

ATLAS HEAVY TRANSPORT LLC | TERMS AND CONDITIONS OF SERVICE

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer." In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the terms and conditions set forth in such other document(s) shall govern those services.

1. Definitions.

- (a) "Cargo" means any and all property/materials/goods which are the subject of Company's Services;
- (b) "Company" shall mean Atlas Heavy LLC d/b/a Atlas Heavy Transport LLC f/k/a Hansa Meyer Heavy Haul & Rigging USA, LLC;
- (c) "Customer" shall mean the person for which the Company is rendering service;
- (d) "Documentation" shall mean all information, specifications, technical data and drawings received directly or indirectly from Customer, whether in paper or electronic form;
- (e) "Services" shall mean the service performed by Company under these terms and conditions of service, which may include but not necessarily be limited to transportation brokerage and management services, logistics and project consulting, equipment painting, equipment and material fabrication, Cargo rigging, and/or engineering.
- (f) "Third Party Vendors" shall include, but not be limited to, the following: carriers, truckmen, cartmen, lightermen, forwarders, ocean transportation intermediaries, customs brokers, agents, warehousemen and others.

2. Company as Agent.

The Company acts as the "agent" of the Customer for the purpose of making arrangements with Third Party Vendors and/or performing duties in connection with filing documentation and/or obtaining permits with Government Agencies: as to all other Services, Company acts as an independent contractor.

3. Limitation of Actions.

- (a) Unless a longer period is mandated by law, any and all claims against Company must be asserted in writing and received by the Company within ninety (90) days of the event giving rise to the claim or from the date that Company completes the Services, whichever is sooner; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer. In the event of any claim for overcharge, such mandatory time for written claim against Company shall be 30 days from the date of Company's invoice.
- (b) All suits against Company must be filed and properly served on Company within nine (9) months from the date of the loss or from the date that Company completes the Services, whichever is sooner.

4. No Liability for the Selection or Services of Third Party Vendors and/or Routes.

Any transportation Services provided by Company under these terms and conditions of service are provided in Company's capacity as agent and/or "broker" as that term is defined at 49 USC § 13102 or successor statute. In the course of performing Services, Company shall use reasonable care in its selection of Third Party Vendors, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the Cargo; advice by the Company that a particular person or firm has been selected or engaged by Company shall not be construed to mean that the Company warrants or represents that such person or firm will be ultimately participating nor does Company assume responsibility or liability for any action(s) and/or inaction(s) of such Third Party Vendors and/or their agents, and Company shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a Third Party Vendor or the agent of a Third Party Vendor; all claims in connection with the act or omission of a Third Party Vendor shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company in so cooperating.

5. Declaring Higher Value to Third Party Vendors.

Third Party Vendors to whom the Cargo is entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefor; in the absence of written instructions or the refusal of the Third Party Vendor to agree to a higher declared value, at Company's discretion, the Cargo may be tendered to the Third Party Vendor, subject to the terms of the Third Party Vendor's limitations of liability and/or terms and conditions of service.

6. Quotations and Pricing Terms.

- (a) Quotations given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company in writing agrees to undertake Services at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer. Quotations are provided based on the assumption of free and clear access to buildings, entryways, exits and to and around all equipment or work areas and an adequate unloading and staging area for equipment if applicable.
- (b) Quoted pricing assumes maximum 10-hour work day (Mon-Fri 7AM-5PM, excluding federal holidays), outside of which additional overtime rates and charges apply.
- (c) Unless otherwise agreed in writing, the labor hours required to perform engineering services will be recorded on a time sheet by the individual performing the services. Labor hours will be recorded to the nearest quarter hour.
- (d) For transportation related services, Customer, shippers, consignees and bill-to parties are jointly and severally liable for the compensation of the Company for its Services. The Company's charges may be reversed to the responsible parties if a shipment is refused or payment is not made by the original bill-to party. The compensation of the Company for its Services shall be included with and is in addition to the rates and charges of all carriers and other Third Party Vendors selected by the Company to transport and deal with the Cargo and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers and other Third Party Vendors in connection with the shipment.
- (e) In the event of cancellation by Client, Client shall be liable for the greater of: (a) 80% of the quoted total price for the Services; or (b) hours expended, charged to client at Company's market rates (including, but not limited to, mobilization labor and engineering hours), in addition to any and all costs and/or fees incurred by Company and/or committed by Company to Third Party Vendors and other third parties.
- (f) Unless otherwise agreed in writing, payment to Company shall be due upon Customer's receipt of invoice.
- (g) In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee. In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees, plus late payment fees of 1.5% (one-and-one-half percent) per month or 18% (eighteen percent) per year of the balance due, or the highest rate permitted by applicable law.

7. Customer Warranties.

- (a) Customer warrants the description and marks, center of gravity information, numbers, quantities and weight of the Cargo are accurately and completely disclosed and that the Cargo and requested Services comply with regulations of relevant public authorities.
- (b) Customer warrants the accuracy of any drawings, technical data, measurements, or other information or Documentation required by Carrier for performance of the Carriage and/or provided by or on behalf of Customer. Customer warrants the Cargo has suitable lashing points accessible, is suitably packed for transport and is free of hazardous materials. Customer warrants the Cargo has no latent weight imbalance or other latent irregularity or attribute except as noted by Customer to Carrier in writing and in advance of Carriage.
- (c) Without any obligation to do so, Company shall have the unrestricted liberty to inspect the packaging and contents of the Cargo and to inquire and verify the accuracy or sufficiency of information provided and to seek assurances as to the Customer's warranties. Any discrepancies may result in delay in Services, cancellation of Services and/or additional charges assessed by Company. Company may, without any obligation to do so, disclose and report any and all regulatory non-compliance to authorities.

8. Insurance.

Company shall be adequately insured or self-insured for its liability and risks assumed under these terms and conditions of service. Unless requested to do so in writing and confirmed to Customer in writing, Company is however under no obligation to procure any first party cargo insurance for the Cargo on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

9. Limited Warranty for Consulting and/or Engineering Services.

Company will provide consulting and/or engineering services in accordance with generally accepted professional practices using reasonable care and skill consistent with that ordinarily exercised by members of the profession under similar conditions. However, due to the nature of the Services being provided,

Company cannot fully guarantee the success of the Customer's project(s) for which Company's consulting and/or engineering services are being provided. In the event that Company commits an error or omission with respect to, or incorrectly performs, consulting and/or engineering services, Company shall use commercially reasonable efforts to correct such error or omission, or re-perform such consulting or engineering services at not cost to Customer. Customer acknowledges that its sole and exclusive remedy, and Company's sole and exclusive liability, for any defect or error in consulting and/or engineering services shall be correction, re-performance or substitution of such consulting and/or engineering services by Company.

10. Limited Warranty for Fabrication and/or Painting Services.

Company will provide fabrication and/or painting services in accordance with generally accepted professional practices using reasonable care and skill consistent with that ordinarily exercised by members of the profession under similar conditions. Equipment and/or materials fabricated by Company and painting services by Company are all provided "as-is" and shall be deemed delivered in satisfactory condition unless a material defect is noted at time of delivery by Company. In the event of any such defect, Company shall use commercially reasonable efforts to correct such defect, or re-perform such fabrication and/or painting services at not cost to Customer. Customer acknowledges that its sole and exclusive remedy, and Company's sole and exclusive liability, for any defect in fabrication and/or painting shall be correction, re-performance or substitution of such fabrication and/or painting services by Company. Company does not give and hereby expressly disclaims any express or implied warranties of merchantability, suitability or completeness of equipment and/or materials fabricated by Company and/or painting services by Company for Customer's particular needs.

11. Additional Provisions for Rigging and Crane Services.

- (a) Customer assumes all responsibility for the ground, concrete and/or soil conditions in the area where the equipment is to be operated or parked. Customer shall perform or have performed all necessary inspections or testing to determine the nature of the ground, concrete and/or soil and its ability to support the equipment while in operation or otherwise. In the event that the ground, concrete or soil condition are such that it cannot support the equipment, the Customer shall take all necessary measures to ensure that these conditions are remedied prior to the equipment being placed.
- (b) Customer is responsible to verify adequate clearance from danger of power lines.
- (c) Carrier is not responsible for any utility work including but not limited to disconnection, reconnection or initial hook-up of any water, air, electrical lines, etc.

12. Disclaimers; Limitation of Liability.

- (a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with the Services.
- (b) Customer agrees that in connection with any and all Services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer and the Company shall in no event be liable for the acts of Third Party Vendors.
- (c) Any liability of Company, however arising, shall be limited to the following:
 - (i) for loss or damage to Cargo in the course of rigging and/or crane services performed by Company as principal, any liability of Company shall be limited to the Cargo's cost of repair or replacement not to exceed \$25,000 (twenty-five thousand dollars) in the aggregate;
 - (ii) for any other type of claim arising from rigging and/or crane services and/or for claims arising from any other Services, including but not limited consulting services, engineering services, and/or painting services, any liability of Company shall be limited to the aggregate to 50% (fifty percent) of Company's charges for the specific transaction giving rise to the claim or \$500 (five-hundred dollars), whichever is less.
- (d) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages.
- (e) Company does not guarantee performance of Services within any particular time and in no event shall Company be liable for any delay in the performance of Services.
- (f) In no event shall Company be liable or responsible for damages attributable to circumstances of Force Majeure. For purposes of these Terms and Conditions, Force Majeure includes, but is not limited to, Acts of God, acts of the public enemy, assailing thieves, Laws and Regulations, wars or warlike action (whether actual or impending) arrests and other restraints of government (civil or military), blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, sabotage, tropical storms and hurricanes, civil disturbances, tidal waves, explosions, confiscation or seizure by any government or other public authority, and any other causes, whether of the kind herein enumerated or otherwise, that are not reasonably within the control of Company and that could not have been overcome by the exercise of ordinary diligence. Company shall notify Customer with reasonable promptness of the existence of any such Force Majeure and the probable duration thereof, and shall provide Customer from time to time with correct information concerning same.
- (g) The liability of Company under these terms and conditions shall be the aggregate and collective liability of Company to Customer and to any and all third parties that may suffer damages or financial loss arising out of or relating to the Services. As the party initiating the Services, Customer shall to the maximum extent allowed by law defend and indemnify Company of any liability to any third party(ies), however arising, to the extent exceeding the liability assumed by Company under these terms and conditions of service.
- (h) Except as expressly provided in these terms and conditions to the contrary, Customer and Company will each bear its own legal fees, costs and expenses incurred in connection with any dispute arising in connection with the Services.

13. Indemnification/Hold Harmless.

In addition to any other indemnification obligations of Customer under these terms and conditions, Customer agrees to indemnify, defend, and hold Company harmless from any claims, liability, expenses and/or damages arising from Customer violating any warranties required of Customer under these terms and conditions or any Customer conduct which violates any Federal, State and/or other laws or regulations.

14. General Lien and Right to Sell Customer's Property.

- (a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;
- (b) Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.
- (c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

14. No Duty to Maintain Records for Customer.

Unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.

15. No Modification or Amendment Unless Written.

These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

16. Severability.

In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

17. Governing Law; Consent to Jurisdiction and Venue.

These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Texas without giving consideration to principles of conflict of law. All disputes arising hereunder shall be resolved in the state of Texas, Harris County, and at no other place.

-Customer and Company

- (a) irrevocably consent to the jurisdiction of the United States District Court for the Southern District of Texas and the State courts of Texas;
- (b) agree that any action relating to the Services performed by Company, shall only be brought in said courts;
- (c) consent to the exercise of *in personam* jurisdiction by said courts over it, and
- (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.