

## STRAIGHTSOFT, INC. - SHIPPER TERMS OF SERVICE

This Terms of Service Agreement (“Agreement”) sets forth the terms and conditions under which Straightsoft, Inc. (“Straightsoft” or “Broker”) offers to you, the “Shipper”, access to and use of its web-based and mobile-software-based application platform (collectively “Software”). Through the Software, Straightsoft provides an online platform for the connection of Shippers and Carriers for transportation of cargo and goods within the continental United States (“Service”). This Agreement shall apply to any and all applications, downloads, services, and content provided by Straightsoft through any digital platform.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING THE TERMS HEREOF. USE OF THE SOFTWARE AND SERVICE IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT, INCLUDING ALL TERMS SET FORTH HEREIN, AS WELL AS ANY AND ALL POLICIES LINKED HERETO, AS AMENDED FROM TIME TO TIME BY STRAIGHTSOFT IN ITS SOLE DISCRETION, AND ANY AND ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.

IF YOU DO NOT AGREE TO AND ACCEPT THIS AGREEMENT, YOU ARE PROHIBITED FROM ACCESSING OR USING THE SOFTWARE AND SERVICE.

### 1. DEFINITIONS

- 1.1. “Broker” shall mean Straightsoft, Inc., including any successor thereto, a broker properly conforming to the definition thereof as set forth in 49 U.S.C. § 13102(2), as amended from time to time, and holding all appropriate licensure from the United States Department of Transportation.
- 1.2. “Carrier” shall mean a company conforming to the definition thereof as set forth in 49 U.S.C. § 13102(14), as amended from time to time.
- 1.3. “Shipper” shall mean the company identified by you during the sign-up and registration process and conforming to the definition of such term as set forth in 49 U.S.C. § 13102(13), as amended from time to time.

### 2. SHIPPER REPRESENTATION AND WARRANTIES

- 2.1. Shipper owns the cargo to be shipped pursuant to this Agreement through use of the Software and Service and has all necessary rights to ship the cargo.
- 2.2. Shipper is in compliance and shall maintain compliance with any and all applicable federal, state, and local laws and regulations governing the subject matter of this Agreement.
- 2.3. Shipper agrees that Broker shall not be responsible for or liable for the loss, damage, destruction, or delayed delivery of Shipper’s cargo.
- 2.4. Shipper is responsible for obtaining first-party insurance on any cargo to cover any anticipated losses related thereto.
- 2.5. Shipper agrees that the insertion, by Carrier or Shipper, of Broker’s name as a/the carrier on any bill of lading shall be construed to be for the convenience of Shipper only and shall not be construed to change Broker’s status as a property broker or to change Carrier’s status as a motor carrier.
- 2.6. Shipper shall fully and accurately disclose to Broker all reasonably necessary information regarding its cargo to be shipped, including but not limited to type, weight, dimensions, special handling requirement, and special security requirements.
- 2.7. Shipper shall not use the Software and/or Service to transport any hazardous or illegal cargo.
- 2.8. All payment/account information provided by Shipper to pay for the Services is accurate, current, and complete, and the person entering this information into the Software has been duly authorized by Shipper to do so.

### 3. DESCRIPTION OF SERVICES

- 3.1. Broker provides to Carrier and to Shippers the Software and Service, through its web-based and mobile-device applications, a platform for Shippers to order and Carriers to accept shipments of cargo. NO HAZARDOUS OR ILLEGAL MATERIALS MAY BE TRANSPORTED THROUGH USE OF THE SOFTWARE AND SERVICE.
- 3.2. Shipper may, through the Service, post one (1) or more items for shipping and shall, through the Software, agree to the price of transportation of such cargo, based on pick-up location, delivery location, weight, dimensions, cargo/commodity type, special equipment/handling requirements, Broker’s fee/commission and any other factors included by Broker in its sole discretion. Upon acceptance of the price and listing by

the Shipper of all additional relevant information, including dates of pick-up and delivery, Broker will post the shipment request details on the Service.

- 3.3. A Carrier, through the Service and Software, may view a list of available shipment requests and may accept any such shipment request for which it is qualified and capable of fulfilling. Such acceptance shall include acceptance of the price, including the portion thereof that shall be paid to and retained by Broker.
- 3.4. Upon acceptance of the shipping request by the Carrier, Broker will notify Shipper of the Carrier's acceptance, and Broker will send notification to Carrier of the assignment of such shipment.
- 3.5. Following acceptance and notification to both Parties by Broker. To the extent that any bill of lading includes terms that are in conflict with provisions of this Agreement or might impose any additional duty or obligation upon Broker, such terms shall be null and void and of no legal effect.
- 3.6. Carrier shall abide by any and all cargo handling instructions communicated to it by Shipper or Broker.
- 3.7. Shipper shall be responsible for review and acceptance or rejection of the trailer of Carrier as relating to cleanliness, odors, moisture, or other physical conditions that Shipper may reasonably deem unacceptable. In the event of such rejection, Shipper must immediately notify Broker to request alternate shipment.
- 3.8. Shipper should coordinate with the Carrier to ensure that its cargo is properly braced, packaged, and secured for safe transport.
- 3.9. Once Carrier has completed the delivery of the Shipment, Carrier shall post to the Service a proof of delivery signed by an authorized recipient as quickly as is reasonably possible but, absent exigent circumstances out of the control of the Carrier, within forty-eight (48) hours of delivery.
- 3.10. For more information relating to the Software, Services, and the process of shipment of cargo through the use thereof, Shipper is referred to the FAQ posted on Broker's website, as amended from time to time.

#### **4. PAYMENT**

- 4.1. For each shipment ordered, Shipper will pay to Broker the charge quoted through the Software and Service, plus any additional charges incurred relating to the shipment of the cargo. Such additional charges, by way of example, may include but are not limited to overnight storage due to unavailability of cargo recipient at scheduled delivery time, delays in pick-up caused by Shipper, cancellation of shipment by Shipper after Carrier dispatch (Truck Ordered Not Used), or differences in weight, dimensions, special needs, or other details entered by Shipper in the shipment ordering process.
- 4.2. Carriers used by Broker are, generally, required to provide advance notice of any additional charges; however, Broker cannot guarantee advance notice, and Shipper agrees to pay the costs of any additional or modified services that Broker, in its discretion, determines are reasonable and necessary.
- 4.3. Shipper will not be charged by Broker until delivery of the shipment and receipt by Broker from Carrier of proof of delivery. Upon receipt and acceptance by Broker of such proof of delivery, payment shall be immediately due and payable in full, and Broker will charge Shipper for the cargo transportation via the payment method selected by Shipper or otherwise agreed upon by Shipper and Broker.
- 4.4. Broker may change pricing for use of the Service and Software from time to time in its sole discretion by updating the Software, with or without notice to Shipper or Carrier.
- 4.5. Upon processing of Shipper's payment, Broker shall provide, through the Software, a receipt for the shipment's freight charge.
- 4.6. In the event that Broker is unable to process any payment by Shipper due to insufficient funds, incorrect or obsolete credit card number, name, or address, Shipper shall be liable to Broker for any and all costs and expenses incurred to obtain full payment, including but not limited to any and all attorney's fees incurred by Broker.

#### **5. DAMAGES/LOSS OF CARGO**

- 5.1. A Carrier's liability for lost, destroyed, damaged, or delayed shipment of cargo is governed by the Carmack Amendment (codified at 14 U.S.C. § 14706) ("Carmack Amendment"), as well as applicable state laws. Carriers may impose time limits for the filing of loss or damage claims, as well as for filing actions relating to loss or damage of cargo, as provided in the Carmack Amendment. **BROKER RECOMMENDS THAT SHIPPER CONSULT WITH A QUALIFIED ATTORNEY REGARDING ANY CLAIM IT MAY WISH TO PURSUE AGAINST A CARRIER.**
- 5.2. Upon written request from Shipper, Broker may, at its sole discretion, assist Shipper in any claim against a Carrier for lost, damaged, delayed, or destroyed cargo. Notwithstanding any such assistance of or participation with Shipper, Broker shall not be liable to Shipper or any third party for any lost, damaged, delayed, or destroyed cargo unless such loss, damage, destruction, or delay was caused solely by the negligent or willful act of Broker.

#### **6. INTELLECTUAL PROPERTY**

- 6.1. By signing up and registering through the Software and subject to Shipper's continuing compliance with this Agreement, Broker grants to Shipper a limited, non-transferable, revocable license to use the Software for the purposes set forth in this Agreement.
- 6.2. Broker retains any and all ownership of the Software and Services provided thereby, including any and all intellectual property rights and including any marks, logos, trade names, trade dress relating thereto.
- 6.3. Shipper shall not
  - 6.3.1. License, sell, rent, transfer, assign, distribute, publish, host or otherwise commercially exploit the Software and/or Service;
  - 6.3.2. Reverse engineer, modify, make derivative works of, or disassemble the Software or Service, or any portion thereof;
  - 6.3.3. Use the Software or Service in any way to study or build a competitive service or business; or
  - 6.3.4. Copy, reproduce, distribute, publish, display, upload, or post the Software in or by any means, including any portion thereof.
- 6.4. Shipper grants to Broker a license to identify Shipper and use Shipper's logo in order to identify Shipper as a customer and user of Broker's Software and Services and, in furtherance thereof, to display and publish Shipper's name and/or logo in marketing materials.
- 6.5. In the event that Shipper or any employee or agent thereof provides and comment, request, or information regarding the Software or Service to Broker, all intellectual property rights relating to such comment, request, or information shall be automatically assigned by Shipper and/or its employee or agent to Broker, and Shipper shall assign or compel its employee or agent to assign to Broker any and all ownership and intellectual property rights thereof to Broker.
- 6.6. If, in good faith, Shipper believes that any materials included in or posted to the Software or Service infringes any copyright ownership interest of Carrier, Carrier shall comply with the provisions of the Digital Millennium Copyright Act, as amended from time to time, providing Broker, the following information, which must be signed by the owner of the copyrighted work or a person authorized to act on his/her/its behalf:
  - 6.6.1. A description of the location where the infringing work is posted/located;
  - 6.6.2. A description of the work infringed upon;
  - 6.6.3. Your contact information, including name, address, phone number, and email address;
  - 6.6.4. A statement explaining why you think an infringing action has occurred;
  - 6.6.5. A statement that Shipper has a good faith belief that the alleged infringing use is not permitted under applicable law and not excused by contract or other reason; and
  - 6.6.6. A statement that, under the penalty of perjury, the information provided is accurate and that the signatory is the owner or has authority to act on the owner's behalf.

## **7. DISPUTE RESOLUTION**

- 7.1. In the event of a dispute arising out of this Agreement related to claims between Broker and Shipper, a party's recourse shall be exclusively settled through binding and confidential arbitration, governed by the Federal Arbitration Act, as amended from time to time. The arbitration shall be conducted before one arbitrator from the Transportation ADR Council, Inc. ("TAC") and pursuant to its rules.
- 7.2. The decision of the arbitrator shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of the arbitrator.
- 7.3. All arbitration proceedings shall be held in Memphis, Shelby County, Tennessee, which shall further be the sole venue for injunctive or other equitable relief. In the event that either party is granted equitable relief, the party against whom judgment is entered shall be liable for all costs and expenses incurred by the prevailing party including, but not limited to, reasonable attorney fees. This paragraph shall not apply to enforcement of an award of arbitration.
- 7.4. Notwithstanding the foregoing, in the event of a claim with a monetary value not exceeding Ten Thousand Dollars (\$10,000.00), a party may elect to bring such a claim in the General Sessions Court of Shelby County, Tennessee.
- 7.5. Unless preempted or controlled by federal law and regulations, this agreement shall be interpreted and enforced according to the laws of the State of Tennessee.
- 7.6. This article does not apply to claims between a Carrier and a Shipper.

## **8. DISCLAIMER AND LIMITATION OF LIABILITY**

- 8.1. THE SERVICE AND SOFTWARE ARE PROVIDED "AS IS" AND "AS AVAILABLE." BROKER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- 8.2. BROKER MAKES NO WARRANTY THAT THE SERVICE AND/OR SOFTWARE: (A) WILL MEET SHIPPER'S REQUIREMENTS; (B) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; OR (C) WILL BE ACCURATE, FREE OF VIRUSES, OR OTHER HARMFUL CODE, LEGAL, OR SAFE.
- 8.3. THE SOFTWARE AND SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER UNAVOIDABLE PROBLEMS RELATING TO AVAILABILITY AND CONNECTIVITY OF USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR DUE TO MAINTENANCE BY BROKER OR OTHER REASONS. BROKER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS OR DELAYS. BROKER SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, THE SERVICE OR SOFTWARE, INCLUDING ANY USE OF THE SOFTWARE AND SERVICE BY SHIPPER.
- 8.4. BROKER RETAINS THE FULL RIGHT AND POWER, IN ITS SOLE DISCRETION, TO MODIFY, SUPPLEMENT, SUSPEND, OR DISCONTINUE ANY SERVICE OR SOFTWARE WITH NO OBLIGATION TO SHIPPER.
- 8.5. THE ENTIRE RISK ARISING OUT OF CARRIER'S USE OF THE SOFTWARE AND SERVICES, SHALL, TO THE EXTENT ALLOWED UNDER APPLICABLE LAW, SHALL BE SHIPPER'S AND SHIPPER'S ALONE.
- 8.6. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, BROKER SHALL NOT BE LIABLE TO SHIPPER FOR ANY CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, INTERFERENCE WITH BUSINESS RELATIONS, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, PRODUCT LIABILITY OR OTHER.
- 8.7. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, BROKER'S TOTAL LIABILITY TO CARRIER FOR ANY AND ALL CLAIMS RELATING TO OR ARISING FROM THIS AGREEMENT AND/OR SHIPPER'S USE OF THE SOFTWARE AND/OR SERVICE, SHALL BE LIMITED TO AND SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY SHIPPER TO AND RETAINED BY BROKER FOR THE SHIPMENT(S) IN THE PRIOR TWELVE (12) MONTHS.
- 8.8. IN THE EVENT THAT ANY OF THE FOREGOING DISCLAIMERS OR LIMITATIONS ARE NOT APPLICABLE OR AVAILABLE UNDER APPLICABLE LAW, SUCH PROVISIONS SHALL BE DEEMED TO BE EXCLUDED FROM THIS AGREEMENT.

#### **9. NON-SOLICITATION**

- 9.1. For the period of this Agreement and for one (1) year thereafter, Shipper shall not contract or arrange for the transport any cargo or shipment for or otherwise contract with any Carrier for which Shipper first transported cargo through or pursuant to this Agreement, including Shipper's use of the Service and Software. In the event that any Carrier contacts Shipper to attempt to initiate such a relationship and/or to arrange for Shipper's transportation of its cargo without use of Broker and its Software and Service, Shipper shall reject such overture and shall report the same immediately to Broker. In the event that Shipper violates this provision, Broker shall be entitled to, as liquidated damages, an amount equal to 20% of the fee charged by Carrier to Shipper for any such shipment.

#### **10. INDEMNIFICATION**

- 10.1. TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW, SHIPPER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND BROKER, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, EMPLOYEES, AGENTS, SUCCESSORS, SUBSIDIARIES, AND ASSIGNS FROM ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, INJUNCTIONS, SUITS, ACTIONS, FINES, PENALTIES, CLAIMS, DEMANDS, COSTS AND EXPENSES OF EVERY KIND OR NATURE, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS MADE BY ANY THIRD PARTY RELATING TO OR ARISING OUT OF (A)

SHIPPER'S USE OF THE SERVICE OR SOFTWARE; (B) SHIPPER'S VIOLATION OF THIS AGREEMENT; (C) SHIPPER'S NEGLIGENT, WILLFUL, OR INTENTIONAL ACT RELATING TO THE SHIPMENT OF SHIPPER'S CARGO THROUGH USE OF THE SERVICE AND SOFTWARE; OR (D) VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION.

**11. TERM AND TERMINATION**

11.1. This Agreement shall remain in full force and effect unless and until terminated by either party. In the event of termination, regardless of the terminating party, Shipper's license to use the Software and Service shall be immediately and automatically terminated.

**12. NOTICE**

12.1. Any notice to be provided to Shipper under this Agreement shall be to that name, person, and address entered by Shipper upon registration. Shipper may update the natural person to whom notice should be directed by emailing Broker at [customerservice@straightsoft.com](mailto:customerservice@straightsoft.com), which update shall be effective upon confirmation of receipt and processing of such update by Broker. Notice from Shipper to Broker shall be made by either email, U.S. registered mail, or via an overnight delivery service with the capability for electronic tracking of shipment as follows:

Straightsoft, Inc.  
1223 West Crestwood  
Memphis, TN 39119  
email: [customerservice@straightsoft.com](mailto:customerservice@straightsoft.com)

12.2. The person whose information is entered in the registration process or as amended pursuant to the previous subsection shall be conclusively construed to be vested by the Shipper with all authorization and power necessary to act on Shipper's behalf, including but not limited to binding Shipper to the terms of this Agreement and to accept and undertake any obligation pursuant to this Agreement and/or the use of the Service and Software.

**13. MODIFICATION**

13.1. Broker shall have the right to modify this Agreement in its sole discretion. Broker shall notify Shipper of any such change and, in the event of a material change to any provision of this Agreement, such modified Agreement shall become enforceable upon the sooner of (a) Shipper's next use of the Software and/or Service; or (b) thirty (30) days following Broker's notification of its modification of the Agreement.

**14. MISCELLANEOUS**

14.1. In the event that any provision of this Agreement should violate any applicable provision of federal, state, or local law or regulation or is otherwise determined by a court of competent jurisdiction to be unenforceable, such provision shall be construed to be replaced by the conflicting provision of applicable law, and the remainder of this Agreement shall continue in full force and effect.

14.2. The provisions set forth in the following Articles shall survive the termination or expiration of this Agreement: 2, 4, 5, 6, 7, 8, 9, 10, and 14.

14.3. This constitutes the entire Agreement between the Parties. Any additional or differing terms set forth on any document of Shipper or Carrier, including but not limited to any bill of lading, delivery confirmation, or invoice, shall be null, void, and of no legal effect.

14.4. Any failure or election by Broker not to enforce any right it has under this Agreement shall not be construed to waive such right in the future.

14.5. Nothing in this Agreement shall be construed to create any third-party beneficiary.

14.6. No right or obligation of Shipper under this Agreement may be assigned, transferred, delegated, bequeathed, sold, subcontracted or otherwise transferred, in whole or in part, to anyone without Broker's prior written consent.

14.7. By accepting the terms of this Agreement by registering for the Software and Service and clicking on the I AGREE button, the person so doing represents and warrants that he/she has full authority to take such action and enter into such an Agreement on behalf of Shipper.