

## Terms & Conditions of Motor Carrier Service

1. **APPLICABILITY.** These Terms and Conditions (“T&Cs”) apply to any and all services rendered by Haney Freightways, LLC. d/b/a CargoRx Dry Capacity (“CARRIER”) to or for the benefit of the party engaging Carrier, as well as the shipper, consignor, consignee, or any other entity claiming an interest in goods with respect to which CARRIER has provided services (“CUSTOMER”). Any terms and conditions on any load confirmation, bill of lading, or similar document exchanged between the parties other than these T&Cs, shall not apply to any Services and shall not be binding on or applicable to CARRIER. CARRIER and CUSTOMER represent and warrant that their relationship is that of independent contractors and that the respective employees are under their respective exclusive management and control. Nothing in these T&Cs shall be deemed to require CARRIER to provide Services upon request of CUSTOMER and CARRIER reserves the right to accept or decline, in its sole discretion, any particular request for Services. Any and all shipments may be inspected at CARRIER’s sole discretion.

2. **COMPLIANCE WITH LAW AND REPRESENTATIONS.** CARRIER agrees to comply with all applicable federal, state and local laws regarding the provision of its Services. CUSTOMER warrants and represents that it is authorized to tender the cargo in question to CARRIER and that all descriptions of the cargo are complete, accurate, and include all information required by applicable law, rules or regulation. Without in any way limiting the foregoing: (i) if CUSTOMER tenders for transportation cargo designated as hazardous materials or dangerous goods, prior to any shipment, CUSTOMER shall be solely responsible for complying with any and all applicable laws, rules, regulations, or conventions with respect to classifying, tendering, packaging and labeling such cargo and must provide notice of any such cargo at the time a request for Services is first initiated by CUSTOMER to CARRIER; and (ii) any information regarding weight or mass of cargo and/or loaded containers provided by or required to be provided by CUSTOMER is has been provided and is complete and accurate in all regards. No special handling (including temperature control service) will be provided except as requested in a Special Handling Notice (which, for purposes of these T&Cs, means a written notice to CARRIER communicated in writing or via electronic means at the time of CUSTOMER’s initial request for services with respect to the specific consignment identified in the Special Handling Notice which identifies all special handling being requested), and acknowledges that no additional handling or specialized services are required to ensure safety or integrity of cargo. No failure or alleged failure to comply with handling procedures established herein or otherwise applicable to any shipment, including, but not limited to, delivery without the original trailer seal in tact, or with an unreadable seal, shall result in any presumption that a consignment is unsafe, contaminated, adulterated or otherwise unfit for its intended purpose.

3. **PAYMENT AND CHARGES.** CARRIER will charge and CUSTOMER will pay the rates and charges set forth in a load confirmation or as otherwise agreed for services provided by

CARRIER. CUSTOMER agrees to pay CARRIER without offset and within fifteen (15) days of receiving the invoice, with interest accruing monthly at a rate of one percent (1%) per month on any unpaid balance. CUSTOMER shall also be liable for any expenses, including attorney fees, CARRIER incurs in collecting its rates and charges. CUSTOMER shall also be responsible for any additional accessorial charges for work performed or expenses incurred in the performance of the services which were not anticipated by CARRIER at the time CARRIER agreed to perform Services or which were not otherwise included in the rate (including, but not limited to, detention, loading and unloading, multiple stop-offs, equipment ordered and not used, etc.). CARRIER may revise its accessorial charges and its fuel surcharge at any time without notice to CUSTOMER. CUSTOMER can access CARRIER’s then current accessorial charges and fuel surcharge at [www.cargorx.com/terms/](http://www.cargorx.com/terms/) CUSTOMER will remain directly liable for payment regardless of whether a shipment is tendered as prepaid or collect. Without limiting the foregoing, In no event will CARRIER have any responsibility for, and CUSTOMER will defend, indemnify, and hold CARRIER harmless from, and will pay and reimburse, any charges imposed by third parties with respect to use of equipment in which cargo tendered by, to or on behalf of CUSTOMER is or has been laden, or for charges assessed with respect to storage or handling of any such equipment, including, but not limited to, charges assessed by steamship lines, rail carriers, rail terminal operators, marine terminal operators or port authorities. Without limiting the generality of the foregoing, CARRIER shall have no liability for any such charges arising from or related to port congestion, lack of equipment availability, labor shortages, or other situations impacting port or intermodal transportation operations, including any charges incurred due to CARRIER’s inability to provide service because of any such conditions. CARRIER shall have a possessory lien on all cargo, and any proceeds therefrom, in its dominion or control for the payment of any and all amounts due and owing from CUSTOMER or with respect to services rendered at the request, or for the benefit of, CUSTOMER. In addition, to the extent not prohibited by applicable law, CARRIER will have a general lien on any cargo under its dominion or control, and any proceeds thereof, for any and all amounts due and owing from CUSTOMER or with respect to services rendered at the request, or for the benefit of, CUSTOMER, regardless of whether those amounts relate to cargo or proceeds against which the general lien is enforced.

4. **WARRANTIES AND LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM OR RELATED TO SERVICES OR OPERATIONS HEREUNDER, INCLUDING DAMAGES FOR OR ARISING FROM LOST PROFITS OR BUSINESS INTERRUPTION, REGARDLESS OF WHETHER THE PARTY TO BE CHARGED HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO

WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

5. **CARGO LOSS, DAMAGE AND DELAY.**

CARRIER's sole liability, and the sole recovery of the claimant, for cargo loss or damage, including delay in pick-up or delivery, shall be in accordance with the Carmack Amendment as currently codified at 49 USC 14706. CARRIER's liability shall be limited to the lesser of the cost to repair or replace the goods or (a) for new and unused cargo, \$5.00 per pound per package subject to a maximum liability of \$100,000 per trailer or conveyance; or (b) for used or reconditioned equipment, \$1.00 per pound subject to a maximum liability of \$10,000 per trailer or conveyance. If CUSTOMER wishes for CARRIER to assume additional liability, CUSTOMER must make such request to CARRIER by calling CARRIER at (303) 690-1618 at least seventy-two (72) hours prior to the scheduled pick-up which request is not valid unless agreed upon in writing by an officer of CARRIER. If such request is accepted by CARRIER in a signed writing, and CUSTOMER pays additional freight charges quoted by CARRIER in response to such request, then CARRIER will be liable for the lesser of the full value declared by CUSTOMER or the cost to repair or replace the goods. CUSTOMER shall submit to CARRIER written notice of any cargo claim, for loss, damage or delay, within nine (9) months of the delivery date of the shipment or, if no delivery, the date delivery would have been reasonably expected. Any proceeding related to any such cargo claim must be filed no later than two (2) years from the date of denial of all or any part of such claim. In no event will CARRIER be liable for the consequences of delay unless CARRIER fails to deliver Cargo with reasonable dispatch, such failure is due to CARRIER's negligence, and such delay results in physical loss of or damage to Cargo. Moreover, if CARRIER is tendered a pre-loaded and/or sealed trailer or conveyance, and/or if the transporting conveyance is moved via multiple modes or by multiple carriers, in order to meet its initial burden of proof, the claimant must show by clear and convincing evidence that any loss, damage, destruction or shortage arose or occurred while the cargo was in the possession of CARRIER. CARRIER's sole liability, and CUSTOMER's sole recovery, with respect to cargo loss, damage or delay will be as set forth in this provision and in no event will CARRIER be liable under any other theory of law, nor to any party other than the actual beneficial owner of cargo, or its direct assignee, with respect to any claim arising from or related to loss or damage to cargo or delay. If CUSTOMER is not the owner of the Cargo, then Customer acknowledges and agrees that it is authorized to bind the owner of the provisions of this article. In no event will CARRIER be liable for loss or damage to cargo moving to, from or within Mexico.

6. **INDEMNIFICATION.**

CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CARRIER FROM AND AGAINST, AND SHALL PAY AND REIMBURSE CARRIER FOR, ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, FINES, JUDGMENTS, PENALTIES AND AMOUNTS (INCLUDING REASONABLE ATTORNEY FEES) ARISING FROM OR RELATED TO: (i) BREACH BY CUSTOMER OF THESE T&Cs; (ii) THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF

CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES; (iii) VIOLATION BY CUSTOMER, ITS AGENTS, CONTRACTORS OR EMPLOYEES OF ANY APPLICABLE LAWS, RULE OR REGULATION; OR (iv) CUSTOMER'S FAILURE TO PROVIDE, OR CARRIER'S COMPLIANCE WITH OR RELIANCE ON, INSTRUCTIONS, DIRECTIONS, OR REQUEST OF CUSTOMER. THE FOREGOING NOTWITHSTANDING, CUSTOMER'S OBLIGATION TO HOLD HARMLESS, DEFEND, INDEMNIFY, PAY AND REIMBURSE SHALL NOT APPLY TO THE EXTENT ANY CLAIM IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CARRIER.

7. **USE OF THIRD PARTIES.**

CARRIER is authorized by FMCSA to operate as a property broker. In order to meet CUSTOMER's transportation needs, CARRIER may arrange for transportation to be provided by third parties. When Carrier arranges with a third party to provide or arrange services hereunder, CARRIER shall be deemed to be acting as a property broker and not a for-hire motor carrier. In any such event, the provisions hereof notwithstanding, CARRIER's obligation shall be limited to using reasonable efforts to ensure cargo is tendered to motor carriers duly authorized in accordance with applicable law, rule or regulation to provide the requested motor carrier services. CARRIER will not be responsible for the acts or omissions of any third party but CARRIER will remain liable for cargo loss and damage claims with respect to any shipments brokered by CARRIER pursuant to this section as if CARRIER had provided the underlying motor carrier services directly under its own authority.

8. **LEGAL RESTRAINT OR FORCE MAJEURE.**

In the event performance by one Party is affected or prohibited by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, emergency declarations, pandemic, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request as requisition for national defense, or requests of governmental officials, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the running of all periods of time, and the performance of all obligations required herein shall be suspended during the continuance of such interruption. The affected Party shall promptly notify the other Party of such interruption.

9. **DISPUTE RESOLUTION.**

CUSTOMER and CARRIER expressly waive any and all rights and remedies under Part B of Subtitle IV to Title 49 of the U.S. Code to the extent that such rights and remedies conflict with these T&Cs as allowed by 49 U.S.C. § 14101. These T&Cs shall be deemed to have been drawn in accordance with the statutes and laws of the state of Colorado and in the event of any disagreement or dispute regarding services subject to these T&Cs, to the extent not otherwise governed by federal law, the laws of the state of

Colorado shall apply and suit must be brought in the state of  
Colorado as each party specifically submits to the exclusive  
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personal jurisdiction of such courts for disputes involving  
services hereunder.