

**CARRIER – SHIPPER**  
**TERMS AND CONDITIONS**

1. **CARRIER'S OPERATING AUTHORITY.** Carrier represents and warrants that it is duly and legally qualified to provide all transportation services contemplated herein, including that it will hold motor carrier authority issued by the FMCSA and that its drivers will be duly licensed for the provision of the services. Shipper shall provide to Carrier an accurate and complete description of all goods tendered for transportation. Shipper shall give Carrier written notice prior to requesting services for which special permits or authorities may be required, including, but not limited to, transportation of hazardous materials, alcoholic beverages, oversize or overdimension loads, etc. In no event will Shipper tender for transportation by Carrier any product regulated as waste or otherwise intended for disposal. Shipper shall not tender to Carrier cargo moving to, from or within Mexico.

2. **BILLS OF LADING.** Each shipment hereunder shall be evidenced by a bill of lading. The bill of lading shall act as a receipt only and in no event shall any terms, conditions and provisions of the bill of lading, manifest or other form of receipt apply to transportation performed pursuant to this Agreement. Carrier's failure to issue a bill of lading shall not affect its liability hereunder. Carrier shall notify Shipper within a reasonable timeframe of any exception made on the bill of lading or delivery receipt.

3. **CARRIER'S OPERATIONS.** Unless otherwise stated in this Agreement, Carrier shall furnish all fuel, oil, tires and other parts, supplies and equipment required for the operation and maintenance of the tractors, trailers and other motor vehicles equipment furnished by Carrier for the performance of its obligations hereunder (collectively, the "Equipment"). All such Equipment will be clean, dry, leak proof and free from harmful or offensive odor. Shipper's commodities will not become adulterated or contaminated by virtue of being transported in Carrier's Equipment. As it relates to Shipper, Carrier shall have responsibility for the personnel used by Carrier in the operation of Carrier's Equipment and shall perform the motor carrier services hereunder as an independent contractor.

4. **FREIGHT CHARGES AND PAYMENTS.**

- a. Unless governed by a signed Rate Confirmation Agreement provided by Carrier, the freight charges and payment terms for the services performed hereunder shall be in accordance with the rates, charges and rules set forth by the Carrier, which can be supplemented or revised by written agreement signed by both Parties.
- b. The Rate Confirmation Agreement shall be in a form acceptable to Carrier. Accessorial charges apply to, and will be assessed with respect to, services performed pursuant to a Rate Confirmation Agreement.
- c. Payment shall be made by Shipper within fifteen (15) days of the date of Carrier's invoice, and in the event the payment is not made within fifteen (15) days, Shipper agrees that interest shall accrue daily and be payable to Carrier at the interest rate of twelve percent (12%) per annum, together with any and all collection costs, including attorney fees. In no event shall Shipper offset any amount owed by Carrier to Shipper against amounts owed to Carrier under any Carrier invoice.
- d. Carrier and Shipper agree that any payments made hereunder are made in payment of debts incurred in the ordinary course of business and are made according to ordinary business terms. Shipper shall be liable for all charges arising out of transportation services requested by Shipper and performed by Carrier.
- e. Shipper understands and agrees that in the event of failure to pay freight charges as due, Carrier shall be entitled to a general lien on any cargo in the possession of Carrier which is tendered or owned by Shipper regardless of whether such freight charges apply to the cargo in the possession of Carrier. Carrier's rights and obligations with respect to disposal of such cargo and enforcement of its lien shall be as set forth under the law of the state selected by the Parties to govern disputes under this Agreement assuming a valid carrier lien under such state law regardless of whether the lien at issue qualifies for enforcement under such law.

- f. In no event will Carrier have any responsibility for, and Shipper will defend, indemnify, and hold Carrier harmless from, and will pay and reimburse, any charges imposed by third parties with respect to use of equipment in which cargo tendered by, to or on behalf of Shipper is or has been laden, or for charges assessed with respect to storage or handling of any such equipment, including, but not limited to, charges assessed by steamship lines, rail carriers, rail terminal operators, marine terminal operators or port authorities. Without limiting the generality of the foregoing, Carrier shall have no liability for any such charges arising from or related to port congestion, lack of equipment availability, labor shortages, or other situations impacting port or intermodal transportation operations.

5. **FREIGHT LOSS, DAMAGE OR DELAY.**

- a. Carrier shall be liable for cargo loss or damage, including cargo loss or damage caused by Carrier's failure to exercise reasonable dispatch, in accordance with the provisions of 49 USC 14706, which liability shall be limited to the lesser of the cost to repair or replace the goods or \$100,000.00 per truckload.
- b. In the event Shipper wishes to declare a higher value of liability in excess of \$100,000 per truckload with respect to any shipment subject to this Agreement, Shipper must make such request to Carrier in writing at least seventy-two (72) hours prior to the scheduled pick-up which request is not valid unless agreed upon in writing by an officer of Carrier. If such request is accepted by Carrier in a signed writing, and Shipper pays additional freight charges applicable thereto, then Carrier will be liable for the full value declared by Shipper, but such liability shall in no event exceed the lesser of \$250,000.00 or the full cost to repair or replace the goods, whichever is less.
- c. The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. Part 370. Carrier shall have no liability with respect to cargo loss or damage unless Shipper shall submit to Carrier written notice of any cargo claim, for loss, damage or delay, within nine (9) months of the delivery date of the shipment or, if no delivery, the date delivery would have been reasonably expected. Any proceeding related to any such cargo claim must be filed no later than two (2) years from the date of denial of all or any part of such claim, or Carrier shall be relieved of any liability with respect to any such claim.
- d. The foregoing notwithstanding: (i) in no event will the concept of deviation apply to services provided hereunder; (ii) Carrier will not be liable for cargo loss, damage or delay occurring or arising in Mexico and if it is unclear whether such a claim arose in Mexico there will be a rebuttable presumption that loss, damage or delay arose in Mexico unless rebutted by Shipper by clear and convincing evidence; and (iii) where Carrier performs a single leg of a through movement (for instance, a move where a single transporting conveyance is transported by multiple carriers), Carrier will have no liability for any loss, damage, shortage, or destruction of any such cargo unless established by clear and convincing evidence that such loss, damage, shortage, or destruction arose while the cargo was in Carrier's possession or was caused by Carrier's acts or omissions. .
- e. In no event will Carrier be responsible for any chargebacks or other penalties or assessments imposed by the consignor or consignee with respect to late or missed pick-ups or delivery appointments.
- f. Carrier's sole liability, and the claimant's sole recovery, with respect to cargo loss, damage or delay will be as set forth in this section and in no event will Carrier be liable under any other theory of law, nor to any party other than the actual beneficial owner of cargo, or its direct assignee, with respect to any claim arising from or related to loss or damage to cargo or delay. If Shipper is not the beneficial cargo owner, then Shipper warrants and represents that it is authorized to bind the beneficial cargo owner to this provision.

6. **INSURANCE.** Carrier shall procure and maintain the following insurance coverage at all times while this Agreement remains in effect:

- a. Commercial Automobile/Trucking Liability insurance coverage with limits of not less than \$1,000,000.00 per occurrence. If authorized by FMCSA, Carrier may meet this obligation through verified self-insurance.

- b. Motor Truck Cargo liability insurance in an amount not less than \$100,000 per occurrence.
- c. Workers' Compensation insurance coverage with statutory requirements.

Carrier shall furnish copies of certificates of insurance evidencing Carrier's compliance with these obligations upon request.

7. **INDEMNITY**. This section shall not apply to claims for cargo loss, damage, or delay.

- A. CARRIER SHALL INDEMNIFY AND HOLD SHIPPER AND ITS OFFICERS, DIRECTORS AND EMPLOYEES HARMLESS FROM AND AGAINST, AND PAY AND REIMBURSE, ANY AND ALL LIABILITIES, DAMAGES, FINES, PENALTIES, COSTS, CLAIMS, INTEREST AND EXPENSES (INCLUDING COST OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEY FEES, BUT EXCLUDING CLAIMS REGARDING LOSS, DAMAGE OR DELAY OF CARGO), TO THE PRORATED EXTENT CAUSED BY: (I) NEGLIGENCE OR WILLFUL MISCONDUCT OF CARRIER OR ITS EMPLOYEES; (II) VIOLATIONS OF ANY FEDERAL, PROVINCIAL, STATE OR LOCAL LAW, STATUTE, REGULATION OR RULE BY CARRIER OR ITS EMPLOYEES; OR (III) CARRIER'S BREACH OF THIS AGREEMENT.
- B. SHIPPER SHALL INDEMNIFY AND HOLD CARRIER AND ITS OFFICERS, DIRECTORS AND EMPLOYEES HARMLESS FROM AN AGAINST, AND PAY AND REIMBURSE, ANY AND ALL LIABILITIES, DAMAGES, FINES, PENALTIES, COSTS, CLAIMS, INTEREST AND EXPENSES (INCLUDING COST OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEY FEES), TO THE PRORATED EXTENT CAUSED BY: (I) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SHIPPER OR ITS EMPLOYEES; (II) VIOLATIONS OF ANY FEDERAL, PROVINCIAL, STATE OR LOCAL LAW, STATUTE, REGULATION OR RULE BY SHIPPER OR ITS EMPLOYEES; OR (III) SHIPPER'S BREACH OF THIS AGREEMENT.
- c. ADDITIONALLY, IF SHIPPER UTILIZES ANY THIRD-PARTY ENTITY (A "THIRD-PARTY PAYOR") TO COMPENSATE/PAY CARRIER TRANSPORTATION CHARGES EARNED PURSUANT TO THIS AGREEMENT, SHIPPER AGREES THAT IT SHALL INDEMNIFY, DEFEND AND HOLD CARRIER AND ITS OFFICERS, DIRECTORS AND EMPLOYEES HARMLESS FROM, AND SHALL PAY AND REIMBURSE, ANY AND ALL LIABILITY, CLAIMS, LOSSES, COSTS, FINES, PENALTIES, EXPENSES (INCLUDING ATTORNEY'S FEES), JUDGMENTS, OR DEMANDS ON ACCOUNT OR DAMAGE OF ANY KIND WHATSOEVER, ARISING IN ANY WAY FROM SHIPPER'S USE OF A THIRD-PARTY PAYOR AND/OR CARRIER'S RECEIPT OF PAYMENTS FROM A THIRD-PARTY PAYOR ON SHIPPER'S BEHALF, INCLUDING BUT NOT LIMITED TO, CLAIMS TO THE SUMS PAID BY THE THIRD-PARTY PAYOR ASSERTED IN A THIRD-PARTY PAYOR'S BANKRUPTCY, OR OTHERWISE.
- d. If either Party seeks indemnification hereunder (the "Indemnified Party") from the other Party (the "Indemnifying Party") with respect to a third party claim, the Indemnified Party shall notify the Indemnifying Party as promptly as practicable and give the Indemnifying Party an opportunity to defend the claim. The foregoing indemnity obligations will extend only to the losses actually suffered by the Indemnified Party, reduced by any offsetting assets or services received from any third party, including any insurer.

8. **COMPLIANCE WITH LAW**. Both Parties shall comply with all applicable federal, state or provincial laws, rules, or regulations applicable to their operations.

9. **HAZARDOUS MATERIALS**. Shipper shall comply with all laws, rules, regulations and ordinances regarding tender of hazardous materials, as that term is used and defined in the Hazardous Material Transportation Act, 49 U.S.C. § 50101 et seq., as well as any other hazardous or non-hazardous waste ("Hazardous Material"), including any and all applicable notices and/or manifests related to such Hazardous Material. Shipper further agrees that, prior to any shipment, it shall provide Carrier with written notice of the tender of Hazardous Material, including a current copy of the Material Safety Data Sheet for the Hazardous Materials to be tendered to Carrier for transportation. Carrier shall comply

with any and all applicable laws, rules and regulations applicable to its transportation of Hazardous Materials, including, but not limited to, providing property licensed and trained drivers. Shipper shall indemnify, defend and hold harmless Carrier and its officers, employees, agents and insurers, against, and shall pay and reimburse, all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out or related to the exposure to a release of any Hazardous Material, including without limitation, fines or expenses relating to the removal or treatment of Hazardous Material or other remedial action pertaining to the Hazardous Material under federal or state law, if: (i) Shipper fails to provide the notice required by this provision prior to tendering the Hazardous Material to Carrier; (ii) the contact, exposure or release resulted from the improper packaging of loading or other acts or omissions of the Shipper, its employees or agents; or (iii) the contact, exposure or release occurred subsequent to the transport of the Hazardous Material by Carrier.

10. **SHIPMENTS CONTAINING FOOD.** Any food not requiring temperature control during transportation will be packaged prior to tender to the Carrier in such a manner as to ensure safe and sanitary handling during transportation without the need for any specialized handling procedures. With respect to food for which controlled temperature services have been requested in a Food Consignment Notice (which, for purposes of this Agreement, means a written notice to Carrier communicated in writing or via electronic means at the time of Shipper's initial request for services with respect to the specific consignment identified in the Food Consignment Notice which includes the required temperature range stated in degrees Fahrenheit ), the following will apply: (i) the consignor of the consignment shall ensure that commodities are within appropriate temperature ranges at the time of physical tender to Carrier; (ii) the consignor and consignee shall be solely responsible for taking, and maintaining records of, temperature readings at origin and destination respectively and no temperature recordings will be made while the commodities are in-transit; and (iii) the consignor shall be solely responsible for ensuring the transporting conveyance is set to appropriate temperature ranges prior to initiation of loading. Shipper acknowledges that no additional handling or specialized services are required to ensure safety of food, and no additional handling or specialized services shall be provided. Any failure or alleged failure to comply with handling procedures established herein or otherwise applicable to any shipment, including, but not limited to, delivery without the original trailer seal intact, shall not, in and of itself, result in any presumption that a consignment is unsafe, contaminated, adulterated or otherwise unfit for its intended purpose.

11. **LEGAL RESTRAINT OR FORCE MAJEURE.** In the event performance by one Party is affected or prohibited by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, port congestion, container shortage, chassis shortage, material equipment repairs, fuel shortages, governmental regulations, or governmental request as requisition for national defense, or requests of governmental officials, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the Party that is unable to perform, or unable to perform timely, shall have no liability arising from or related to any delay in its operations, and the running of all periods of time, and the performance of all obligations required herein shall be suspended during the continuance of such interruption. The affected Party shall promptly notify the other Party of such interruption.

12. **WAIVER.** Shipper and Carrier expressly waive any and all rights and remedies under Part B of Subtitle IV to Title 49 of the U.S. Code to the extent that such rights and remedies conflict with this Agreement as allowed by 49 U.S.C. § 14101. Failure by either Party to insist upon the other Party's performance under this Agreement or to exercise any right or privilege herein shall not be a waiver of any of the rights or privileges provided for in this Agreement. **WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT, OR OTHERWISE ARISING FROM THE RELATIONSHIP OF THE PARTIES, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SALES, OR DAMAGES DUE TO BUSINESS INTERRUPTION, REGARDLESS OF WHETHER THE PARTY TO BE CHARGED HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.**

13. **RELATIONSHIP OF THE PARTIES.** The parties intend to create, by this Agreement, a relationship of independent contractors and in no event will the parties be deemed to be involved in an employment relationship, joint venture, partnership, or agent-principal relationship. Neither Carrier nor Shipper intend to create an exclusive agreement hereunder. Carrier shall be free to service other customers during the term of this Agreement, and Shipper shall be free

to utilize the services of other motor carriers during the term of this Agreement. Nothing hereunder shall be construed as obligating Carrier to accept shipments tendered by Shipper or to transport any minimum volume of shipments.

14. **MISCELLANEOUS.** Neither Party may assign or transfer this Agreement, in whole or in part except to an affiliate as that term is defined in the antitrust laws of the United States, which assignment or transfer to an affiliate may be completed upon written notice to the other Party. This Agreement, including any supplements to or revisions thereof, exclusively states the rights and obligations of the Parties and supersedes all other agreements and/or tariffs published or provided by Carrier. If any portion of this Agreement is deemed unenforceable for any reason, such portion shall be severable and the remaining provisions of this Agreement shall continue in full force and effect. Except to the extent preempted by federal law, this Agreement, and any disputes arising therefrom, shall be interpreted and governed by the laws of the State of Wisconsin. Any legal proceeding filed as a result of disputes arising out of this Agreement shall be filed in the court of proper jurisdiction in the State of Wisconsin. The Parties hereby consent to the exclusive personal jurisdiction of such courts in the resolution of disputes under this Agreement. Without waiving the foregoing, the Parties may agree to submit disputes to mediation or arbitration in the State of Wisconsin.