



INCORPORATION OF TERMS

The Terms and Conditions set forth herein incorporate all Assumptions stated in each fully executed Project Quote and Purchase Order and apply to all Projects performed by MESA for CUSTOMER.

PROJECT TERMS AND CONDITIONS

Section 1 – Definitions.

- 1.1 “MESA” shall mean MESA Logistics Group, LLC.
- 1.2 “CUSTOMER” shall mean any person or entity that signs these Terms and Conditions and any person or entity that retains MESA to provide Services subject to these Terms and Conditions.
- 1.3 “PARTIES” shall mean MESA and CUSTOMER collectively.
- 1.4 “Project” shall mean and include all Services (as defined herein) performed by MESA for CUSTOMER under any Project Quote or Purchase Order.
- 1.5 “Project Quote” shall mean the quote or estimate provided by MESA to CUSTOMER that outlines the details of the specific project and its scope, including, but not limited to, the project’s: (1) time frame, (2) scope of work, (3) estimated cost, (4) rate tables, and (5) assumptions.
- 1.6 “Purchase Order” shall mean the electronic purchase order submitted by CUSTOMER to MESA, which contains the following: (1) the purchase order number, (2) item number, (3) description of Goods, (4) quantity of Goods, and (5) any other pertinent information to identify the Goods.
- 1.7 “Goods” shall mean the items, products, and/or property tendered to MESA for transportation, warehousing, storage, distribution, or assembly and installation, including but not limited to furniture, fixtures, and equipment (“FF&E”).
- 1.8 “Services” shall mean all logistics and distribution services provide by MESA, including but not limited to: (1) arranging for interstate and intrastate transportation by motor carrier (“Freight Brokerage Services”); (2) warehousing, storage, and distribution of property; and light assembly and installation, including but not limited to FF&E.
- 1.9 “Subcontractor” shall mean any third-party that MESA contracts with to perform Services hereunder.

Section 2 – CUSTOMER Warranties and Responsibilities.

- 2.1 CUSTOMER warrants that any Goods delivered to or by MESA, or installed by MESA, are properly marked, packaged, labeled, and classified for handling and are fit for storage, transportation, or installation as may be required. MESA will not transport, accept, or install Goods that in the reasonable opinion of MESA are not properly packaged or suitable for movement or storage. If MESA is required to identify and label Goods on its own, the warehouse labor charges and rates identified in the Project Quote Rate Table will apply.
- 2.2 Prior to transport, delivery, or installation, CUSTOMER shall furnish an electronic version of the Purchase Order in the format required by MESA that contains the following: (1) the Purchase Order number, (2) item number,

(3) description of the Goods, (4) quantity of the Goods, and (5) any other pertinent information to identify the Goods. MESA will provide a template to assist with formatting of the Purchase Order. If the Purchase Order does not meet MESA's requirements, an additional fee may apply.

- 2.3 CUSTOMER warrants that it shall not tender to MESA or otherwise request any Services for any Goods which are hazardous materials and/or dangerous goods unless Customer expressly identifies the hazardous materials and dangerous goods to MESA in writing and MESA acknowledges the same in writing prior to execution of the Project Quote, execution of the Purchase Order, and tender, transport, delivery, and installation of the Goods. CUSTOMER warrants that the Goods shall be limited to such materials and quantities as are permissible under the law and regulations in effect as of the time of the execution of the Project Quote. CUSTOMER warrants that it shall properly classify the Goods, accurately describe the Goods, and to provide MESA with all necessary or useful information for the safe storage, handling, transportation, or installation of the Goods. If CUSTOMER breaches any of the foregoing warranties then (a) MESA shall be entitled to immediately dispose of or remove the Goods without notice to CUSTOMER in MESA's sole discretion, in addition any other available remedies; (b) MESA shall not be liable to CUSTOMER for any damages to CUSTOMER caused by such disposal or removal; (c) CUSTOMER shall be liable for all expenses, costs, losses, damages, fines, penalties or other expenses of any sort incurred by MESA in connection with the removal, or disposal, and handling of the Goods; and (d) CUSTOMER shall indemnify, defend, and hold MESA harmless from and against all amounts, liabilities, claims, or damages arising in connection with the Goods.
- 2.4 For all Goods, CUSTOMER shall provide to MESA all documents or information necessary or useful for the safe and proper warehousing, handling, storage, transportation, and installation (if any) of the Goods. If all such information and documents are not fully, accurately and timely provided to MESA, CUSTOMER shall indemnify, defend, and hold MESA harmless from and against consequences of such failure.
- 2.5 CUSTOMER warrants its compliance with all applicable laws, rules, and regulations.
- 2.6 If the Project involves storage of items at a third-party warehouse, CUSTOMER shall identify the warehouse as "[Warehouse name] – MESA" in the address line. If the Project involve delivery of materials to any project site, then Customer shall provide ready and safe access to the Site on deliveries through driveways and sidewalks to the buildings and through receiving areas, hallways, elevators, floors and rooms.

Section 3 – Projects, Services, and Payment

- 3.1 Project Quote Not Binding. The Project Quote outlines the scope of work, provides an estimated cost, and details the rates for specific Services based on the data, information, and estimates provided by CUSTOMER. The Project Quote is a detailed estimate provided for budgeting and planning purposes. It does not bind MESA or limit the final amount charged to CUSTOMER. Any changes or additions to the Project Quote may result in additional charges that will be reflected on monthly invoices. All invoices shall be based on the Services actually provided by MESA.
- 3.2 Payment. MESA shall invoice CUSTOMER for its Services performed on a monthly basis. All amounts owing by CUSTOMER to MESA are due within thirty (30) days of the invoice date, without any deduction or setoff. MESA shall apply CUSTOMER's payment(s) to the invoices specified in the payment, if any. Otherwise, MESA may apply payments to such invoices or other amounts owing from CUSTOMER as MESA deems appropriate in its sole discretion. If any charges owing to MESA are not paid by the due date, interest shall accrue on the amounts owing at the rate of 1.5% per month, compounded monthly. CUSTOMER shall also be liable to pay MESA for any and all costs incurred by MESA in collecting the amounts owing, including, but not limited to, reasonable attorney fees and costs, regardless of whether litigation is filed.
- 3.3 Taxes. All sales, use, excise, and other taxes or governmental fees of any kind are to be paid by CUSTOMER, unless otherwise agreed to in a writing executed by both PARTIES.
- 3.4 Subcontractors. MESA may provide Services using the personnel, equipment, and facilities of MESA, or may arrange for and engage Subcontractors to provide any Services hereunder. The relationship between MESA and any Subcontractor is and shall remain that of an independent contractor. MESA shall contractually require all

Subcontractors to have all licenses, permits, authorizations, and insurance to perform the services for which they were engaged. MESA agrees to indemnify CUSTOMER against claims for compensation made by Subcontractors against CUSTOMER provided CUSTOMER has fulfilled its payment and other obligations to MESA. Notwithstanding any such subcontracting, MESA shall trace, expedite and coordinate all such Services and provide information to CUSTOMER as required.

- 3.5 Overtime and Expedited Work. If CUSTOMER requests overtime or expedited work that requires work on Saturday, Sunday, or a holiday, or at a time other than normal business hours (8:00 am to 5:00 pm) on regular working days, MESA will try to provide the work as requested. CUSTOMER shall pay reasonable charges for such work which shall be at the rates specified either in the Project Quote Rate Table or at the rates quoted by MESA to CUSTOMER.
- 3.6 Freight Brokerage Services. If CUSTOMER engages MESA to perform Freight Brokerage Services as part of any Project, then in addition to these Terms and Conditions, the Terms and Conditions for Freight Brokerage shall apply to any Freight Brokerage Services provided by MESA. The Terms and Conditions for Freight Brokerage Services are available at <https://mesalogisticsgroup.com/wp-content/uploads/2019/06/customer-brokerage-terms-and-conditions.pdf>. In the event of any conflict between these Terms and Conditions and the Terms and Conditions of Brokerage as it pertains to Freight Broker Services, the Terms and Conditions of Brokerage shall control.

Section 4 – Insurance, Liability, and Indemnification

- 4.1 Insurance. MESA carries and requires its Subcontractors to carry appropriate insurance for all Services it provides. By way of information and not by any requirement, MESA generally carries and maintains the following insurance coverage in the amounts indicated:
- A. General Liability (\$1,000,000)
 - B. Workers Compensation (as required by laws of the state in which the work is to be performed)
 - C. Cargo Legal Liability (\$250,000)
 - D. Warehouse Legal Liability (\$500,000)
- 4.2 Limitation(s) of Liability. Unless otherwise agreed to in a written agreement executed by both Parties: (1) MESA shall not be responsible to insure any Goods tendered, stored, or handled by MESA (or its Subcontractors) against loss or damage however caused; and (2) MESA’s liability, if any, for loss or damage to CUSTOMER’s Goods tendered, stored, or handled by MESA (or its Subcontractors) is limited to the actual loss or damage to the item. CUSTOMER understands and agrees that MESA accepts no liability for concealed damage, including but not limited to the working condition of goods handled. MESA shall not be liable under any circumstance for any indirect, consequential, special, incidental, or punitive damages, including but not limited to loss of use, delay, or lost profits.
- 4.3 Indemnification. CUSTOMER shall each defend, indemnify, and hold MESA harmless against any claims, actions, damages, and causes of action arising out of or relating to CUSTOMER’s negligent or other tortious acts or omissions or arising out of or relating to CUSTOMER’s failure to fulfill any obligations it may have to hereunder or otherwise.
- 4.4 Confidential Information. CUSTOMER understands and acknowledges that it may have access to information that is confidential or proprietary to MESA, including without limitation trade secrets, prices, CUSTOMER and supplier lists and data, details of CUSTOMER and supplier relationships, and the identity of employees and other independent contractors, (“Confidential Information”). CUSTOMER agrees to not disclose such Confidential Information without prior written approval of MESA.
- 4.5 Remedies. In addition to any other remedies that may be available to MESA at law or in equity, all provisions of these Terms and Conditions may be specifically enforced, however, the failure of MESA to promptly enforce such provisions shall not be construed to be a waiver of MESA’s rights hereunder. In addition, CUSTOMER recognizes that the payment of damages hereunder may not fully compensate MESA for CUSTOMER’s breach of the provisions of these Terms and Conditions and that MESA will likely suffer irreparable harm from such a

breach. Accordingly, CUSTOMER agrees that should it breach, violate, or threaten to breach or violate the provisions of these Terms and Conditions, that MESA will be entitled to injunctive relief prohibiting CUSTOMER's breach, violation or continued breach or violation without the need of MESA having to post any bond in connection with such injunctive relief.

- 4.6 Attorney Fees and Costs. CUSTOMER understands and agrees that in the event of the breach of any of the terms or conditions herein, CUSTOMER shall be liable to pay MESA all reasonable attorney fees and costs incurred by MESA in enforcing any terms and conditions of this Agreement, regardless of whether litigation is filed.

Section 5 – Miscellaneous

- 5.1 Non-Exclusivity. Subject to any minimum volume or exclusivity requirements set forth in the Project Quote or another writing and signed by both Parties, CUSTOMER is free to request Services from other providers and MESA is free to provide Services to other customers.
- 5.2 Regulatory Compliance. MESA agrees to comply with all applicable provisions of any federal, state and/or local law or ordinance, or foreign laws, if applicable, and all lawful orders, rules and regulations issued thereunder. MESA represents and warrants that it is properly authorized and licensed to provide the Services.
- 5.3 Independent Contractor. The relationship of MESA to CUSTOMER is and shall remain solely and exclusively that of an independent contractor, and nothing contained herein shall be construed to be inconsistent with that relationship. Neither MESA, nor any of MESA's Subcontractors shall be deemed employees or agents of CUSTOMER. The PARTIES represent and agree that all personnel providing Services under this agreement, are not subject to the direction, control or supervision of CUSTOMER.
- 5.4 Governing Law. Negotiations for MESA's Services are deemed to have been conducted within the State of Missouri. Accordingly, except to the extent (if any) that they are preempted by federal law, the laws of the State of Missouri shall govern the construction and interpretation of these Terms and Conditions and the dealings between CUSTOMER and MESA. CUSTOMER expressly submits to the jurisdiction of the Courts of the State of Missouri and the United States District Court for the Eastern District of Missouri and agrees that jurisdiction and venue shall be proper in such Courts and CUSTOMER waives any claim or defense that such Courts will be an inconvenient forum.
- 5.5 Force Majeure. If MESA is unable to meet its contractual obligations as a result of an Act of God, war, insurrection, pandemic, strikes, derailments, or any like causes beyond its control, MESA's contractual obligation affected by the force majeure condition shall be suspended for the duration of the same; provided, however, that MESA shall make reasonable efforts to continue to meet its obligations during the duration of the force majeure condition.
- 5.6 Entire Agreement. These Terms and Conditions and those incorporated herein by each Project Quote and Purchase Order make up the entire agreement and understanding of the PARTIES (the "Contract Documents") and supersede all prior agreements made, either written or verbal. There are no representations, inducements, promises or agreements, oral or written, not embodied in the Contract Documents. The Contract Documents may be modified only by a written instrument signed by authorized representatives of both PARTIES.
- 5.7 Conflicting Language. In the event of any conflict between these Terms and Conditions and the Project Quote, the more specific terms of the Project Quote shall prevail, but only as to that specific Project Quote.
- 5.8 Assignment. The PARTIES shall not assign all or part of this Agreement, or any rights or obligations under this Agreement, except otherwise stated in the Contract Documents without the prior written consent of the other.
- 5.9 Successors and Assigns. The Contract Documents and invoices shall be binding on and shall inure to the benefit of the Parties' respective successors and assigns.
- 5.10 Savings Clause. If any provision of this Agreement is deemed invalid under the laws of the federal government, any state or any other jurisdiction, such provisions shall be deemed not to be a part of the Contract Documents,

except in the case of a state or local prohibition in which event it shall be eliminated only for such state or locality, but no such elimination shall invalidate any other provision of the Contract Documents.