

Terms and Conditions for Use of Banyan Technology's Software and Web-Based Services

Definitions

1. **BANYAN** - Banyan Technology Inc. , an Ohio corporation.
2. **This Web Site** - A collection of world wide web pages that provide information to those who have freight to move, those who move freight, those who act as freight agents, and any other entity or individual involved in the transportation industry.
3. **Customer** - The Customer is the individual who uses BANYAN services and has agreed to the Terms and Conditions of Use for BANYAN services set forth below (also referred to herein as "you").

Acceptance of Terms

1. Customer registration is required by execution and submission to BANYAN of BANYAN's Freight Services Agreement.
2. Submission of any paper or electronic Freight Services Agreement constitutes agreement to and acceptance of these Terms and Conditions of Use. These Terms and Conditions of Use are deemed to have been executed upon the Customer's submission of a completed electronic Freight Services Agreement or a signed paper Freight Services Agreement.
3. Notwithstanding the continued existence and availability of this Web Site, these terms and conditions may be altered or revised at any time by BANYAN for any reason or no reason. You are bound by any such revisions, whether or not BANYAN has provided you with specific notice thereof, and you should therefore periodically visit this page to review the current version of these terms and conditions.
4. These Terms and Conditions supersede all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any order, confirmation or other request or document submitted to BANYAN.
5. This agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio, as it is applied to agreements entered into and to be performed entirely within such State. Any action you bring to enforce this agreement or any matters related to this site shall be brought in either the State or Federal Courts located in Lorain County, Ohio. If any provision of this agreement is void or unenforceable in whole or in part, the remaining provisions of this Agreement shall not be affected thereby. The applicable Freight Services Agreement and these terms and conditions together constitute the entire agreement between the parties relating to the matters contained herein and can not be modified except in writing, signed by an authorized corporate officer of BANYAN, or the posting of new or revised terms on the Web Site.

Use of BANYAN's Services

1. The Customer shall not use BANYAN's services or this Web Site in any manner, which is in violation of any applicable law, rule, regulation, ordinance, statute or judicial, administrative or regulatory order.
2. The Customer shall not use BANYAN's services or this Web Site, specifically e-mail and other on-line communications, to harass, menace, upset, annoy or inconvenience any person, as determined in BANYAN's sole discretion. Furthermore, the Customer shall not transmit any unsolicited message using BANYAN's services or this Web Site, which is offensive, indecent or obscene, as determined in BANYAN's sole discretion.
3. The Customer shall maintain the confidentiality of passwords and other access codes to BANYAN's services and this Web Site, and take reasonable precautions to avoid the disclosure of these and other confidential information relating to the BANYAN's services or this Web Site.
4. Passwords and access codes are assigned to a single individual.
5. The Customer shall not transfer their right to use BANYAN's services or this Web Site to any other party.
6. The Customer shall not cause continuous traffic by means of any automatic FTP or NEWS Article transfer or extraction programs. All memberships must conform to a normal use pattern over any 10 day period. The definition of a normal use pattern will be determined by BANYAN in its sole discretion.
7. BANYAN's standard customer privacy policy, as the same is in effect from time to time, is incorporated herein by reference. This policy contains restrictions on BANYAN's use of customer-supplied information and should be carefully reviewed on a periodic basis.

Charges

1. Charges for services provided by BANYAN are as defined in the Freight Services Agreement. Customers will pay for BANYAN's services and use of this Web Site on a net 15 days basis for monthly transaction fees or minimum requirement equivalent.
2. BANYAN reserves the right to change the rates for services with thirty (30) days advance notification to the Customer.

Payment

1. Accounts that remain unpaid fifteen (15) days after the date of invoice will be assessed a service charge in the amount of one and one-half percent (1.5%) per month of the total amount due.
2. Accounts unpaid thirty (30) days after the date of invoice will be considered in default. Customers in default shall be denied access to BANYAN's services and this Web Site until full payment is received. If the Customer in default maintains any information or files on this Web Site, BANYAN, may, in its sole discretion, remove all such material from the Web Site. Removal of such material does not relieve the Customer of its obligation to pay any outstanding charges assessed to the Customer's account. BANYAN will not be able to restore information removed from the Web Site for Customers who are in default.

3. Checks returned for insufficient funds are assessed a return charge of \$35 and the account is immediately considered to be in default until full payment is received. Customers with accounts in default agree to pay BANYAN reasonable expenses, including costs for collection by third-party agencies and attorney fees, incurred by BANYAN in enforcing these Terms and Conditions

Termination

1. The Customer may request termination of the Freight Services Agreement by providing written notice to BANYAN and will be effective the last day of the month following the month in which the notification was received by BANYAN. Telephone or e-mail requests by Customer for termination will not be honored.
2. BANYAN may discontinue, suspend or modify this Web Site at any time with or without notice, and BANYAN may terminate the Freight Services Agreement and/or block, terminate or suspend your and any user's access to this Web Site at any time for any reason in its sole discretion, even if access continues to be allowed to others.
3. Upon such termination you must immediately destroy all copies of any software, data, text, images, code or other materials supplied by BANYAN or downloaded or otherwise obtained through BANYAN or this Web Site, to the extent the same are in your possession at the time of termination.

Disclaimers and Liability Release

1. The Customer agrees to defend, indemnify and hold harmless BANYAN from any and all claims, losses, costs, expenses, damages and liabilities, including without limitation reasonable attorney fees, resulting from or arising out of (i) the Customer's use of BANYAN'S services or this Web Site, (ii) any transaction directly or indirectly related to the Customer's use of BANYAN'S services or this Web Site, and (iii) Customer's breach of any its representations, obligations or undertakings set forth in these Terms and Conditions or any Freight Service Agreement.
2. THE WEB SITE AND ALL ELEMENTS THEREOF ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND ARE TO BE USED BY CUSTOMER AT ITS OWN RISK. BANYAN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. BANYAN DOES NOT WARRANT THAT THE WEB SITE WILL OPERATE OR PERFORM IN A MANNER THAT IS UNINTERRUPTED OR ERROR-FREE, OR THAT THE WEB SITE OR HOST SERVER WILL BE MAINTAINED FREE OF VIRUSES OR OTHER HARMFUL CODE. BANYAN ASSUMES NO RESPONSIBILITY, AND SHALL NOT BE LIABLE FOR, ANY DAMAGES TO, OR VIRUSES THAT MAY INFECT, YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY AS A RESULT OF YOUR ACCESS TO, USE OF, OR VIEWING OF THIS WEB SITE OR ANY DOWNLOADING OF DATA, TEXT, IMAGES OR SOFTWARE FROM THIS WEB SITE.
3. BANYAN MAKES NO WARRANTIES THAT THE INFORMATION PRESENTED ON THE WEB SITE IS CURRENT, UP-TO-DATE, OR ACCURATE. THE ENTIRE RISK AS TO THE QUALITY, ACCURACY, ADEQUACY, COMPLETENESS, CORRECTNESS AND VALIDITY OF ANY MATERIAL RESTS WITH THE CUSTOMER. BANYAN AND/OR ITS RESPECTIVE SUPPLIERS MAY AT ANY TIME MAKE IMPROVEMENTS AND/OR CHANGES IN THE PRODUCT(S), SERVICES AND/OR MATERIALS DESCRIBED IN OR AVAILABLE THROUGH THIS WEB SITE AND BANYAN ASSUMES NO OBLIGATION TO TIMELY CORRECT ANY ERROR, INACCURACY OR DEFECT IN THIS WEB SITE.
4. UNDER NO CIRCUMSTANCES AND REGARDLESS OF LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, WILL BANYAN BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND REGARDLESS OF CHARACTER, INCLUDING WITHOUT LIMITATION, ANY DAMAGES RELATING TO LOST DATA, COMPUTER FAILURE OR MALFUNCTIONING, LOST PROFITS, LOSS OF USE OF EQUIPMENT OR OTHERWISE, EVEN IF BANYAN WAS AWARE OF THE POSSIBILITY THEREOF. YOU AGREE TO THIS ALLOCATION OF RISK IN RELATION TO YOUR USE OF BANYAN'S SERVICES AND THE WEB SITE. FURTHER, IN NO EVENT SHALL BANYAN'S TOTAL LIABILITY TO YOU FOR ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO BANYAN FOR ACCESSING THIS WEB SITE AND USING BANYAN'S SERVICES AS OF THE DATE THE CLAIM IS MADE.
5. Some states and jurisdictions do not allow limitations on implied warranties or consequential damages, so the above limitation may not apply to you.
6. This Web Site and BANYAN'S services are intended to provide Customer with information services only and BANYAN is not responsible for any damage or loss to any property of Customer occurring as a direct or indirect result of Customer securing freight or shipping services through this Web Site or as a result of BANYAN'S services. All such claims are to be made against the actual freight carrier chosen for your specific shipment and may not be made against BANYAN. Further, Customer agrees that it is solely responsible for payment of, and that it will timely pay, for any freight or other goods or services supplied by a third party as a direct or indirect result of Customer's use of this Web Site or BANYAN'S services.

Legal Restrictions

1. Neither the Web Site nor any element thereof, including without limitation, software, data, text, images, code or other materials, may be copied, repurposed, uploaded, posted, transmitted, or redistributed via any media, except that you may download one copy of such materials to your individual computer for your individual use, provided that all copyright and other proprietary notices appearing on such materials must be preserved without alteration, modifications, or obfuscation. With respect to any software, data, text, images, code or other materials downloaded by you from the Web Site, such items are licensed to you by BANYAN on a

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3. Neither BANYAN nor its partners assume the responsibility of enforcing licensing requirements, or of checking for licenses, with respect to licensed professions or trades, prior to publishing advertisements, quotes or listings.
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5. There may be links on this Web Site, which allow you to visit the web sites of third parties. Neither these sites nor the companies to whom they belong are controlled by BANYAN. BANYAN makes no representations concerning the information provided or made available on such sites nor the quality or acceptability of the products or services offered by any persons or entities referenced in any such sites. BANYAN has not tested and makes no representations regarding the correctness, performance or quality of any software found at any such sites. You should research and assess the risks, which may be involved in accessing and using any software on the Internet before using it.

Ownership Rights

1. All right, title, and interest in and to this Web Site, and any data, software or code contained in this Web Site, is owned by BANYAN, and no rights therein are granted to Customer except the limited, revocable license set forth above.
2. This Web Site and all parts of it are protected by copyright, trademark, trade dress and other laws and may not be copied or imitated in whole or in part. No image of persons or places, trademark, logo, graphic, image or sound from this Web Site may be copied or retransmitted without express written permission from an authorized officer of BANYAN in each instance.

Force Majeure

1. BANYAN shall not be liable for any breach of these Terms and Conditions caused by an Act of God, national or local emergency, acts of government, acts of war or civil disorder, military operations, industrial disputes, fire, flood, lightning strike, weather damage, subsidence or earthquake, or acts or omissions of persons or entities for whom BANYAN is not responsible.