



## TERMS & CONDITIONS FOR TRANSGUARDIAN FREIGHT: LESS-THAN-TRUCKLOAD (LTL), Etc.

The use of TransGuardian Freight services is subject to the following Terms & Conditions. By using TransGuardian services, the user and/or shipper agrees to these Terms & Conditions and agrees to undertake the mutual obligations and promises of these Terms & Conditions.

### A. SCOPE OF SERVICES PROVIDED:

1. TransGuardian's low rates are based partly on requiring payment by credit card or electronic check (ACH), so that a large accounting department and uncollected invoices do not drive up the cost for everyone. If cash flow timing or payment only after pick-up is an issue for you, please discuss this with your sales representative. But our low rates are available because our customers provide a credit card or bank / electronic check information.
2. The services provided and covered under these Terms & Conditions include all forms of transportation of freight including truck, except that small packages shipped by UPS, FedEx, DHL, or the U.S. Postal Service are excluded. Small package shipments are handled under TransGuardian's "Secure Transit Coverage" service found at [www.TransGuardian.com](http://www.TransGuardian.com). Different terms and conditions apply to these shipments of small packages.
3. Shipper is not required to place any particular shipment through TransGuardian.
4. TransGuardian shall investigate and determine the least expensive shipping carrier consistent with Shipper's various requirements, using its expertise.
5. TransGuardian shall provide Shipper with a quote or estimate of the expected cost of the shipment unless Shipper explicitly waives a quote for urgent shipment arrangements.
6. If the Shipper approves the shipping plans arranged by TransGuardian and any price quoted, TransGuardian shall arrange for the carrier to pick-up Shipper's shipment, carry it, and deliver it according to the Shipper's instructions.
7. "Shipper" refers to the person or company requesting or arranging the transportation of freight. Freight and cargo are intended as synonyms.
8. TransGuardian reserves the right, in its sole discretion, to refuse any shipment.

### B. FEES PAYABLE TO TRANSGUARDIAN:

1. **WARNING:** If you charge freight costs to your customer at the time they place an order with you **be careful to inform your customer that estimated freight fees can change**, such as if the carrier adds charges for restricted access to the delivery address (gated community, school campus, military base, etc.) or if extra services are required upon delivery (e.g., carrying the freight into place, lift gate, etc.). We do not want you to end up absorbing these adjustments. Be careful to inform your customer that they might have to pay an additional amount for freight.
2. The most common reason for increased costs by adjustment of freight costs is incorrect weight estimates. To avoid you getting stuck with an increased freight cost, after your customer already paid



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the estimated freight cost, please be very certain of the weight. If it is not practical to weigh an item precisely, make very sure your customer understands that you and he are only estimating the weight and he may have to pay you more based on the actual weight.

3. In order for TransGuardian to offer such low fees for freight, TransGuardian requires streamlined billing by placing a credit card on file with TransGuardian or arranging with TransGuardian payment by electronic check from a bank account sometimes referred to as an "ACH" payment. Shipper hereby authorizes TransGuardian to charge fees for all shipments actually requested by the Shipper on Shipper's credit card or bank account on file, on a continuing and on-going basis. Shipper's request to arrange a shipment includes Shipper's agreement to charge the related fees to Shipper's credit card or bank account, to the extent that fees are otherwise proper under these Terms & Conditions.
4. If an attempt to obtain payment is not completed successfully, the Shipper shall pay applicable fees by check within 10 business days of receiving demand.
5. Shipper agrees to pay all fees at TransGuardian's prevailing rates, which fees may vary depending on the particular type of shipment, category of commodity shipped, declared value, destinations and origins, carrier chosen, class of services, whether freight is picked up or delivered to a terminal, loading / unloading, and other details of the shipment.
6. TransGuardian shall pay all the various carriers used by Shipper for shipment.
7. Cancellations require 24 hour advance notice to avoid penalty. Once TransGuardian has contracted with a carrier to move a truckload shipment, the scheduled load must be tendered to the carrier as the Shipper requested on the Bill of Lading, or an equipment not used (EON) fee of up to \$200 may be assessed, according to the carrier's policies. If a shipment is cancelled, the carrier may still charge TransGuardian a fee, and Shipper agrees to pay that fee, if any.
8. Shipper agrees that the accuracy of TransGuardian's quote of fees for the shipment will depend upon the accuracy of the information supplied by Shipper to TransGuardian. If that information turns out not to be correct, such as the weight or the proper classification of the freight, Shipper agrees to pay TransGuardian's fees based upon the actual weight, classification, and details of the shipment, even if more than the quote given.
9. Shipper is entitled to be informed in advance of what factors might alter the fees for the shipment and what the fees would actually be if the actual weight, classification, or other details are different from Shipper's prediction.
10. Shipper agrees that LTL freight is assigned a freight class according to the NMFC (National Motor Freight Classification) based upon the commodity shipped and how it is packaged.
11. LTL rates are based on the freight class and also based on the weight shipped, on the Shipper's choice of Dock Door Pickup/Dock Door Delivery and Shipper Load/Consignee Unload service categories, and on state to state itineraries and the mileage traveled.
12. Additional fees may apply for charges including but not limited to, Tractor Detention, Trailer Detention, and Driver Assistance, or permit or license fees for the freight imposed by a State.
13. Air Freight rates are based on the greater of actual or dimensional weight. If an Air Freight shipment contains oversize freight, additional charges and transit days may apply.



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14. Van Line rates are determined by state to state/mileage, weight (including actual weight or density) and commodity/product type.
15. Flatbed rates are based on equipment type, state to state/mileage and weight. If a flatbed shipment contains oversize freight, additional charges and transit days may apply.
16. No fee shall be charged to the Shipper without Shipper's knowledge and agreement, except when the Shipper requested shipment of Shipper's freight but --
  - a. the details which Shipper provided about its shipment were incorrect and a higher fee applies to the actual circumstances found to exist for Shipper's freight or cargo by applying previously-established rates, and/or
  - b. shipment, pick-up, or delivery of Shipper's freight / cargo demands special services not identified by the Shipper such as the necessity of a fork-lift vehicle or hand-operated fork-lift to move the freight on pick-up or delivery, palletizing loose items, manpower to move an item into a designated place inside a residence or facility (rather than doorstep delivery) or refrigeration of perishable items. TransGuardian shall not add any such fees unless TransGuardian is actually billed by the Carrier for such additional services. Shipper is encouraged to consider all such details and give explicit instructions in advance. Alternatively, Shipper is encouraged to have a responsible party available to give instructions to the Carrier about how to handle any such issues that arise.
17. Shipper shall promptly review invoices while information is still fresh and available for review. **Warning:** Many carriers have an extremely short and strict time limit for disputing invoices, as short as 48 hours after delivery. If Shipper does not successfully challenge an invoice or line item with the carrier within the required time, Shipper will pay any line item that TransGuardian is obligated to pay for Shipper's shipment. Shipper should assume that only 48 hours are allowed. However, for its part, TransGuardian will allow thirty (30) business days from receipt to dispute any invoiced charges, unless the carrier establishes a shorter period.
18. Any payment past due shall be subject to interest at 1-1/2% per month of the average outstanding balance due, or the highest rate of interest permitted by applicable law.
19. In the event that, after demand for payment has not been honored, TransGuardian retains an attorney or collection agency to collect unpaid charges or for the enforcement of these Terms and Conditions, Shipper shall also be liable for all actual attorney's and/or collection agency fees incurred, together with related costs and expenses to the extent allowed by law. If actual attorneys fees are not enforceable, reasonable attorneys fees shall be paid.

### C. TERMS AND CONDITIONS:

1. The Shipper, Shipper and/or Consignee (hereinafter collectively referred to as "Shipper") agrees to these TERMS AND CONDITIONS which no agent or employee of the parties may alter. These TERMS AND CONDITIONS shall apply to all shipments scheduled by Shipper.
2. Shipper agrees that TransGuardian is not a freight carrier but functions as a dispatcher locating the most economical and best shipping options for Shipper's freight. Shipper will have a direct relationship with the carrier created when the carrier company picks up the Shipper's freight or the Shipper's freight is dropped off at the freight terminal. The carrier alone will take custody of Shipper's freight and undertake the duty to deliver it as instructed.



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3. Shipper agrees and understands that Shipper must obtain a signed bill of lading from the freight carrier company, signed by the driver or other carrier personnel, as proof of the carrier's receipt of the Shipper's shipment. Through this documentation, carrier and the Shipper will have a direct relationship with the carrier in which carrier will be responsible to the Shipper for the carriage and delivery of Shipper's freight or cargo.
4. A carrier's General Rules Tariffs established by a carrier arranged by TransGuardian, will govern the Shipper's shipment with that carrier in all respects, and will take precedence in all legal proceedings and when applicable. On matters not covered within the carrier's General Rules Tariff, TransGuardian's TERMS AND CONDITIONS shall control.
5. All displayed or announced transit times are estimates only. Transit times do not include day of pickup or day of delivery. LTL pickup dates are not guaranteed.
6. **Guaranteed Service:** From time to time, some carriers may offer guaranteed services for particular routes and classes of service. If such service is offered for the Shipper's particular shipment, the freight charges for that shipment (but not fees for transit insurance) will be refunded if the delivery time guaranteed is not met. Guaranteed Service transit times do not include holiday and/or "no service" days as defined by the individual carrier. If the Shipper arranges for the shipment to be picked up at a terminal, delivery is complete under the Guarantee on the day that the shipment is fully processed and available for pick-up by the addressee. In the event of carrier failure to comply with the guaranteed service requested, the Customer is permitted fifteen (15) business days from the actual delivery date of shipment to file a claim in writing with TransGuardian. If TransGuardian does not receive a claim request within the allowable time, service will be deemed to have met all guaranteed service standards and the claim request will automatically be considered invalid and denied.
7. **Necessary Documentation:** The Customer may use TransGuardian's computer system to generate the Bill of Lading if it is not prepared by the carrier. If the Customer does not complete all the documents required for carriage, or if the documents which they submit are not appropriate for the services, pick up or destination requested, the Customer hereby instructs TransGuardian, where permitted by law, to complete, correct or replace the documents for them at the expense of the Customer. TransGuardian may charge a \$35 administrative fee for correcting errors. However, TransGuardian is not obligated to do so. If a substitute form of Bill of Lading is needed to complete delivery of this shipment and TransGuardian completes that document, the terms of this Bill of Lading will govern. TransGuardian is not liable to the Customer or to any other person for any actions taken on behalf of the Customer under this provision.
8. **SHIPPER'S LIABILITY FOR DAMAGE: WARNING:** Surprisingly, new regulations from the TSA and FAA now authorize the government to fine Shippers and carriers if the contents of the Shipper's package leaks out and harms other freight or property, or causes any other harm. For example, when shipping a car battery if the battery acid were to leak out and damage other property, the Shipper, the carrier, and TransGuardian might all be liable to pay for the damage to the other packages or property in addition to regulatory fines. This is now true regardless of which carrier or shipping method you use, through TransGuardian or someone else. The Shipper assumes full responsibility for the contents of its freight and packages and agrees to reimburse TransGuardian and/or the carrier for any liability or fines imposed upon them. Shipper agrees to carefully consider whether any of the contents of its shipment could escape and cause damage to other property, prepare the items for safe shipment (perhaps by draining liquids, etc.) and to package the items adequately to minimize problems.

### D. APPROVED COMMODITIES:

1. The parties agree that the Shipper shall not knowingly ship, cause to be shipped, or cooperate in the shipment of any freight or commodities whose possession, trafficking, shipment, or sale is against the



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laws of the United States or of any State where the shipment originates or is delivered, including without limitation (a) any hazardous material, chemicals or substance without proper licensing, notices, and handling; (b) any weapons or ammunition without proper licensing, notices, and handling; (c) any illegal narcotics, marijuana or the like; (d) counterfeited goods infringing trademarks; (e) cigarettes or liquor smuggled without paying taxes; (f) stolen goods, or (g) any person being trafficked.

2. The Shipper shall correctly identify the contents of the shipment at the time that each shipment is declared, and Shipper warrants that all information is accurate and complete.
3. The Shipper is exclusively responsible to investigate and to comply with all laws and regulations concerning the possession, trafficking, shipment, or sale of Shipper's freight.
4. The Customer agrees to furnish such information and complete and attach to the Bill of Lading such documents as are necessary to comply with such laws, rules and regulations. TransGuardian assumes no liability to the Customer or to any other person for any loss or expense due to the failure of the Customer to comply with this provision. Any individual or entity acting on behalf of the Customer in scheduling shipments hereunder warrants that it has the right to act on behalf of the Customer and the right to legally bind Customer.
5. The Shipper understands and agrees that the shipment of any hazardous materials may require not only licenses, notices, and special handling – all by Shipper -- but also routing of the shipment to avoid populated areas or congested roads. The Shipper shall notify TransGuardian if any material is being shipped which could even possibly be considered hazardous, for evaluation of safe routing. TransGuardian reserves the right to refuse to handle a shipment if TransGuardian is uncertain whether precautions are adequate.
6. Shipper agrees to indemnify, hold harmless, and reimburse TransGuardian for any legal liability, costs, or loss, including TransGuardian's legal fees, if Shipper ships, causes to be shipped, or cooperates in the shipment of any material described in 1 through 4 above.
7. Under no circumstances shall either TransGuardian, Inc. or its insurance carrier assume any liability whatsoever for the knowing shipment of contraband or unlawful goods, including for confiscation of Shipper's freight / cargo by government.

### **E. TRANSIT INSURANCE:**

1. Individual Carriers may offer insurance to protect the Shipper against loss of the shipment, and the Shipper may choose to elect a carrier's insurance coverage.
2. In the event that Shipper chooses insurance coverage directly from the carrier, TransGuardian shall have no responsibility, liability or involvement in the issuance of insurance, the denial of insurance, or in the payment of claims.
3. Alternatively, the Shipper may elect to use TransGuardian's Secure Transit Coverage, however the details of this will be covered under a separate, companion contract.

**F. LIMITATIONS OF LIABILITY AND CLAIMS:**

1. Shipper is exclusively responsible for determining whether the freight or cargo is suitable for shipment by truck (where it will be subject to ordinary handling, jolts and minor shocks expected in shipment by truck by the package carrier, and variations in temperature) or whether the freight or cargo is overly-fragile or sensitive, or whether the freight or cargo is perishable. The Shipper is exclusively responsible for proper packaging of the freight or cargo to protect it during shipment, including partially dismantling sensitive equipment or “parking” moving parts to avoid damage to or by moving parts during shipment.
2. Transguardian makes no warranties, expressed or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose, with regard to deliveries or with regard to its website, information provided on this website or services related to transactions conducted on this website. Transguardian cannot guarantee delivery by any specific time or date. In any event, Transguardian shall not be liable for any special, incidental or consequential damages, including but not limited to loss of profits or income, whether or not Transguardian had knowledge that such damages might be incurred
3. Except to the extent Shipper arranges insurance for the shipment subject to the terms of conditions of such insurance, TransGuardian shall not be liable for any loss, damage, mis-delivery or non-delivery caused by the act, default or omission of the Carrier, the Shipper or any other party. TransGuardian is not liable for losses, mis-delivery or non-delivery caused by violation(s) by the Customer of any of the TERMS AND CONDITIONS contained in the Bill of Lading or of the carrier's General Rules Tariff including, but not limited to, improper or insufficient packing, securing, marking or addressing, or of failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions. TransGuardian is not liable for losses, mis-delivery or non-delivery caused by the acts of God, perils of the air, public enemies, public authorities, acts or omissions of Customs or quarantine officials, war, riots, strikes, labor disputes, weather conditions or mechanical delay or failure of aircraft or other equipment.
4. The filing of a claim for any loss does not relieve the responsible party for payment of freight charges, unless the carrier did not actually carry the freight. Any insurance will not be in force if fees are not paid for.
5. The Shipper hereby authorizes TransGuardian to assist Shipper (while keeping Shipper informed) in making and explaining any claim for loss or damage, including providing information necessary to search for the freight and/or file a police report and/or provide information necessary to process an insurance claim. TransGuardian shall have a lien on insurance payments to pay Shipper's past due invoices with TransGuardian.

**G. WARRANTIES OF SHIPPER:**

Shipper expressly agrees, represents, and warrants that by declaring a package or shipment to TransGuardian for coverage, Shipper warrants --

1. that the shipment is in compliance with all foreign, federal, state, and local laws, including export regulations and Customs regulations, and that no controlled substances or illicit contraband is being shipped. Losses are not reimbursable under this Agreement from the seizure or loss of illicit contraband or other controlled substance, violations of Customs regulations, or items shipped to restricted persons under export control regulations.



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2. that all information provided about a shipment is accurate to the best of its knowledge.
3. that the shipment has been adequately prepared, packaged, and sealed appropriately to the contents, and that the contents are suitable for transport by truck or ship.

### H. MISCELLANEOUS

1. This Agreement may be terminated without cause by either party upon fifteen (15) business days' prior written notice, or immediately in the case of Shipper's, fraud, or if Shipper intentionally conceals or misrepresents any material fact or circumstance before or after loss. However, termination shall not affect coverage of any package declared prior to the termination if otherwise in compliance with all other terms and conditions nor payments due by Shipper or by TransGuardian.
2. In the event of a dispute, for the purpose of attempting to resolve the dispute easily and cheaply and with a minimum of legal action (if any), each party shall promptly cooperate in good faith to fully inform the other of the basis, nature, and all materially-relevant facts of the party's position in and reasons for the dispute, and shall fully engage in a good faith discussion to attempt to resolve the dispute informally. If TransGuardian is claiming non-payment for shipment(s) or invoice(s), it shall be adequate for TransGuardian to submit details of the shipment and the charges sufficient to identify the shipment and the basis for the charges.
3. Shipper expressly agrees that the time for the commencement of proceedings against TransGuardian, Inc. shall be limited to one (1) year from the date on which the shipment was delivered, or should have been delivered - all proceedings commenced thereafter being time barred, however founded.

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