

**BROKERAGE SERVICES TERMS AND CONDITIONS**

MoLo Solutions, LLC, a truckload service (DOT#3000394) of ArcBest, and ArcBest II, Inc. (DOT#2946400) (collectively “MoLo”) are in the business of arranging transportation of property by third-party motor carriers and each entity holds authority from the Federal Motor Carrier Safety Administration to engage in operations as transportation brokers of general commodities (except Household Goods) in interstate or foreign commerce for MoLo customers (“Shipper”). MoLo and Shipper may be referred to herein individually as a “Party” and collectively as the “Parties.”

Shipper understands and acknowledges that: (1) MoLo is not a motor carrier, (2) MoLo is a broker which arranges for the transportation of freight by third-party motor carriers, (3) MoLo intends to engage and contract with one or more motor carriers (as defined below) for purposes of satisfying obligations under these Terms and Conditions, and (4) since MoLo is acting as a broker, and not a motor carrier or freight forwarder, it has no liability for loss, damage and/or delay to Goods.

By tendering freight to MoLo, Shipper agrees to be legally bound by these Terms and Conditions. Shipper and MoLo enter into these Terms and Conditions in accordance with 49 U.S.C. § 14101(b)(1) and expressly waive any and all rights and remedies that each may have under 49 U.S.C. § 13101 through § 14914 that are contrary to the specific provisions of these Terms and Conditions. In addition, Shipper specifically waives any rights Shipper may have under 49 C.F.R. § 371.3.

**AGREEMENT**

1. **SERVICE.** MoLo agrees to arrange for transportation of Shipper’s freight (“Goods”) by third-party motor carriers (“Carrier(s)”) in compliance with all applicable federal, state, and local laws and regulations. MoLo’s responsibility is limited to arranging for, but not actually performing, transportation carriage of Goods.
2. **SHIPPER RESPONSIBILITIES.**
  - A. **Compliance with Laws.** Shipper warrants that it is the beneficial owner or agent authorized to bind the beneficial owner with respect to these Terms and Conditions. Furthermore, Shipper warrants and represents that Shipper is in compliance with all laws, regulations and requirements applicable to Shipper’s business and requested Services. Shipper is responsible for complying with all applicable export and import laws and regulations. In the event of a judicial or administrative determination that Shipper has failed to comply with any applicable law, regulation or requirement, Shipper agrees to pay expenses, including attorneys’ fees, litigation costs, fines, and penalties, incurred by MoLo or Carriers directly related to Shipper’s failure to comply with such laws, regulations, or requirements.
  - B. **Compliance with Food Safety Laws.** If a shipment containing food or food grade products (collectively “Food”) is subject to regulation by the Food and Drug Administration (“FDA”), including but not limited to the FDA’s Final Rule on the Sanitary Transportation of Human and Animal Food (21 C.F.R. Part 1, Subpart O (§ 1.900 et seq.)) (“STF Rule”), the Food Safety Modernization Act, the Federal Food, Drug and Cosmetic Act and the Sanitary Food Transportation Act, or is subject to the Department of Agriculture or Food Safety and Inspection Service regulations (collectively, the “Food Safety Laws”), Shipper will provide written notice identifying the covered Food prior to tender to MoLo and provide any shipping instructions for the Carrier. Shipper warrants and represents that the Food has been packaged so as to ensure such Food or food grade products do not become contaminated or adulterated during transit, and shall otherwise remain in safe and sanitary condition. In no event will MoLo or any Carrier be obligated to provide any specialized handling, and any failure or alleged failure by MoLo or any Carrier to comply with specialized instructions shall not, in and of itself, result in any presumption that the shipment is unsafe, contaminated, adulterated, or otherwise unfit for its intended purpose or use. Under no circumstances shall MoLo or any Carrier be obligated to perform the duties of a “shipper” as that term is defined in the STF Rule, or other similar regulations which may be enacted from time to time. BY TENDERING ANY SHIPMENT WHICH CONTAINS FOOD INTENDED FOR HUMAN OR ANIMAL CONSUMPTION, INCLUDING ARTICLES USED FOR COMPONENTS THEREOF, SHIPPER WARRANTS AND REPRESENTS THAT IT HAS INSPECTED THE TRANSPORTATION EQUIPMENT IN QUESTION AND DETERMINED THAT THE EQUIPMENT IS IN COMPLIANCE WITH ANY STANDARDS APPLICABLE TO THE GOODS IN QUESTION. ANY THIRD-PARTY MAKING SHIPPER’S GOODS AVAILABLE FOR TRANSPORTATION IS FULLY AUTHORIZED TO ACT ON BEHALF OF SHIPPER WITH RESPECT TO DETERMINING WHETHER THE TENDERED TRANSPORTATION EQUIPMENT IS ACCEPTABLE.
  - C. **Hazardous Materials and Dangerous Goods.** Shipper will not tender for transportation or storage any hazardous materials or dangerous goods (as defined by applicable international convention or code), or otherwise applicable federal, state or provincial legislation or regulations, including but not limited to those set forth in DOT regulations, 49 C.F.R. Parts 100 to 185, and the Transport Dangerous Goods Regulations/Canada without first giving notice to MoLo. Shipper must comply with all applicable laws and regulations relating to the transportation of hazardous materials as dangerous goods. Shipper is obligated to inform MoLo immediately if any such shipments constitute hazardous materials or dangerous goods. Shipper shall defend, indemnify, and hold MoLo harmless from any penalties or liability of any kind, including reasonable attorney fees, arising directly out of Shipper’s failure to comply with applicable hazardous materials or dangerous goods laws and regulations.
  - D. **Shipper Written Instructions.**
    - i. Shipper must provide necessary shipping instructions and properly identify all Goods in the bill of lading or other shipping instructions. Shipper will not tender any prohibited or restricted commodities or commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation.
    - ii. At the time of booking, and prior to loading the Goods, Shipper must further specify in the booking request and on the face of the bill of lading all instructions to be followed by the Carrier to maintain the safety of the Goods, including, without limitation, all temperature control requirements and temperature control documentation requirements, including an operating temperature for the transportation and, when necessary, the pre-cooling phase, all sanitation requirements and sanitation documentation requirements for the Goods, including those for the Carrier’s vehicle and transportation equipment, any design specifications and cleaning procedures (“Written Instructions”). MoLo will assist Shipper in providing any Written Instructions to the Carrier transporting Shipper’s Goods.
  - E. **Cargo Loading and Securement.**
    - i. Shipper is responsible for ensuring that Goods are properly and safely packaged and loaded. If Carrier is not allowed on the dock during loading, Shipper is responsible for ensuring that Goods are supported, blocked, braced, and secured. If Shipper is loading the Goods into

the motor vehicle, Shipper must inspect the vehicle or other transportation equipment provided by the Carrier, to ensure it meets the requirements specified in the Written Instructions and is in an appropriate sanitary condition for transporting the Goods.

- ii. Shipper must reject any equipment that is not in apparent suitable condition to protect and preserve the Goods during transportation. Vehicles and other transportation equipment used to transport the Goods will be deemed acceptable to Shipper upon loading. Shipper's failure to fulfill the obligations under this section will be considered an act or default of the Shipper, and a defense to any cargo claim resulting from the condition of the trailer.

**3. MOLO'S RESPONSIBILITIES.**

A. MoLo will select Carriers, using the following criteria:

- i. Verifying the Carrier's operating authority.
- ii. Verifying the Carrier's insurance coverage, with coverage not less than:
  1. \$1,000,000 per occurrence for Commercial Auto Liability;
  2. \$100,000 per occurrence for Motor Truck Cargo Liability;

B. MoLo will require by written contract, that each Carrier providing transportation services agree:

- i. That it is and shall remain duly and legally licensed under applicable state, providential, and federal law to provide transportation services, that it does not have a conditional or an unsatisfactory safety rating issued by the United States Department of Transportation or any state or provincial authority with jurisdiction over its operations and that it will comply with all applicable federal, state, provincial and local laws;
- ii. That it is performing services pursuant to a written contract; and,
- iii. That it will obtain a receipt showing the kind and quantity of goods delivered to the consignee of each shipment at the destination.

**4. INCIDENTAL, CONSEQUENTIAL, AND OTHER INDIRECT DAMAGES.** Neither MoLo nor Carriers shall be liable and each hereby disclaims responsibility, for any indirect, incidental, special, punitive, consequential, or multiplied damages, or other indirect costs, lost profits, chargebacks, fees, charges, or delays of any kind, whether or not foreseeable or disclosed. Additionally, no breach of these Terms and Conditions, whether material or immaterial, or material deviation will extend MoLo's or Carriers' liability beyond the limitations specified herein.

**5. RECEIPTS AND BILLS OF LADING.** Shipper's insertion of MoLo's or ArcBest's name on the bill of lading will be for Shipper's convenience only and will not change MoLo's or ArcBest's status as a property broker. The terms and conditions of any freight documentation used by Shipper or Carrier will not supplement, alter, or modify these Terms and Conditions.

**6. PAYMENTS.** All services charges are due and payable without offset within 15 days from the invoice date, including Saturdays, Sundays, and legal holidays. The credit term begins the day after the invoice date. On business-to-business credit payments, a two percent handling charge will be applicable on all Service fees and charges. Invoices not paid within 15 days from the invoice date, or other credit period, if applicable, and for which MoLo utilizes an outside collection agency and/or attorney to effect collections will be subject to a collection handling fee of thirty percent of the unpaid amount. Shipper is responsible for all fees and costs, including reasonable attorneys' fees, litigation costs and collection agency fees, incurred by MoLo in enforcing collection of payments for unpaid invoices.

**7. CLAIMS.**

A. **Cargo Claims.** MoLo is acting as a broker, not a motor carrier or freight forwarder, and has no liability for loss, damage and/or delay to Goods. MoLo shall require Carrier to assume the liability of a motor carrier (*i.e.* "Carmack Amendment" liability) for loss, damage and/or delay to the Goods while in transit, subject to a maximum liability of \$100,000 per shipment unless otherwise agreed to in writing between the Parties. Shipper acknowledges that liability is limited in consideration of a lower rate than would otherwise be applicable and that Shipper has the option to request a higher valuation of liability at the time of booking. Shipper must file claims for cargo loss or damage with MoLo (which will forward such cargo claim to the Carrier) or Carrier within nine (9) months from the delivery date or, in the event of non-delivery, the scheduled delivery date. Shipper must file any civil action against Carrier in a court of law within two (2) years from the date Carrier or MoLo provides written notice to Shipper that any part of the claim is disallowed. Upon request, MoLo may assist Shipper in the filing and/or processing of claims with Carrier (claims may be submitted at <https://arcb.com/tools/claims.html>). If payment of a claim is made by MoLo to Shipper, Shipper automatically assigns Shipper's legal right and interest in the claim to MoLo. If a court of law determines that MoLo is legally liable to pay Shipper for cargo loss, damage and/or delay, and such court does not enforce Section C, below, MoLo's liability will be limited to (U.S.) \$5.00 per pound, per package subject to a maximum of \$100,000.00 per shipment (whichever is less) or (CN) \$2.00 per pound if a Canadian Shipment unless the Shipper has requested and paid for a higher valuation at the time of booking and such request of higher valuation is also stated by the consignor on the bill of lading at origin.

B. **All Other Claims.** The Parties shall notify each other of all known material details of any claims in writing within 60 days of receiving notice of any claims other than cargo loss or damage claims and shall update each other promptly thereafter as more information becomes available. Civil actions must be commenced within 2 years from the date either Party provides written notice to the other Party of such a claim.

C. **Limit of Liability.** MoLo's aggregate liability to Shipper or any third party for all claims, losses, and damages related to the Services and any loss or damage to Goods for which shipment is arranged by MoLo, whether based on an action in contract, equity, negligence, tort, statute, or other theory, will not exceed an amount equal to the total charges paid to MoLo for the Service or shipment. The Parties agree that the foregoing limits shall apply even if MoLo is found to be acting as a motor carrier or freight forwarder.

D. **Trailer Seals.** Unless otherwise agreed by MoLo, Shipper is responsible for applying the seal to any trailer tendered for Services. If the seal originally applied to the trailer is intact upon delivery, neither MoLo nor the Carrier will be liable for shortage or theft unless there is physical evidence of unauthorized entry into the trailer while it was in the possession of the Carrier and proof of actual damage or loss of Goods. Shortage or theft claims must be supported by seal records and actual loading and unloading records. Such absolution of liability for shortage or theft will also occur if the seal is broken (1) at the direction and under the supervision of a Governmental Authority and is resealed after inspection by such Governmental Authority or (2) because it becomes reasonably necessary to do so to inspect, reposition, or protect the cargo or the trailer or to comply with applicable laws or regulations. In both instances, MoLo will request the Carrier to document the breaking of the original seal and application of a new seal in such circumstances. In the absence of any other evidence, a missing or broken seal will not create a presumption of loss to or contamination of the Goods. The consignee may not refuse delivery of a shipment, even for food grade loads, due to broken or missing seals unless there is direct physical evidence of product tampering or contamination beyond the broken or missing seal. Contamination claims must be supported by appropriate quality inspections outlining the full actual loss.

E. **Mitigating Damages.** None of the provisions in these Terms and Conditions in any way limits Shipper's obligation to mitigate damages, including by salvaging all portions of a shipment for which there is a secondary market.

8. **INSURANCE.**

- A. MoLo agrees to at its own expense, at all times during the term of these Terms and Conditions, to maintain all insurance required by law for interstate property brokers.
- B. Shipper is responsible for maintaining property insurance covering the Goods, both for the Goods and in transit, including loading and unloading.
- C. MoLo may consult an insurance broker to arrange insurance appropriate to Shipper's specific needs. Upon request of the Shipper, MoLo may offer, for an additional cost and through its designated insurance broker, to arrange for shipment-specific cargo policies to be issued in Shipper's name. Following the issuance of any such policy through their insurance underwriter, MoLo will have no further duty regarding cargo insurance and no liability for loss of, delay of, or damage to the Goods during transport or storage, whether covered by insurance on the Goods or not, and whether such loss, delay or damage has been caused or contributed to by its negligence or breach of these Terms and Conditions, or otherwise. Any coverage on the Goods will be subject to the terms and conditions of the specific policy or policies procured. MoLo is not liable if Shipper for any reason whatsoever, fails to recover a loss in whole or in part from the insurer under any applicable policy, even though the premium charged by the insurer may be different from MoLo charges Shipper. A difference in charge between actual premium and premium stated on the invoice is an administrative charge for arranging such Shipper specific insurance for and on behalf of Shipper. Any difference in premium charged is hereby solely an administrative fee for services rendered. Shipper acknowledges and agrees that MoLo role is limited to facilitating placement of coverage with entities licensed to sell insurance and that neither MoLo nor ArcBest is not in the business of selling insurance or insuring risk.
9. **SURETY BOND.** MoLo, in its capacity as a broker, shall maintain a surety bond or trust fund agreement as required by the FMCSA and shall furnish Shipper with proof upon request.
10. **INDEMNIFICATION.** Shipper must defend, indemnify, and hold MoLo, MoLo's employees and agents and Carriers harmless against any losses caused by or resulting from (i) Shipper's or Shipper's employees' or agents' negligence or intentional misconduct, (ii) Shipper's breach of these Terms and Conditions, (iii) Shipper's or Shipper's employees' or agents' violation of applicable laws or regulations, or (iv) claims by Shipper, Shipper's customers, or any party to a bill of lading which are in excess of the limitations herein or for liabilities excluded herein. Shipper must also indemnify MoLo from any attempts to recover from MoLo by Shipper's insurance carrier or any other party. The obligation to defend includes payment of all reasonable costs of defense, including attorney fees, as they accrue. Shipper may not enter into any third-party agreements that would, in any manner whatsoever, constitute an admission of fault by MoLo or bind MoLo in any manner, without MoLo's prior written consent.
11. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** These Terms and Conditions may not be assigned or transferred by Shipper, in whole or in part, for any reason whatsoever without MoLo's prior written consent, and any such action or conduct in violation of the foregoing will be void and without effect. MoLo expressly reserves the right to assign this Agreement and to delegate any of its duties and obligations hereunder.
12. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of these Terms and Conditions results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of these Terms and Conditions for any reason.
13. **INDEPENDENT CONTRACTOR.** It is understood between MoLo and Shipper that MoLo is not an agent for Carrier or Shipper and shall remain at all times an independent contractor. Shipper does not exercise or retain any control or supervision over MoLo, its operations, employees, or Carrier. MoLo does not exercise or retain any control or supervision over Carrier, its operations, employees, or Shipper.
14. **NONWAIVER.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions of these Terms and Conditions, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of these Terms and Conditions, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.
15. **NOTICES.** Excluding service of process, any notices to MoLo must be sent to MoLo, Attn: Vice President Yield Mgt., 8401 McClure Drive, Fort Smith, AR 72916, and must be delivered either by certified or registered mail, return receipt requested and postage prepaid, or by overnight courier service, and are deemed given upon receipt by MoLo or Shipper.
16. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under these Terms and Conditions during any time in which such performance is prevented by fire, flood, or other natural disaster, war, pandemic, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of Shipper or MoLo, provided that the Party so prevented uses its best efforts to perform under these Terms and Conditions and provided further, that such Party provide reasonable notice to the other Party of such inability to perform. Performance requirements are extended by the amount of the delay except for payment obligations.
17. **CHOICE OF LAW AND VENUE.** All questions concerning the construction, interpretation, validity and enforceability of these Terms and Conditions, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the federal laws regarding transportation, where applicable, and otherwise by the laws of the State of Arkansas, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. The Parties agree to jurisdiction and venue in a federal or state court in Sebastian County, Arkansas.
18. **ENTIRE AGREEMENT.** These Terms and Conditions constitute the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof. No terms and conditions stated in Shipper's purchase order or in any other Shipper order or tender documentation shall be incorporated into or form any part of this agreement, and all such terms and conditions shall be null and void. Notwithstanding anything to the contrary herein, MoLo reserves the right, at its sole discretion to modify and amend these Terms and Conditions at any time. In the event these Terms and Conditions are modified, the updated Terms and Conditions will be posted on MoLo's website. The current version shall be applicable at the time of shipment. By booking Services with MoLo or tendering shipments to MoLo, Shipper agrees to be bound by these Terms and Conditions.