

# ClickShip Terms of Service

These terms and conditions of service (the “**Terms of Service**”) constitute a contract between you and the Freightcom Inc. operating business as ClickShip (the “**Company**”, “**we**,” “**us**,” “**our**”, or “**ClickShip**”).

## 1. Acceptance of these Terms of Service

- (a) By using the Services (defined below), or clicking “I accept the Terms of Service”, you hereby expressly represent that you:
  - (i) have carefully read, understand, accept, and agree to be bound by, these Terms of Service as well as the Terms of Use of the Platform, the Privacy Policy, and (if applicable to you) the Freightcom Insurance Terms;
  - (ii) meet all of the eligibility requirements listed in section 3; and
  - (iii) have “electronically” accepted these Terms of Service pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17, as amended from time to time, and its regulations, or any other applicable legislation or regulations.
- (b) If you do not accept these Terms of Service or if you do not meet the eligibility requirements listed in section 3, do not proceed to make a payment to the Company or use the Services.
- (c) We reserve the right in our sole discretion to revise, modify, and update these Terms of Service and conditions from time to time. Any and all such modifications are effective immediately upon posting and apply to all access to and continued use of our Services. You agree to periodically review these Terms of Service in order to be aware of any such modifications and your continued use shall be your acceptance of these Terms of Service.
- (d) Additional terms and conditions, including the Freightcom Insurance Terms and may be applicable to parts or features of this Platform and are hereby incorporated by reference into these Terms of Service.

## 2. Definitions

The following terms have specific meanings and appear in bold face type throughout these Terms of Service:

- (a) “**Accessorial Charges**” means any and all fees added to a freight or parcel cost for any additional service that a Carrier provides in order to make a standard delivery, pickup and receipt confirmation including but not limited to the following: residential charges, fuel surcharges, peak surcharges, signature required, threshold delivery, etc.

- (b) “**API**” means integration software created by the Company to facilitate access to the data within your Marketplaces and Storefronts, with your permission, in order for the Company to be able to provide you with the Services.
- (c) “**Carriers**” means Our Carrier and Your Carriers.
- (d) “**Our Carrier’s Services**” means the following services provided to you by the Company:
- (i) the provision of shipping label(s) generated on the Platform that you purchase directly from the Company for a delivery of goods to be either shipped by Our Carriers as a parcel, or envelope or a less-than-truckload (pallet) service
  - (ii) the capability of finding, comparing, selecting and buying shipping services from a variety of Our Carriers nationally and internationally;
  - (iii) serves as an intermediary between you and Our Carrier(s) in respect of Claims; and
  - (iv) automated synced integration of the orders and products in your Marketplace and Storefronts with the Platform (as well as manual imports or updates regarding shipped or fulfilled, as required);
  - (v) Track and ship with multiple numbers of Our Carriers;
  - (vi) auto-fulfillment toggles the ability to have ClickShip automatically purchase the shipping label based on your customer's selection at checkout
  - (vii) Print shipping labels, packing slips, and detailed shipment receipts individually, or batch print them in bulk;
  - (viii) other types of services as added to the Company's provision of services from time to time.

Notwithstanding the above, the Services shall exclude the physical transport or delivery of Orders.

- (e) “**Consignee**” means the person to whom the Shipment is required to be delivered as specified in the Shipping Label.
- (f) “**Customer**” means the person who is booking the Shipment on your Marketplace or Storefront.
- (g) “**Destination Address**” means the Consignees' or other final warehouse or place of storage at the location named in the Shipping Label for which the Shipment is to be delivered.
- (h) “**Dimensional weight**” means the weight of the space a parcel or shipment occupies in relation to its volume, as determined by each individual carrier's internal policies.
- (i) “**Extra Charges**” has the meaning as defined in Section 8.

- (j) **"Inputs"** means the information your Customer entered into your Storefront or Marketplace in order to purchase and ship listed goods, and for which such information was transmitted via the API to our Platform, or the information you or your personnel entered into the Platform, including but not limited to, the weight of a package, the dimensions of a package, the classification of a package, the need for accessorial services, quantity of goods to be shipped, and its of the actual address of the originating or Destination Address, amount paid for shipping, or other specifications.
- (k) **"Marketplace"** a provider of an intermediary online service that allows you to sell your goods to members of the general public and/or registered users of that provider and conclude sales transactions via their online platform, including shipping, and which you integrate through an API with our Platform in order to automatically sync data regarding your orders and products. Types of Marketplaces including but not limited to Amazon, eBay, Etsy, Walmart, and Best Buy.
- (l) **"Net Terms Account"** means a payment option offered to qualified and eligible commercial customer accounts of the Company that provide a certain number of days from the invoice date to pay for Orders and for which the Company, in its sole discretion, assigns a maximum credit limit in respect of all your Orders and other transactions with the Company.
- (m) **"Order"** means the electronic purchases of shipping services that your Customers book on your Storefront or Marketplace that flow through to the Platform through the API, or your manual written requests to the Company for the supply of Services.
- (n) **"Our Carrier"** means a third-party person or entity who performs, through its affiliates, agents, employees and/or contractors, the whole or any part of, the physical carriage and transport of, less than truckload shipments or courier shipments by water, land or air, and who has a direct legal arrangement with the Company to list Rates and market such services through the Company on the Platform.
- (o) **"Platform"** means the web-based automated shipping system operated by the Company, through which the Company provides automated shipping services to you located websites <http://www.clickship.com>, <https://app.clickship.com/>, and its subdomains, or such other URL as the Company may notify you about from time to time.
- (p) **"Rates"** means the written estimate for prices, quotes or other conditions under which a potential Carrier would provide shipping services to you, as displayed on the Platform or manually quoted through an authorized representative of the Company, based upon the Inputs and/or other information you enter or selected on the Platform or sent to an authorized representative of the Company, subject to the agreement between the Company and the applicable Carrier.
- (q) **"Services"** means the Our Carriers' Services and the Subscription Services.
- (r) **"Shipment"** means a delivery that is to be shipped by a Carrier via courier as a parcel, PAK, or envelope or less than truckload volume, and for which such delivery was

completed with one or more shipping label(s) automatically generated on the Company's software platforms that you purchased directly from the Company.

- (s) "**Shipping Label**" means the provision of shipping label(s) automatically generated on the Platform that you purchase directly from the Company for a delivery of goods to be either shipped by a courier as a parcel, PAK, or envelope or a less than truckload service;
- (t) "**Storefronts**" means an online, configurable e-commerce website hosted and maintained by a website provider through which you list and sell your products to your customers, and which you integrate through an API with our Platform in order to automatically sync data regarding your orders and products. Types of Storefronts including but not limited to Shopify, Woocommerce, Magento, Lightspeed, Wix, Squarespace, and BigCommerce.
- (u) "**Subscription Services**" means the following services provided to you by the Company:
  - (i) The ability to import the rates of Your Carrier onto the Platform and create your own shipping labels;
  - (ii) Address validation;
  - (iii) Advanced Custom Branding for emails and tracking page; and
  - (iv) other types of services as added to the Company's provision of services from time to time.

Notwithstanding the above, the Services shall exclude the physical transport or delivery of Orders.

- (v) "**you**" or "**your**" shall mean the individual or legal entity using the Services or making payment in consideration of the Services on the Platform.
- (w) "**Your Carriers**" means a third party person or entity who performs, through its affiliates, agents, employees and/or contractors, the whole or any part of, the physical carriage and transport of, less than truckload shipments or courier shipments by water, land or air, and who has a direct legal arrangement with you, whereby you directly purchase shipping labels from them with shipping rates provided directly to you by third party person or entity.

### **3. Your Representations and Warranties**

- (a) By using the Services and making payment for Orders on the Platform, you covenant that you will:
  - (i) provide current, complete and accurate payment and Billing Information on your account; and
  - (ii) pay all charges incurred in the use of the Services, including the Extra Charges on the Invoices even if such Extra Charges were not originally shown when the Rate was first retrieved from the Carrier through the Platform or through an authorized representative of the Company.

- (b) You represent and warrant that:
- (i) you have the appropriate authority to validly accept these Terms of Service and are able to, and will meet, your obligations in relation to these Terms of Service;
  - (ii) if you are using a credit card to pay all of your amounts outstanding, the credit card used to pay for the Services is issued in your name or you are duly authorized to use such credit card for the purchase of Services;
  - (iii) if you are using a credit card to pay all of your amounts outstanding, payment for Services and Extra Charges incurred on your Orders will be honoured by your credit card company and that you shall pay the credit card issuer all charges incurred;
  - (iv) are the legal age of majority under applicable law to form a binding contract with the Company; and
  - (v) you shall update all information to keep your account current, complete, and accurate (i.e., a change in billing address, credit card number, or credit card expiration date).
- (c) You acknowledge that failure to adhere to the above noted representations, warranties and covenants may result in the suspension or termination of your access to the Services and your account with the Company pursuant to section 15 of these Terms of Service.

#### **4. Carriers**

- (a) For your convenience, this Platform may provide links or pointers to third-party sites of the Carriers. By booking Orders or using our Services, you agree to abide by the terms or conditions imposed by any Carrier with whom you elect to deal, including but not limited to the following terms and conditions of the Carriers (the "**Carrier Terms**"): Federal Express, Purolator, DHL, UPS, Canpar, GLS Logistics Systems Canada Ltd., ICS, Nationex, Apex Motor Express Ltd., CCT Auto-Transport, Day & Ross, GLS Logistics Systems Canada Ltd., Kindersley Transport Ltd., Maritime-Ontario Freight Lines Limited, Midland Transport, Overland West, Polaris Transportation Group, Speedy Transport, TST-CF Express, Western Canada Express Inc., Yellow Corporation.

Please note for any Carriers that do not have terms and conditions available online, we recommend contacting the Carrier directly.

- (b) You shall abide by the applicable Carrier Terms, and circumvention of a Carrier's Terms may result in the suspension or termination of your account on the Platform in accordance with the terms and conditions of section 15 of these Terms of Service, or the Carrier's cancellation of your Order, or their denial of delivery, or the addition of Extra Charges to your invoice.
- (c) If you choose to ship your Orders from our Platform, you do so at your own risk. When you use our Platform to access Carrier services, you accept that there are risks in doing so, and that the Company is not responsible for such risks. We encourage you to be aware when you use the Services to read the Carrier Terms of the Carrier for the Order you are shipping.

- (d) Our display on or through our Platform of shipping service options offered by Carriers does not in any way imply, suggest, or constitute any sponsorship or approval of us by any particular Carrier or any affiliation between any such Carrier and us. Our display of specific options does not suggest a recommendation by us of the Carrier or its delivery options.
- (e) We have no control over any of the Carriers operations, nor do we monitor, verify, censor or edit the content of any Carrier websites, and therefore you release and hold us harmless from any and all liability arising from the following:
  - (i) any information or content publicly posted or privately transmitted through the Carrier website;
  - (ii) any loss or damage that may arise from the transport of your Shipments (with the exception of any payment you may be entitled to through coverage you have purchased through Freightcom Insurance);
  - (iii) the timeliness of the Orders, the content, accuracy of Rates or deadlines or any other information expressed in any Carrier websites or through any Carriers that you interact with through the Services;
  - (iv) errors or omissions in that information or content or for any damages or loss you might suffer in connection with it;
  - (v) the acts, omissions, errors, representations, warranties, breaches or negligence of any Carrier;
  - (vi) any personal injuries, death, property damage, or other damages or expenses resulting in any manner from the shipping services provided by, and your interactions with, any Carrier; and
  - (vii) the accuracy, timeliness or completeness of information it may obtain from these Carriers.
- (f) If there is a dispute between you and Carriers or any other third party, you agree that the Company is under no obligation to become involved and you hereby release the Company, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes.

## **5. Accessing and Using the Company's Rates**

- (a) The Company shall make available and sell Services to you at the Rates, plus any Extra Charges incurred in the process of performing the Services, on the terms and conditions set out in these Terms of Service.
- (b) The Rates will only remain valid for the period of time as indicated on the Platform (or if such Rate was manually quoted, as otherwise indicated by an authorized representative of the Company) after which the Company reserves the right to change such Rate at its discretion. Rates are subject to change without notice based upon actual differences to weight, piece/pallet count, re-weighs or re-classifications of packages, shipping dimensions, commodity descriptions, address changes and all other

charges that occur during transportation (re-delivery, appointment request, storage, additional services used such as tailgates, etc.) and other changes by the Carriers, or instances outside the control of the Company, and subject to any agreements between the Company and the Carrier. All Rates are subject to confirmation by Company and can be withdrawn any time by the Company in its sole discretion regardless of your acceptance of an Order.

- (c) The Rates will be presented on the Platform in the currency that such Rate was offered to the Company by the applicable Carrier. In the event you wish to book an Order for which a Rate is displayed in a currency for which you do not normally conduct business in the ordinary course, you may choose any of the following:
  - (i) You may use the currency exchange conversion rate on your credit card in which case the actual amount charged on the credit card may slightly differ due to varying exchange rates applied by different card issuers. In addition, your statement may include a conversion or transaction fee (which may be in a foreign currency) charged by your card issuer to process the transaction. We are not associated with these additional fees and will not be held liable for any fees relating to varying exchange rates and card issuer fees.
  - (ii) You may ask the Company to conduct a currency conversion on your behalf when booking an Order, in which case your invoice for such Order may include a conversion or transaction fee (which may be in a foreign currency) charged by the Company to process the transaction.

## **6. Accessing and Using the Platform With Your Own Carrier Accounts**

- (a) If you use the Platform with Your Carriers, you agree to pay all fees associated with the Subscription Services. The Company's current standard pricing for Subscription Services is set forth at <https://www.clickship.com/pricing> ("**Subscription Fees**"), which may be updated from time to time. Please note the Subscription Fees will include the upcoming monthly fee for your chosen plan fee listed at <https://www.clickship.com/pricing>, as well as a fee of CAD\$0.05 for each shipping label you generate through the Website during the prior Subscription Period, along with a fee of CAD\$0.10 for each address validation you choose to purchase during the prior Subscription Period.
- (b) If you sign up for any Subscription Services, your payment method automatically will be charged the Subscription Prices at the start of each Subscription Period for the fees and taxes applicable to that period. As used in these Terms, "**Subscription Period**" means the period from the date on which you registered and were approved by an authorized representative of the Company to start using the Subscription Services, and that date shall serve as the monthly anniversary date ("**Monthly Billing Date**") for all future billings.
- (c) When you purchase Subscription Services you agree that you are authorizing recurring monthly payments, and payments will be made to the Company on the Monthly Billing Date, until the Subscription Services are terminated by you or by the Company. By authorizing recurring payments, you are authorizing the Company and/or the Company's authorized payment processors to process your payments through their

payment processing company. Subscription Fees are generally charged in advance of the applicable Subscription Period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, the Company or its service providers reserve the right to terminate your access to the Subscription Services until all amounts owing are due.

- (d) You acknowledge and understand that all booked on our Platform for shipping services performed by Your Carriers pursuant to the Subscription Services shall be invoiced by Your Carriers to you directly. You also agree to defend, indemnify, and hold harmless the Company, its affiliates, and their respective directors, officers, employees, contractors, agents, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable legal fees) arising out of or relating to any special, exemplary, punitive, indirect, incidental or consequential damages; lost or loss of savings, profit, data, use, or goodwill; business interruption; costs for the procurement of substitute products or services; personal injury or death; or personal or property damage arising out of or in any way connected to any shipments carried out by Your Carriers, regardless of cause of action or the theory of liability, whether in contract, tort (including negligence or gross negligence), or otherwise, and even if notified in advance of the possibilities of such damages.
- (e) You may cancel the Subscription Services upon written notice to the Company, and the Subscription Services cancellation shall be deemed effective the date of written notice and the Company shall refund to you the unused portion of the remaining Subscription Period on a pro-rated basis.
- (f) If you register on our Platform for a free 14-day trial of the Subscription Services, we will make the Subscription Services available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the applicable Subscription Service(s), or (b) the first Monthly Billing Date for any Subscription Services you ordered.

## **7. Acceptance and Rejection of Orders.**

- (a) All requests for Rates are subject to confirmation by Company and can be withdrawn any time by Company at its sole discretion regardless of your acceptance.
- (b) All estimates of shipping dates, pickup dates and delivery dates displayed on the Platform (the "**Delivery Dates**") are based upon your or your Customers' Inputs and the Carrier' availabilities and capacities, and such Delivery Dates are therefore estimates and are not guaranteed by the Company. You acknowledge and agree that the Company is not liable to you for any Delivery Dates by which Orders do not arrive by the estimated shipping date.
- (c) All Orders accepted by the Company are based on the assumption of the validity of the Inputs provided by you or your Customer being fully accurate and correct in all circumstances.
- (d) The Company reserves the right reserve the right, in our sole discretion, to refuse or cancel Orders in the following circumstances, including without limitation:



- (i) Orders that appear to be placed by an entity other than you;
- (ii) if we believe that you have made a false or fraudulent Order;
- (iii) other types of extenuating circumstances as may be decided by the Company in its sole discretion from time to time.

## 8. Remeasurement

- (a) The Rates generated on the Platform are based on the accuracy of the Inputs you or your Customer enter onto the Platform. It is your responsibility to enter in accurate Inputs into the Platform upon booking manual Orders and it is your responsibility to communicate to your Customers the importance of entering in accurate Inputs into the Platform upon booking their Order.
- (b) At any time and from time to time, the Carrier may conduct an audit of the Inputs of any Shipment they pick up pursuant to their Carrier Terms, using the Carrier's then-current measurement specifications and Remeasurement tools at their premises (each such audit, a "**Remeasurement**"). If there is a discrepancy between the Inputs that you originally entered and the Carrier's results upon Remeasurement the Carrier's Remeasurement results will always be paramount. Such Remeasurement may include remeasurement according to Dimensional Weight.
- (c) If your Inputs are deemed incorrect by the Carriers upon Remeasurement, or if any additional services or charges are captured by the Carrier and passed on to us as a result of such Remeasurement, the difference between the original Rates and the final charges after adjustment for Remeasurement ("**Remeasurement Charges**") will be invoiced and charged to you on a subsequent invoice. You hereby authorize the Company to bill Remeasurement Charges on your invoice to your Payment Method once the results of Remeasurement have been received by the Company from the applicable Carrier. In such cases, you hereby authorize that your credit card or your Prepaid Account or Net Terms Account will be charged the Remeasurement Charges. If applicable, a supplementary invoice will follow the initial invoice to reflect any Remeasurement Charges.
- (d) You hereby agree to indemnify the Company against all liability with respect to the Carrier for any inaccurately entered Inputs that result in Remeasurement Charges, including but not limited to Remeasurement according to Dimensional Weight.

## 9. Extra Charges

- (a) You wholly accept responsibility for, and you shall indemnify the Company from, any of the following charges (the "**Extra Charges**") that may be added onto an invoice upon booking, after the original Order was booked, or after the delivery of a parcel to a Carrier's distribution centre or the final Destination Address, including but not limited to fees such as:
  - (i) customs charges, tariffs, import taxes/duties or any other brokerage/clearance related fees incurred on your Order(s);

- (ii) any direct or indirect charges billed to the Company by any competent authority arising out of, or in connection with, or related to, your Order(s);
  - (iii) any and all Accessorial Charges added to an Order for any additional service that a Carrier must provide in order to successfully complete your Order(s);
  - (iv) any additional expenses that a Carrier would charge on an Order for Inputs that you entered incorrectly on the Platform at the time of booking an Order on the Platform but was later determined by the Carrier to be incorrect after a Remeasurement;
  - (v) an amount charged to you on an Order arising from, in connection with, or related to, or in respect of, the storage and warehousing costs for Orders held at customs, or the delivery and storage charges associated with multiple delivery attempts; or
  - (vi) any and all fees added to an Order for any additional Services requested by you or your customer (i.e., the Consignee) from a Carrier after your initial booking, including but not limited to threshold delivery delivery charges requested by the Consignee from the Carrier at the Destination Address;
  - (vii) a fee of CAD\$0.05 per shipping label generated on the Platform for the shipping services booked through Your Carriers;
  - (viii) a fee of CAD\$0.10 for each address validation you perform on the Platform.
- (b) If any such Extra Charges become due as a result of a carriage and/or delivery of an Order on your behalf and such Extra Charges are billed to us by any competent authority, such Extra Charges will be billed back to you directly on your credit card, or it will appear on your next invoice if you are under the Net Terms Account or Prepaid Account.
- (c) You must satisfy yourself as to the amounts and prices of these Extra Charges within thirty (30) days of the date of the invoice or you shall relinquish your right to dispute such Extra Charges with the Company. Except as provided for in these Terms of Service or agreed to in writing by an authorized representative of the Company, you shall remain obligated to pay to the Company the full amounts due on any outstanding invoices by the Invoice Due Date despite any invoice disputes of any amounts owing. In the event of a successful dispute over any amounts on an invoice, such amounts will be returned to you.

## **10. Payment Method**

- (a) By entering your credit card details, or filling out an application for a Prepaid Account or Net Terms Account ("**Billing Information**"), you authorize and consent to:
- (i) (if for credit card payment) your Billing Information being provided by the Company to its credit card payment processing service provider for the sole purpose of offering and administering online payments of invoices and saved for future transactions on a secure payment vault platform provided to us by a third party credit card processing merchant;

- (ii) (if for Prepaid Account or Net Terms Account) your Billing Information being provided by the Company to its third party credit provider for sole purpose of assessing your eligibility for credit; and
- (b) You acknowledge that the Company takes all industry standard measures to ensure credit card payments are secure, including using Secure Socket Layer (SSL) technology. However, you agree, understand and confirm that your Billing Information transmitted over the Internet may be susceptible to misuse, hacking, theft and/or fraud and that the Company or the any payment service provider(s) it uses have no control over such matters.
- (c) The Company currently offers three (3) payment options: credit card, Net Terms Account, or a Prepaid Account (each, a “**Payment Method**”).
- (d) Unless the Company authorizes you to use a Net Terms Account or a Prepaid Account as your default Payment Method, you shall make payment of all invoices by an accepted credit card ( MasterCard and Visa) for all Orders.
- (e) The Company reserves the right to revoke or modify your access to any Payment Method at any time without notice, including but not limited to a breach of any of these Terms of Service as well as the Terms of Use of the Platform, the Privacy Policy, and (if applicable to you) the Freightcom Insurance Terms, or any other agreement you may have with the Company.
- (f) If you make payment of Orders on a Net Terms Account or a Prepaid Account, the Company in its sole and absolute discretion, may invoice you as soon as the Order is booked, or as soon as the Carrier completes the Service requested in the Order, or when the Company is invoiced by the Carrier (the “**Invoice Generation Date**”).
- (g) If you make payment of Orders on a Net Terms Account or a Prepaid Account, the Company shall issue invoices to you for all Orders you booked immediately as the Shipments are delivered, and you shall pay all properly invoiced amounts due to the Company by wire transfer, cheque, or credit card within thirty (30) days of the Invoice Generation Date. You shall make all payments in the currency listed on the Platform by cheque, wire transfer, in accordance with the wire instructions provided to you by the Company.

## **11. Credit Card Payments**

- (a) By entering credit card details onto our Platform to pay for the Services, you understand, agree and give express written consent to and authorize the Company or its respective designated representatives or agents to automatically continue charging that card (or any replacement credit card account if the original card is renewed, lost, stolen, or changed for any reason by the credit-issuing entity, and such entity informs the Company of such new replacement card account) until all amounts due for the specified Services (including Extra Charges) are paid in full.
- (b) More specifically, in the event you enter inaccurate Inputs when requesting Rates and booking Orders on the Platform which result in a Remeasurement Charges on such

Orders, you hereby expressly authorize the Company to enter into, or authorize such Remeasurement Charges transactions on your behalf.

## **12. Net Terms Account**

- (a) In order to qualify for payment of your Orders on a Net Terms Account, you:
- (i) must be using your Company account for business purposes;
  - (i) must not have defaulted on any payments owing to the Company within the last seven (7) years;
  - (ii) must not be an affiliate or a non-arms length party to any person or entity that has defaulted on payments owing to the Company within the last seven (7) years;
  - (iii) must meet the other eligibility criteria of the Company and the Company's third-party credit provider;
  - (iv) shall complete the Company's prescribed credit application form accurately and completely; and
  - (v) hereby authorize the Company to send the information you entered into the Company's prescribed credit application form to the Company's third-party credit agency in order to conduct a credit check.
- (b) Upon the Company's receipt of approval from the third-party credit agency regarding your eligibility for a Net Terms Account, the Company reserves the right to:
- (i) approve or deny you for a Net Terms Account;
  - (ii) authorize any amount of initial credit limit for your Net Terms Account;
  - (iii) right to increase or decrease your credit limit on the Net Terms Account at any time at its sole discretion;
  - (iv) revoke your right to payment of your Orders through the Net Terms Account at any time;
  - (v) switch your Payment Method to Prepaid Account or credit card at any time; and
  - (vi) approve, deny, increase or decrease your credit limit upon your request for a change to the credit limit.
- (c) If you make payment of your Orders through a Net Terms Account, you shall be required to pay such amounts within thirty (30) days of the Invoice Generation Date unless otherwise prescribed by the Company. In the event you do not pay invoices within thirty (30) days of the Invoice Generation Date, the Company reserves the right to suspend or terminate your account pursuant to section 15.
- (d) You have thirty (30) days from the Invoice Generation Date to dispute charges on any invoice.
- (e) In the event Extra Charges are added onto an Order by the applicable Carrier after you booked the Order, such Extra Charges shall appear on the invoice after the Company receives the invoice for Extra Charges from the Carrier, which can take up to one

hundred and twenty (120) days from date of delivery of your Order to the Destination Address.

### **13. Prepaid Account**

- (a) **Upon reviewing your credit history, the Company may require you to** make payment for Services through **an account for which you are required to** deposit funds with the Company of an amount prescribed by the Company in its sole discretion (the “**Minimum Deposit**”) as security for the performance of your covenants and obligations under these Terms of Service (the “**Prepaid Account**”). The Minimum Deposit can be paid to the Company by electronic funds transfer, wire transfer, by mailing in a cheque made payable to “Freightcom Inc.” to 77 Pillsworth Rd Unit #1, Bolton, ON L7E 4G4.
- (b) The Company, in its sole discretion, may either keep the Minimum Deposit within your Prepaid Account as a security deposit for the credit extended to you by the Company for your Orders, or you shall replenish the Minimum Deposit on your Prepaid Account with funds as required by the Company from time to time. The Company reserves the right, in its sole discretion, to assign a maximum credit limit to the Prepaid Account by which any Orders or other transactions with the Company which exceed such credit limit may be suspended or put on hold until outstanding amounts are paid.
- (c) If you are making payments for Orders through a Prepaid Account, you shall pay all invoices within thirty (30) days of the Invoice Generation Date unless otherwise prescribed by the Company. In the event you do not pay invoices within thirty (30) days of the Invoice Generation Date, the Company reserves the right to suspend or terminate your account pursuant to section 15.
- (d) The Company may suspend or terminate the Services pursuant to section 15 if the funds in your Prepaid Account falls below the Minimum Deposit.
- (e) The Company shall have no obligation to pay you interest on the Minimum Deposit.
- (f) The Minimum Deposit is not a measure of damages incurred by the Company in case of your default on payment of any Orders or Extra Charges. Upon the occurrence of any event of default by you, the Company may from time to time, without prejudice to any other remedy provided herein or by law, use any portion of, or the whole of, the Minimum Deposit as a credit against any payments due to the Company hereunder, or any other damage, injury, expense or liability caused by such event of default, and you shall pay to the Company, within ten (10) days of demand, the amount so applied in order to restore the Minimum Deposit to its original amount.
- (g) The Company is hereby granted a purchase-money security interest in the Minimum Deposit in accordance with applicable provisions of the *Personal Property Security Act*, R.S.O. 1990, c. P.10. and the Company may use and commingle the Minimum Deposit with other funds of the Company.
- (h) If the Company requests to terminate your Prepaid Account, then the Minimum Deposit shall be reduced by such amounts as may be required by the Company to make payment of all outstanding balances on any and all Orders and invoices as well as

remedy defaults on your part in the payment of other obligations under these Terms of Service. Then, any remaining balance of such Minimum Deposit shall be returned by the Company to you, without interest, within one hundred and eighty (180) days after you inform or notify the Company that you shall no longer be using its Services.

#### **14. Claims Process**

- (a) In case of a damaged or missing Shipment for which Freightcom Insurance was not purchased (“**Claims**”), you may be entitled to reimbursement from the Carrier up to the maximum liability as established in the Carrier Terms. Where you are eligible for a claim from the Carrier pursuant to the Carrier Terms applicable to your Order, you can request such a refund from the Company’s customer service department, who will submit your request to the Carrier on your behalf after you have filed a claim on the system and provided all requested documentation.
- (b) Conditions of eligibility for reimbursement from a Claim may vary depending on the Carrier, the Company has provided very general guidelines and procedures at the following website to assist you in the Claims process <<https://www.freightcom.com/claims>>.
- (c) A Claim can only be filed and processed by the Company if all documentation necessary to file a Claim has been submitted to the Company within thirty (30) days of delivery of a Shipment to the Destination Address.
- (d) The Company reserves the right to refuse the processing of any Claim due to your or the Consignee’s failure to do the following:
  - i) follow the Carrier Terms or these Terms of Service;
  - ii) failed to adhere to Freightcom’s Guide on Freight Claims <<https://www.freightcom.com/claims>>; or
  - iii) make timely payment of all outstanding invoices for all Orders and applicable Extra Charges.
- (e) THIS SECTION 14 SETS FORTH YOUR SOLE REMEDY AND FREIGHTCOM'S ENTIRE LIABILITY REGARDING ANY DAMAGED SERVICES OR MISSING SHIPMENTS.

#### **15. Suspension or Termination of Account**

- (a) We reserve the right at any time and from time to time, to disable, suspend, or terminate your account, any username, password, or other identifier, whether chosen by you or provided by us, or remove your access to any Payment Method, in our sole discretion for any reason, including but not limited to any of the following circumstances:
  - (i) any violation of any provision of these Terms of Service, the Terms of Use of the Platform, the Privacy Policy, the Freightcom Insurance Terms;

- (ii) if full payment is not received in a timely fashion within the period specified in the invoices;
  - (iii) if your Subscription Services are not paid or your credit card is not successfully processed;
  - (iv) if we discover that you provided your login credentials to unauthorized individuals within or outside of your business;
  - (v) abuse the Company or the Company's systems and operations;
  - (vi) defame or otherwise diminish the goodwill and reputation of the Company;
  - (vii) use the Rates you discovered on the Platform to directly negotiate your own rates with the Carriers;
  - (viii) fail to follow any Company recommendations or guidelines;
  - (ix) continually enter inaccurate Inputs for Orders;
  - (x) fail to pay outstanding invoices on time;
  - (xi) have any Payment Method declined by your credit card provider or bank for whatever reason;
  - (xii) breach these Terms of Service, the Terms of Use of the Platform, the Privacy Policy, the Freightcom Insurance Terms, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for ten (10) days after the Company provides you with written notice of such breach;
  - (xiii) become insolvent or are generally unable to pay, or fail to pay, its debts as they become due;
  - (xiv) files or has filed against you, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;
  - (xv) make or seek to make a general assignment for the benefit of its creditors;
  - (xvi) apply for, or has appointed, a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of your property or business;
  - (xvii) verbally or physically harass, abuse, any of the Company's authorized representatives, employees, contractors, or other customers;
  - (xviii) make unwelcome comments about, or discriminate against, on any of the Company's authorized representatives, employees, contractors, or other customers on the basis of any of the protected grounds under the Human Rights Code, R.S.O. 1990, c. H.19; or
  - (xix) any other grounds determined by the Company, in its sole discretion, is warranted for suspension or termination of an account.
- (b) No suspension or termination of your account will affect your obligation to pay all fees owing to the Company that may have become due before such expiration or termination, or entitle you to any refund.

- (c) Once your account is suspended, the Company retains the right to retain your personal information and Billing Information until all outstanding payments are fulfilled. While your account is suspended, all pending Orders will remain on hold unless the outstanding balance is paid off.

## **16. Set Off**

- (a) Except as provided for in these Terms of Service or agreed to in writing by an authorized representative of the Company, your obligation to pay the Company for Services provided by the Company, or otherwise perform your obligations under these Terms of Service shall not be affected by, or reduced, by any circumstances, including any set-off, counterclaim, recoupment, defense, arising from, or in connection with, other Claims or rights you may have against the Company, the Carriers, or other third parties.
- (b) Upon the occurrence of, and during the continuance of, any default of payment under these Terms of Service, the Company is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all funds received from Carriers for successful Claims at any time held by the Company, or any funds received as reimbursement for Shipments covered by Freightcom Insurance, against any and all indebtedness at any time owing by you to the Company, whether or not the Company had made any demand for payment. The Company agrees to promptly to notify you after any such set-off, provided that the failure to give such notice shall not affect the validity of such set-off.

## **17. Miscellaneous.**

- (a) Limitation on Liability. Except where such exclusions are prohibited by law, under no circumstance will the Company nor its parent, subsidiaries, affiliates or their respective directors, officers, employees, agents, service providers, contractors, licensors, licensees, suppliers, or successors be liable for negligence, gross negligence, negligent misrepresentation, fundamental breach, damages of any kind, under any legal theory, including any direct, indirect, special, incidental, consequential, or punitive damages, including, but not limited to, personal injury, pain and suffering, emotional distress, loss of revenue, loss of profits, loss of business or anticipated savings, loss of use, loss of goodwill, loss of data, and whether caused by tort (including negligence), breach of contract, breach of privacy, or otherwise, arising out of or in connection with your use, or inability to use, or reliance on, the Services, the Platform, any linked websites, the Carrier websites, or such other third-party websites, nor any website content, materials, posting, or information thereon even if the Company was allegedly advised or had reason to know, any service outages, inability to use the real-time rates, or inability to access the Platform, the failure or outage of the Services.
- (b) Indemnification. To the maximum extent permitted by applicable law, you agree to defend, indemnify, and hold harmless the Company, its parent, subsidiaries, affiliates, and their respective directors, officers, employees, agents, service providers, contractors, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable legal fees) arising out of or relating to your breach of these Terms of Service,



the Terms of Use of the Platform, our Privacy Policy, the Freightcom Insurance Terms, or your use of the Platform, the Services, including, but not limited to, the Carrier websites, third-party sites, any use of the Platform's content, the Services other than as expressly authorized in these Terms of Service, the Terms of Use of the Platform, our Privacy Policy, or the Freightcom Insurance Terms.

- (c) Force Majeure. The Company shall not be liable or responsible to you, nor deemed to have defaulted under, or breached, these Terms of Service, the Terms of Use of the Platform, our Privacy Policy, or the Freightcom Insurance Terms, when and to the extent such failure or delay is caused by or results from acts beyond the Company's reasonable control, including, without limitation: (a) acts of God (b) flood, fire, or explosion; (c) epidemics, pandemics, including the 2019 novel coronavirus disease (COVID-19) pandemic; (d) war, invasion, riot, or other civil unrest; (e) actions, embargoes, or blockades; (f) national or regional emergency; (g) strikes or labour stoppages, or other industrial disturbances; (h) passage of law, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent; (i) shortage of adequate power or telecommunications or transportation facilities; or (j) any other event which is beyond the reasonable control of such party.
- (d) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed by you to the Company at 1-77 Pillsworth Rd. Bolton, ON L7E 4G4, or legal@freightcom.com (or to such other method that may be designated by the Company from time to time in accordance with this Section), or by the Company to you at the address and contact information you have entered into your account on the Platform. All Notices must be delivered by email address or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in these Terms of Service, a Notice is effective only: (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.
- (e) Amendments and Modifications. No amendment to or modification of these Terms of Service is effective unless it is in writing and signed by an authorized representative of each party.
- (f) Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms of Service, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms of Service will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (g) Severability. If any provision of these Terms of Service is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of these Terms of Service or invalidate or render unenforceable such term or provision in any other jurisdiction.

- (h) Governing Law. These Terms of Service and all matters arising out of or relating to these Terms of Service are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction).
- (i) Choice of Forum. Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to these Terms of Service, and, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. You agree that a final judgment in any such suit, action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. You irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
- (j) Assignment. You may not assign or transfer any of your rights or delegate any of your obligations under these Terms of Service, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of the Company. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating party of any of its obligations hereunder. These Terms of Service are binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- (k) Entire Agreement. These Terms of Service, the Terms of Use of the Platform, our Privacy Policy, and the Freightcom Insurance Terms constitute the sole and entire agreement between you and the Company regarding your use of the Services and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.
- (l) Paramountcy. In the event of any inconsistency between the English version of these Terms of Service and the terms of the French version of these Terms of Service, the English version of these Terms of Service shall govern.