRUCTION TO THE UNDERLYING CARRIER. TOTAL IS NOT LIABLE FOR THE CONDITION OR THE EFFECTS OF USE OF ANY TRANSPORTATION EQUIPMENT (INCLUDING PALLETS, TOTES, PACKAGING, ETC.).

(b) Failure to Comply with Written Instructions. ANY FAILURE OR ALLEGED FAILURE BY THE UNDERLYING CARRIER TO COMPLY WITH SPECIALIZED INSTRUCTIONS PROVIDED AND ACKNOWLEDGED IN ACCORDANCE WITH THE PROVISIONS OF THESE TERMS AND CONDITIONS SHALL NOT, IN AND OF ITSELF, RESULT IN ANY PRESUMPTION THAT THE CONSIGNMENT IS UNSAFE, CONTAMINATED, ADULTERATED, OR OTHERWISE UNFIT FOR ITS INTENDED PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL LACK OF THE ORIGINAL SEAL AT THE TIME OF DELIVERY RESULT IN ANY PRESUMPTION THAT THE CONSIGNMENT IS UNSAFE, CONTAMINATED, ADULTERATED OR OTHERWISE UNFIT FOR ITS INTENDED PURPOSE. TO THE EXTENT NOT OTHERWISE PROHIBITED BY LAW, CUSTOMER CONFIRMS ITS OBLIGATION TO MITIGATE DAMAGES.

16. CHOICE OF LAW AND VENUE. These Terms and Conditions shall be subject to and interpreted in accordance with the laws of the State of Tennessee, with the exception of any conflicts of law rules thereof. Exclusive jurisdiction shall be in the State and Federal courts with venue in Chattanooga, Hamilton County, State of Tennessee in any action to interpret or enforce these Terms and Conditions.

17. WAIVER. If TOTAL fails to enforce, or waives the breach of any term or condition herein, such action or inaction shall not operate as a waiver of any other breach of such term or condition, nor of any part of these Terms and Conditions, nor of any other rights, in law or equity, or of claims which TOTAL may have arising out of, connected with, or related to these Terms and Conditions.

18. SEVERABILITY. If any provisions of these Terms and Conditions are declared invalid by a court of competent jurisdiction, the remainder of these Terms and Conditions shall remain in full force and effect.