



# Kingsgate Transportation

## Standard Terms & Conditions

Effective Dec 14 updated July 15, Dec 15

**ARTICLE 1 – SERVICES PROVIDED BY KINGSGATE:** KINGSGATE provides freight transportation services acting as a Freight Broker. KINGSGATE is not holding itself out as a carrier, warehouseman, customs broker, or any other transportation entity. KINGSGATE will act for the CUSTOMER in arranging for freight transportation. KINGSGATE does not provide the transportation directly.

**ARTICLE 2 – AGREEMENT TO PERFORM AND OBTAIN SERVICES:**

2.1 – KINGSGATE agrees that it will perform highway brokerage services (the “Services”) by arranging on behalf of the shipper or consignee or 3<sup>rd</sup> party noted in the Rate Quotation (hereafter “Customer”) for the transportation of loaded and/or empty trailers and/or containers (the “Shipment(s)”) between points in the United States and Canada which have been requested by CUSTOMER and agreed to by KINGSGATE as provided in the Rate Quotation, under the Standard Terms and Conditions stated in this Agreement – hereafter (“Agreement”).

2.2 – CUSTOMER agrees to obtain the Services from KINGSGATE wholly under the terms and conditions stated in this Agreement.

**ARTICLE 3 – SCOPE:**

3.1 – CUSTOMER and KINGSGATE shall agree to the origin and destination points of the transportation to be arranged for each shipment under this Agreement.

3.2 – Once CUSTOMER tenders even one shipment tendered to KINGSGATE moved under the terms and conditions set forth herein, any and all shipments tendered thereafter shall be bound to this Agreement with no exceptions. This is acknowledged by any tender after these Terms & Conditions are posted on the Kingsgate website (12/4/2014) and the notice to these terms being made available for viewing by any CUSTOMER.

3.3 – Nonexclusive: KINGSGATE and CUSTOMER agree that this is a nonexclusive agreement and that KINGSGATE shall be free to offer its services to CUSTOMERs other than CUSTOMER and that CUSTOMER shall be free to use the services of companies other than KINGSGATE.

3.4 – Performance: KINGSGATE shall use due diligence to obtain on-time, scheduled performance from the underlying carriers for the transportation arranged for pursuant to this Agreement; however KINGSGATE does not in any manner guarantee the performance by the underlying carriers, and CUSTOMER shall not have any right, claim or cause of action against KINGSGATE resulting from the failure of underlying carriers to fulfill their promised or published schedules. KINGSGATE shall assist CUSTOMER in working to improve substandard performance by any underlying carrier.

3.5 – EXEMPT COMMODITIES: It is hereby understood any tender of exempt commodities under this Agreement is also subject to every term and condition set forth herein. KINGSGATE does not forfeit any right in this Agreement on exempt commodities, including cargo loss and damage claims.

3.6 – Shipper Load & Count: All rates and service provided by KINGSGATE are done so under the terms of “Shipper Load & Count” (SLC) whereby the shipper, the shipper’s vendor or shipper’s contractor is responsible for load, count, seal, proper and adequate blocking and bracing and stowage.

**ARTICLE 4 – CHARGES FOR SERVICES, TERMS, CREDIT SUPPORT:**

4.1 – KINGSGATE rates for the Services to be performed for CUSTOMER under this Agreement shall be based on the Rate Quotation to CUSTOMER applicable to the performance of the Services. All rates shall remain in effect for the term referenced in the Rate Quotation.

4.2 – CUSTOMER shall remit payment within 30 days from the date of each invoice. CUSTOMER is responsible for paying all charges for the Services and agrees to pay the full amount of the invoice without deduction or offset of any kind. All outstanding charges in excess of 30 days are delinquent and are subject to a 1½% per month finance charge. All accounts with outstanding charges in excess of 30 days may lose their credit privileges and be placed on a cash basis until the account is made current. Additionally KINGSGATE reserves the right to retract any discount offered to the payor of freight charges for any freight bill not paid within 30 days. This last provision is also known as “loss of discount” provision and enforceable at KINGSGATE’s discretion and will also apply to 4.4 below. Should collection action be required, CUSTOMER shall be liable for all collection fees, plus the applicable finance charge beginning on the 31<sup>st</sup> day from the date of invoice.

4.3 – Collect and/or “third party” collect shipments must be made known to KINGSGATE in advance of shipping and KINGSGATE reserves the right to refuse collect shipments based on credit approval or the right to make collect shipments “C.O.D.”. Should a CUSTOMER tender a shipment to KINGSGATE “collect” to the consignee without prior notice and approval, the CUSTOMER agrees to guarantee payment and reimburse KINGSGATE for uncollectable freight charges and any collection fees as described below in 4.4. Since KINGSGATE does not actually sign for any shipments, a CUSTOMER signing Section 7 of the bill of lading WILL NOT relieve them of the obligation to pay on a collect shipments not paid by the consignee or 3<sup>rd</sup> party.

4.4 – KINGSGATE extends credit only to its customer - the shipper, consignee or beneficial owner of the goods being shipped. KINGSGATE considers a freight payment company to be an agent of the customer, and it does not extend credit to the customer's freight payment company. A customer's payment to its freight payment company does not constitute a payment to KINGSGATE. If a customer's freight payment company fails to pay KINGSGATE' invoices for any reason, including but not limited to insolvency, bankruptcy or misappropriation of funds, the customer will not be relieved of its obligations and will remain liable for unpaid freight charges. If freight charges remain unpaid by a customer's freight payment company for more than 30 days from the date of the invoice, KINGSGATE will re-bill the customer and will require payment within 30 days of the date of the re-billed invoice. Charges remaining unpaid after this period will be subject to interest at 1½% per month. If it becomes necessary to engage collection companies or attorneys, the customer agrees to pay collection expenses in the amount of 15% of the unpaid balance and/or reasonable attorney fees.

4.5 - From time to time KINGSGATE may request CUSTOMER to submit evidence of an applicable performance bond or other credit information.

4.6 – The charges for Services performed for any Shipment may not be adjusted and KINGSGATE may not submit an invoice for an undercharge and CUSTOMER may not present a claim for an overcharge unless such invoice or claim is submitted within six months of the original shipment date.

4.7 – In the event that the actual transportation providers pass on to KINGSGATE unexpected rate increases, such as increased fuel surcharges, detention or unloading, etc KINGSGATE shall have the right to increase the rate quoted for the move to reflect these accessorial charges in an amount that will recover such increased costs.

**ARTICLE 5 –LIMITS of LIABILITY and CLAIMS:**

5.1 – KINGSGATE is a freight broker, not a freight forwarder or a motor carrier and has no liability for loss, damage or delay.

5.2 – KINGSGATE will assist Customer in filing cargo claims with the underlying motor carrier, but under no circumstances will KINGSGATE be liable for cargo loss, damage, or delay. Should Customer file a cargo claim, Customer will be required to obtain or ensure that the consignee obtains an inspection prior to rejecting any portion of a food shipment. Kingsgate will not be responsible for the cost of the inspection.

5.2.1 – Unless otherwise provided herein, all claims, whether for exempt or nonexempt commodities, will be subject to the provisions of 49 U.S.C. § 14706 and 49 CFR Part 370.

5.2.2 – Any claim for cargo loss, damage or delay, must be filed with the underlying motor carrier within nine (9) months of the date of delivery of the subject shipment or the date delivery should have been made. Any legal action must be filed within one (1) year and one (1) day of the date the underlying motor carrier denies payment of the claim or any part thereof.

5.2.3 - KINGSGATE has no (nor accepts any) liability for (i) any claim arising from negligence or willful acts of shipper, consignee, shipper vendors, underlying carriers or their respective employees, agents or contractors; or (ii) any claim for loss of profit, loss of market or any other incidental, consequential or punitive damages.

**5.3 – Claims Offset Prohibited:** Offsetting freight charges for settlement of freight claims is **strictly prohibited**; under no circumstance is this practice allowed. Any KINGSGATE freight charge offset by the shipper, customer, or claimant will be immediately rebilled and due upon receipt and subject to a 10% rebilling penalty. In addition, KINGSGATE reserves the right to hold any shipment as a lien against any balance owed until remedy is reached. KINGSGATE may also bring action against any other party to this transaction that may have benefited from the transportation service provided.

5.5 – Equipment is accepted for loading at shipper’s discretion. By loading the equipment provided, shipper accepts equipment as adequate and suitable for their transportation needs. Shipper retains the right to file claim against the equipment owner and agrees to hold KINGSGATE harmless for any claims related to equipment condition or failure.

**ARTICLE 6 – COMPLIANCE WITH LAWS:** SHIPPER (CUSTOMER) is responsible for tendering the Shipments in compliance with all state, federal and local laws and regulations and the requirements of the underlying carriers, including, but not limited to, (i) all state, federal and carrier weight and dimensional requirements, (ii) international, federal and state laws and regulations and carrier requirements governing the transportation of hazardous materials, (iii) U.S. Customs laws and regulations, and (iv) rules and regulations governing the safety of the Shipments (collectively the “Requirements”). KINGSGATE shall not be responsible for and CUSTOMER shall defend, indemnify and hold harmless KINGSGATE and any underlying carrier or depot operator with respect to any loss, costs, fines, penalties or other expenses and any claims which result from non-compliance of the Shipments or the freight with the requirements. KINGSGATE shall not be responsible for any rejection of the Shipments by the underlying carriers based on non-compliance with the Requirements. CUSTOMER shall advise KINGSGATE, at the time CUSTOMER requests KINGSGATE to arrange for transportation of the Shipments, if a Shipment requires handling as hazardous materials. CUSTOMER also shall provide to KINGSGATE all information, documentation, and certifications regarding the Shipments necessary for KINGSGATE to arrange transportation of the Shipments in compliance with the Requirements.

**ARTICLE 7 – CONFIDENTIALITY:**

**7.1 -** As part of their business relationship under this Agreement, each party may come into possession of confidential business and trade information, trade secrets or other proprietary information belonging to the other party. KINGSGATE and CUSTOMER will each exert its best efforts to maintain the confidentiality of such information. Neither party shall disclose the terms of this Agreement or the Rate Quotation to a third party except when disclosure is required by law, or to third parties engaged to perform professional services for either party.

**7.2 –** Carrier relationships are a vital resource to KINGSGATE and must not be impeded upon by CUSTOMER and kept confidential. Therefore, the CUSTOMER agrees that no one representing their interests (no owner, employee or agent) will approach any carrier used to perform transportation services arranged through the carrier - brokerage agreement with KINGSGATE. Should the CUSTOMER actually hire a carrier directly without KINGSGATE’s participation, CUSTOMER shall be bound to pay KINGSGATE the average commission earned on all shipments transacted under these terms and conditions.

**ARTICLE 8 – DEFAULT; KINGSGATE REMEDIES:** In the event CUSTOMER fails to remit full payment on any KINGSGATE invoice within the time provided in ARTICLE 4.2, CUSTOMER shall not be entitled to possession or delivery of cargo unless and until all such unpaid invoices have been paid in full. CUSTOMER is liable for all charges incidental to the Services provided herein, including, but not limited to, demurrage, detention, and storage and return freight on any undelivered Shipments.

**ARTICLE 9 – FORCE MAJEURE:** Neither party shall be deemed to be in default in the performance of this Agreement to the extent that the failure to perform is beyond such party’s control and not occasioned by such party’s fault or negligence.

**ARTICLE 10 – MISCELLANEOUS:**

**10.1 – Governing Law:** The interpretation, construction and enforcement of this Agreement shall be governed by the laws of the State of Ohio (United States of America), exclusively, without reference to the laws of any other state, subject to the laws or regulations of the United States of America to the extent applicable.

**10.2 – Disputes:** In the event a dispute between the parties arises concerning any matter under this Agreement, the party claiming the existence of a dispute shall notify the other party in writing. CUSTOMER and KINGSGATE shall negotiate in good faith to attempt to resolve any such disputes. In the event that the parties cannot promptly settle a dispute, both CUSTOMER and KINGSGATE may consent to first arbitrate the dispute through the American Arbitration Assoc. (AAA) in Cincinnati, OH. Court action shall be limited to the exclusive jurisdiction of the state and federal courts in Ohio and agree that such courts can settle the dispute.

**10.3 – Notices:** Any notice required or permitted by this Agreement shall be given in writing, delivered by hand, by facsimile or mailed by first class mail, postage prepaid to the addresses of KINGSGATE and CUSTOMER set forth in the Rate Quotation. The notice shall be deemed to have been duly given on the date of delivery, if delivered personally or by facsimile, or on the third business day after the date of mailing, if mailed.

**10.4 – Entire Agreement:** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and merges and replaces all prior negotiations, discussions, representations, warranties, promises, and agreements of the parties with respect to such subject matter, and cannot be amended except in writing signed by both parties. Notwithstanding the foregoing, the particular Services provided under this Agreement may be agreed to orally between KINGSGATE and CUSTOMER in each instance.

**10.5 – Definition:** It is hereby understood that references to Shipper, Consignee or “3<sup>rd</sup> Party” and CUSTOMER are all references direct to the relationship between KINGSGATE AND CUSTOMER herein known as the party with whom KINGSGATE has agreed to offer and provide its services and any absence of that direct reference in these terms and conditions does not void any portion thereof.