

Schedule E

Load Brokerage Services provided by Agility Logistics, LTD. (“Agility”)

These terms and conditions govern all load brokerage agency services provided by Agility relating to the domestic or cross-border (between Canada and the U.S.) carriage of goods by commercial motor vehicle (“Brokerage Terms”).

The shipper, consignor, consignee, beneficial owner, or any other party requesting or using services of Agility (hereafter, collectively “Customer”) agrees to be bound by the Brokerage Terms.

1. AGILITY AS AGENT

1.1 Customer acknowledges that when providing load brokerage agency services, Agility operates exclusively as an agent, and is registered as, a transportation broker in Canada in the province of Quebec under number _____. Agility is not a motor carrier or, when providing load brokerage agency services, a freight forwarder. As an agent, Agility is only responsible for arranging transportation and related services of Goods, and it is not responsible for the actual performance of the transportation of Goods. Agility will select motor carriers (hereafter, “Carriers”) to pick-up, transport, and deliver Goods that are the subject of loads tendered by Customer to Agility and accepted by Agility.

1.2 Customer acknowledges that the insertion of Agility’s name on shipping documents of any kind, does not represent or imply that Agility is acting in the capacity of a motor carrier or freight forwarder. The terms and conditions of any freight documentation used by the Customer, Agility, or any Carrier selected by Agility, may not supplement, alter, or modify the terms of these Brokerage Terms. In the event of any conflict between the terms of any such other document and these Brokerage Terms, the latter shall govern to the extent of any inconsistency.

2. SERVICES

2.1 In accordance with the terms herein, Agility agrees to select duly authorized and licensed Carriers to provide transportation and related services in respect of the Goods.

2.2 Unless services are performed by persons or firms engaged pursuant to express written instructions from the customer, Agility shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in handling, transportation, clearance and delivery of the shipment. Advice by Agility that a particular person or firm has been selected to render services with respect to the goods shall not be construed to mean that Agility warrants or represents that such person or firm will render such services nor does Agility assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or their agents. Agility 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, Agility shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Agility.

3. CREDIT

Customer is subject to credit approval. The amount of credit, if any, granted to Customer is at the sole discretion of Agility. Agility reserves the right to withhold Services and to have Carriers hold Goods that are in transit to ensure payment of all invoices.

4. PAYMENT AND FUEL SURCHARGES

4.1 Payment for Services is due within thirty calendar days of date of invoice. Payment may be made by check, money order, electronic funds transfer, or if approved in advance, by credit card. Invoices not paid as agreed will bear interest at an annual rate of 26.82 % per annum (2% per month) or the highest lawful rate, if less. If Agility retains an attorney or collection agency to collect unpaid charges, Customer will be liable for all related costs and expenses, including attorneys’ fees, costs, and collection agency fees. No charges due or allegedly due to Customer may be set off against charges due to Agility.

4.2 Agility shall invoice Customer for fuel surcharges every Monday based on the most recent Fuel Calculation Bulletin published by the North American Transportation Council or will use and apply the Customer’s pre-authorized fuel surcharge program.

5. AGILITY’S RATE QUOTATIONS

Freight Rate Quotations issued by Agility are based on information provided by Customer as to the circumstances concerning the shipment of Goods and as required to be provided by the Agility Terms and Conditions. In accordance with the Agility Terms and Conditions, final rates may vary from a Rate Quotation as based on Goods actually tendered to a Carrier for carriage at origin and as set forth at paragraph 9 below.

6. AGILITY CARGO CLAIM ASSISTANCE

6.1 As stipulated above, Agility provides load brokerage agency services as a transportation broker agent, and not as a motor carrier or a freight forwarder. As a transportation broker agent, Agility is not liable for incidents taking place during transit such as loss of, damage to, or delay in the delivery of the Goods (“Cargo Claims”).

6.2 Agility is willing to facilitate the presentation of a Customer’s Cargo Claim against a Carrier. In this regard, it is very important that Customer notes the items listed in paragraph 7 below, and that Customer immediately provides Agility all details concerning a possible Cargo Claim so that Agility can present the necessary notice of claim against the Carrier. Agility will also follow up with the Carrier in question from time to time until the Carrier provides a position on the Cargo Claim.

6.3 In providing the services described at paragraph 6.2 above, Agility acts as an agent only in terms of facilitating the Carrier’s consideration of a Cargo Claim. In the event of the matter not being resolved amicably at that early stage, the Cargo Claim will remain a matter to be dealt with directly between Customer and the Carrier(s).

6.4 As a pre-condition to the filing of any Cargo Claim against a Carrier, any billing by Agility to Customer in respect to the shipment concerned must be paid in full.

7. CARGO CLAIMS AND TIME LIMITS

7.1 Customer is reminded that there are time deadlines to file a Cargo Claim against a Carrier. Customer must note paragraph 6 above. Where Goods are lost, damaged, or delayed in transit, Customer must ensure that the consignee makes a detailed note of same on any bill of lading or other transit document produced by the Carrier at destination. If Customer does not provide Agility with timely notice and the details of a possible Cargo Claim pursuant to paragraph 6.2 above, Customer is responsible for presenting any Cargo Claim to the Carrier.

7.2 In order to provide an indication on what time limits are involved in the provision of a notice of a Cargo Claim to a Carrier, Customer should note that motor carriers governed by Canadian law often require the presentation of a Cargo Claim within sixty (60) days of the Cargo Claim arising and that motor carriers governed by United States law often require the presentation of a Cargo Claim within nine (9) months of the Cargo Claim arising.

7.3 Customer should also note that there are certain deadlines for commencing any legal action against any Carrier considered responsible for a Cargo Claim. In the event that a Cargo Claim dispute remains unresolved, Customer should always timely seek legal advice as to its options and the protection of its interests with respect to the Cargo Claim against the Carrier.

8. CARGO CLAIMS: POTENTIAL CARRIER EXCEPTIONS FROM LIABILITY

Customer should note that, under general principles of transportation law, Carriers are not liable for the following:

- (a) damage to Goods to the extent due to packaging, loading, unloading, blocking, bracing, or securing of Goods (unless Carrier has provided loading or unloading services at Customer’s request, in which case such Carrier may be liable for cargo damage caused by such loading or unloading services);
- (b) inherent vice or defect in Goods, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, or deterioration of perishable products;
- (c) an act of God or “Queen’s” or “public enemy”;
- (d) any act or default of any Customer, consignee, or consignor, or beneficial owner of Goods;
- (e) any act taken under authority of law;
- (f) any act of war or terrorism, riot, or strike;
- (g) quarantine
- (h) difference in weights of grain, seed, or other commodities caused by natural shrinkage.

9. CARGO CLAIMS: CARRIER LIMITATIONS OF LIABILITY

9.1 Rules Governing Shipments from a location in Canada

9.1.1 Customer should be aware of the fact that:

- I. under provincial law and/or as may be provided by a carrier’s terms of performance that carriers often seek to limit their liability (absent a declaration of value on the bill of lading or contract of carriage at the point of origin) to the amount of \$2.00 CDN per pound (or perhaps to a lesser or a greater amount) for loss or damage to Goods;
- II. certain carrier(s) terms of performance also provide that they may also limit their liability to the total amount of \$100,000 CDN for loss or damage to Goods; and/or

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- III. applicable law and/or certain carrier(s) terms of performance provide that they will not be liable for any loss caused by any delay in the delivery of Goods to destination.

9.1.2 Agility Limitation of Liability

Without prejudice to any of the terms herein, Customer agrees that any liability, whether for breach of any contract or duty or in negligence as may be alleged as against Agility in connection with its services herein and/or any shipment is limited to the lesser of:

- I. the actual value of the goods lost or damaged at the time and place of origin;
- II. an amount equal to \$2.00 CDN per pound, as calculated by the value of the goods actually lost or damaged.

In no event shall any liability of Agility exceed an amount of \$100,000 CDN in respect of any loss or damage to a shipment.

Steps to be Taken by Customer so as to be Provided with an Accurate Freight Rate for Billing

9.1.3 Customer (or the actual shipper, if someone else) has the option of determining if a declaration of a value is to be given to the carrier on the bill of lading or other carriage document. Agility shall not be responsible for the declaration of a value of Goods to a carrier. The declaration of value is an item to be addressed between the shipper tendering the Goods and the carrier to whom the Goods are tendered.

9.1.4 Agility provides freight rate quotations based upon information provided by Customer on the premise and assumption that there will not be a value declared to a Carrier at the time of the pick-up of the Goods at the place of origin.

9.1.5 In the event that Customer wishes for a carrier(s) being arranged by Agility to carry Goods without recourse to the a “per pound limit of liability” or if Customer tenders freight valued at an amount of more than \$100,000 CDN Customer must make said intention and concerns known, in writing, to Agility at the time of booking Agility’s services herein. Agility will then communicate such intention and concerns to carrier(s). Where carrier(s) agree to carry Goods without recourse to any per pound or reduced amount of liability it or they may charge a freight ‘surcharge’ which Agility will endeavor to timely communicate to Customer.

Steps to be Taken by Customer when Desiring to Declare a Value for Carriage

9.1.6 Further to the foregoing, in addition to providing the prescribed instruction to Agility concerning the intention that a carrier carry Goods pursuant to a declared valuation, Customer will be responsible to ensure that the shipper at origin in fact declares the value of the goods on the Bill of Lading or carriage document provided by the carrier at origin. **Customer acknowledges that if shipper does not so declare a value that Carrier may be able to limit liability as aforesaid.**

9.1.7 Customer agrees that if a shipper at the point of loading endorses a value on a bill of lading or other carriage document tendered by a carrier at origin (not having already been communicated to Agility in accordance with the foregoing) that Customer will be liable for payment of any applicable surcharges billed by carrier.

9.1.8 Agility reserves the right to cancel a freight rate quotation if the shipment actually tendered for carriage deviates from or is different than that described in a freight rate quotation.

9.1.9 Any freight rate quotation issued by Agility is subject to carrier availability. Agility shall be entitled to cancel a freight rate quotation in the event that for any reason a Carrier is not available to carry a shipment.

9.2 Agility will require each Carrier that it uses to be liable to Customer for the actual loss of, damage to, or delay of the Goods subject to the following, commercially reasonable limitations of liability hereby expressly agreed to and acknowledged by Customer:

- I. With respect to Goods being transported as a single truckload shipment, Carrier will be subject to a maximum liability of \$100,000.00 CAD per shipment unless a higher degree of liability is specifically assumed in writing in advance of dispatch by an authorized representative of Carrier in exchange for Customer’s payment of a higher rate; or
- II. With respect to Goods being transported as part of a less-than-truckload shipment, Carrier will be subject to a maximum liability of \$10.00 CAD per pound per piece lost, damaged, or delayed, or \$100,000.00 CAD per shipment, whichever is less, unless a higher degree of liability is specifically assumed in writing in advance of dispatch by an authorized representative of Carrier in exchange for Customer’s payment of a higher rate.

10. CLAIMS PROCEDURES

If Customer wishes Agility to assist with the processing of a Cargo Claim, Customer must provide Agility with the following:

- 10.1** Copy of the bill of lading or other document showing receipt of all Goods in good condition by Carrier;
- 10.2** Copy of the delivery documentation showing the shipment was delivered short or damaged. If the shipment was not delivered, Customer should provide other evidence, such as communication from the Carrier or consignee that the shipment was not delivered;
- 10.3** Copy of a vendor’s invoice, showing the value of the Goods that are the subject of the Cargo Claim;
- 10.4** A demand for a specific amount of money, with a clear explanation of how that amount is determined.

11. CONSEQUENTIAL DAMAGES

Under no circumstances will Agility or any Carrier be liable to Customer or any other person for consequential or indirect damages (including but not limited to, any and all liquidated damages, penalties, late fines, lost profits, loss of use of Goods, business interruption, or loss of business of any kind), incidental damages, or punitive damages related in any way to a Cargo Claim or the services provided by Agility or any Carrier.

12. CUSTOMER’S DUTIES

12.1 Customer is responsible for ensuring that Goods are transit-worthy for the route intended and, where Customer is involved in the loading or securement of the Goods on a carriage conveyance, that they are properly and safely loaded, supported, blocked, braced, and secured.

12.2 Customer must provide necessary shipping instructions and properly identify all Goods in the bill of lading or other shipping instructions. Customer will not tender any restricted commodities including, but not limited to hazardous materials and waste, oversize or overweight shipments, coiled or rolled products, or commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation.

12.3 Unless Customer has requested that Agility arrange for Carrier to provide driver count services before dispatch and Carrier performs such driver count services, Customer is responsible for properly counting and recording the number of pieces transported on the Bill of Lading. Customer is responsible for affixing a seal on truckload shipments.

12.4 Customer is responsible for checking all empty containers or trailers tendered for loading and rejecting any equipment that is not in apparent suitable conditions to protect and preserve Goods during transportation. Neither Agility nor the Carrier will be liable for claims in which equipment was loaded by Customer and then deemed unsuitable after the fact.

12.5 If Customer requests that Agility arrange for equipment to be dropped at a location for Customer’s convenience and left unattended by Carrier, Customer and its consignors or consignees will not lose, damage, or misuse the equipment, and Customer will pay for loss or damage to the equipment occurring during or as a result of such custody, control, possession, or use of the equipment.

13. INSURANCE

Agility and Customer agree that the following insurance policies are in place and will be maintained throughout the relationship between the parties:

- 13.1** Customer:
- I. Workers Compensation Insurance
 - II. Employer’s Liability Insurance
 - III. Commercial General Liability Insurance

13.2 Carriers:
Agility will endeavor to ensure that the Carriers maintain the insurance specified below:

- I. Worker’s compensation insurance in statutory amounts
- II. Occurrence based commercial General Liability Insurance including blanket contractual coverage, with combined single limits of \$1,000,000 USD for personal injury, including death, and \$500,000 for each occurrence for property damage including: (i) Premises operation; and (ii) Contractual liability for the liability assumed by Carrier pursuant to any indemnification agreements between Agility and Carrier;
- III. Occurrence based Truckers Policy or Automobile Liability Insurance with limits of \$1,000,000 per occurrence, and Hazardous Materials

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coverage of not less than \$5,000,000 per occurrence if Hazardous Materials are handled;

- IV. Occurrence based cargo insurance with limits of liability of not less than \$100,000 per shipment.

13.3 Agility's sole obligation is to obtain a certificate of insurance from the Carrier's insurers reflecting the foregoing types and amounts of insurance. Agility makes no representations or warranties regarding coverage or what exclusions or limitations any particular insurance policy may have.

14. GOVERNING LAW; CHOICE OF FORUM

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario, without giving effect to any choice of law or conflicting provision or rule. Litigation regarding this Contract may be brought only in the courts located in the Province of Ontario, including but not limited to those in the judicial region of Toronto, which shall have exclusive jurisdiction

15. INDEMNIFICATION

The Customer agrees to defend, indemnify, and hold Agility harmless from any claims and or liability arising from the transportation of the Goods or the conduct of the Customer, which violates any Federal, State, or Provincial, or other laws, and further agrees to defend, indemnify, and hold Agility harmless against any and all liability, loss, damages, costs, claims, or expenses, including but not limited to reasonable attorney's fees and costs, which Agility may hereafter incur, suffer, or be required to pay by reason of such claims.

16. CONFIDENTIALITY

Customer and Agility agree that the terms and provisions contained herein, in addition to any and all other information concerning the business operations of Customer or Agility, are confidential, and that they will not reveal any of its contents or any information concerning the services performed within this contract without the written permission of any party involved or as may be required by law.