

Terms & Conditions

Unless expressly superseded by a written contract signed by an officer of FedEx Custom Critical, Inc. ("FCC" or "Broker") and the shipper, consignor, consignee, or any other entity claiming an interest in goods for which FCC arranges transportation ("Customer") these Terms and Conditions shall govern property brokerage service (which, for purposes hereof, shall mean the arrangement of motor carrier transportation to be performed by third party motor carriers as defined below) provided by FCC ("Services"). Any terms and conditions on documents exchanged between the parties other than these Terms and Conditions, as revised from time to time, shall not apply to any Services and shall not be binding on or applicable to FCC.

Customer understands and agrees that when providing these Services, FCC functions as an independent entity, and not as a carrier, in selling, negotiating, and arranging for transportation for compensation, and that the actual transportation of shipments tendered to FCC shall be performed by third-party motor carriers. Nothing in these Terms and Conditions shall be deemed to require FCC to provide Services upon request of Customer and FCC reserves the right to accept or decline, in its sole discretion, any particular request for Services. By requesting quotations for Services or by tendering freight to FCC for transportation, Customer accepts and agrees to the following terms and conditions:

1) Quotations:

- a) All quotes provided are valid until 11:59 PM Eastern Time on the date quoted and are dependent on available capacity. Quotes that are converted to orders after that cutoff time are subject to change. **Please note:** The quoted charges are based on the information supplied by Customer, and are also based on liability terms and rates in effect at the time of the quote. Actual charges will be based on the shipment's actual weight, dimensions, classification and type of commodity, pickup and delivery location and conditions, requested transit days and additional services performed. In such cases, FCC reserves the right to amend the price or refuse the shipment. Customer will be liable to FCC for full payment of actual charges.

2) Quoted Charges, Accessorial Charges and Transportation Expenses:

- a) FCC's quotation is for transportation charges, any fuel surcharge in effect at the time of quote, and any special services requested in writing and specified in the quote. It does not include any applicable accessorial charges, including, but not limited to detention, equipment ordered and not used (dry run), re-delivery, inside pickup or delivery, waiting time, customs clearance, taxes, duties, or other costs or expenses that may be

associated with shipment or otherwise rendered by the carrier. Additional accessorial charges reasonably incurred for Customer's account will be invoiced separately. Customer agrees to pay any and all such accessorial charges.

3) Initiation of Broker Services:

- a) Customer may authorize FCC to perform services under these terms and conditions by means of any verbal, e-mail, facsimile, or other form of written communication, the substance of which authorizes FCC to provide services. Upon receipt of Customer's authorization, FCC will commence services unless FCC elects to decline a service request. FCC will provide seasonable written notification in the event it declines to perform a requested service.
- b) It is understood and agreed that FCC (i) is retained by Customer to arrange for the transport by third parties of the shipment described below, and (ii) makes these arrangements only as a licensed property broker, and not as a motor carrier.**

4) Additional Services:

- a) Unless otherwise agreed in writing signed by an authorized representative of FCC, FCC will not provide or arrange for the import or export of cargo (including, but not limited to, any filings to be made with any governmental authority); customs broker services; loading, unloading, lumber or transloading services; warehousing or warehouse services; or any other services not specifically identified in Broker's quotation.

5) Independent Contractors:

- a) The relationship between Customer and FCC is that of independent contractor and is not based on common law or contract employment, agency, partnership, or a joint venture. Customer understands that the transporting carrier(s) which transports Customer's cargo are independent contractor(s) and that FCC does not own, operate or control the transporting carrier(s). Depending on the transaction, FCC reserves the right to interline or place the shipment with another property broker or other transportation intermediary which may, in turn, ultimately place the shipment with a motor carrier or rail carrier. Such interline services, property brokers and transportation intermediaries are also independent contractors. In no event is FCC liable for any act or omission of any third party.

6) Dry Run Charges:

- a) In the event Customer cancels a shipment twenty-four (24) hours or less before scheduled pickup, FCC may charge and Customer agrees to pay all fees of the

transporting carrier resulting from the cancelled shipment (dry run). In addition, an administrative fee of up to \$100 may apply.

7) Detention Charges:

- a) Customers are allowed two (2) hours of free time for loading and unloading. Upon expiration of the stated free time, Customer will be responsible for the payment of detention charges at the rate provided by the transporting carrier's tariff or other governing terms and conditions.

8) Service Limitations:

- a) Transit times are approximate and are not guaranteed. Price, mileage, transit times and service options may vary based on equipment availability, freight availability, the time Customer places the order with FCC, weather, Force Majeure, and other unavoidable or unforeseen transportation, broker or customs delays.

9) Broker Liability:

- a) FCC has no liability under any legal theory for cargo loss, non-delivery, damage, shortage, or delay, with respect to cargo for which it has arranged transportation pursuant to these Terms and Conditions, unless such claim results solely, proximately and directly from FCC's negligence or breach in its performance of services under these terms and conditions. Without limiting the foregoing, and unless otherwise agreed upon in a signed writing between the parties, in no event will FCC or any carrier be liable for delay or any consequences of delay unless such delay results in actual loss of or damage to goods.
- b) FCC shall not be responsible for loss or damage to cargo due to improper loading and/or securement (including blocking and bracing), due to an inherent vice or defect in the cargo, itself, or otherwise arising from any other act or omission of any third party.
- c) FCC does not control the transporting carrier's equipment or drivers and is not responsible for the consequences or expenses associated with any collision, accident or mechanical breakdown, including, but not limited to, towing charges, road cleanup and debris removal, warehousing or temporary storage, or field transloading services.
- d) In the unlikely event that FCC is liable for loss or damage to cargo in accordance with the foregoing, any such liability under any legal theory, shall be capped to the same extent as the liability of the transporting carrier at issue (as provided in Section 11) or \$100,000, whichever is less. Any amounts recovered against the transporting carrier will be credited against the liability of FCC.

- e) Customer acknowledges and agrees that the sole liability of FCC with respect to loss, damage or delay to cargo shall be as set forth in these terms and conditions.

10) Insurance:

- a) FCC maintains insurance as required by the DOT/FMCSA regulations governing licensed property brokers, but does not specifically insure Customer cargo. FCC contractually requires the transporting carrier(s) to maintain any legally required cargo insurance. FCC recommends that Customer obtain a policy of all-risk or another suitable policy of insurance to provide coverage for the cargo.
- b) In no event will Broker have any liability arising from or related to the carrier or the carrier's cargo insurer limiting its liability for cargo loss and damage, nor will Broker have any liability arising from or related to any warranties or exclusions in the carrier's cargo policy which may affect the coverage.

11) Liability of Transporting Carrier(s):

- a) For purposes of these Terms and Conditions, (i) Less-than-Truckload or "LTL" means motor carrier transportation where the transporting carrier's rates and/or liability levels are determined by classifying the goods via the National Motor Freight Classification, or other means, and/or are based on the weight and dimensions of the goods; and (ii) Full Truckload or "FTL" means any motor carrier transportation not included in the definition of LTL above.
- b) Customer agrees that carrier liability for loss or damage to new and unused cargo for FTL service is limited to the lesser of \$100,000 per full truckload or container load, regardless of the number of shipments or bills of lading contained therein, or the cost to repair or replace the cargo. Customer agrees that carrier liability for loss or damage to new and unused cargo for LTL service is limited to the lesser of \$10 per pound or the cost to repair or replace the lost or damaged cargo, not to exceed a total of \$100,000.
- c) Higher levels of liability for higher transportation charges may be obtained by calling FCC at least forty-eight (48) hours in advance of the requested pick-up date to request a quote based on the specified level of carrier liability. FCC will provide a quote which must be approved in writing by the customer prior to actual pick up of the shipment. A higher value declared on the bill of lading shall not increase carrier liability unless Customer and FCC have executed the written agreement specifying the rate and liability set forth above.
- d) The foregoing subsections (a), (b) and (c) notwithstanding,

- i) FCC makes no representation or warranty as to the amount of liability to be assumed: (A) by any Rail Carrier (as defined below); (B) by any carrier via any mode with respect to used or reconditioned equipment; or (C) by any carrier transporting cargo to, from or within Mexico.
 - ii) With respect to cargo moving to, from or within Mexico: (A) Neither FCC nor the transporting carrier shall have any liability for loss or damage to cargo shipped to, from or through Mexico.; and (B) if it is unclear where such loss or damage occurs, the loss or damage will be presumed to have occurred during transportation in Mexico unless such presumption is overcome by clear and convincing evidence to the contrary.
 - iii) Regardless of whether any shipment documentation indicates that the cargo was loaded by the shipper, the carrier shall not be liable for shortage identified upon delivery if the carrier did not load the trailer in question, the trailer is delivered with the original trailer seal intact, or if the trailer seal was broken in response to order of law enforcement personnel.
- e) With respect to loss or damage that could not have been identified at the time of delivery based on a reasonable inspection, there will be an irrebuttable presumption that any such loss or damage occurred subsequent to delivery unless such loss or damage is reported in writing to FCC within 72 hours of delivery.
- f) Transporting carrier shall not be responsible for loss or damage to cargo due to improper loading and/or securement (including blocking and bracing), due to an inherent vice or defect in the cargo, itself, or for any other act or omission of the tendering party.
- g) Customer acknowledges and agrees that failure or alleged failure by a transporting carrier to comply with shipment handling instructions, or a broken trailer seal, shall not, in and of itself: (i) result in any presumption that goods have been adulterated, contaminated or rendered unfit for their intended purpose, nor (ii) be grounds for rejection of a shipment or filing of a claim for cargo loss and damage without proof of actual loss or damage.
- h) Notwithstanding anything in these Terms and Conditions to the contrary, in the event, whether upon request of Customer or in FCC's discretion, any portion of the underlying transportation is performed by a rail carrier ("Rail Carrier"), Customer acknowledges and agrees that the Rail Carrier services, including, but not limited to, charges, liability (including limitations) for loss or damage to cargo, and terms and conditions of services are governed by tariffs, circulars or similar documents maintained by the Rail Carrier or other third party logistics provider arranging such Rail Carrier services (the "Rail Conditions"). Customer acknowledges and agrees that Customer, and not FCC, shall be

deemed as a shipper or beneficial cargo owner for purposes of application of the Rail Conditions. As between Customer and FCC, Customer shall be solely responsible for: (a) proper packing of any and all shipments; (b) blocking and bracing all such cargo in accordance with the Rail Conditions, as well as in accordance with industry standards (including, but not limited to, those imposed by the American Association of Railroads via Circular 43, Rules Governing the Loading, Blocking and Bracing of Freight in Closed Trailers and Containers for TOFC/COFC Service); and (c) compliance with any and all obligations or charges imposed by the Rail Carrier with respect to tender of cargo for rail and/or intermodal transportation, including but not limited to any and all charges for accessorial services imposed by Rail Carriers whether or not included in the initial rates agreed upon by the parties.

12) Claims Filing and Processing:

- a) Claims alleging carrier liability for cargo loss, damage, shortage, destruction or delay must be filed directly with the actual transporting carrier unless otherwise agreed. Customer will not file claims valued at less than \$150. FCC may assist in facilitating Customer's claim by filing overage, shortage or damage claims with the transporting carrier(s) if a valid claim is provided by Customer to FCC within six (6) months of delivery. Prior to presenting any claim to FCC, all undisputed freight charges pursuant to the damaged shipment, invoiced by FCC, must be paid in full by Customer. Customer agrees that any claim payment for valid claim amounts shall be paid directly by the carrier to Customer. FCC shall not make any claim payments or accept liability on behalf of carrier. In no event will FCC have any liability for any loss or damage arising from failure to timely file a claim with any transporting carrier, the claims process, or for the satisfactory outcome of such process.
- b) The Customer must promptly provide any documentation as requested by FCC to facilitate the processing of the claim. FCC reserves the right to decline to facilitate a claim for any reason, including when Customer is unable or fails to provide accurate or complete claim documentation in support of Customer's claim, in which case Customer may file the claim directly with the transporting carrier. In the event of dispute, the Customer may pursue legal action for recovery against the carrier. Failure to file claims or pursue legal action within applicable time limits will result in an absolute bar to any such claim and legal action and will relieve carrier of any and all liability with respect thereto.
- c) Customer waives any claim against FCC arising from or relating to FCC's facilitation of the cargo claim and the claims process, to the fullest extent permitted by law.

13) Claims Process, Damage Inspection, Mitigation and Salvage Rights:

- a) Except to the extent otherwise provided for in these terms and conditions, claims for loss or damage to cargo against motor carrier based in the United States shall be processed in the manner provided by 49 C.F.R. Part 370.
- b) Following any event causing damage to cargo, Customer shall take commercially reasonable steps to preserve the damaged cargo and to provide reasonable notice and an opportunity for all interested parties to inspect the damaged cargo. At all times, Customer is required to take all commercially reasonable steps to mitigate its damages.
- c) In the event that the transporting carrier or FCC pays a claim for damage to cargo, the party paying the claim shall be entitled to salvage the damaged cargo in mitigation of the damage claim. Customer or a shipper may reasonably refuse to permit a salvage sale of the damaged cargo, but the party paying the claim shall be entitled to deduct the fair market salvage value of the damaged cargo from the amount of the claim.

14) Consequential and Punitive Damages:

- a) Neither FCC nor a transporting carrier shall be liable for any form of special, incidental, indirect, extended, punitive, or consequential damages, or for other indirect costs, fees, or charges of any kind arising from or related to services subject to these Terms and Conditions, or otherwise from the relationship of the parties, regardless of the form of action, theory of recovery, or the failure of essential purpose of any other limited remedy, even if FCC or a transporting carrier had knowledge that such damages could be incurred.

15) Force Majeure:

- a) FCC and the transporting carrier(s) shall not be legally responsible for cargo loss or damage or a failure or delay in performance of services caused by a Force Majeure event. A Force Majeure event shall include Acts of God, or the public enemy, natural disasters or weather related events, war conditions, terrorism, governmental interference or requirements, regulations or actions, embargoes, fires, floods, pandemics, labor disorders, riots or civil disorder, closing of the public highway, inherent vice of the goods being transported, or without construing the foregoing as words of limitation, any other cause beyond FCC's , or the carrier's reasonable control.

16) Food Shipments:

- a) If Customer requests service with respect to food, Customer acknowledges and agrees that if Customer has not requested temperature control service or other specialized handling requirements, then all such food has been packaged in such a manner to ensure safe and sanitary handling during transportation without adoption by the

underlying carrier of any specialized handling procedures and as such Broker has no obligation to arrange for any specialized handling. If specialized handling has been requested by Customer, Broker's sole obligation is to pass through such specialized handling instructions to the underlying carrier. With respect to food for which temperature control service has been requested, Customer acknowledges and agrees that Broker's sole responsibility will be to communicate requested temperature ranges to the underlying carrier and that ambient air temperature readings within the trailer, if any, taken by the loader and receiver at origin and destination are sufficient to ensure safe and sanitary handling of Customer's commodities. Any request for specialized handling, including controlled temperature transit, must be submitted to Broker in writing at the time of the initial request for service to which the instructions relate. As between Broker and Customer, Customer shall have sole discretion in determining shipment handling instructions necessary to ensure the safe and sanitary handling of food.

17) Tobacco Products:

- a) Broker does not arrange transport of Tobacco Products, which include but are not limited to cigarettes, smokeless tobacco, cigars, loose tobacco (whether for pipes or roll-your-own cigarettes) or hookah tobacco. Broker prohibits all shipments containing electronic cigarettes, e-liquids, and other vaping products to businesses and consumers. Customer (i) represents that no Tobacco Products, electronic cigarettes, e-liquids, and other vaping products are included in shipments arranged by Broker and (ii) agrees to defend and indemnify Broker for any unlawful shipping of Tobacco Products, electronic cigarettes, e-liquids, and other vaping products.

18) Cannabis and Hemp Products:

- a) Broker may arrange for transportation of hemp-derived cannabidiol ("CBD") products containing less than 0.3% tetrahydrocannabinol ("THC"). In such instance, Customer is required to execute Broker's separate CBD Oil Brokerage Transportation Agreement. All cannabis and hemp plants, cannabis-derived CBD, hemp oil, hemp seed oil, consumable or edible products and any product containing 0.3% or more THC are expressly prohibited. Customer agrees to defend and indemnify Broker for any unlawful or prohibited shipping of such products.

19) Hazardous Cargo:

- a) Customer shall provide Broker with advance written notice of the proposed shipment of any hazardous material, as that term is used and defined in 49 CFR Parts 105-180 ("Hazardous Material"). Prior to the proposed transportation, Customer shall provide Broker with a current Material Safety Data Sheet for the hazardous material

shipment. Customer is the sole offeror of any and all such cargo, and in no event will FCC have any responsibility to perform any obligations imposed on the offeror of such cargo.

- b) Customer shall indemnify, defend and hold harmless Broker, carrier and each of their officers, employees, agents, contractors and insurers against all claims, liabilities, losses, fines, reasonable attorneys' fees and other expenses arising out of or relating to any contact with, exposure to or release of any Hazardous Material, including without limitation, fines or expenses relating to the removal or treatment of Hazardous Material or any other remedial action pertaining to the Hazardous Material under federal or state law, if (1) Customer fails to provide the notice required by this provision prior to tendering the Hazardous Material to Broker, (2) the contact, exposure or release resulted from the improper packaging or loading or other acts or omissions of the Customer, its employees or agents, or (3) the contact, exposure or release occurred subsequent to the transportation and delivery of the Hazardous Material by Carrier.

20) Customer Cargo and Compliance Warranties:

- a) Customer owns the cargo, or is authorized to arrange for transportation of the cargo on behalf of the owner, in accordance with these Terms and Conditions.
- b) All information provided by Customer regarding the cargo, cargo characteristics and handling, and shipment related information shall be accurate and complete. Customer warrants that all cargo tendered will be in compliance with all applicable laws, rules and regulations and that packaging, labeling, packing, loading, blocking and bracing will be in accordance with applicable law and governing industry standards.
- c) Customer specifically warrants that, in connection with all cargo tendered to Broker, it has fully complied with all applicable local, state, federal and foreign laws and regulations, including, without limitation, import and export regulations, TSA regulations, OFAC regulations, FCPA, ITAR and all other laws and regulations governing the importation and exportation of goods to or from the United States.
- d) Customer agrees to defend, indemnify and hold Broker harmless against claims, liabilities, fines, investigation expenses, business interruption, and damages related to or arising from or out of inaccurate or incomplete information or any Customer breach of this warranty.

21) Payments Terms, Credit and Collection:

- a) Quotations and charges are stated in U.S. currency unless otherwise specified. Charges must be paid in full and without deduction or offset within fifteen (15) days of receipt of

invoice. Charges may be paid by company check, bank check, electronic transfer, credit card, or bank draft. Payments should reference the FCC invoice number or order number.

- b) Non-credit customers must pay for charges and services in advance. FCC may, extend credit to Customer. The decision to extend credit and the amount of such credit is subject to FCC's sole discretion. Credit will be extended only after a review and approval of Customer's current credit report and references. FCC reserves the right to refuse, limit, suspend or terminate credit at any time and also reserves the right to require Customer to pay for certain charges or expenses notwithstanding the existence of credit terms.
- c) In the event that collection activity or a legal action is initiated to collect unpaid and overdue accounts receivable from Customer, in addition to all sums and interest due, FCC shall also be entitled to recover its reasonable attorneys' fees, collection costs and fees, and costs of court.
- d) FCC is entitled to receive payment of all sums due to it for services rendered without regard to any claims or amounts owed by FCC to Customer, including, but not limited to, amounts for loss or damage to cargo which. Customer shall not have the right to delay, withhold or offset payment for FCC's services.

22) Customer Indemnity of FCC:

- a) In addition to specific indemnity obligations provided in these Terms and Conditions, Customer agrees that it will defend, indemnify and hold FCC, each transporting carrier, and each of their affiliated entities harmless from and against, and shall pay and reimburse, any and all loss, damage, claim, fine, cost or expense, including reasonable attorney fees, arising from Customer's breach of these terms and conditions, or in any way related to services provided under this Agreement, except to the extent such liability arises directly and proximately from any negligent act or negligent omission of Broker in providing property brokerage services hereunder. Customer's indemnity obligations specifically include, but are not limited claims arising from or related to: (i) to the failure of Customer, shipper or other party to properly block, brace or load Customer's shipments; (ii) Customer's failure to comply with applicable laws; (iii) commodity restrictions and prohibitions; and (iv) failure to properly describe and label (including with regard to hazardous materials) cargo; and (v) any claim seeking to impose liability on FCC in excess of the liabilities expressly assumed herein. Each transporting carrier and the affiliates of FCC and each transporting carrier, are intended third party beneficiaries of these Terms and Conditions.

23) Governing Language:

- a) These Terms and Conditions and all documents related hereto, either present or future, shall be prepared and interpreted in the English language only.
- b) ***Les parties de par les presentes qu'ils exigent que cette entente et tous les documents y afférents, soit pour le présent ou l'avenir, soient rédigés en langue anglaise seulement.***

24) Choice of Law and Forum:

- a) These terms and conditions are to be interpreted under Ohio law, without regard to its conflict of law principles, and any dispute arising under these terms and conditions and any legal action to enforce, apply or construe these terms and conditions shall be brought exclusively in the state or federal courts located within the state of Ohio. The parties waive any challenge to venue in or jurisdiction of any such court.

25) Bills of Lading:

- a) FCC may undertake, but is not required to prepare Bills of Lading or comparable shipping documents. Regardless of whether FCC participates in the preparation of the Bill of Lading, such Bill of Lading and its content are the responsibility of the shipper or Customer and Customer understands and agrees that FCC is not liable for any errors or omissions in any Bill of Lading. Bills of Lading will function as records of receipt for goods only. In no event will any terms or conditions in any such Bill of Lading or other shipment documentation, including, but not limited to, any proof of delivery or manifest form, be binding on FCC. Insertion of FCC's name as the carrier on a bill of lading shall be for convenience only and shall not change FCC's status as a property broker. FCC does not provide these Services as a motor carrier and assumes no motor carrier responsibility for cargo loss and damage.

26) Complete Agreement and Priority:

- a) By tendering cargo to FCC for shipment by transporting carriers, Customer accepts and agrees to the terms and conditions set forth herein. This is the complete agreement and understanding between FCC and Customer and supersedes any other prior written or verbal agreements, understandings, representations or assurances between FCC and Customer as to the subject matter unless in a writing signed by an officer of FCC and Customer which such signed writing expressly disclaims these Terms and Conditions.
- b) As between FCC and Customer, to the extent this document conflicts with any other agreement, bill of lading, delivery receipt, purchase order, or other shipment related document issued by or on behalf of Customer, or on behalf of a shipper, consignor,

consignee, or carrier, this document shall control, unless the conflicting document expressly states it controls and is signed by authorized representatives of both FCC and Customer.

27) Binding Authority:

- a) The individual authorizing services by FCC and a transporting carrier is an authorized representative of Customer who has read and fully understands these terms and conditions. Customer warrants and represents that if it is not the owner of the cargo to be transported under these terms, Customer holds authority from such owner to bind the owner to these conditions.

28) Non-Waiver of Rights:

- a) Broker's waiver of any Customer default or failure to enforce any term hereof shall not be construed as a waiver of either a subsequent or continuing default or a waiver of any term of these terms and conditions.

29) Modification of Terms and Conditions:

- a) FCC reserves the right to amend, supplement or delete any or all of the foregoing terms and conditions at any time, without prior notice, and in its sole discretion.

REVISED AND EFFECTIVE AS OF JUNE 1, 2023