



Bill of Lading Terms and Conditions

The following "Terms and Conditions" shall govern all transportation and related services ("Services") provided by the carrier ("Carrier") set forth on the face of the bill of lading to which the Terms and Conditions are attached, incorporated on the back thereof, or otherwise incorporated by reference (the "Bill of Lading"; and together with these Terms and Conditions, the "Contract"), with respect to the goods, packages and other cargo (collectively, "Goods") set forth in such Bill of Lading.

1. CARRIER DUTIES AND REPRESENTATIONS. Carrier shall provide lawful and responsible transportation and related services to the shipper set forth on the face of the Bill of Lading ("Shipper"). Carrier represents and warrants that it is duly authorized to carry on operations and in good standing under applicable Canadian federal and provincial laws, statutes, regulations, rules and ordinances (collectively "Applicable Laws"). Carrier further represents and warrants that it does not have an unsatisfactory or unfit rating issued by any regulatory authority with jurisdiction over Carrier's operations, including but not limited to, the Province(s) where it may operate. Carrier shall at all times comply with all of Shipper's reasonable shipping instructions and all applicable Provincial, Federal, State and/or local law or ordinances and all lawful orders, rules and regulations issued thereunder, including, but not limited to, the safety regulations of all applicable jurisdictions. In addition, Carrier shall comply with all of Shipper's policies and procedures communicated to Carrier by Shipper. Carrier shall independently perform its services under this Agreement in accordance with the highest standards of the transportation industry and shall maintain all required and appropriate licenses and permits to do so. Under no circumstances shall Carrier co-broker or subcontract the Services without the written consent of Shipper. Carrier agrees to maintain and preserve its records relating to performance pursuant to the Contract for a period of three (3) years following the last shipment transported for Shipper.

2. DELIVERY AND PERFORMANCE. Time is of the essence with respect to performance of the Contract, including, without limitation, delivery of Goods and performance of conforming Services under the Contract. The delivery date(s) set forth in the Contract is (are) the required delivery date(s) (or in the case of services, the delivery and performance date(s)) at Shipper's designated facility, unless otherwise expressly set forth in the Contract. If Carrier's delivery of Goods will not meet the required delivery date(s) for any reason, Carrier shall provide Shipper with immediate written notice of such delay and, unless Shipper terminates the Contract as a result of such breach, ship the conforming goods via the most expeditious available method of transportation, and any additional cost resulting from such method of transportation shall be borne by Carrier.

3. CARGO LIABILITY. Carrier certifies, covenants, agrees, represents and warrants that in accordance with Applicable Laws, Carrier shall assume full liability for any loss, damage or delay to Shipper's goods while in Carrier's or its subcontractor's care, custody, control or possession. Carrier also agrees that any limitations of liability that may be incorporated by reference in any document provided by Carrier without the Shipper's specific, actual knowledge and written consent are null and void. Carrier agrees that, pursuant to Applicable Laws and any other applicable regulation, Carrier assumes full liability for any loss, damage or delay to Shipper's Goods that are transported pursuant to the Contract. Exclusions or limitations, if any, in Carrier's insurance policy or policies shall not relieve or release Carrier from this liability.

4. RATES AND PAYMENT. Shipper shall pay Carrier, within 60 days after Shipper's receipt of Carrier's invoice, signed delivery receipts and other shipping documents requested by Shipper. 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. Carrier warrants that there are no other applicable rates or charges except those expressly agreed to by the parties from time to time. Upon and during any breach of the Contract by



Carrier, Shipper may withhold payment of the price. Invoices shall be sent to Shipper at the address provided by Shipper to Carrier from time to time.

5. WARRANTIES.

a. Carrier certifies, covenants, agrees, represents and warrants that it shall at all times be currently licensed and registered with all regulatory agencies having authority with respect to the Goods transported and geographic scope of all transportation arranged under the Contract. Carrier shall obtain and make available to Shipper, upon request, copies of Carrier's registrations and operating licenses and safety ratings.

b. Carrier certifies, covenants, agrees, represents and warrants that all services shall be performed (i) in accordance with all specifications and instructions provided by Shipper, (ii) in a professional and competent manner in accordance with industry standards and to the satisfaction of Shipper and (iii) using properly qualified and trained employees of Carrier.

c. Carrier certifies, covenants, agrees, represents and warrants that it is, and shall at all times during the duration of the Contract be, in compliance with all national and international statutes, agreements and treaties governing prohibited payments to government officials and/or private individuals in connection with the obtaining or retaining of business including, but not limited to, the Foreign Corrupt Practices Act, the U.K. Bribery Act, Sections 299 and 301 of the German Criminal Code ("SIGB"), the Canadian Corruption of Foreign Public Officials Act, and The PRC Criminal Law, the PRC Anti Unfair Competition Law and the Interim Rules of the State Administration for Industry and Commerce on Prohibition of Commercial Bribery.

d. All of the certifications, covenants, agreements, representations and warranties of Carrier together with its service warranties and guaranties, if any, shall run to Shipper and Shipper's affiliates and customers. All rights and remedies of Shipper and its affiliates hereunder shall be in addition to any other rights and remedies provided at law, in equity, or otherwise.

6. SALVAGE. In the event of loss or damage to Shipper's Goods, Shipper shall have full rights to the possession and control of all damaged Goods. Shipper shall be sole judge in determining what Goods are to be salvaged or destroyed.

7. INDEMNIFICATION. Carrier shall indemnify, defend and hold harmless Shipper and its affiliates, and its and their respective directors, officers, employees, agents, insurers, customers, successors and assigns (collectively, the "Shipper Indemnified Parties"), from and against any and all liabilities, losses, damages and expenses (including, without limitation, attorneys' fees and legal costs) of any kind or of any nature whatsoever that they, or any of them, may sustain or incur directly or indirectly as a result of or arising out from (i) any actual or alleged breach of any representation, warranty or covenant made by Carrier in the Contract, (ii) failure of Carrier to maintain appropriate licenses to carry out the purposes of the Contract, resulting in the inability to, among other things, ship and/or arrange the shipment of Goods for Shipper, (iii) failure to maintain the ratings required herein, (iv) violation of applicable laws, rules and regulations by Carrier, its employees, agents, suppliers or contractors, (v) any actual or alleged injury to or death of any person, or any actual or alleged damage to or loss of any property, arising out of (y) any Goods in the possession or under the control of Carrier, its employees, agents, suppliers or contractors, or (z) any Services performed by Carrier, its employees, agents, suppliers or contractors, (vi) claims arising directly or indirectly out of the transportation of Goods on behalf of Shipper by Carrier, including but not limited to claim arising from accidents involving equipment used to transport Goods, or (vi) the negligent acts or omissions or intentional misconduct of Carrier, its employees, agents, suppliers or contractors.



8. **INSURANCE.** For a period commencing on the date of the Bill of Lading and expiring three (3) years after performance of the Services, Carrier, at its sole cost and expense, shall procure and maintain the insurance coverages and coverage levels, in such amounts, under such forms of policies, upon such terms, for such periods and written by such companies, as reasonably required from time to time by Shipper. Carrier's compliance with this paragraph shall not release Carrier from, or limit in any way, Carrier's obligations or liabilities under the Contract.

9. **CONFIDENTIALITY.** Carrier acknowledges that prior to or during performance of the Contract, Carrier may be given access to, or may otherwise acquire, obtain or develop, information and data, including technical data, customer information and pricing information, that is proprietary to Shipper (collectively, the "Shipper Proprietary Information"). Carrier shall not (a) use any of the Shipper Proprietary Information for any purpose other than performance of its obligations under the Contract; or (b) disclose or make available any of the Shipper Proprietary Information to any person or entity other than those of its employees or agents who have a definable need to have access to such Shipper Proprietary Information in order to allow Carrier to perform its obligations hereunder. Upon expiration or termination of the Contract, Carrier shall return all such Shipper Proprietary Information, including copies thereof, to Shipper or make such other disposition thereof as may be directed or approved by Shipper in writing. Carrier will not make any press release, publication, advertisement, or other type of announcement arising out of or otherwise relating to the Contract without Shipper's prior written approval.

10. **FORCE MAJEURE**—Neither party shall be liable for any damage as a result of any delay in its performance due to any cause beyond its own reasonable control, including acts of God, sabotage, fire, floods, explosions, epidemics or quarantines, freight embargos, insurrections, occurrences commonly referred to as terrorist attacks and any armed hostilities associated therewith, war and/or continuance of war, or any similar events (but specifically excluding strikes, slowdowns or other work stoppages associated with labor problems, none of which shall excuse any delay or default under the Contract), provided, however, that the party affected thereby gives the other party written notice of the occurrence of any such event that is likely to cause any delay (such notice to be provided as promptly as possible and in any event within twenty-four (24) hours after such occurrence), setting forth in the notice its best estimate of the length of any delay, and provided further that such affected party shall use its best efforts to expeditiously overcome the effects of such event and to resume performance. In the event of any such excused delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay.

11. **TERMINATION.**

a. Without limiting any other provision of the Contract or Shipper's rights under applicable law, Shipper may terminate the Contract, in whole or in part, upon written notice to Carrier, (i) for its own convenience at any time, or (ii) in the event Carrier (y) breaches any provision of the Contract, whether or not the breach is deemed "material," or (z) ceases to exist or makes an assignment for the benefit of creditors, or fails or is unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, reorganization, liquidation or other insolvency proceeding, or applies for or consents to the appointment of a receiver for any of its property.

b. In the event Shipper terminates the Contract (or any part thereof) for its own convenience, Shipper shall pay to Carrier all reasonable out-of-pocket costs incurred by Carrier in the performance of the Contract (or the terminated part thereof) prior to such notice, as evidenced by reasonable documentation. In the event Shipper terminates the Contract (or any part thereof) under Section 11(a)(ii), in addition to any other rights Shipper may have under the Contract, at law, in equity or otherwise, Shipper may procure or otherwise obtain, upon such terms and in such manner as Shipper may deem appropriate, services similar to those covered by the



Contract (or the terminated part thereof), and Carrier shall be liable to Shipper for any excess costs of such similar services. Shipper shall not be responsible to Carrier for any compensation, reimbursement, profits or damages whatsoever as a result of any termination of the Contract (or any terminated part thereof). Carrier shall continue performance of the Contract to the extent the Contract is not terminated by Shipper.

c. Sections 1, 3, 5(c), 8, 9, 10, 11 and 12 of these Terms and Conditions shall survive any expiration or termination of the Contract and may be enforceable by Shipper and its affiliates, successors and assigns.

12. MISCELLANEOUS.

a. **ENTIRE AGREEMENT.** Unless Carrier and Shipper have executed a master transportation services agreement or other similar agreement (a "Master Agreement"), upon the execution of the Billing of Lading, the Contract (including these Terms and Conditions and any other documents referenced or incorporated into the Bill of Lading or these Terms and Conditions) shall constitute the entire agreement between the parties (except for any additional warranties given by Carrier) with respect to the Services identified herein, superseding any and all previous communications and negotiations, whether oral or in writing. These Term and Conditions are hereby incorporated in their entirety into the Bill of Lading, and references in these Terms and Conditions to the Bill of Lading shall be deemed to mean the Bill of Lading incorporating these Terms and Conditions. Shipper hereby provides notice of objection to and rejection of any additional or different terms or provisions (except additional warranties given by Carrier) in any quotation, acknowledgment, invoice or other form or correspondence supplied by Carrier; such additional or different terms or provisions are hereby deemed to be material alterations and no such additional or different term or provision (except additional warranties given by Carrier) shall become part of the agreement between the parties. In the event of any conflict at any time between any provision contained in the Contract (including these Terms and Conditions) and any term or condition or attempted limitation of warranty set forth in any communication from Carrier, it is agreed by Carrier that such provision in the Contract (including these Terms and Conditions) shall control such conflict and govern the Services contemplated by the Contract. Notwithstanding the foregoing, if the parties have executed a Master Agreement, then the Contract (including these Terms and Conditions) shall be deemed to supplement such Master Agreement; provided that in the event of any direct conflict between any provision of such Master Agreement and any provision of the Contract (including these Terms and Conditions), the provisions of the Master Agreement shall control. For the avoidance of doubt, if the parties have executed a Master Agreement, all references in these Terms and Conditions to the Contract shall be the Contract and such Master Agreement.

b. **NO LIENS.** Carrier will not possess and expressly waives, disclaims and releases any lien, whether statutory or otherwise, security interest or encumbrance of any kind or nature whatsoever with respect to any of Shipper's Goods, other cargo, or any portion thereof.

c. **GOVERNING LAW.** Carrier and Shipper desire that the provisions of the Contract will have precedence over any federal or provincial provisions governing or dealing with the specific provisions of the Contract. To the extent no conflicts exist with the Contract or federal law, the law of the Province of [Ontario], without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply, shall apply.

d. **CONSENT TO JURISDICTION.** Carrier agrees that all actions or suits arising out of the Contract shall be brought, heard and determined exclusively in the Courts of the Province of Ontario, and Carrier consents to personal and subject matter jurisdiction and venue in such courts and waives and relinquishes all right to attack the suitability or convenience of such venue



or forum. Carrier waives personal service of any and all process upon it in any such action or suit and consents to all such service of process made by mail or by messenger directed to it at the address specified on the face of this document. Carrier acknowledges that all directions issued by the forum court, including, without limitation, all injunctions and other decrees, shall be binding and enforceable in all jurisdictions and countries.

e. **AMENDMENTS.** The Contract may not be modified or terminated orally, or by any course of performance, dealing, trade, or any course of conduct, and no modifications, amendments or changes to the Contract shall be valid and binding unless made in writing and signed by an authorized officer of Shipper.

f. **NON-WAIVER OF RIGHTS.** No waiver by Shipper of any of the provisions of the Contract shall be effective unless explicitly set forth in writing and executed by an authorized officer of Shipper. Except as expressly otherwise set forth in the preceding sentence, no action taken pursuant to the Contract shall be deemed to constitute a waiver by Shipper of compliance with any representations, warranties or covenants made by Carrier in the Contract. The waiver by Shipper of a breach of any provision of the Contract shall not operate or be construed as a waiver of any prior or subsequent breach.

g. **ASSIGNMENTS.** Carrier shall not assign or otherwise transfer any of its rights or obligations under the Contract, in whole or in part, voluntarily or by operation of law, without the prior written consent of Shipper; any purported assignment or transfer in violation of this provision shall be void. Shipper may assign its rights and obligations under the Contract, in whole or in part, voluntarily or by operation of law, without the prior written consent of Carrier. The Contract is binding upon, and shall inure to the benefit of, Shipper and Carrier and their respective permitted successors and permitted assigns.

h. **NON-EXCLUSIVE RIGHTS.** The rights and remedies set forth in any provision of the Contract shall be in addition, and without prejudice, to all other rights and remedies to which Shipper may be entitled under any other provision of the Contract, applicable law or otherwise, including, without limitation, any right to specific performance or injunctive relief.

i. **AUTHORIZATION.** It is agreed and warranted by each of Shipper and Carrier that the individuals signing this document on behalf of Shipper and Carrier, respectively, are duly authorized to execute such Contract. No further proof of authorization is or shall be required.

j. **INDEPENDENT CONTRACTOR.** Carrier shall remain at all times an independent contractor of Shipper. Shipper does not exercise or retain any control or supervision over Carrier, its operations, employees, or its independent subcontracted owner operators. No other tariff provisions, carrier publications or Carrier forms shall modify, alter or amend the terms of this Contract. Carrier shall assume complete responsibility for all of its employees and subcontractors it may utilize in its performance and shall indemnify and hold Shipper harmless from any and all claims or assessments of any kind or nature related to their employment or subcontracted services including, but not limited to, statutorily required benefits or court ordered protections or obligations, income taxes or withholding.

k. **SEVERABILITY AND SURVIVABILITY.** In the event that the operation of any portion of the Contract results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, Shipper and Carrier agree that such portion or provision shall be severable and that the remaining provisions of the Contract shall continue in full



force and effect. The representations and obligations of Carrier shall survive the termination of the Contract for any reason.