

THOROUGHbred DIRECT INTERMODAL SERVICES, INC.'S
TERMS AND CONDITIONS

These Terms and Conditions apply to the arrangement of motor, rail and less than truckload transportation as well as cross-dock and incidental warehouse services with respect to the Customer's Cargo tendered to TDIS. These Terms and Conditions contain the entire understanding between TDIS and the Customer with respect to the subject matter contained herein and supersedes all prior Terms and Conditions and understandings, verbal and/or written between the parties with respect to such subject matter unless contained in a written and signed Transportation Agreement. The Customer acknowledges that TDIS's responsibilities are limited to arranging for, but not actually performing, transportation of the Customer's Cargo.

1. Definitions:

- a. **TDIS-** shall mean Thoroughbred Direct Intermodal Services, Inc., its agents, employees, representatives, officers and directors.
- b. **LTL Shipments-** shall mean shipments tendered to TDIS pursuant to its Thoroughbred Freight Transfer Program (TFT).
- c. **Full Load Shipments-** shall mean shipments tendered to TDIS other than those tendered to TDIS pursuant to its Thoroughbred Freight Transfer Program (TFT).
- d. **Carrier or Carriers-** shall mean LTL carriers, motor carriers, rail carriers or rail transportation arrangers, third party logistics providers, local transportation by motor carriers and vendors providing cross dock and incidental warehouse services.
- e. **Terms and Conditions-** shall mean the terms and conditions contained herein as well as any incorporated terms. Customer agrees that to the extent there is a conflict between the Terms and Conditions and the terms and conditions of any executed transportation agreements between Customer and TDIS or rate quote provided by TDIS ("Transportation Agreements") that the terms and conditions of such Transportation Agreements shall control. All executed Transportation Agreements for standard intermodal or other transportation services between Customer and TDIS will remain in effect.
- f. **Cargo-** Shall mean tangible goods including any packaging, containers or equipment tendered to TDIS for the purpose of TDIS providing the Services.
- g. **Customer-** Shall mean the party that engages TDIS to facilitate transportation of the Cargo. The Customer may be acting on its own behalf or on the behalf of another party; however, whether as principal or agent, the Customer is bound in its own right to these Terms and Conditions. The Customer might or might not be the owner of the Cargo. When acting as a disclosed or undisclosed agent, the Customer binds not only itself but also its principal including the owner of the Cargo (if not the Customer) to the terms and obligations of these Terms and Conditions.
- h. **Service(s)-** Shall mean the arrangement of freight transportation by Carriers and the arrangement of cross-dock and incidental warehouse services pursuant to these Terms and Conditions. All transportation services provided by a Carrier will be subject to the circulars, tariffs, directories, agreements, rules, or policies governing the transportation of the Cargo published by the respective Carrier and in effect at the time of the engagement of such carrier with respect to the transportation and or storage of Cargo ("Tariff"). Customer agrees that TDIS shall act solely as a facilitator with respect to any claims for damage as discussed herein.

2. Customer Warranties:

Customer warrants and represents that it is either the owner of the Cargo, or that it is otherwise authorized to arrange for the transportation of the Cargo and to bind the owner of the Cargo to these Terms and Conditions. The Customer also warrants that its agreement(s) with the owner of the Cargo do not preclude the Customer from tendering the Cargo to entities providing services similar to the Services and/or TDIS. The Customer also warrants as follows:

- a. **Description of the Cargo-** Customer warrants that the description and particulars, including but not limited to their marks, number, weight, volume and quantity, of any Cargo tendered by or on behalf of the Customer to TDIS are complete and accurate. Customer further warrants that the Cargo does not require any special licenses, permits or authorizations in order to store, handle, possess or otherwise provide services related to the Cargo .
- b. **LTL Shipments-** Customer acknowledges that the tendering of Cargo to TDIS as an LTL Shipment allows TDIS to commingle the Customer's Cargo with the Cargo of other Customers. Customer further warrants that it has the authority to tender freight to TDIS as an LTL Shipment.
- c. **Customer compliance with applicable laws-** Customer shall be responsible for and warrants compliance by it and all consignors and consignees with applicable laws, rules, and regulations, including, but not limited to, customs laws, import and export laws, anti-corruption laws and governmental regulations of any jurisdiction to, from, through or over which the Cargo may be carried. TDIS assumes no liability to the Customer or to any other person for any loss or expense due to the failure of Customer to comply with this provision.
- d. **Right to act on behalf of Cargo owner-**Any individual or entity acting on behalf of the Customer in requesting Services hereunder warrants that it has the right to act on behalf of the Cargo owner and the right to legally bind the Cargo owner or anyone else with an interest in the Cargo.

3. Special Instructions

Except where TDIS has accepted special instructions in writing, and has issued written acknowledgement of its acceptance thereof, the Customer warrants that the Cargo does not require insulated, refrigerated, ventilated or other special storage or handling not disclosed to and agreed to by TDIS at or before the time of Customer's request for Services with respect to such Cargo.

4. Customer Responsibilities:

Customer is responsible for ensuring that all Cargo subject to these Terms and Conditions has been properly and sufficiently prepared, packed, packaged, stowed and labeled and/or marked for intermodal transportation, including any special handling requested by the Customer if applicable, and that the Cargo has been properly loaded in a suitable transport unit in suitable condition to carry the Cargo. Except where TDIS has accepted special instructions in writing, and has issued written acknowledgement of its acceptance thereof, the Customer warrants that: (i) the consignor has loaded, blocked and braced the shipment in such proper and timely manner to prevent shifting of the shipment during intermodal transportation and in compliance will all laws, regulations or rules related to the highway and rail transportation of the Cargo including any requirements in the Tariffs as well as to comply with applicable federal and state gross and axle weight limits and (ii) consignee will unload shipments from the underlying Carrier's vehicle in a timely manner and within the free time allowed by the Carrier. Detention beyond allowed free time may cause assessment of additional charges.

- a. **Shipper Load and Count-** All shipments shall be treated as "Shipper load and count, consignee unload" if the shipment is sealed at origin.
- b. **Hazardous, Dangerous or Restricted Goods-** Except under special arrangements previously agreed to in writing by TDIS as more fully described in ¶ 17, the Customer will not tender or attempt to tender any Cargo containing any waste or fertilizers; any goods of a noxious, dangerous, hazardous or flammable or explosive nature; or any goods likely to cause damage. Any specially arranged consignment must be packaged, tendered and labeled in accordance with the hazardous material regulations of the U.S. Department of Transportation, applicable Dangerous Goods

Regulations (“DGR”) or any other applicable governmental or industry rules and regulations, and such consignments must be identified as such at the time of Customer’s request for Services and again at the time of tender. Should any Customer deliver any such Cargo to TDIS or cause TDIS to handle or deal with any such goods, otherwise than under special arrangements previously agreed to in writing by TDIS, the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Cargo however arising and hereby indemnifies TDIS against all penalties, fines, claims, damages, costs and expenses whatsoever including any reasonable attorneys’ fees to defend against any penalties, fines, claims, damages, costs and expenses arising in connection therewith whether such negligence or condition is caused or created, in whole or in part as a result of TDIS’ negligence or not and the Cargo may be destroyed or otherwise dealt with at the sole discretion of TDIS or any other person in whose custody they may be at the relevant time. If such Cargo is accepted under arrangements previously agreed to in writing, they may nevertheless be so destroyed or otherwise dealt with on account of risk to other goods, property, life or health, though TDIS will where reasonably practicable contact the Customer. The expression “goods likely to cause damage” includes goods likely to harbor or encourage vermin or other pests and goods which are liable to taint or affect other goods.

5. Equipment:

- a. Inspection of Equipment.** The Customer will cause all empty containers or trailers tendered for loading to be inspected before loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the Cargo during transportation. Customer will promptly notify TDIS of any rejected equipment.
- b. Use of Equipment.** If the Customer requests that TDIS arrange for equipment to be dropped at a location for the Customer’s convenience and left unattended by a Carrier, the Customer and its consignors or consignees will not lose, damage or misuse the equipment and the Customer will pay for loss or damage to equipment occurring during or as a result of such possession or use of the equipment.

6. TDIS’s Engagement of Carriers:

TDIS shall select Carriers authorized to transport or store the Cargo on behalf of Customer. TDIS shall ensure that any Carrier is not designated as unsatisfactory by the U.S. Department of Transportation (the “DOT”).

7. Carrier Insurance Requirements:

- a.** TDIS shall ensure that all motor carriers transporting Full Load Shipments have a minimum of \$250,000.00 in cargo insurance on file with the DOT.
- b.** TDIS shall ensure that all motor carrier transporting LTL Shipments have a minimum of \$100,000.00 in cargo insurance on file with the DOT.

8. Payment:

TDIS shall charge, and Customer agrees to pay the rates and charges set forth in any rate quote provided by TDIS to the Customer and any rate agreements signed by the parties, or such rates as otherwise agreed in writing prior to commencement of the Services (including, without limitation, by email or via ns-direct.com). Customer shall also be responsible for any additional applicable accessorial service charges, including, but not limited to, charges for detention, loading and unloading, and equipment ordered but not used. TDIS agrees to submit to the Customer an invoice for all Services provided together with proof of delivery, if applicable. The Customer agrees to pay all such invoices within fifteen (15) days of receipt without offset unless otherwise agreed to in writing. TDIS reserves the right to demand payment for any requested Services prior to the performance of the Services.

Customer agrees that claims made against a Carrier or TDIS may not be offset by the Customer, consignee or freight payer against freight charges or accessorial charges otherwise owed to TDIS.

9. Shipping Documentation:

Unless agreed to in writing by TDIS as described in ¶18, in no event shall any terms or conditions of any bill of lading, cargo receipt, proof of delivery or other shipment specific documentation relating to a shipment of Cargo apply to any Services provided by TDIS or otherwise be binding on TDIS. Any bill of lading issued by Customer or Carrier shall constitute a delivery receipt only. Customer will not insert TDIS' name as the "carrier" on a bill of lading, and TDIS' inclusion as the "carrier" on any bill of lading shall not impact TDIS' status as a property broker.

10. Responsibility For Carrier Charges:

Upon payment by TDIS of freight or accessorial charges to its retained Carrier(s), Customer assigns, and TDIS acquires by assignment, all collection rights of its Carrier.

11. Independent Contractor:

Customer acknowledges and agrees that TDIS is not an agent for the Customer or Carrier(s) and TDIS shall remain at all times an independent contractor.

12. TDIS Insurance:

TDIS agrees to procure and maintain at its own expense, at all times insurance coverage amounts adequate to facilitate TDIS' obligations as required by these Terms and Conditions.

13. Liability:

Customer understands and agrees that only the Carrier(s), are liable for any loss, damage or delay and TDIS is not responsible for or liable for the acts or omissions of such Carriers. TDIS' sole liability with respect to loss or damage to Cargo shall be to the extent that such loss or damage is exclusively caused by the intentional misconduct of TDIS. TDIS and Carriers shall not be liable for loss, damage or for any delay to a shipment caused by an act of God, the public enemy, the authority of law, the inherent nature or vice of the goods (including but not limited to natural shrinkage), or resulting from an act or default of the Customer or consignee. TDIS SHALL NOT BE LIABLE, AND HEREBY DISCLAIMS RESPONSIBILITY, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL PUNITIVE, OR MULTIPLIED DAMAGES OR OTHER INDIRECT COSTS, LOST PROFITS, FEES, LEGAL FEES, COURT COSTS, OR CHARGES OF ANY KIND ARISING FROM ANY CLAIMS FILED HEREUNDER OR ANY OTHER ACTS, INCLUDING DELAYS OR OMISSIONS OF TDIS, WHETHER FORESEEABLE, DISCLOSED OR NOT.

- a. Claims for Damage or Loss:** In the event of a cargo loss, damage or shortage claim, as an accommodation to Customer, TDIS will facilitate the filing of a claim with the Carrier conditioned on Customer submitting to TDIS any such claim to tdisclaims@ns-direct.com, *before nine (9) months of the date of delivery, which, for export traffic is the delivery at the port of export and, for import traffic is the pickup at the place of tender.* All claims must be fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage. Customer understands and agrees that the underlying Carrier may have a limitation of liability in place that limits Customer's recovery with respect to such claims. Customer shall have a duty to mitigate damages for all claims. Each Carrier's liability shall be subject to the limitations found in such Carrier's tariff. TDIS may, in its sole discretion and without liability to Customer, discontinue pursuit of claims with the Carrier if such claim is not resolved within sixty (60) days of receipt by Customer. In no event will TDIS have any liability arising from or related to Carrier's refusal to accept full value liability or the Carrier otherwise limiting its liability for cargo loss and damage. Customer acknowledges that it has been provided the opportunity to elect full value liability for the transportation of its Cargo in exchange for paying a higher rate and has agreed for its Cargo to be transported at the rate provided by TDIS pursuant to the liability terms herein or as identified in each Carriers Tariff. TDIS shall be under no obligation to arrange, and Carrier shall be under no obligation to provide, service in accordance with any set pick-up or delivery schedule. Customer warrants and represents that if it is not the owner of such Cargo, Customer holds authority from such owner to bind the owner to the provisions of these Terms and Conditions.
- b. Damage Evidence Requirements** -Delivery receipts without written notice of damage by the consignee will be evidence that the shipment was delivered in good condition. Visible loss or

damage apparent at the time of delivery should be recorded in detail on the delivery receipt. Neither TDIS nor the Carrier(s) shall accept liability for damage claims stemming from the transport, handling or delivery of said freight without notation of damage on the bill of lading.

- c. **Liability Limits** – Except as otherwise provided herein, or modified in a Carrier’s Tariff, in the event of loss of and/or damage to any shipment, Carrier’s liability for the damage or loss of freight will not exceed the lesser of:
- i. The actual value of the article(s);
 - ii. \$2.00 per pound per lost or damaged package;
 - iii. The lowest value of any new commodity contained in the shipment will be used if the Customer does not properly describe the freight on the Bill of Lading or uses a description of “FAK” or “Freight All Kinds” or other language that does not properly identify the commodities shipped including subsequent claims for shortage or damage;
 - iv. \$100,000.00 per shipment for LTL Cargo and \$250,000 for full truckload Cargo;
 - v. Any general statutory or regulatory domestic or international cargo liability limitations;
 - vi. \$1.00 per pound per lost or damaged package for household goods;
 - vii. The amount stated on any Carrier’s insurance coverage which controls any portion of the shipment’s movement throughout transit of the shipment; or
 - viii. All commodities other than new (including household goods and personal effects), when accepted and transported, will be subject to liability equal to the lesser of \$0.10 per pound with a maximum of \$5,000 per shipment.
- d. **TDIS Liability:** In no event will TDIS have any liability for cargo loss, damage or shortage. Customer acknowledges and agrees that the sole liability of TDIS related to the Services provided shall be as set forth in these Terms and Conditions. Any lawsuit arising from such a claim must be commenced within eighteen (18) months of denial of all or any part of such claim. Failure to do so will result in an absolute bar to any such claim and will relieve TDIS of any and all liability with respect thereto. The total liability of TDIS, if any, with respect to any claims or damages arising from or related to the Services provided will be limited to the amount charged by TDIS for the Services specifically giving rise to such claims or damages.

14. Indemnification and Warranties:

CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TDIS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY CUSTOMER OF THESE TERMS AND CONDITIONS; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF CUSTOMER, ITS REPRESENTATIVES, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS REPRESENTATIVES, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULES OR REGULATIONS; (iv) COMPLIANCE WITH OR RELIANCE ON ANY INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER, OR (v) CLAIMS ASSERTED BY THE OWNER OF THE CARGO AGAINST TDIS. THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED.

15. Headings:

All headings are utilized herein only as a matter of convenience and reference, and in no way define, limit or describe the scope of the terms contained therein.

16. Integration:

TDIS and Customer intend that no extrinsic evidence may be introduced to reform these Terms and Conditions in any legal or equitable proceeding unless contained in a written and signed Transportation Agreement.

17. No Modification:

Notice is hereby given that no person, other than an officer or director of TDIS has or will be given authority to agree to any modification, cancelation or waiver of these Terms and Conditions. No waiver, modification, or cancelation and/or purported waiver, modification, or cancelation on the part of TDIS shall be deemed to bind TDIS unless made in writing and signed by an authorized TDIS officer or authorized delegate. Any waiver on the part of

TDIS of any term or condition of these Terms and Conditions shall not constitute a precedent, nor require TDIS to continue waiving such term or condition or to waive any succeeding breach of the same or any other of the terms and conditions of these Terms and conditions.

18. Waiver:

Failure of TDIS to insist upon the Customer's performance under these Terms and Conditions or to exercise any right or privilege herein, will not be a waiver of any rights or privileges. To the extent applicable, TDIS and the Customer hereby expressly waive any and all conflicting rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated thereunder, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, et seq., including 49 U.S.C. § 14706 and 49 U.S.C. § 14101(b) (collectively the "Acts"). These Terms and Conditions in conjunction with any applicable Transportation Agreement(s) is a contract for specified services provided under specified rates and conditions. Neither TDIS nor Customer shall challenge any provision of these Terms and Conditions on the ground that any provision(s) violate the waived rights and remedies under the Acts. For avoidance of doubt this waiver does not waive the preemption of state law claims by the Acts.

19. Severability:

In the event any paragraph(s) and/or portion(s) hereof are found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

20. Choice of Law:

These Terms and Conditions and the relationship of Customer and TDIS shall be governed by applicable Federal law of the United States and by the law of the Commonwealth of Pennsylvania and any dispute arising out of any such act or contract shall be within the exclusive jurisdiction of the federal or state courts with jurisdiction in Montgomery County, Pennsylvania without giving consideration to the choice of law principles thereof. Customer and TDIS hereby irrevocably consent to the jurisdiction of those courts; agree that any action relating to the Services performed by TDIS shall be brought only in said courts; consent to the exercise of in personam jurisdiction by said courts over them; and further agree that any action to enforce a judgment may be instituted in any jurisdiction.