

KAISER LOGISTICS, INC. TRANSPORTATION LOGISTICS CONTRACT

This Transportation Logistics Agreement (hereinafter the "Agreement") entered into by and between Kaiser Logistics, Inc., a Wisconsin corporation (hereinafter "Kaiser") and _____ including all of its affiliates and subsidiaries, (hereinafter "Carrier").

RECITALS

WHEREAS, Kaiser is duly authorized to engage in operations as a property broker of regulated freight moving in interstate or foreign commerce as defined in 49 U.S.C. 13102(2), controls the transportation which is the subject of this Agreement, and desires to tender to Carrier for transportation such goods of its customers as are offered to Kaiser; and

WHEREAS Kaiser is also duly authorized to engage in operations as a freight forwarder of regulated freight moving in interstate or foreign commerce as defined in 49 U.S.C. 13102(8), controls the transportation which is the subject of this Agreement, and desires to use Carrier for part of the transportation Kaiser provides to its customers as contemplated by 49 U.S.C. 13102(8)(C);

WHEREAS Carrier is duly authorized by the Federal Motor Carrier Safety Administration or its predecessor to engage in operations in interstate and foreign commerce as a motor carrier, as defined in 49 U.S.C. 13102(14) and desires to participate in the transportation of such freight as is tendered to Carrier by Kaiser by providing contract carriage services designed to meet the special and distinct needs of Kaiser and its customers as contemplated under 49 U.S.C. 13102(4) and 49 U.S.C. 14101(b);

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the parties mutually agree as follows:

SECTION ONE REPRESENTATIONS, WARRANTIES AND DEFINITIONS

1.1 Carrier's Representations and Warranties. Carrier represents and warrants to Kaiser that it:

- a. Has been issued Contract Motor Carrier Permit No. MC-_____ by the Federal Motor Carrier Safety Administration or its predecessor agency, and such authority is now, and will continue during the term of this Agreement to be, valid and subsisting.
- b. Has been issued appropriate operating authorities, licenses, certificates or permits for operations in the states and provinces where the operations contemplated by this Agreement shall be performed.
- c. Has and will maintain, while this Agreement remains in effect, the public liability and cargo insurance described in Section Four of this Agreement.
- d. Makes the representations herein for the purpose of inducing Kaiser to enter into this Agreement.
- e. Has authorized the person(s) executing this Agreement to do so on Carrier's behalf.
- f. Is in compliance with all applicable federal, state, provincial and local laws relating to its service and the performance of this Agreement and will remain in compliance with all such laws during the entire term of this Agreement.
- g. Has in effect an effective safety program and has been issued a "Satisfactory" Safety Rating by the United States Department of Transportation; will maintain an effective safety program and a "Satisfactory" Safety Rating during the term of this Agreement; and is in compliance with all applicable federal, state and provincial safety regulations and requirements.

1.2 **Kaiser's Representations and Warranties.** Kaiser represents and warrants to Carrier that it:

- a. Has been issued Motor Carrier Property Broker License No. MC-302833 by the Federal Motor Carrier Safety Administration and such authority is now, and will continue during the term of this Agreement to be, valid and subsisting.
- b. Has now and will maintain, while this Agreement remains in effect, a Property Broker's Surety Bond under 49 C.F.R. 387.307 or trust fund agreement authorized therein.
- c. Has been issued Freight Forwarder registration No. FF-8453 by the Federal Motor Carrier Safety Administration and such authority is now, and will continue during the term of this Agreement to be, valid and subsisting.
- d. Makes the representations herein for the purpose of inducing Carrier to enter into this Agreement.
- e. Has authorized the person(s) executing this Agreement to do so on Kaiser's behalf.

1.3 **Definitions.** This Agreement will govern operations conducted by Carrier regardless of whether Kaiser is acting as a Broker or as a Freight Forwarder. Kaiser will be deemed to be acting as a Broker when Carrier transports a shipment directly from the point of origin to the point of destination (unless the parties expressly agree otherwise), and in such instances Kaiser will not be deemed to be acting as either a consignor or as a consignee of the freight and Carrier's liability for loss or delay, or damage to, goods in transit, shall be directly to the consignor, consignee or other party claiming beneficial ownership of the goods. Kaiser will be deemed to be acting as a Freight Forwarder when Kaiser or a party other than Carrier performs a portion of the transportation services (unless the parties expressly agree otherwise), and in such instances Kaiser will be deemed either a consignor, or a consignee, or both and will issue its standard bill of lading to Carrier governing only that portion of the services to be performed by Carrier. In such instances Carrier will be liable to Kaiser for loss or delay of, or damage to, goods in transit occurring while the goods are in Carrier's possession.

SECTION TWO TRANSPORTATION AND RELATED SERVICES

2.1 **Tender of Freight.** Kaiser agrees to tender to Carrier for transportation, and Carrier agrees to transport for Kaiser, such shipments of freight as the parties shall mutually agree, such transportation to be accomplished in accordance with the rates and charges and other provisions pertaining to each shipment as provided in Section Seven of this Agreement.

2.2 **Independent Contractor Status.** Carrier, in its performance of this Contract, shall be and remain an independent contractor, and nothing contained herein shall be construed to be inconsistent with such relationship or status.

2.3 **Equipment.** Carrier shall, at its own cost and expense, provide and maintain motor truck equipment for use in the services to be performed hereunder which is adequate and satisfactory to Kaiser and its customers, and Carrier shall also procure and maintain such licenses and permits as are required by local, state or federal authorities with respect to such transportation services and shall comply with the laws and regulations applicable thereto. Carrier shall pay all costs and expenses relating to the transportation services, including but not limited to all expenses of loading and unloading, fuel, vehicle maintenance, taxes, tolls, fees, and all compensation for personal services, unless Kaiser or its customer expressly agrees to pay (or reimburse) Carrier for any such expenses.

2.4 **Personnel.** Carrier shall employ or contract with all persons required for the performance of this Agreement, and shall assume full responsibility for the payment of state and federal contributions or taxes for unemployment insurance, workers compensation, FICA, Medicare and any other taxes or contributions required with respect to the persons engaged in the performance of transportation services hereunder, and further agrees to comply with the applicable rules and regulations promulgated under such laws as are applicable thereto, including driver qualifications, drug testing and hours of service.

2.5 **Service Standards.** Carrier agrees to provide service which satisfies the reasonable needs of Kaiser and its customers, and to transport and deliver all shipments with reasonable dispatch unless a different service standard is required by Kaiser or its customers and accepted by Carrier. Acceptance of a shipment which is tendered with a specific delivery deadline shall constitute agreement by Carrier to meet the specified delivery deadline, even if "reasonable dispatch" would have permitted a later delivery, and Carrier agrees to assume liability for all consequential damages arising out of late delivery of any such shipment.

SECTION THREE COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

3.1 **Compliance With Legal Requirements.** Carrier shall be fully responsible for compliance with all applicable federal, state, provincial and local statutes, rules, regulations, ordinances and other legal requirements pertaining to the motor carrier operations conducted by Carrier, Carrier's employees and agents, and anyone working under Carrier's direction and control such as independent contractors, including but not limited to all requirements set forth in the Federal Motor Carrier Safety Regulations licensing of equipment, size and weight restrictions, labor laws, immigration laws, and all requirements relating to taxation including but not limited to payroll, fuel and equipment excise taxes. Additionally, Carrier agrees to defend, indemnify and hold Kaiser and its customers harmless from and against all fines, penalties or liabilities resulting from Carrier's failure to comply with such federal, state and local safety rules and regulations.

3.2 **Licenses and Permits.** Carrier further represents and warrants to Kaiser that Carrier is authorized and permitted to perform the transportation services described hereunder under all applicable laws, rules, ordinances and regulations. If any government permit or license shall be required for the proper and lawful shipment of goods moved under this Agreement, Carrier, at Carrier's expense, shall at all times keep such permits or licenses in effect and shall comply with the terms and conditions of each such license or permit,

3.3 **Safety Rating.** Carrier agrees that this contract will immediately terminate if Carrier's overall safety rating is downgraded to "conditional" or "unsatisfactory". Carrier further agrees to attach proof of its safety rating, if it has been issued one, upon signing this Agreement and will immediately notify Kaiser of any change in Carrier's safety rating.

SECTION FOUR TERM

4.1 **Term.** This Agreement is effective on the date both parties sign below and will remain in effect for a period of one (1) year thereafter and will renew for successive one (1) year periods provided -- (1) Carrier's safety rating is not downgraded to "conditional" or "unsatisfactory" and (2) at least 30 days prior to the end of the expiration of each one (1) year period, the Carrier submits proof that the insurance as required in Section 5 below has been renewed. Either party, however, may terminate this Agreement upon giving the other party thirty (30) days notice.

SECTION FIVE INSURANCE

5.1 **Insurance.** Carrier understands and agrees that prior to the commencement of operations and during the entire term of this Agreement, Carrier will maintain the following minimum insurance coverage and will provide a copy of an insurance certificate naming Kaiser as a certificate holder:

a. **Workers' Compensation and Employer's Liability** coverage in amounts not less than the statutory limits for the state(s) in which the Carrier's operations will take place under this Agreement.

b. **Comprehensive General Liability Insurance** with a combined single limit per occurrence of not less than one million dollars (\$1,000,000.00) for any and all liability assumed by Carrier under this Agreement. Carrier understands and agrees that it will provide Kaiser with Certificate of Insurance naming Kaiser as an additional insured with respect to the transportation services provided to Kaiser under this Agreement.

c. **Automobile Liability Insurance** with a combined single limit per occurrence of not less than one million dollars (\$1,000,000.00) for any and all vehicles owned, non-owned, hired or otherwise assigned or directed to transport goods on behalf of Kaiser. This insurance will include coverage for any and all injuries or damage arising out of or in connection with the ownership, maintenance, use or operation, including loading or unloading, of the Equipment as defined in Section 2.3 operated by Carrier under this Agreement. Further, Carrier agrees that it will provide Kaiser with a Certificate of Insurance naming Kaiser as an additional insured with respect to the transportation services provided to Kaiser under this Agreement.

d. **Cargo Liability Insurance** that has sufficient coverage to cover total value of freight on the truck with a minimum limits being the greater of, (a) not less than the value of the shipment as stated on the Load Confirmation or (b) one hundred thousand dollars (\$100,000.00), per shipment for all liability assumed by Carrier in Section 8 of this Agreement. The cargo insurance cannot contain a co-insurance clause or exclusions that would exclude sufficient coverage for the freight being carried. Further, Carrier understands and agrees that it will provide Kaiser with a Certificate of Insurance naming Kaiser as an additional named insured and loss payee with respect to the transportation services provided to Kaiser under this Agreement.

5.2 **Notice of Termination or Non renewal of Insurance.** Carrier understands and agrees that it will arrange to provide Kaiser a Certificate of Insurance described in the above Sections and that it will require the insurance carrier to give Kaiser written notice thirty (30) days prior to the cancellation or non renewal of any insurance policy required under the terms of this Agreement. Carrier further agrees that this Agreement will terminate according to the provisions in Section 4 upon the giving of 30 days notice if Carrier allows any policy of insurance referenced in Section 5.1 Subparagraphs a. through d. to lapse for any reason.

SECTION SIX INDEMNIFICATION AND LIABILITY

6.1 **INDEMNIFICATION.** CARRIER UNDERSTANDS AND AGREES THAT IT WILL AT ALL TIME INDEMNIFY AND HOLD HARMLESS KAISER, ITS OFFICERS, DIRECTORS, AGENTS, AFFILIATED COMPANIES AND EMPLOYEES AND SAVE IT HARMLESS FROM AND AGAINST ANY KIND OF LEGAL ACTION OR CLAIM OF ANY NATURE RESULTING FROM OR ARISING OUT OF OR BY REASON OR IN CONSEQUENCE OF CARRIER'S PERFORMANCE UNDER THIS AGREEMENT AND WHICH KAISER MAY SUSTAIN OR INCUR IN TAKING STEPS IT MAY DEEM NECESSARY IN MAKING ANY INVESTIGATIONS, IN DEFENDING OR PROSECUTING ANY ACTIONS, SUITS OR OTHER PROCEEDINGS WHICH MAY BE BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS INDEMNIFICATION WILL ALSO APPLY TO ANY BREACH OF THE AGREEMENT BY CARRIER'S EMPLOYEES, AGENTS, ASSIGNS, INDEPENDENT CONTRACTORS OR OTHER UNDERTAKING ACTIVITIES ON BEHALF OF CARRIER. FURTHER, THE OBLIGATIONS OF CARRIER UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.2 **Assumption of Liability.** Carrier agrees that Kaiser has exclusive use of the truck and agrees to assume full liability for any loss, damage or delay of the goods that it agrees to transport or otherwise under its care, custody and control and shall upon demand pay Kaiser for such goods that are lost, damaged, destroyed or delayed during such time.

SECTION SEVEN RATES/CHARGES

7.1 **Rates and Charges.** Rates and charges for traffic moved under this Agreement shall be as agreed to between the parties hereto in writing and are to be contained in a rate schedule or memorandum of rates and charges prepared and issued by Kaiser and acknowledged by Carrier. Changes to this schedule or memorandum shall also be made in writing on mutually agreed notice and similarly acknowledged. This schedule shall also contain the conditions of and charges for any additional or accessorial services, which may be required or performed.

7.2 **Payment of Freight Charges.** Carrier shall be entitled to receive and Kaiser agrees to, as the sole compensation for Carrier's services performed under this Agreement, make payments according to the agreed to rates. Carrier agrees that it will invoice Kaiser upon completion of Carrier's services under this Agreement and each invoice will make reference to the applicable Bill(s) of Lading, Kaiser's load reference number, and any other documentation necessary to invoice Kaiser's customer. Carrier agrees that it will not invoice Kaiser's customers for payment of freight charges for any reason. Kaiser shall pay Carrier within fifteen (15) days after receiving Carrier's invoice and clean BOL along with any other requested documentation. It is further agreed, that if Carrier owes Kaiser money for any reason, Carrier agrees and understands that Kaiser has the right to deduct any such money from any payment(s) that Kaiser may owe Carrier. In such instances, Carrier expressly waives its right, in law or by contract, to receive such payments.

7.3 **Waiver of Liens.** Carrier hereby waives any lien it may have on the goods being transported pursuant to this Agreement under the Uniform Commercial Code or other provisions of law, and Carrier agrees that it shall not bill or otherwise seek recovery from anyone other than Kaiser for freight charges earned by Carrier in the performance of this Agreement, nor shall Carrier accept payment from any consignor, consignee or party other than Kaiser without the express written consent of Kaiser.

7.4 **Tariffs Inapplicable.** Carrier represents and warrants to Kaiser that Carrier is a duly licensed motor contract carrier of property pursuant to one or more contract carrier permits issued to Carrier by the Federal Motor Carrier Safety Administration. Carrier further represents and warrants to Kaiser that Carrier is not certificated as a motor common carrier of property by the Federal Motor Carrier Safety Administration or, if Carrier does hold common carrier authority, than none of the operations which Carrier will conduct pursuant to this Agreement shall be conducted as a common carrier and further, that if Carrier has published any motor carrier tariffs with the Federal Motor Carrier Safety Administration, or maintains unpublished tariffs or rates, none of the rates or terms and conditions set forth in any such tariffs which are inconsistent with the rates and terms established by this Agreement shall be applicable to any transportation services which Carrier shall perform pursuant to this Agreement.

SECTION EIGHT LOSS OR DAMAGE TO CARGO

8.1 **Liability Standard.** Neither party shall be liable for failure to perform or delay in the performance of any of the terms or provisions hereof when such failure or delay is occasioned by Acts of God, the public enemy, war, floods, storms or other acts of the elements, accidental fires, strikes, lockouts or other labor acts of regulations, or any other circumstances or conditions beyond the reasonable control of said party and without the fault or neglect of such party, whether similar or not to the foregoing. Notwithstanding Carrier's status as a contract carrier, the standard of liability for freight loss and damage shall be consistent with the common carrier standard of liability set as established by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. 14706, and Carrier shall be liable for the full actual value of any goods which are lost, destroyed or damaged in transit unless such loss, destruction or damage is caused by circumstances falling within a recognized exception to common carrier liability. No limitation of liability, released rates, or released valuations contained in any tariffs, classifications or bills of lading shall be applicable to any shipments transported under this Agreement, and any attempt by Carrier to limit or excuse its liability other than in accordance with this Agreement shall be null and void.

8.2 **Additional Damages.** Notwithstanding Section 8.1 above, CARRIER SHALL INDEMNIFY KAISER FOR ALL INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR OTHER SPECIAL ECONOMIC LOSSES THAT ARE AWARDED AGAINST KAISER ON ANY CUSTOMER'S CLAIM. In addition, for any claim arising from any reckless, dishonest, or illegal acts of Carrier's employee or agent, or claim arising from Carrier furnishing contaminated equipment, Carrier shall be solely liable and responsible for such claim.

8.3 **Bill of Lading.** All shipments transported pursuant to this Agreement shall be deemed to be governed by the terms and conditions of the Kaiser Bill of Lading, and this contract hereby incorporates by reference all the terms and conditions of said Kaiser Bill of Lading as though fully set forth herein. Unless otherwise agreed in writing, Carrier shall become responsible for the freight when it receives or accepts possession thereof, regardless of whether a bill of lading has been issued. Failure on the part of the Carrier to issue a bill of lading, or to execute a bill of lading acknowledging receipt of the cargo, shall not affect the liability of the Carrier for loss of, or damage to, the cargo. In the event a bill of lading is issued or accepted by Carrier containing terms which are inconsistent with the terms of this Agreement or the Kaiser Bill of Lading, the terms of this Agreement and the Kaiser Bill of Lading shall be deemed to supercede and replace any inconsistent terms in the bill of lading used for a shipment governed by this Agreement.

8.4 **Claims and Salvage.** The provisions contained in 49 C.F.R. Part 370 shall govern the processing of claims for loss, damage, injury, or delay to property and the processing of salvage.

8.5 **High Value Cargo.** Carrier shall not accept any shipment with a declared or actual value of greater than two hundred and fifty thousand dollars (\$250,000.00) without having first notified Kaiser and written approval by Kaiser.

8.6 **Payment of Claims.** For any undisputed freight claim, Carrier shall pay Kaiser or its Customer for any claim resulting from loss, damage or delay within thirty (30) days of Carrier's receipt of an appropriate invoice and supporting documentation.

**SECTION NINE
MISCELLANEOUS**

9.1 **Covenant Not to Compete.** Carrier agrees that in consideration of the substantial effort undertaken by Kaiser in locating the traffic which is the subject of this Agreement, as well as the good will which now exists between Kaiser and its customers and further in consideration of the substantial and irreparable harm to Kaiser that would result from a breach hereof, that Carrier shall not at any time during the term of this Agreement is in force plus a period of one year immediately following the cancellation, expiration or termination of this Agreement, solicit or in any way contract directly with any Shipper, Receiver, Consignor, Consignee, Buyer or Purchasing Party who controls the transportation, whose freight is first tendered by Kaiser to Carrier, for the hauling which is the subject of this Agreement, without the express written consent of Kaiser. Carrier expressly agrees that in the event of a material breach of this provision by Carrier, Kaiser may, at Kaiser's election, seek injunctive relief, or money damages, or both, and that the measure of Kaiser's damages shall be the full amount of commissions or other compensation due Kaiser for all traffic transported in contravention of this Agreement, subject to a minimum of 15% of the freight charges paid to Carrier for each such shipment. Should Kaiser elect to seek enforcement of this clause through litigation or other legal proceedings, Carrier shall be liable to Kaiser for the costs and disbursements of such action including reasonable attorneys fees. Moreover, Carrier shall be liable to Kaiser for interest on unpaid commissions or other compensation at a rate of 1.0% per month from the date of the breach, which is an annual percentage rate of 12.0%. For purposes of construing this clause, any shipment hauled by Carrier in violation of this clause shall be deemed a separate breach of this Agreement, and any waiver by Kaiser of any particular individual breach of this clause shall not be construed as a waiver by Kaiser of the terms and conditions of this clause for any subsequent breaches hereof.

9.2 **Notices.** All notices required by this Agreement shall be served upon the following by First Class U.S. Mail:

Kaiser Logistics, Inc.

Carrier: _____

P. O. Box 520

Janesville, WI 53547-0520

9.3 **Governing Law.** This Agreement is accepted in the State of Wisconsin and all questions pertaining to the validity or construction of this Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Wisconsin, except as to matters governed by federal law. Further, any suit or action filed in connection with this Agreement and any attachment thereto shall be brought and adjudicated in Rock County Circuit Court or in the United States District Court for the Western District of Wisconsin. Carrier expressly consents to the exercise of personal jurisdiction over it in such courts and agrees that venue is proper in said courts.

9.4 **Separability.** A decision of any court or government agency having jurisdiction that a provision of this Agreement is unlawful, or unlawful as to any person or instance, shall not adversely affect any other provision contained or its application to any other person or instance, unless such illegality makes the functioning of the Agreement impossible.

9.5 **Entire Agreement.** This Agreement supersedes any and all prior agreements between the parties and constitutes the entire Agreement between the parties. This Agreement cannot be changed, modified, limited or supplemented by any reference to any carrier's rates, rules, classifications, practices, schedules or tariffs. Further, it is agreed that any amendment to this Agreement will not be binding on either party unless and until signed by each party.

9.6 **Confidentiality/Privacy.** The Carrier may collect information regarding an individual or corporation in course of its performance. In so doing, Carrier shall at all times indemnify and keep indemnified Kaiser and hold and save it harmless from and against any and all liability, losses, costs, damages, attorneys' fees and expenses of whatever kind which Kaiser may sustain or incur by reason of Carrier sharing such information or for Carrier's failure to comply with any and all federal or state privacy laws.

9.7 **Assignment.** This Agreement is not assignable and, Carrier will not assign this Agreement nor will it assign or co-broker any shipments tendered to it by Kaiser, to any third party, without the prior written consent of Kaiser. Any assignment of this Agreement or any shipments tendered hereunder without the consent of Kaiser will have no force or effect and will terminate this Agreement.

