

MOTOR CARRIER/SHIPPER AGREEMENT

THIS MOTOR CARRIER/SHIPPER AGREEMENT (this "Agreement"), is made and entered into as of the 21st day of February, 2008, by and between _____, a _____ corporation, ("Shipper"), and _____ (MC#_____) a _____ corporation ("Carrier"). Shipper and Carrier are sometimes individually referred to herein as a "Party" and together as the "Parties."

WHEREAS, Shipper desires to hire Carrier to perform motor carrier transportation service for Shipper in accordance with the terms and subject to the conditions of this Agreement; and

WHEREAS, Carrier desires to perform motor carrier transportation service for Shipper in accordance with the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual agreements and provisions hereinafter set forth, the Parties hereby mutually agree as follows:

1. Term. This Agreement shall remain in full force and effect for a 1 year period beginning on the date first written above and continuing thereafter on a year-to-year basis. Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party, unless otherwise specified in this Agreement.

2. Scope of Agreement. Carrier is a motor carrier under 49 U.S.C. 13102(12), is duly registered with the Department of Transportation pursuant to 49 U.S.C. 13902 and 13905 without a Motor Carrier Safety Rating of "unsatisfactory", and will provide lawful and responsible transportation service to Shipper under contract. Shipper will tender Carrier freight for transportation. Carrier shall be an independent contractor of Shipper. As between the Parties, Carrier shall have the sole and exclusive responsibility for the costs and over the manner in which its employees and/or independent contractors perform the transportation service, including the equipment provided.

3. Rates, Charges, and Payment Terms.
 - (a) Shipper shall pay Carrier, within 15 days of the invoice, the amounts calculated in accordance with the schedule of rates and charges attached hereto as Appendix A including any written supplements thereto, and as otherwise set forth in this Agreement. Carrier shall apply Shipper's payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices.

- (b) If Shipper does not pay the invoiced amounts, Carrier must commence civil action or final and binding arbitration proceedings to recover such invoiced amounts within eighteen (18) months of delivery or tender of delivery of the shipments involved. If Carrier alleges undercharges, or Shipper alleges overcharges, duplicate payment, or overcollection, notice of such claims or unidentified payments must be given within 180 days of receipt of the invoice and a civil action or arbitration proceeding must be filed within eighteen (18) months of delivery or tender of delivery of the shipments involved. The processing, investigation, and disposition of overcharge, unidentified payment, duplicate payment, or overcollection claims shall be governed by present federal regulations codified at 49 C.F.R. Part 378.
4. Freight Documentation. Any form(s) used by the Parties shall only be used for the purpose of documenting the pick-up and delivery of freight. Either Party, at its option, may supply any document required by or referenced in this Agreement in either paper or electronic form (including, but not limited to, an electronically imaged, faxed, photocopied, or online posted version), and any such version shall be sufficient for all purposes under this Agreement. Unless specifically agreed to by the Parties, any joint movement involving another transportation entity to or from a point outside the U.S. shall not be considered as moving on a "through" bill of lading. Carrier agrees not to subcontract, broker, interline, or to use "substituted services" by rail or motor carrier without the specific approval of Shipper. If for any reason this is done without permission, Carrier shall be liable to Shipper for any cargo loss, damage, or injury to the same extent as if Carrier performed the service.
5. Insurance. Carrier shall maintain during the term of this Agreement (a) workers' compensation insurance on all employees, as required by applicable state law, (b) automobile and property damage liability insurance with limits of liability of not less than \$750,000.00 per occurrence, (c) cargo insurance to cover damage to or loss of cargo in the amount of \$250,000.00 per occurrence, and (d) general liability insurance with limits of liability of not less than \$750,000.00 per occurrence. The required insurance shall cover the entire geographic scope in which the Carrier will operate under this Agreement and, as applicable, be "Broad Form." Upon request, Carrier will furnish Shipper with a certificate of insurance from a reputable insurance company evidencing such insurance. Carrier will request that its insurance company provide 30 days' advance notice to Shipper prior to cancellation of such insurance. Neither Party waives any right to subrogation it nor its insurers may have arising out of service provided pursuant to this Agreement. Notwithstanding the foregoing, if Carrier meets all applicable federal requirements, Carrier may self-insure. Upon request, Carrier shall furnish Shipper with proof of self-insurance.

6. Refused Shipment-Warehouseman Liability. If the consignee refuses the lading tendered by Carrier or if Carrier is unable to deliver the lading because of fault or mistake of Shipper or the consignee, or if Shipper advises and instructs Carrier to stop movement of the lading and to hold it in transit, Carrier's liability thereafter immediately shall be that of a warehouseman. The procedures which Carrier agrees to and will take as a warehouseman involve the use of ordinary care to keep the lading in a safe or suitable place or to store the lading properly. Carrier shall (a) attempt to give Shipper notice as soon as possible if the foregoing occurs, (b) place the lading in public storage, if available, unless Carrier receives contrary disposition instructions from Shipper within twenty-four (24) hours, and (c) if disposition instructions are not given by Shipper within ten (10) days of Carrier's initial notification to Shipper, Carrier may offer the lading for public sale. In the case of perishable lading, Carrier may dispose of the lading at a time and in a manner Carrier deems appropriate. Shipper will be responsible for storage costs and reasonable costs Carrier incurs in acting as a warehouseman. To the extent any sale or disposal revenues exceed the storage costs and the costs Carrier incurs as a warehouseman, Carrier shall remit the balance to Shipper. If Shipper gives Carrier timely disposition instructions, Carrier shall use any commercially reasonable steps to abide with such instructions. Shipper will pay Carrier's costs and any additional transportation costs Carrier incurs in doing so.

7. Cargo Liability.

- (a) Carrier shall be liable to Shipper for loss or damage to lading occurring while it is in Carrier's possession, except to the extent such loss or damage is caused by an act of God or a public enemy, a public authority, an act of Shipper, or the inherent vice or nature of the lading. Carrier's possession of lading under this Agreement shall begin when Carrier has executed the freight documentation form for such lading and shall terminate upon the lading being tendered for delivery to Shipper's consignee.
- (b) Claims for loss or damage to lading must be filed in writing by Shipper within nine (9) months from date of delivery, or scheduled date of delivery for lost lading, or in the absence of a scheduled delivery date, the filing period shall begin after a reasonable time has elapsed for delivery, and a civil suit or arbitration proceeding shall be commenced by Shipper within two (2) years from the date Carrier gives Shipper written notice Carrier is disallowing the claim or any part of it. Claims will be filed and resolved in accordance with federal regulations codified at 49 C.F.R. Part 370.
- (c) The measure of damages for loss of or physical damage to the cargo shall be the invoice value of the lading, or in the absence of an invoice, wholesale destination value. Carrier also shall be liable for the reasonable costs of the Shipper to mitigate its damages.
- (d) In no event shall Carrier be liable to Shipper or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless Shipper has informed Carrier in written or electronic form, prior to or when

tendering a shipment or series of shipments to Carrier, of the potential nature and type of such damages, and Carrier specifically agrees in written or electronic form to accept responsibility for such damages. In no event shall Carrier be liable to Shipper or anyone else for punitive or exemplary damages that relate to loss, damage or delay to a shipment.

8. Sealed Shipment. If Shipper loads and seals the lading in or on the trailer and Carrier does not have the opportunity to count the lading being loaded and the seal is intact upon delivery, Carrier shall be absolved from any liability for shortages or any damage to the lading except when proximately caused by independent action of Carrier. Such absolution of liability will also occur if (i) the seal is broken at the direction and under the supervision of an agent of a body politic, or (ii) trailers are preloaded and the adequacy of loading or count of such trailer is not practical by a representative of Carrier. Carrier agrees that if a seal is broken and an inspection made by an agent of a body politic, its operator or other representative will take all reasonable steps to secure the count, safety, and integrity of the lading. These steps will include requesting that the body politic reseal the trailer and/or make appropriate notation on the freight documentation form. Carrier may break the seal on a trailer if, upon Carrier's determination or that of its operator or other representative, it becomes reasonably necessary to do so to inspect, reposition, or protect the lading or Carrier's equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations. Shipper's consignee may not refuse delivery of a shipment solely because the seal on a trailer is broken.

9. Salvage. Shipper will have the right reasonably to determine to repair, repackage, salvage, or scrap damaged lading. If Shipper elects to salvage lading, Shipper shall notify Carrier to return the lading to Shipper or allow Carrier to dispose of the lading. If salvage is sought, at least two independent bids shall be obtained, and the highest bid accepted. Any monies received in salvage, whether accomplished by Carrier or Shipper, will be credited, if applicable, against any amount Carrier may otherwise be responsible for in terms of the damages. Shipper may condition salvage upon the removal of all identifying marks or labels or the lading being permanently marked as "*damaged*" or with a similar notation. If Carrier is retained by Shipper to return the damaged lading for repair, salvage, or scrapping, Shipper agrees to pay Carrier freight charges otherwise provided in this Agreement, or at a negotiated rate to be reduced to writing, without prejudice to recovery of such freight charges as damages. Damaged lading will not be scrapped unless repair and/or salvage are not feasible. If Carrier salvages the lading, Carrier may bill a reasonable charge for doing so against salvage receipts.

10. Indemnification.

- (a) Carrier shall defend, indemnify, and hold Shipper and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Carrier or its employees or agents, or (ii) Carrier's or its employees' or agents' violation of applicable laws or regulations.
- (b) Shipper shall defend, indemnify, and hold Carrier and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Shipper, its employees, or agents, or (ii) Shipper's or its employees' or agents' violation of applicable laws or regulations.
- (c) In the event such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) are caused by the joint and concurrent negligence of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) shall be borne by each Party in proportion to its degree of fault.
- (d) In no event shall either Party be liable to the other under this Section 10 to the extent damages are incidental, consequential, special, punitive, or exemplary. Any indemnified party under this Section 10 shall promptly tender the defense of any claim to the indemnifying Party. Carrier's liability for cargo damage shall be governed by Section 7 above.

11. Legal Restraint or Force Majeure. In the event performance by one Party is affected 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, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, 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 running of all periods of time mentioned herein and the performance of all obligations required herein shall be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. Carrier shall be permitted an extension

period equal to the period of suspension to complete shipments adversely affected by the suspension. No liability shall be incurred by either Party for damages resulting from such suspensions.

12. Notices. Any notice required or permitted to be given under this Agreement, unless otherwise indicated, shall be deemed sufficiently given if it is delivered by hand or sent by prepaid mail, registered or certified, return receipt requested, by a nationally recognized overnight courier, or facsimile transmission (with confirming copy sent first class mail) if sent to the address or fax number and to the attention of the individual noted in the signatory provision hereof.
13. Captions. The captions set forth in this Agreement are for convenience only and shall not be considered a part of this Agreement nor affect in any way the meaning of the terms and provisions hereof.
14. Successors and Assigns; Other Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by either Party without the written consent of the other Party, except to any wholly-owned subsidiary of such Party and, except in the case of Carrier, an assignment in connection with the sale of substantially all of the assets of Carrier or merger by Carrier with or into another entity.
15. Entire Agreement. This Agreement and the attached Appendices, including Motor Carrier/Broker Agreement constitutes the entire agreements between the Parties hereto and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed, or implied, with respect to the subject matter hereof.
16. Amendments. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.
17. Severability. Any term or provision of this Agreement that is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18. Waiver. No waiver of any right, power, or privilege hereunder shall be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.
19. Counterparts. This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
20. Governing Law. The Parties desire that the provisions of this Agreement will have precedence over any federal or state provisions governing or dealing with the specific provisions of this Agreement. The Parties agree that pursuant to 49 U.S.C. § 14101(b) (1) they expressly waive any and all rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated thereunder, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, et seq. (the "Acts") that are inconsistent with the provisions of this Agreement. No Party shall challenge any provision of this Agreement on the ground that any such provision or provisions violates the waived rights and remedies under the Acts. To the extent no conflicts exist with this Agreement or federal law, the law of the State indicated in the Shipper's address in the signatory provision hereof shall apply.
21. Dispute Resolution. The Parties agree that this Agreement is being entered into in good faith and that if a dispute arises in its application or interpretation that:
 - (a) They shall attempt to resolve said dispute between themselves or upon mutual agreement by the intervention of an experienced mediator and upon the terms and cost allocation agreed upon.
 - (b) If a dispute is not resolved voluntarily, good faith considerations shall be given to submitting the dispute to final and binding arbitration under the Commercial Rules of the American Arbitration Association before a single arbitrator at a point mutually agreed upon or if no point is agreed upon at the offices of the Association which is approximately equal distance from the headquarters of the Parties. The award of the arbitrator may be enforced in any court of competent jurisdiction.
 - (c) If arbitration is not agreed to, or if the dispute involves a remedy not otherwise available in arbitration such as, but not limited to, injunctions, criminal penalties, or certain equitable relief, civil action may be pursued subject to the following: (i) jury trials are waived by the Parties; (ii) service by certified mail to the persons specified as being entitled to notice under this Agreement and to the address shown shall constitute valid and binding service of process; and (iii) jurisdictional issues as to state or federal jurisdiction and forum non-conveniens are not waived.

- (d) Any disputes which arise on movements to, from, or within Mexico and/or Canada which cannot be resolved between Carrier and Shipper shall be resolved by final and binding arbitration as provided in Section 23(b) above.
22. Confidentiality. The Parties shall keep in confidence and not disclose to any third party (a) the terms of this Agreement, and (b) any confidential or proprietary information either learns about the other Party, such as, but not limited to, the rates, value, origin, destination, or consignee of any shipment made hereunder. The Parties may disclose such terms and information to the extent required by law, to obtain financing, to substitute service providers to the extent necessary to provide such substitute service, or to auditors retained for the purpose of assessing the accuracy of freight bills.
23. No Use of Name. Neither Party may use the other's name, trademarks, or trade names, or those of its subsidiaries or affiliates, in any manner, especially advertising, without the other's expressed written consent, which may be withheld in such Party's sole discretion.
24. Compliance with Laws and Regulations. The Parties shall at all times comply with all applicable federal, state, municipal, and provincial laws, rules, and regulations including, but not limited to, the federal and state safety regulations. To the extent this Agreement or any services provided hereunder shall conflict with such laws, rules, and regulations, this Agreement and the services provided hereunder shall be modified to comply with such laws, rules, and regulations, and the Parties shall not be deemed in breach of this Agreement or suffer any liability or penalty for compliance with such laws, rules, and regulations. In the event Carrier, through no fault of its own, is delayed or removed from service by or because of an inspection by any body politic, Carrier shall not be deemed in breach of this Agreement, nor shall it suffer any liability or penalty under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by a duly authorized officer effective as of the date first above written.

SHIPPER

CARRIER

Name:

Name: _____

By: _____

By: _____

Title:

Title: _____

Dated: _____

Dated: _____

INFORMATION FOR NOTICES

Address:

Address: _____

Fax:

APPENDIX A

FREIGHT CHARGES **ACCESSORIAL and MISCELLANEOUS CHARGES**

1. Basic Freight Charges. The Parties agree that Carrier shall be paid for its transportation services in accordance with the attached price list, which can only be changed by the written agreement of the Parties. Shipper shall notify Carrier at least twenty-four (24) hours before the time of tendering a load that has a value exceeding \$250,000 and Carrier shall have the right to refuse any such load.
2. Rate-
3. Mileage Computation. Payment is specifically based on a mileage basis; mileage will be determined by the practical mileage route determined by the following software ALK P.C. Miler. New versions of this software will not automatically be adopted under this Agreement, and must be specifically agreed to by the Parties in writing.
4. Fuel Surcharge. Freight charges will be subject to a fuel surcharge which will be billed as a separate charge on freight bills. The charge will be adjusted up or down by the cost per mile. Adjustments according to _____.
5. Payments. All payments shall be made in U.S. currency and at U.S. rate of exchange.
6. In-Transit Stop-Off / Drop Charges. A single shipment may be stopped at the direction of Shipper for partial loading or partial unloading. Shipper shall pay Carrier, in addition to other freight charges due \$_____ per stop in transit. This item is included in spot quote
7. Tracking and Tracing. Carrier, to the best of its capabilities, shall make available in-transit load position and related load delivery status and tracing information. For information provided by Carrier in response to Shipper's inquiry by telephone, e-mail, or other method requiring personal contact and response.
8. C.O.D. Shipments. Carrier shall accept shipments with C.O.D. charges to collect if Shipper advises Carrier of the need for such service at the time of offering a load and checks the applicable box on the freight document the Parties have agreed to use. Carrier shall only accept money orders or certified checks from consignees unless Shipper otherwise indicates acceptance of an uncertified check. Carrier shall remit to Shipper the collection within fifteen (15) days of delivery.
9. Proof of Delivery. An original, signed bill of lading, or delivery receipt is required as prerequisite to payment of freight charges.