



TERMS AND CONDITIONS – MOTOR CARRIAGE

Effective Date: January 26, 2009

The following contains the general terms and conditions of contract (“Terms”) under which CorTrans Logistics’ (“CARRIER”) services are provided. These Terms are effective on the date set forth above, and are subject to change without prior notice. The most current version of the Terms is published on the CorTrans web site at www.cortrans.com. In tendering the shipment for delivery, the shipper (“SHIPPER”) agrees that the version of these Terms in force at the time of presentation of the shipment for carriage will apply to the shipment and its carriage. These Terms shall apply to all CARRIER’s shipments for motor carriage save to the extent otherwise required or mandated by any international, national, federal, state, or local law, rule, convention, or regulation applicable to the shipment.

1. **SERVICE.** CARRIER agrees to provide motor carrier transportation service for the transportation of commodities of the types and kinds specified in APPENDIX A hereto (the “Commodities”) from and to the points specified in APPENDIX A. SHIPPER shall tender for transportation in a series of shipments and CARRIER shall transport subject to availability of CARRIER’s equipment, a minimum of three shipments per year throughout the duration of this AGREEMENT. CARRIER agrees to transport and deliver Commodities with reasonable dispatch. CARRIER shall furnish all such vehicles and equipment necessary to perform the transportation services required herein. Such motor vehicles and equipment shall at all times during the term of this AGREEMENT be properly maintained by CARRIER and shall comply in all material respects with all applicable federal, state and local laws and regulations. Notwithstanding the foregoing CARRIER reserves the right to refuse shipments tendered by SHIPPER

2. **CARRIER’S OBLIGATIONS.** 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 and related equipment furnished by CARRIER for the performance of its obligations hereunder (collectively, the “Equipment”). CARRIER shall have full control of the personnel used in the operation of the Equipment and perform the services hereunder as an independent contractor. Notwithstanding the foregoing, CARRIER reserves the right to provide substitute transportation services consisting of shipments brokered by CARRIER to other qualified contract carriers without prior notice to the SHIPPER.

3. **LOADING RESPONSIBILITY.** Except as otherwise provided in writing prior to the time of dispatch, shipments transported by CARRIER must be loaded by SHIPPER and unloaded by the Consignee, from or on the Equipment. The Equipment will be provided for use by SHIPPER to load and Consignee to unload all shipments. All freight so loaded by SHIPPER shall be properly packed and braced by SHIPPER to protect against damage during the course of normal transportation. CARRIER will not be responsible for any damage to a shipment or for personal injuries at origin, destination or enroute, which is directly caused by improper, careless or inefficient preparation for shipment, inherent vice or nature of the Commodities, or loading and unloading performed by SHIPPER, Consignor, Consignee or a Third Party.

4. **PICK UP AND DELIVERY.** CARRIER does not agree to pick up or deliver any shipment in time for any particular market, occasion, or event, and CARRIER does not guarantee to arrive at or depart from any particular point at any specified time. The estimated pick up and delivery times which CARRIER may advise, through its agents, are times which the CARRIER endeavors to maintain, but such times are not guaranteed.

5. **BILL OF LADING.** All Commodities tendered to CARRIER under this AGREEMENT shall move on and be governed by the terms and condition sin the CARRIER’S Bill Of Lading. However, to the extent any terms or conditions of CARRIER’S Bill Of Lading conflict in any way with any term or condition of this AGREEMENT, this AGREEMENT shall take precedence and control the resolution of disputes. THIS AGREEMENT GOVERNS THE TERMS OF THE TRANSPORTATION PERFORMED BY CARRIER FOR SHIPPER, IN THE EVENT OF ANY PROVISIONS TO THE CONTRARY ON ANY SHIPPING DOCUMENT WHICH MAY BE ISSUED COVERING ANY SHIPMENT OR SHIPMENTS.



6. CARGO LIABILITY. Subject to the limitations of liability contained herein, CARRIER shall be liable for the actual loss, damage or injury to the commodities tendered by SHIPPER and accepted by CARRIER for transportation, provided that CARRIER shall not be liable for the loss or damage caused, in whole or in part, by an act of God, public enemy, the fault or neglect of the SHIPPER or public authority. The measure of the loss, damage or injury shall be the lesser of the actual replacement cost or the cost of repairs to the commodities so lost, damaged or destroyed, not to exceed the lesser of \$2.50 per pound or \$100,000 per truckload shipment. CARRIER's liability for shipments involving commodities in other than new condition, including but not limited to, used agricultural implements or parts, or used machinery or parts, shall be limited to the lesser of \$1.00 per pound or \$25,000 per truckload shipment. CARRIER shall not be liable for indirect, special, delay, economic or consequential damages other than actual loss or damage to the commodities, regardless of CARRIER's knowledge of the possibility of such damages. CARRIER shall deduct from the amount of any claim the reasonable salvage value of the lost or damaged commodities. In those instances when CARRIER exercises its right to broker shipments to qualified contract carriers, CARRIER shall have no liability for cargo loss, damage or delay claims; provided however, that CARRIER agrees to submit, negotiate and attempt to settle such claims with the responsible carrier and to keep SHIPPER advised of the status of all such claims. UNLESS OTHERWISE AGREED TO IN WRITING, CARRIER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE INCURRED IN MEXICO.

Where permitted under applicable law, and subject to the following requirements, SHIPPER may arrange for and pay for cargo insurance. CARRIER accepts no responsibility for or liability to, and the shipper and consignee waive, release, and discharge CARRIER from, SHIPPER's or consignee's failure to comply with the terms and conditions of the cargo insurance policy. Policy terms and conditions apply and are available upon request, which terms and conditions include without limitation, the limits and conditions described herein. The insurance covers the shipment against risks of physical loss or damage from most external causes, subject to certain exclusions. The amount of insurance requested (in whole dollars) should be equal to the value of the shipment (lesser of replacement cost or sales price) plus insurance, and the freight charges. A premium per \$100.00 of insurance requested will be charged and billed. Advance arrangements must be made for insurance coverage; such request must be made by SHIPPER and accepted by CARRIER in writing. Any amount of insurance requested in excess of the maximum allowed in these terms is null and void, and the acceptance by CARRIER for carriage of any shipment with an insurance amount in excess of the allowed maximum does not constitute a waiver of this maximum. Cargo insurance is not available for all shipments; SHIPPER should contact CARRIER for more information and exclusions.

7. CLAIMS.

- a. Claims for damaged shipments must be made in writing within 60 days of ship date. Notification of concealed damage must be made within 24 hours of receipt. Original shipping cartons and contents must be retained by consignee for inspection. Claims for overcharges must be presented to Carrier within 60 days of the shipping date.
- b. No loss or damage claim will be processed until all Transportation charges have been paid. Claimants may not deduct the amounts of pending claims from any charges owed to Carrier, and Shipper waives any and all rights, including any statutory or common law rights, to set off the amount of any claim against charges owed to Carrier. Shipper's account with Carrier must be in good standing before Carrier shall make any claims payment.
- c. If Carrier subcontracts any portion of the services performed, Shipper hereby authorizes Carrier to file and collect claims on Shipper's behalf with the subcontracted party/parties.
- d. All claims for loss or damage are subject to proof of value, documentation of which shall be provided by Claimant at the time such claim is made.

8. INSURANCE. During the term of this AGREEMENT, CARRIER shall carry and maintain public liability and property damage insurance, or obtain self-insurance as authorized by federal law, in such amounts and in such manner as may be required by law.



9. NON-ALTERNATION. Both SHIPPER and CARRIER agree that any shipments tendered to CARRIER under the terms of this AGREEMENT shall be subject to rates provided in CARRIER's common carrier Tariffs, unless CARRIER and SHIPPER have entered into a separate written contract providing other such rates.

10. PROVISIONS FOR PAYMENT. As full compensation for the services provided by CARRIER pursuant to the terms and conditions of this AGREEMENT, SHIPPER shall pay CARRIER in accordance with the rates and charges provided in APPENDIX A herein except as hereinafter provided. When CARRIER and SHIPPER shall both agree, the transportation charge for any shipment(s) may be an amount agreed upon by both parties different from that shown in APPENDIX A. If both parties agree to a special rate, such rate shall be reduced to writing by the CARRIER and signed by both parties prior to the shipment pick-up in order to become binding. Signed written agreements may be transmitted between the parties electronically or by U.S. Mail. This procedure satisfies the requirements of a written agreement for change in rates, as provided in the AGREEMENT. All invoices (freight bills) are due and payable within thirty (30) days from date of CARRIER's invoice.

- a. All invoices more than ten (10) days in arrears shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less, from the date due until paid.
- b. SHIPPER agrees to pay all collection expenses, including reasonable attorney's fees, as and when incurred or paid by CARRIER.
- c. All transportation charges are to be paid in full. No deductions from transportation charges are to be made for loss or damage or for billing error on other shipments.
- d. When the Bill of Lading indicates contractual rates and charges are to be collected from the Consignee or a Third Party, CARRIER agrees to collect its full compensation from the Consignee or Third Party directly. In the event the Consignee or Third Party refuses to pay CARRIER its full compensation, SHIPPER agrees that it shall pay the said compensation for freight charges, services and advances due to CARRIER.

11. WAIVER. CARRIER and SHIPPER expressly waive any and all rights and remedies allowed under 49 U.S. C. Section 14101, et. seq. to the extent that such rights and remedies conflict with this AGREEMENT.

12. INDEMNIFICATION. Except as otherwise provided herein, each party hereto shall indemnify and hold harmless the other party hereto from and against all loss, damage, fines, expense (including reasonable attorney fees), actions and claims for injury to persons (including injury resulting in death) and damage to property, caused by the negligent acts or omissions of such party, its agents or employees.

13. FORCE MAJEURE. Neither CARRIER nor SHIPPER shall be liable one to the other for default in the performance or discharge of any duty or obligation under this AGREEMENT where caused by an Act of God, or the public enemy, war conditions, governmental interference, regulations or actions, embargoes, fires, floods, labor disorders, closing of the public highway, or without construing the foregoing as words of limitation, any other cause beyond CARRIER or SHIPPER's control.

14. DEFAULT

- a. Any of the following events shall constitute a default hereunder:
 1. failure of SHIPPER or CARRIER to pay when due and payable any payment or charges during the term of AGREEMENT; or
 2. failure by any party to perform, keep or observe any term, provision, warranty or condition contained in this AGREEMENT unless otherwise excused.
- b. If either party to this AGREEMENT fails to correct a default hereunder within fifteen (15) days after written notice to do so, the party serving such notice may unilaterally terminate this AGREEMENT forthwith. Waiver of any default shall not be construed as a waiver of either a subsequent or continuing defaults. Termination



of this AGREEMENT shall not affect a party's liability by reason of any act, default or occurrence prior to such termination.

15. RELATIONSHIP OF THE PARTIES. The relationship between CARRIER and SHIPPER under this AGREEMENT shall be that of independent contract. Nothing contained in this AGREEMENT shall be deemed to constitute a relationship of agency, joint venture, partnership or any relationship other than that specified.

16. HAZARDOUS MATERIAL TRANSPORTATION: SHIPPER shall provide CARRIER with advance written notice of the proper shipment of any hazardous material, as that term is used and defined in the Hazardous Material Transportation Act, 49 U.S.C. Section 15101, et. seq., ("Hazardous Material"). Prior to the proposed transportation, SHIPPER shall provide CARRIER with a current Material Safety Data Sheet for the hazardous material shipment. SHIPPER shall indemnify, defend and hold harmless CARRIER and it's officers, employees, agents, drivers and insurers against all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out of or contact with exposure to or release of any Hazardous Material, including without limitation, fines or expenses related to the removal of treatment of Hazardous Material or any other remedial action pertaining to the Hazardous Material under federal or state law, if (1) SHIPPER fails to provide the notice required by this provision prior to tendering the Hazardous Materials to CARRIER, (2) the contact, exposure or release resulted from the improper packaging or loading or other acts of omissions of the SHIPPER, it's employees or agents, or (3) the contact, exposure or release occurred subsequent to the transport of the Hazardous Material by CARRIER.

17. RESERVED

18. COMPLIANCE WITH LAW. CARRIER shall comply in all material respects with all federal, state and municipal laws and regulations relating to the transportation of the Commodities covered by this AGREEMENT and shall indemnify and save SHIPPER harmless from any and all penalties or other liability arising from violations of said laws and regulations.

19. GENERAL.

- a. This AGREEMENT shall remain in full force and effect for a term of one (1) year from date hereof and unless either party notifies the other in writing at least thirty (30) days prior to the expiration of the primary term or any extension thereof, this AGREEMENT shall be deemed extended at any such expiration for another term of like duration as the primary term, subject always, however, to the right of termination by either party at any time on thirty (30) days' written notice to the other party.
- b. In the event that any provision of this AGREEMENT shall be construed as or declared to be invalid, unenforceable or unconstitutional, then such invalidity, unenforceability or unconstitutionality shall not affect the remaining provisions of this AGREEMENT, and said provisions shall be given full force and effect as if the invalid, unenforceable or unconstitutional provision did not exist.
- c. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.
- d. The failure of one party to insist upon the other party's strict adherence to any provision of this AGREEMENT shall not be considered a waiver thereof, nor shall it deprive that party of the right therefore to insist upon such strict adherence to or enforcement of that or any other provision hereof.
- e. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Georgia.
- f. This AGREEMENT constitutes the entire agreement and understanding between the parties and shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.