

# Drive Star Service Terms & Conditions

## **APPLICATION OF THESE SERVICE TERMS AND CONDITIONS**

1. These Service Terms & Conditions govern all services offered by Drive Star Shuttle Systems Ltd. (DRIVE STAR, COMPANY or CARRIER) for its direct customer and/or the shipper, owner, consignee or any person or entity claiming legal or beneficial interest in goods (CUSTOMER). The reference to "goods" herein shall include trucks, tractors or other equipment intended to be driven or towed ("Goods"). A copy of these Service Terms & Conditions may be made available upon request
2. The DRIVE STAR services referred to in paragraph 1 above include but are not limited to the following services provided for a CUSTOMER which are described on DRIVE STAR's website ([www.drivestardelivers.com](http://www.drivestardelivers.com)):
  - a) "Drive-Away of Goods"
  - b) "Tow-Away of Goods"
  - c) "Specialized Drive-Away of Goods"
  - d) "Transportation of Goods"
  - e) "Trade Show and Exhibit Goods"
  - f) "International Freight Forwarding of Goods"
  - g) "Intermodal / Rail Shipments of Goods"
  - h) "Fleet Management"
  - g) services not otherwise included in the foregoing items a) through h) (collectively, "Drive Star Services")
3. These Service Terms & Conditions will apply to all Drive Star Services for a CUSTOMER regardless of the province or state of origin and the routing over which the Drive Star Services are to be provided.
4. These Service Terms & Conditions also apply whenever any claim is made against any employee, agent or independent contractor engaged by DRIVE STAR to perform Drive Star Services whether such claims are founded in contract or in tort, and the aggregate liability of DRIVE STAR and all such persons shall not exceed the limitations of liability in these Service Terms & Conditions. For purposes of this paragraph DRIVE STAR acts as agent for all such persons who may ratify such agency at any subsequent time.
5. Subject to any written agreement between DRIVE STAR and Shipper these Service Terms & Conditions constitute the entire agreement between the parties for Drive Star Services. In the event of a conflict between these Service Terms & Conditions and any other agreement or applicable laws concerning Drive Star's Services (including, without limitation, any terms of carriage deemed applicable in accordance with the laws in effect at a point of shipment origin)

these Service Terms & Conditions will govern to the extent of any such inconsistency as permitted by law.

#### ***DRIVE STAR MAY BE ACTING AS A PRINCIPAL OR AS AGENT IN THE PROVISION OF SERVICES***

6. DRIVE STAR may provide its services as either principal or agent. DRIVE STAR acts as agent of the CUSTOMER, **except:**

(a) where DRIVE STAR issues a transport document or electronic record evidencing its obligation for the delivery of Goods, and

(b) when, but only to the extent, that a DRIVE STAR driver has physical care, custody and control of Goods in the course of performing a specific service, in which cases DRIVE STAR acts as **principal**,

but whether acting as principal or as agent these Service Terms & Conditions govern the rights and liabilities of the CUSTOMER and the COMPANY.

#### ***DRIVE STAR'S ROLE AS AGENT***

7. When acting as an agent, DRIVE STAR acts solely on behalf of the CUSTOMER in engaging the services of third parties on the usual terms and conditions on which the third parties offer such services for the carriage, storage, packing or handling of any Goods, or for any other service in relation to them, thereby establishing a direct contract between the CUSTOMER and the provider of such services capable of being enforced by the CUSTOMER as principal, whether or not the CUSTOMER is identified in the contract. DRIVE STAR shall on demand by the CUSTOMER provide evidence of any contracts made on its behalf.

#### ***DRIVE STAR'S ROLE AS PRINCIPAL***

8. Where requested by the CUSTOMER or on its/his/her own accord DRIVE STAR or a DRIVE STAR driver may:

(a) issue a transport document or electronic record by which DRIVE STAR as principal undertakes carriage of particular Goods; or

(b) guarantee in writing proper performance of the terms of any contract between the CUSTOMER and a third party whose services the COMPANY has engaged on behalf of the CUSTOMER.

9. Where DRIVE STAR issues such a transport document or electronic record, or provides a guarantee, without prejudice to the provisions of paragraph 18 below, any liability for Goods on the part of DRIVE STAR will in no event exceed that borne by the third party who performs the carriage or guaranteed service, as may be limited by the conditions on which that party customarily offers its services. In the event of any inconsistency with these provisions, the special conditions on a transport document or electronic record issued by DRIVE STAR shall prevail.

### **DRIVE STARS' GENERAL RESPONSIBILITIES**

10. (A) DRIVE STAR shall exercise reasonable care in the discharge of its obligations including the selection and instruction of third parties that provide any services engaged on behalf of the CUSTOMER.
- (B) DRIVE STAR shall arrange transport and any related services within a reasonable time after receiving the CUSTOMER's instructions.
- (C) If DRIVE STAR has reasonable grounds for departing from any of the CUSTOMER's instructions, DRIVE STAR can do so without prior authorization from the CUSTOMER, but must act with due regard to the interests of the CUSTOMER, and, as soon as possible, inform the CUSTOMER of its actions and any additional charges resulting therefrom.
- (D) DRIVE STAR reserves the right to determine the route each vehicle will take in order to arrive at its destination. DRIVE STAR does not guarantee that all affiliated units will be shipped at the same time or together in the same shipment. DRIVE STAR may from time to time mix and match trucks from various CUSTOMERS in order to meet operational requirements or achieve an optimum load factor. DRIVE STAR shall not charge the CUSTOMER for out of route miles, however, the CUSTOMER, acknowledges and agrees that DRIVE STAR, at its sole discretion may ship vehicles out of route to accommodate its operating requirements.

### **CUSTOMER'S GENERAL RESPONSIBILITIES**

11. (A) The CUSTOMER shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of its business, including terms of purchase and sale, the need for insurance and the extent of coverage available for the type of Goods being tendered for shipment, the need to preserve and retain documentation, the need for care to avoid transmitting viruses by electronic communications, the need for confidential handling of information relating to high value Goods, and all other matters relating thereto.
- (B) The CUSTOMER warrants that all information in whatever form relating to the general and dangerous character of the Goods, their description, bar-coding, marks, number, weight, volume and quantity of the Goods, as furnished by the CUSTOMER or on its behalf, is accurate and complete at the time the Goods were taken in charge by the COMPANY or any third party whose services it has engaged. The CUSTOMER further undertakes to provide independent confirmation of such particulars on the request of DRIVE STAR.
- (C) CUSTOMER warrants that it tenders transit worthy cargo for any intended carriage, has notified DRIVE STAR in writing of applicable laws, regulations and instructions governing

the cargo, and that the tender is in full compliance with declaration, marking, and all requirements of the respective U.S. and Canadian Customs Services, the U.S. Food and Drug Administration and Health Canada, and any other statutes, rules, and regulations of any Federal, state, provincial, and/or local authorities applicable to CUSTOMER's Goods including without limitation the offering for transport of Hazardous and/or Dangerous Goods. CUSTOMER warrants that the size and or weight of the Vehicle or equipment specified herein comply with applicable transportation or other regulatory authority requirements. In the event the Vehicle or equipment is delayed and or re-routed as a result of inaccurate size or weight information, the CUSTOMER will be liable for any and all costs incurred.

(D) i) Any CUSTOMER vehicle being transported must, as and when required by applicable transportation or other regulatory authority requirements, contain a fully functioning fire extinguisher, flares or triangles, and, tire chains during winter months. In the event CARRIER incurs fines due to the lack of necessary safety equipment, fines will be billed to the CUSTOMER along with the cost of purchasing the items required plus applicable surcharges as outlined in the Schedule of Standard Charges.

ii). The vehicle being transported must have fully functioning wipers, headlights, marker lights, turn signals, brake & tail lights, mud flaps bearing retroreflective tape and minimum tire skid depth of 4/32. Any costs incurred in repairing or installing any of the above noted items in order to prepare the vehicle for transport will be the responsibility of the CUSTOMER. All repairs or alterations made on behalf of and connected with these items on behalf of the CUSTOMER will carry the applicable surcharge.

#### ***CUSTOMER'S RESPONSIBILITY FOR PACKAGED AND CONTAINERIZED GOODS***

12. (A) Except where DRIVE STAR has accepted instructions in respect of the preparation, packing, stowage, labeling or marking of the Goods the CUSTOMER warrants that all Goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods. Without limiting the foregoing the CUSTOMER is responsible for timely communication of and warrants the accuracy of the verified gross mass (VGM) of the package(s) and or the transport unit and the identity of the duly authorized person so verifying. The CUSTOMER shall maintain documentation evidencing measurement of VGM as required by law.

(B) Unless the COMPANY has accepted instructions to arrange for or to perform the loading of a transport unit by its employees, the CUSTOMER warrants that:

- (a) the transport unit has been properly and competently loaded;
- (b) the Goods are suitable for carriage in or on the transport unit;

- (c) the Goods have been secured in accordance with any applicable *Cargo Securement Standard*; and
- (d) the transport unit is in a suitable condition to carry the Goods loaded therein (save to such extent as the COMPANY has approved the suitability of the transport unit).

### **SERVICES REQUIRING SPECIAL ARRANGEMENTS**

**13.** The CUSTOMER must give instructions in writing to DRIVE STAR a reasonable time before the tender of Goods for storage or transport where it requests DRIVE STAR to:

- (a) arrange for the departure or arrival of Goods before specific dates;
- (b) arrange for Goods to be carried, stored or handled separately from other Goods;
- (c) arrange for the transport of Goods that may taint or affect other goods, or may harbor or encourage vermin or pests;
- (d) make a declaration of value or special interest in delivery to any carrier or terminal;
- (e) direct carriers or delivery agents to hold Goods until payment of any amount or until surrender of a document;
- (f) arrange for the transport of Goods of unusual high value, luxury Goods, currency, negotiable Instruments or securities of any kind, precious metals or stones; antiques or art; human remains, livestock or plants, or any other comparable cargos.
- (g) transport over-dimensional or overweight vehicles
- (h) transport "right-hand-steer" vehicles
- (i) transport vehicles which use alternate propulsion fuels

**14.** Where for any reason it does not accept such instructions, DRIVE STAR must promptly so advise the CUSTOMER by any means of communication used in the ordinary course of business. If it continues to use DRIVE STAR's services for the contemplated transport after receiving such advice, the CUSTOMER assumes all risks connected with the non-performance of such instructions, whether caused or contributed to by DRIVE STAR's negligence or not.

### **QUOTATIONS AND INVOICING - GENERAL**

**15.** A) DRIVE STAR does not assume a role as principal by providing a fixed price quotation, or by rendering an invoice where the difference between the amounts payable to third parties retained to carry out the CUSTOMER's instructions and the fixed price represents DRIVE STAR's gross profit for its services. A CUSTOMER agrees that DRIVE STAR is an agent as provided above where the CUSTOMER:

- (a) accepts a fixed price quotation, or
- (b) does not within thirty days after receipt of the invoice object to the COMPANY charging a fixed price for its services.

(B) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise provided in the quotation all quotes provided by

DRIVE STAR are spot-quotes which expire within 24 hours of issuance. Offered rates not based on spot-quotes are subject to change at any time without prior notice.

16. A) Payment on approved accounts is due on delivery of the Goods to CUSTOMER without offset for any disputes or claims including freight claims, overcharges, duplicate payments and/or disputed invoices. Payment for pre-paid accounts is due by wire transfer or credit card prior to pick up of Goods. All wire fees or credit card charges will be invoiced in addition to DRIVE STAR's quoted rates and standard charges. If CUSTOMER alleges overcharges, duplicate payment, or other over collections, notice of such claims or unidentified payments must be given within 180 days of receipt of the invoice, and a civil proceeding must be filed within eighteen (18) months of delivery or tender of delivery of the shipments involved. To the extent permitted by applicable law, the expiration of the said 180 day period shall be a complete and absolute defense to any such action or proceeding, without regard to any mitigating or extenuating circumstance or excuse whatsoever.

B) A late payment fee will be charged on overdue accounts at 18% per annum, compounded monthly at 1.5%. CUSTOMER is responsible for all costs and expenses, including without limitation, actual legal fees, incurred by DRIVE STAR or its agent(s) relating to the collection of delinquent accounts.

C) CUSTOMER acknowledges its responsibility to pay DRIVE STAR for services rendered at the rates quoted prior to shipment and/or as set out herein on the date of delivery of the Goods (defined below) by DRIVE STAR to CUSTOMER.

D) All rates quoted by DRIVE STAR to CUSTOMER do not include any value-added, sales, use, or similar taxes, duties, or charges (collectively "Sales Taxes") and all Sales Taxes are the responsibility and for the account of CUSTOMER. If DRIVE STAR is required by law or by administration thereof to collect any applicable Sales Taxes from CUSTOMER, then CUSTOMER shall pay such Sales Taxes to DRIVE STAR concurrent with the payment of the consideration on which the Sales Taxes are calculated.

#### ***SPECIAL RULES AND CHARGES APPLICABLE TO DRIVE STAR SERVICES PROVIDED FOR VEHICLES***

17. In addition to CUSTOMER's obligations and responsibilities (including liability to pay charges) as otherwise set forth generally herein, CUSTOMER also acknowledges the following specific rules, requirements and payment obligations pertaining to vehicles:

a) Scheduling of Vehicle Pick-Up: The CUSTOMER acknowledges that DRIVE STAR schedules all vehicle pick-ups from the date and time of vehicle readiness. For scheduling purposes, the clock begins at the moment we receive formal written confirmation that a vehicle is complete and ready for pick up. DRIVE STAR does not consider or include prior advance notice when scheduling to meet a CUSTOMER's anticipated vehicle-readiness date. Detention charges may result if DRIVE STAR is required to wait for a vehicle's completion. The CUSTOMER further acknowledges that transit times are traffic and weather dependent and may change at any time.

b) Other Charges:

i). Enforcement Actions - During the course of transporting any Vehicle, should DRIVE STAR become subject to an enforcement action, resulting from the failure of any such Vehicle to pass a CVSA roadside inspection, which results in DRIVE STAR being required to make a court appearance, CUSTOMER acknowledges and agrees that CUSTOMER will be responsible for all travel expenses, mileage charges and a \$800.00 per diem labour charge. This fee is calculated for each day the DRIVE STAR employee or agent is in court or while traveling to and from court proceedings.

ii). Regulatory Proceedings - Should a DRIVE STAR employee, agent, independent contractor, or subcontractor be required to appear before a regulatory agency with regards to a compliance failure on the part of the CUSTOMER or the CUSTOMER's vehicle or to attend a court of law to give testimony on CUSTOMER's behalf, CUSTOMER acknowledges and agrees that CUSTOMER will be responsible for all reasonable travel expenses, mileage charges and a \$800.00 per diem labour charge for each day the DRIVE STAR employee, agent, etc. is appearing in court or before a regulatory agency, or while traveling to and from regulatory agency or court proceedings.

iii). Fuel Surcharges - All freight invoices are subject to a fuel surcharge. Furthermore, each CUSTOMER with a Vehicle on a deck load, or for those CUSTOMERS who ship trailers, each will be charged an equal share of the overall fuel surcharge on the combined load amount. The fuel surcharge is calculated as a percentage of the overall load freight charge and then divided equally by the number of trucks or trailers on the load. (I.e. the more Vehicles on the load, the more fuel surcharge the individual CUSTOMER will pay). Such percentage is subject to change on a week to week basis.

iv). Vehicle Breakdown Charges – subject only to the provisions of paragraph 29 below (Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" service) costs related to Vehicle breakdowns while the Vehicle is in transit, parked or staged at any of the CUSTOMER's terminals will be the sole responsibility of the CUSTOMER. Breakdown charges include, but are not limited to: vehicle thawing, boosting, towing, roadside &/or general repairs, expired permits as well as driver lodging, extraction and/or insertion transportation, per-diems, missed flights, and such other costs reasonably determined to be related to a Vehicle breakdown and being necessary to facilitate the completion of the Drive-Away service to destination ("Breakdown Expenses"). Subject to the provisions of paragraph 29 below CUSTOMER shall reimburse DRIVE STAR for all Breakdown Expenses incurred and/or paid for by DRIVE STAR on CUSTOMER's behalf, and DRIVE STAR will charge CUSTOMER a 15% surcharge on all such Breakdown Expenses.

v). Detention Charges - DRIVE STAR reserves the right to charge for detention time & expenses due to mechanical breakdowns, lay-overs, waiting and delays in accordance with the Schedule of Standard Charges.

vi). Authorization for Repairs/Breakdown/Towing - In the interest of saving time and money, acceptance of CARRIER's quote and/or contract is the CUSTOMER's pre-authorization to DRIVE STAR to incur up to a maximum of \$1,000.00 in additional repairs/towing plus related breakdown charges deemed necessary by DRIVE STAR to complete delivery. DRIVE STAR will furnish any and all applicable receipts on completion. The CUSTOMER hereby authorizes all necessary repairs and acknowledges this indebtedness for purposes of the Mechanic's Lien Act and/or the RSLA and/or the Consumer Protection Act and/or possessory lien statutes of the prevailing jurisdiction.

vii). Cancellation of Orders - In the event a CUSTOMER retracts/withdraws an order to DRIVE STAR, or in the event DRIVE STAR chooses to cancel an order by reason of any breach by CUSTOMER of its obligations hereunder or otherwise (which DRIVE STAR hereby expressly reserves the right to do), the CUSTOMER accepts and acknowledges that the CUSTOMER will be completely responsible for all charges and costs incurred up to the point of order-cancellation. If DRIVE STAR has incurred costs in connection with the initial order, DRIVE STAR has the right to charge said costs to the CUSTOMER plus the applicable surcharge. DRIVE STAR may also charge the CUSTOMER for the local or regional pick up of any and all units plus any fuel purchased.

viii). Tire Chains - Tire chains are the responsibility of CUSTOMER and must be provided for those vehicles and equipment moving into, out of, or through jurisdictions, where their laws require the use of tire chains during the winter season. In the event DRIVE STAR is required to purchase tire chains on behalf of CUSTOMER, the charges as outlined in the Schedule of Charges will be added to CUSTOMER's invoice.

ix). Storage Charges - CUSTOMER authorizes DRIVE STAR to retain possession of the Vehicle(s) identified in the Order Confirmation ("Vehicle") and to charge storage at the rate of \$50.00 per day per Vehicle in the event that: (a) the CUSTOMER does not retrieve the Vehicle at the specified delivery destination on the specified date and time; and/or (b) CUSTOMER fails to remit payment to DRIVE STAR in accordance with the terms of payment specified above. The CUSTOMER authorizes DRIVE STAR to sell the Vehicle to recover the outstanding invoice owing by the CUSTOMER to DRIVE STAR plus interest, storage and any and all legal costs incurred by DRIVE STAR to complete the sale of the Vehicle.

c) Lead Units and Decked Units.

i). The CUSTOMER acknowledges and agrees that DRIVE STAR may at its sole discretion decide to use a tractor that was quoted as a single or decked unit as a pull-tractor for a trailer or set of trailers. In the event this occurs, the rate quoted may be eligible for amendment to the standard delivery charge for decked units provided the quoted rate was based on a single unit move. Any CUSTOMER requesting that a unit is not to be used as a lead (power unit) will be charged an additional freight charge of \$ 800.00 per unit. DRIVE STAR retains



the right to use a CUSTOMER power unit to pull a trailer rather than deck it and in so doing DRIVE STAR retains the right to drive the unit as many miles as is necessary to affect the delivery of the trailer(s).

ii). All decked units (trailing units) will have the battery terminal(s) disconnected and shall have no more than 1/8 tank of fuel in the fuel tanks during transportation and upon delivery.

iii). DRIVE STAR shall not reimburse CUSTOMER for fuel that was in a vehicle's fuel tank upon pick up or delivery. All vehicles will be delivered with 1/8<sup>th</sup> of a tank or less of fuel regardless of the amount of fuel that was in the tank upon pick up.

d). Loose articles shipped with units (i.e. tires, air fairings, etc...) that need to be secured or fastened to a Vehicle or load will not be the responsibility of DRIVE STAR. DRIVE STAR will not accept responsibility for the loss, damage or theft of any articles lost or stolen. DRIVE STAR will not accept responsibility for theft or vandalism to or for those items shipped on or in a vehicle that cannot be locked including, but not limited to, the vehicle itself or the items whether in the cab, tool boxes, cabinets or compartments.

e). Subject to clause 17(c)(i) above DRIVE STAR does not provide a discount or any rate concession when tractors are used in a combination with other CUSTOMER(s) vehicles or when used to reposition trailers.

#### ***LIABILITY OF DRIVE STAR WHEN ACTING AS A PRINCIPAL***

18. a) Subject to the other terms of these Service Terms & Conditions DRIVE STAR shall only be liable for actual loss or damage to Goods (without allowance for diminution in value) solely to the extent that i) pilferage, loss or damage is noted on the 'Drive Star Inspection Sheet and Bill of Lading' (or such other similar delivery document) provided to CUSTOMER or it's intended receiver of Goods at the time of delivery and, said pilferage, loss or damage was not recorded on the 'Drive Star Inspection Sheet and Bill of Lading' (or such other similar delivery document) at time of vehicle pick-up and ii) such pilferage, loss or damage be a direct result of the negligence of DRIVE STAR (or that of any employee handling and/or being in the possession, custody or control of Goods). Item i) shall not apply in cases of an actual non-delivery of Goods to destination.

b) In no event shall DRIVE STAR be liable for any losses, damages and/or expenses arising directly or indirectly from the removal, cancellation, alteration and/or nullification of any warranty(ies).

c) Subject only to the provisions of paragraph 29 below (Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" service) in no event shall DRIVE STAR be liable for any loss or damage related in any way to mechanical failure and/or any pre-existing defect (whether

latent or otherwise) to a vehicle manifesting itself prior to, during or following the provision of any Drive Star Services.

d) Without restricting the generality of the foregoing and subject only to the provisions of paragraph 29 below (Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" service) DRIVE STAR shall not be liable for partial or complete failure or loss of any of the following components, including but not limited to, engine, radiator, transmission, clutch, bearings, drive-line, U-Joints, rear-ends, axles, oil pans, brakes, hubs, suspension, etc., unless such failure was a direct result of negligence caused solely by DRIVE STAR as determined by a 3rd party industry-recognized expert as appointed or as agreed to by the DRIVE STAR for the purposes of provision of proof on point.

e) Without restricting the generality of the foregoing and subject only to the provisions of paragraph 29 below (Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" service) in no event shall DRIVE STAR be liable for damage or claims to any vehicles pertaining to the normal incidents of carriage by road, in the nature of road hazards, debris, defective or failing tires, mechanical breakdown, and – in respect of Drive-Away services – road hazards including road debris resulting in glass, windshield, stone chips, tires, salt or sand damage.

***LIABILITY OF DRIVE STAR – GENERALLY (WHETHER ACTING AS PRINCIPAL OR AS AN AGENT)***

19. In no event shall DRIVE STAR be liable to CUSTOMER for consequential, special or indirect losses or damages whether for delay or otherwise, or for damages of an incidental, exemplary or punitive nature including but not limited to loss of use, market, goodwill or profits which arise from the performance or non-performance of the services contemplated herein.

20. Subject only to paragraph 29 below (Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" service) DRIVE STAR shall not be responsible if it be prevented or delayed from performing any of its obligations hereunder by reason of any act of God, strike, threat of imminent strike, walkout, labor disruptions, fire, war, insurrection or mob violence, acts of terrorism, requirement or regulation of government, unavoidable casualty, collision or upset or other reason, whether similar or dissimilar to the foregoing, any such event being beyond its reasonable control. In such event the performance of any of DRIVE STAR's obligations be so prevented or delayed they shall be suspended during such period of disability, and DRIVE STAR shall use reasonable diligence to remove such causes of disability as may occur from time to time.

21. If events or circumstances, including a CUSTOMER's failure to take delivery, occur that affect performance of the CUSTOMER's mandate, the COMPANY shall take reasonable steps to obtain the CUSTOMER's further instructions. If for whatever reason it does not receive timely instructions, the COMPANY may:

(a) store the Goods at the sole risk and expense of the CUSTOMER, or

- (b) sell the Goods immediately and without further notice, and hold any net proceeds for the account of the CUSTOMER or
- (c) authorize any third party to abandon carriage and make the Goods or any part of them available to the CUSTOMER at a place that is reasonable in the circumstances.

22. In any event of the foregoing any liability (whether as principal or agent) on the part of DRIVE STAR arising from or being in connection with any Drive Star Services being offered to a CUSTOMER (whether for loss or damage to Goods or otherwise) shall be limited to the lesser of:

- i) CAN \$300,000 or
- ii) the CUSTOMER's actual manufacturing cost or acquisition cost to repair the lost or damaged shipment to its pre-loss condition less salvage value.

CUSTOMER may opt to iii) purchase an increased level of DRIVE STAR's liability for loss or damage to Goods occurring during DRIVE STAR's provision of services than otherwise indicated immediately above or iv) in accordance with paragraph 29 below purchase Risk Protection Products for vehicles being the subject of DRIVE STAR's "Drive-Away of Goods" service. Should CUSTOMER wish to exercise either option it must, prior to the tender of a shipment for carriage: v) provide a written request to DRIVE STAR, vi) secure the written agreement by an authorized representative of DRIVE STAR and vii) agree, in writing, to prepay any applicable charges to DRIVE STAR.

#### ***CUSTOMER REQUIREMENTS FOR FILING OF A CLAIM AND FOR SUIT***

##### **A) Where DRIVE STAR is Acting as Principal**

23. **Notice of Claim.** DRIVE STAR shall not be liable for any claims in its capacity as a principal not presented to it, in writing, by CUSTOMER within 60 days of the date of loss or incident or the date when Goods should have been delivered giving rise to such claim. Any such claim notice must set forth details of any losses or claims alleged with detail of the relevant service description, 'Drive Star Order Form' and/or carriage document (proof of delivery) as may be the case.

24. **Time bar for Suit:** No suit to recover any claim or demand under these Service Terms & Conditions may be brought against DRIVE STAR in its capacity as a principal unless such suit is filed in a court of competent jurisdiction as provided herein within 2 years from the date of loss or incident giving rise to such claim.

##### **B) Where DRIVE STAR is Acting as Agent**

25. **Notice of Claim.** DRIVE STAR shall not be liable for any claims in its capacity as an agent not presented to it, in writing, by CUSTOMER within 30 days of the date of loss or incident or the date when Goods should have been delivered giving rise to such claim. Any such claim notice must

set forth details of any losses or claims alleged with detail of the relevant service description, 'Drive Star Order Form' and/or carriage document (proof of delivery) as may be the case.

**26. Time bar for Suit:** No suit to recover any claim or demand under these Service Terms & Conditions may be brought against DRIVE STAR in its capacity as an agent unless such suit is filed in a court of competent jurisdiction as provided herein within 9 months from the date of loss or incident giving rise to such claim.

### ***DRIVE STAR RIGHT TO LIEN***

**27.** All Goods (and documents relating to Goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such Goods, or for any particular or general balance or other monies owed, whether then due or not, by the CUSTOMER, sender, consignee or owner of the Goods to the COMPANY. If these monies remain unpaid for 10 days after the COMPANY sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the Goods may be sold by private contract or otherwise at the sole discretion of the COMPANY, and the net proceeds applied on account of the monies owing. The COMPANY will not be liable for any deficiencies or reduction in value received on the sale of the Goods nor, will the CUSTOMER be relieved from the liability merely because the Goods have been sold.

### ***INSURANCE***

**28. CUSTOMER's Insurance.**

a. Other than as provided for at paragraph 29 (Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" service) below by way of CUSTOMER's purchase of the protection options set forth therein CUSTOMER shall at all times keep Goods (including all vehicles) insured against loss or damage for which they may from time to time be subject, including, without limitation, collision, fire, theft, vandalism and other risks covered by insurance.

b. CUSTOMER shall also maintain and keep in full force and effect at all times comprehensive public liability insurance protecting and indemnifying it, DRIVE STAR and its employees and/or any and all independent contractors or subcontractors of DRIVE STAR who may operate a vehicle as a part of the services hereunder against any and all third party claims for personal injury or property damage or for loss of life. All such insurance shall be provided in such amounts, in such form, on such terms and by such companies and against such risks as shall be satisfactory to DRIVE STAR.

c. Without limiting the generality of the foregoing, each liability insurance policy shall name DRIVE STAR and its employees and/or any such independent contractor or subcontractor as additional insureds, as their interests may appear, and shall provide that such policy may not be cancelled or modified without at least thirty (30) days prior written notice to DRIVE STAR. CUSTOMER shall provide to DRIVE STAR evidence satisfactory to DRIVE STAR of the existence of each policy of insurance required pursuant to the terms hereof.

**29. Risk Protection Products for DRIVE STAR's "Drive-Away of Goods" Service**

When CUSTOMER purchases any of DRIVE STAR's "Drive-Away of Goods" services listed at paragraph 2a) through c) above it may purchase one or more of the following products in accordance with paragraph 22 above:

i) **Road Hazard & Animal Strike Protection:** If purchased in the event of a road hazard or animal strike incident while in transit DRIVE STAR will arrange for the necessary repairs up to an amount of \$5,000 CDN to facilitate the continuation of the Drive-Away service to destination on an actual cost basis (no repair mark-up) billable to CUSTOMER by a qualified repair facility.

ii) **Breakdown Expenses Protection:** If purchased DRIVE STAR will be responsible for documented Breakdown Expenses which are submitted by CUSTOMER or incurred by DRIVE STAR up to an amount of \$5,000 CDN. Breakdown Expenses exceeding this amount shall be subject to the provisions of paragraph 17(iv) above.

iii) **Rental Protection:** If purchased, notwithstanding the provisions of paragraph 19, in the event of an accident or a collision necessitating repairs to a Vehicle for which DRIVE STAR is liable under paragraph 18a) where the period of time to effect necessary repairs lasts longer than 7 days from the date of CUSTOMER'S repair authorization, DRIVE STAR will then be responsible for the costs of a rental vehicle of equal or lesser description up to a maximum duration of 60 days. This Rental Protection obligation by DRIVE STAR will include the cost of the stationing or placement of such replacement vehicle at either the Drive-Away service place of origin or the intended place of destination as directed by CUSTOMER. This Rental Protection is subject to the condition that where such repair facility is selected by CUSTOMER that the same be expeditiously engaged by CUSTOMER, who agrees to provide DRIVE STAR with repair status reports with supporting documentation on demand.

iv) **Gap Protection:** If purchased, notwithstanding the provisions of paragraph 18a) in the event of an accident or a collision necessitating repairs to a New Vehicle for which DRIVE STAR is liable under the terms of this Agreement, DRIVE STAR will compensate CUSTOMER for the difference, if any, between its documented sales invoice price and its post repair actual cash value as determined by a mutually agreed independent vehicle appraiser. For the purposes of this provision "New Vehicle" means a vehicle that:

a) is the subject of a Manufacturer's Statement of Origin ("MSO") or a New Vehicle Information Statement ("NVIS"), or

b) has an odometer-reading of less than 5,000 original miles (8,000 original kilometers) and/or not more than 120 Engine-Hours of use.

v) **All Star Protection:** CUSTOMER may purchase as one package the products listed at sub-paragraphs i) through iv) above.

### ***CUSTOMER INDEMNITY OF DRIVE STAR***

**30.** The CUSTOMER shall indemnify the COMPANY against all duties, taxes, payments, fines, expenses, losses, claims and liabilities, including without limitation any storage, demurrage, port, or terminal charges and any liability to indemnify any other person against claims made against such other person by the CUSTOMER or by the owner

(a) for which the COMPANY may be held responsible unless caused or contributed to by any negligence or breach of duty of the COMPANY, or

(b) in excess of the liability of the COMPANY in accordance with these Conditions, resulting from or connected with the actions of the COMPANY related to any service to which these Conditions apply.

### ***APPLICABLE LAW AND JURISDICTION***

**31.** These Service Terms & Conditions shall be interpreted and governed pursuant to the laws of Ontario, Canada. DRIVE STAR and CUSTOMER agree that the Courts of Ontario shall have sole and exclusive jurisdiction over and in respect of any disputes howsoever and in any way arising pertaining to this Agreement. In the event that conflict of law principles dictate the application of United States law in a given circumstance, DRIVE STAR and CUSTOMER expressly waive, pursuant to 49 U.S.C. §14101(b)(1), any and all rights and remedies under Title 49 U.S.C. Subtitle IV, Part B but only to the extent that they are contrary to these Service Terms & Conditions.

### ***SEVERABILITY***

**32.** If any provision of these Service Terms & Conditions or the application thereof to any person or circumstances is held invalid or unenforceable in any jurisdiction, the remainder of these Service Terms & Conditions, and the application of such provision to such person or circumstances in any other jurisdiction or to other persons or circumstances in any jurisdiction, shall not be affected thereby, and to this end the provisions of these Service Terms & Conditions shall be severable.

### ***CONFIDENTIALITY AND USE OF INTELLECTUAL PROPERTY***

**33.** The trademarks, logos and marks appearing on this web site and/or on any DRIVE STAR documentation (including but not restricted to transportation documents) are trademarks or registered trademarks of DRIVE STAR or are used under license by DRIVE STAR and may not be copied, distributed, republished, reproduced, uploaded, posted or transmitted in any way without the prior written consent of DRIVE STAR. Modification, use or misuse of these trademarks, other intellectual property or any other content on this web site, except as provided in these terms and conditions or in the web site context, is strictly prohibited. Nothing contained herein shall be construed as conferring any license or right to use any intellectual property contained on this web site. The absence of a trademark, logo or mark belonging to DRIVE STAR anywhere in the

text of this site does not constitute a waiver of DRIVE STAR's trademark or other intellectual property rights concerning that name, logo or mark. CUSTOMER agrees to keep all information provided by DRIVE STAR confidential including without limitation pricing hereunder save and to the extent that CUSTOMER may be under a valid and legal obligation to produce same to a third party.

### **SCHEDULE OF STANDARD CHARGES**

The following standard conditions and charges are applicable to all Vehicle Moves

1. Driver wait, layover or downtime will be charged to the CUSTOMER at a rate of \$60.00/hour.
2. All fines are the responsibility of the CUSTOMER and will be charged back to the CUSTOMER with an additional \$150.00 handling fee.
3. Fuel surcharges may be applied to any shipment at the time of vehicle shipment.
4. Travel surcharges may be applied to any shipment during holiday or blackout travel periods.
5. Surcharges applicable to breakdowns & related charges, repairs/alterations or order cancellation charges will be charged at a rate of 15% plus any applicable taxes.
6. Notwithstanding the Provisions of paragraph 29 i) and ii) above, breakdowns are subject to a \$150.00 handling fee in addition to the 15% mark up and related breakdown expenses.
7. Payments by wire transfer from non-credit CUSTOMERS are subject to a \$25.00 processing fee.
8. Payments by credit card are subject to a 3% handling charge.
9. In the interest of saving time and money, acceptance of DRIVE STAR's quote and/or contract is the CUSTOMER's pre-authorization to DRIVE STAR to incur up to a maximum of \$1,000.00 in repairs/towing plus related Breakdown Charges deemed necessary by DRIVE STAR to complete delivery. DRIVE STAR will furnish all applicable receipts on completion.
10. In the event Breakdown Charges are estimated to be in excess of \$1,000.00, DRIVE STAR will notify the CUSTOMER of the probable cost by issuing an 'Additional Cost Release' ('ACR') to the CUSTOMER and obtaining the CUSTOMER's approval. The CUSTOMER will be asked to return the 'ACR' form as confirmation of prior acceptance of the charges. The CUSTOMER will have (2) hours from the time of notification to return the signed ACR as confirmation or question the charges. Failure to acknowledge the Additional Cost Release within (2) hours constitutes acceptance of the charges contained therein and the CUSTOMER will be deemed to be financially liable for the additional costs incurred, plus applicable surcharge(s).
11. DRIVE STAR shall charge \$15.00 per transaction for every fuel purchase transaction done on behalf of a CUSTOMER when a "Plus Fuel" move is requested by the CUSTOMER. The transaction fee will be charged in addition the cost of the actual fuel purchased.
12. Tire chains are the responsibility of CUSTOMER and must be provided for those vehicles and equipment moving into, out of, or through jurisdictions, where their laws require the use of tire chains during the winter season. In the event DRIVE STAR is required to purchase tire chains on behalf of CUSTOMER, a \$350.00 surcharge for the purchase may be added to the CUSTOMER's invoice.

The following standard conditions and charges are applicable to Decked Trucks and/or Equipment:

13. Air fairing removal = \$225.00 per fairing if fully removed or \$50.00 per fairing if cut
14. Air fairing crating and shipping = \$300.00 per fairing

- 15.** Air fairings are not reinstalled upon delivery
- 16.** Air fairings removed and not shipped with the vehicle are subject to a disposal fee of \$150.00 per fairing
- 17.** Rear Quarter fender removal = \$75.00 per set
- 18.** Rear Side Extender removal = \$75.00 per set
- 19.** Stack removal = \$50.00 per set if heated and removed
- 20.** No extra charge for Stack removal if they are cut
- 21.** Front wheels removal = \$50.00 per set
- 22.** DRIVE STAR will not be responsible to reinstall or re-torque front steer and/or rear drive wheels.
- 23.** DRIVE STAR will charge back to the CUSTOMER all repairs and tire switches at cost plus applicable surcharge
- 24.** The CUSTOMER is responsible for the cost of providing a suitable means for loading/unloading decked units at third party locations, i.e. not at a DRIVE STAR terminal. The CUSTOMER must either provide a wrecker or crane-hoist at no cost to DRIVE STAR.
- 25.** Any cargo-securement tie-downs (chains, binders, straps or banding devices etc.) will be invoiced to the CUSTOMER over and above the above noted charges when left with a load. For each shipment the below noted charges will apply when DRIVE STAR provides the following items:
  - Binders \$45.00 each
  - Hooks \$5.00 each
  - Straps w/ ratchets \$35.00 each
  - 9" Chains \$25.00 each,
  - 12" Chains \$35.00 each
  - 24" Chains \$55.00 each
  - Saddles \$900.00 each
  - Decking Kit \$225.00 per unit