

WENDT TRANSPORTATION SERVICES

TERMS AND CONDITIONS

ARTICLE 1. THE PARTIES; THE SERVICES. Wendt, LLP, its employees, representatives, contractors, and agents (collectively “Carrier”) shall arrange and provide transportation services and such other services as may be requested by shipper from time to time (the “Services”) subject to and in accordance with all of the terms and conditions set forth in this agreement (the “Agreement”). For purposes of this Agreement, the term “shipper” shall mean the party who has requested the Services from Carrier.

ARTICLE 2. EQUIPMENT AND PERSONNEL. Carrier shall provide and have available all equipment necessary to perform the Services contemplated under this Agreement. Carrier shall provide competent, trained, and legally qualified drivers and operators of transportation equipment necessary to perform Services.

ARTICLE 3. COMPLIANCE WITH LAWS. Carrier holds the appropriate licenses and permits as are required by local, state and federal authorities to provide the Services. At all times during the term of this Agreement, and any renewal thereof, Carrier 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 4. LIABILITY. With respect to the Services provided hereunder by the Carrier:

- (a) Carrier 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 shipper, its agents, employees, representatives, contractors (other than Carrier), or the owner of the property being serviced by Carrier. Except in the case of the negligence of the Carrier (and, in that case, subject to paragraph e, below), Carrier 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 shipper or its agent or the Carrier or its agent. Except in case of negligence of the Carrier (and, in that case, subject to paragraph e, below), Carrier 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 the Carrier’s inspection and then only for such articles as are specifically listed by the shipper and receipted for by the Carrier (and, that case, subject to paragraph e, below).
- (b) Except in case of negligence of the Carrier (and, in that case, subject to paragraph e, below), Carrier shall not be liable for delay caused by 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 the Carrier (and, in that case, subject to paragraph e, below), Carrier 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 shipper, owner, or party entitled to make such request, whether such request was made before or after the Carrier 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, Carrier’s responsibility shall cease when the property is so discharged, or property may be returned by Carrier at shipper’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 shipper and owners of the property. Carrier 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 Carrier’s officers, agents or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. Carrier shall 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 the Carrier as to quarantine laws or regulations. The shipper shall hold the Carrier harmless from and against any and all expenses Carrier 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) Shipper acknowledges and agrees that the rates charged by Carrier under this Agreement for the Services are based upon a released valuation (i.e., an agreed upon amount of liability to be assumed by the Carrier) of a certain price per pound per article for shipper’s property. Carrier’s maximum liability to shipper for any loss or damage to shipper’s property shall be thirty cents (30¢) per pound per article, notwithstanding any value declared by shipper on bills of lading or otherwise. If Carrier has purchased insurance coverage for the shipment, then the shipper may file a claim under such insurance coverage; however, to the extent such coverage does not cover or fully cover the shipper’s claim, the shipper’s sole remedy against Carrier is limited as provided herein. Notwithstanding the foregoing, Carrier shall not be responsible under any circumstances for any damages resulting from an interruption of any party’s business, including shipper, even if caused directly by the negligence or nonperformance of Carrier. If shipper desires for Carrier 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 Carrier.

ARTICLE 5. REASONABLE DISPATCH. Carrier shall transport the shipment with reasonable dispatch. Carrier shall have the right, in its sole discretion, to forward the property through any carrier or by any route between the point of shipment and the point of destination.

ARTICLE 6. CLAIMS. As a condition precedent to shipper’s recovery of any claim against Carrier, the shipper or owner of the goods, as the case may be, must (a) first have paid Carrier’s invoices in full for the Services upon which the claim is based, and (b) the claim must be filed in writing with:

- (1) the Carrier;
- (2) the insurance company through which Carrier 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 Carrier, a copy of the claim must be filed with the Carrier to be a valid claim against Carrier. Suits for loss, damage, injury or delay shall be instituted against any carrier, including Carrier, no later than two (2) years and one (1) day from the day when written notice is given by the Carrier to the claimant that the carrier or Carrier, 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 Carrier, 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 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 the Carrier, or a carrier, on a claim.

ARTICLE 7. PACKING/REPACKING. Except where such service is required as a result of Carrier's negligence (and, in that case, subject to Article 4(e), above), all property that requires additional cooerage, packing and repacking, shall at the shipper and owner's sole cost and expense.

ARTICLE 8. PROPERTY NOT RECEIVED. Property not received by the party entitled to receive it within the free time allowed (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or at the time tender of delivery of the property to the party entitled to receive it or at the address given for delivery has been made, may be kept in vehicle, warehouse, or place of business of the carrier, subject to the charge for storage and to Carrier's responsibility as warehouseman, only, or at the option of the Carrier, may be removed to and stored in a warehouse at the point of delivery or at other available points, at the cost of the shipper and owner, and there held without liability on the part of the Carrier, and subject to a lien for all transportation and other lawful charges, including a reasonable charge for storage. In the event the consignee cannot be found at the address given for delivery, then in that event, notice of the placing of such goods in warehouse shall be left at the address given for delivery and mailed to any other address given on the bill of lading for notification, showing the warehouse in which such property has been placed, subject to the provisions of this paragraph.

- (a) Where the property transported to the destination stated in the bill of lading is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive the property fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the Carrier may sell the property at public auction to the highest bidder, at such place as may be designated by the Carrier. PROVIDED, that the Carrier shall have first mailed, sent, or given to the consignor and shipper notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of this Agreement if disposition is not arranged for, and that after 30 days have elapsed from the time said notice to the

consignor and shipper was mailed, sent or given, the Carrier shall also have published a notice containing a description of the property, the name of the party to whom consigned (or if shipped order notify, the name of the party to be notified), and the time and place of sale, once a week for two consecutive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published.

- (b) Where the procedure provided for in paragraph (a), above, is not possible, it is agreed that nothing in these paragraphs shall be construed to abridge the right of the Carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.
- (c) The proceeds of any sale made under this Article shall be applied by the Carrier: (i) to the payment of freight, demurrage, storage, and any other lawful charges; and, (ii) to the expense of notice, advertisement, sale, and other necessary expenses, including attorneys fees, and to the expense of caring for and maintaining the property, if proper care of the property requires special expense. Should there be a balance remaining after all charges and expenses are paid, such balance shall be paid to the owner of the property sold hereunder.

Where the Carrier is directed to load property from (or render Services at) a place or places at which the consignor or his agent is not present, the loading or handling by the Carrier shall be at the risk of the shipper and owner of the property. Where the Carrier is directed to unload or deliver property (or render any Services) at the place or places at which the consignee or its agent is not present, the property shall be unloaded or delivered at the risk of the shipper and owner of the property.

ARTICLE 9. DANGEROUS GOODS. Every party, whether principal or agent, shipper or owner, who ships explosives or dangerous goods, without previous full written disclosure to the Carrier of their nature, shall be liable for and indemnify, defend, and hold the Carrier harmless from and against any and all loss or damage caused by such explosives or dangerous goods. Such goods may be warehoused at shipper and owner's risk and expense or destroyed without compensation to the shipper and owner.

ARTICLE 10. PAYMENT TERMS. The shipper or consignee of any Services provided by Carrier shall, upon acceptance of the goods or products, guarantee payment of all of shipper's obligations under this Agreement including, without limitation, the advances, packing and storage, if any, and all other lawful charges accruing on account of the shipment. Nothing herein shall limit the right of the Carrier to require at time of shipment, the prepayment of all charges. If upon inspection it is ascertained that the articles shipped are not those described in the bill of lading, the advances or charges must be paid based upon those articles or products actually shipped. Carrier's invoices must be paid within 10 days of the invoice date. If not timely paid, Carrier shall be entitled 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.

ARTICLE 11. 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 12. 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 Carrier.

ARTICLE 13. RULES OF CONSTRUCTION. There is no presumption against Carrier as the drafter of this Agreement. Shipper has had the opportunity to review and object to any and all terms contained herein and by requesting the transportation services from Carrier has accepted all terms and conditions of this Agreement.