

# WENDT RIGGING SERVICES

## TERMS AND CONDITIONS

**ARTICLE 1. SCOPE.** Wendt, LLP, its employees, representatives, contractors, carriers, and agents (collectively “Wendt”) shall arrange and provide rigging services and such other services as are requested by Customer (“Services”) subject to and in accordance with all of the terms and conditions set forth in these terms and conditions (hereafter the “Agreement”).

**ARTICLE 2. EQUIPMENT AND LABOR.** Wendt shall provide and have available all equipment and labor reasonably necessary to perform the Services. Wendt shall provide competent, trained, and legally qualified drivers and operators of rigging equipment and other laborers necessary to perform the Services.

**ARTICLE 3. INDEPENDENT CONTRACTOR.** The parties agree that Wendt is and shall remain at all times hereunder an independent contractor in performing Services under this Agreement. Wendt shall have exclusive control and direction of the equipment and labor used in performing the Services. It is further understood and agreed that in no event shall any employee of agent hired by Wendt be or considered to be an employee or agent of Customer.

**ARTICLE 4. PREMISES.** Where Wendt personnel are performing Services for Customer upon the Customer’s premises, the Customer warrants that the premises and equipment thereon are in a sound and fit condition and that such services can be safely undertaken in the ordinary course of providing the Services. The Customer will be liable for any and all damage, loss or injury whatsoever suffered by Wendt due to or as a result of the Customer’s acts, omissions, negligence, or misconduct or that of the Customer’s representatives, employees, agents or subcontractors and the Customer agrees to indemnify, defend and hold Wendt harmless from and against any and all loss, damage, costs, expenses, claims and demands whatsoever and howsoever incurred by Wendt as a result thereof. In providing a safe condition, Customer represents and warrants that any overhead and/or underground obstructions and facilities will be removed and/or placed in a safe position by Customer. Wendt will not be responsible for damage to any underground structures, voids or utilities, or damage to concrete or asphalt, unless Wendt is expressly notified of the “at risk” area of the premises and Wendt disregards the express instructions provided by Customer for working in or near such “at risk” area. Special protection arrangements for identified underground items, concrete or asphalt must be agreed to by Wendt and Customer in writing in advance of the commencement of Services by Wendt.

**ARTICLE 5. COMPLIANCE WITH LAWS.** Wendt holds the appropriate licenses and permits as are required by local, state and federal authorities to provide the Services. At all times during which Services are provided by Wendt to Customer hereunder, Wendt shall, at its own expense, procure and maintain all necessary federal, state and local licenses, operating certificates, permits and approvals to perform the Services.

**ARTICLE 6. PREPARATION FOR TRANSPORTATION.** All equipment, machinery, buildings, structures or property (the “Property”) to be transported as part of the Services must be properly prepared for transportation by Customer prior to commencement of Services, unless otherwise agreed between the parties in writing. For purposes of this Agreement, the term “properly prepared” shall mean, without limitation, that the Property has been properly braced, packaged and prepared for transportation by Customer, including but not limited to, the installation of shipping brackets, supporting braces, securing of counterweights, extensions, pipes, beds, tables, heads and other moving

or loose parts so as to prevent movement and damage in transit. Property must be drained of any and all fluids, which may leak or freeze, causing damage. The drainage of any such fluids shall be conducted by Customer in accordance with all applicable environmental laws. If the Property is crated, it must be properly secured to the crate and such crate must be sturdy and rugged as prepared by craftsmen experienced in crating machinery and equipment and sufficient to adequately protect the Property during transportation. During ordinary rigging, moving or transportation, Property may be tipped, turned or subjected to strong forces, which are not normally experienced while at rest. Such forces include events during ordinary over-the-road transportation and conditions inherent at job and construction sites such as road construction, railroad tracks, sharp turns, unlevelled roadways, potholes and other road hazards. It is Customer’s responsibility to see that all Property including components, parts and accessories for the Property are properly and safely packaged, secured, crated, blocked or braced to prevent damage to same from such events during transportation. Wendt will not be responsible for any damage to Property that occurs during transportation or rigging as a result of Customer’s failure to have properly secured, prepared, packaged and braced the Property as set forth herein.

**ARTICLE 7. HAZARDOUS/DANGEROUS GOODS.** Customer will advise Wendt in writing prior to the commencement of the Services of the presence of any hazardous or dangerous materials that may be involved in the performance of the Services. Customer shall be liable for and defend, indemnify, and hold Wendt harmless from and against any and all loss or damage caused by such hazardous or dangerous materials. Wendt shall have the right to refuse to accept, handle or transport any items that Wendt reasonably determines are not safe for handling or transportation and shall inform Customer promptly of any such refusal and the reasons for such a refusal as soon as reasonably possible.

**ARTICLE 8. INSURANCE.** Customer shall at all times carry and maintain general liability and property damage insurance on the premises or job site where Wendt is directed to perform the Services. Wendt shall carry and maintain at all times during which Services are provided by Wendt workman’s compensation insurance in the statutory amount and any other insurance as may be required by applicable law. All of the policies of insurance coverage carried by Wendt shall exclude recovery due to business interruption of a Customer’s operations in the performance of the Services.

**ARTICLE 9. LIABILITY.** With respect to any delay in Services or loss or damages to any of Customer’s property, including Property (collectively hereafter the “Property”), and except as provided elsewhere in this Agreement, Wendt’s liability shall be limited as follows:

- (a) Wendt shall not be liable for any loss of or damage to any property or for any delay caused by an Act of God, the public enemy, the authority of law, quarantine, riots, strikes, or the act or omissions of the Customer, its agents, employees, representatives, contractors (other than Wendt), or the owner of the property or premises being serviced by Wendt. Except in the case of the negligence of the Wendt (and, in that case, subject to paragraph e, below), Wendt shall not be liable for the loss or damage to any property serviced hereunder or responsible for its condition, operation or functioning, whether or not such property or any part of it is packed,

unpacked, or packed and unpacked by the Customer or its agent or Wendt. Except in case of negligence of Wendt (and, in that case, subject to paragraph e, below), Wendt shall not be liable for damage to or loss of contents of crates, bundles, cartons, boxes, barrels or other containers unless such contents are open for Wendt's inspection and then only for such articles as are specifically listed by Customer and received for by Wendt (and, that case, subject to paragraph e, below)..

- (b) Except in case of negligence of Wendt (and, in that case, subject to paragraph e, below), Wendt shall not be liable for delay caused by breakdown or mechanical defects of any of its vehicles or equipment, highway obstruction, or faulty or impassable highway, or lack of capacity of any highway, bridge, or ferry, or caused by breakdown or mechanical defects of vehicles or equipment.
- (c) Except in case of negligence of Wendt (and, in that case, subject to paragraph e, below), Wendt shall not be liable for loss, damage, or delay occurring while the property for which Services are provided hereunder is stopped and held or stored in transit upon request of the Customer, owner, or party entitled to make such request, whether such request was made before or after Wendt comes into possession of the property.
- (d) In case of a quarantined shipment, the property may be discharged at the risk and expense of the shipper and owner of the shipment into quarantine depot or elsewhere as required by quarantine regulations, or authorities, and in such case, Wendt's responsibility shall cease when the property is so discharged, or property may be returned by Wendt at Customer's expense to the point of origin, accruing transportation charges both ways. Quarantine expenses of whatever nature or kind upon or in respect to such property shall be the sole responsibility of the Customer and owners of the property. Wendt shall not be liable for loss or damage occasioned by fumigation, disinfection or other acts done or required by quarantine regulations or authorities even though the same may have been done by Wendt, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. Wendt shall not be liable, except in case of negligence (and, in that case, subject to paragraph (e), below), for any mistake or inaccuracy in any information furnished by Wendt as to quarantine laws or regulations. The Customer shall hold Wendt harmless from and against any and all expenses Wendt may incur, including attorneys fees, court costs, fines and penalties, by reason of the introduction of the property covered under this Agreement into any place against the quarantine laws or regulations in effect at such place.
- (e) Customer acknowledges and agrees that the rates charged by Wendt under this Agreement for the Services are based upon a released valuation (i.e., an agreed upon amount of liability to be assumed by Wendt) of the amount of fees charged by Wendt and paid by Customer that relate to the claim brought by Customer or, where the Services involve transportation of Customer's property, a certain price per pound per article not to exceed the total cost of the transportation portion of the charges. Wendt's maximum liability to Customer for any loss or damage to Customer's property lost or damaged in transit shall be thirty cents (30¢) per pound per article, notwithstanding any value declared by Customer on bills of lading or otherwise. If Wendt has purchased insurance coverage for the shipment, then the Customer may file a claim

under such insurance coverage; however, to the extent such coverage does not cover or fully cover the Customer's claim, the Customer's sole remedy against Wendt is limited as provided herein. Notwithstanding the foregoing, Wendt shall not be responsible under any circumstances for any damages resulting from an interruption of the Customer's business, even if caused directly by the negligence or nonperformance of Wendt. If Customer desires for Wendt to assume such liability, the parties must agree to this in writing and the charges for the Services increased accordingly to account for this material increase in assumed liability by Wendt.

**ARTICLE 10. REASONABLE DISPATCH.** Wendt shall provide the Services, including any related transportation services, with reasonable dispatch. Wendt shall have the right, in its sole discretion, to contract with any contractor or carrier to provide the Services to Customer hereunder.

**ARTICLE 11. CLAIMS.** As a condition precedent to Customer's recovery of any claim against Wendt, the Customer must (a) first have paid Wendt's invoices in full for the Services upon which the claim is based, and (b) the claim must be filed in writing with:

- (1) Wendt;
- (2) the insurance company through which Wendt has purchased insurance, if applicable;
- (3) the carrier whose line the loss, damage, injury or delay occurred; or
- (4) the carrier in possession of the Property when the loss, damage, injury or delay occurred.

Such claims must be filed within nine (9) months after the delivery of the property (or, in the case of export traffic, within nine (9) months after delivery at the port of export), except that claims for failure to make delivery must be filed within nine (9) months after a reasonable time for delivery has elapsed. Unless the original claim has already been filed with Wendt, a copy of the claim must be filed with Wendt to be a valid claim against Wendt. Suits for loss, damage, injury or delay shall be instituted against any carrier, including Wendt, no later than two (2) years and one (1) day from the day when written notice is given by the carrier or Wendt, as the case may be, to the claimant that the carrier or Wendt, as the case may be, has disallowed the claim or any part or parts of the claim specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier, including Wendt, shall be liable, and such claims will not be paid. Any carrier or party liable for loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, PROVIDED, that the carrier or party receiving the benefit of such insurance will reimburse the claimant the lesser of (a) the premium paid on the insurance policy or contract, or (b) the released valuation (limitation of liability) set forth herein not already paid out by Wendt, or a carrier, on a claim.

**ARTICLE 12. SEVERABILITY.** If any part, term or provision of this Agreement is declared unlawful or unenforceable, by judicial determination or otherwise, the remainder of this Agreement shall remain in full force and effect.

**ARTICLE 13. MODIFICATIONS.** Any alteration, addition or modification to the terms and conditions of this Agreement shall be of no force and effect unless the same is signed by a duly authorized representative of Wendt.

**ARTICLE 14. RULES OF CONSTRUCTION.** There is no presumption against Wendt as the drafter of this Agreement. Customer has had the opportunity to review and object to any and all terms

contained herein and by requesting the Services of Wendt, without requiring a separately drafted written agreement signed by duly authorized representatives of Wendt and Customer, has accepted all terms and conditions of this Agreement.

**ARTICLE 15. PAYMENT TERMS.** Customer shall pay all Wendt invoices within 10 days of the invoice date. If not timely paid, Wendt shall be entitled from Customer to reimbursement of all costs and expenses, including court costs and attorneys fees, incurred in collecting payment of such unpaid invoices. Any past due accounts shall have interest accruing at a rate of 2 % per month.