

Ocean Bill of Lading – Contract for Carriage

Terms and Conditions

RECITALS

Through confirmation and tender of the goods, (the “Goods” meaning cargo, property, and merchandise described on the face of the Bill of Lading) the Shipper (“Shipper” defined as party listed as Shipper and or Bill to Party noted on the Bill of Lading) desires to engage Forwarder, “Approved Holdings, LLC”, to provide certain services in arranging for the transportation of goods and Forwarder desires to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Qualifications of Forwarder.** Forwarder hereby represents and warrants that it has, and shall maintain without lapse throughout the term of the this Agreement, all federal, state and/or local licenses, permits, registrations and bonds necessary for the lawful performance of the Services.
2. **Services Provided by Forwarder.** Forwarder, upon written request by Shipper, shall arrange for the pick-up, transportation, delivery and/or storage of the Goods, as may be designated by Shipper, as well as arranging for other ancillary services in connection therewith (the “Services”), all of which are described in applicable quote. Forwarder is authorized to select and engage carriers, truckmen, lightermen, warehousemen and others (collectively, “service providers”), as required, to perform the Services. Forwarder shall use its commercially reasonable efforts to assist Shipper in the preparation, submission and prompt and favorable resolution of any and all claims against any service provider. In selecting service providers, Forwarder shall use its commercially reasonable efforts to ensure that each service provider possesses all federal, state and local authority necessary to provide the Services for which it is hired, has the highest possible safety rating (where applicable) and, to Forwarder’s actual knowledge, is in compliance with all applicable laws and regulations governing or relating to any Services provided.
3. **Performance of Services.**
 - a. Unless Shipper requests otherwise through instructions in writing delivered to Forwarder, Forwarder has complete and absolute discretion to choose the means, route and procedure to be followed in the performing the Services, as well as which service provider will provide all or any part of such Services. If Shipper instructs Forwarder in writing to use, or it is expressly agreed to by the Parties that Forwarder will use, a particular method with respect to the Services, Forwarder will use its commercially reasonable efforts to give priority to such method; provided, that, if it is inefficient or inconvenient for Forwarder to use such method, Shipper hereby authorizes Forwarder to use another

method or methods to perform any such Services, including deviation from the standard or customary performance of such Services that Forwarder may deem, in its sole and absolute discretion, desirable or necessary under the circumstances.

b. Any communication by Forwarder to Shipper that a particular person or firm has been selected as a service provider with respect to the provision of any Services shall not be construed as a representation or warranty by Forwarder that such person or firm will be a service provider or render such Services.

4. Description of Goods and Shipper's Packing and Inspection. The Shipper shall be deemed to have guaranteed to the Forwarder the accuracy, at the time the Goods were taken into the charge of the Forwarder, of all particulars relating to the general nature of the Goods, including, without limitation, its marks, number, weight, volume and quantity and, if applicable, the dangerous character of the Goods, as furnished by the Shipper or on its behalf for insertion on the Bill of Lading. The Shipper shall indemnify the Forwarder against all loss, damage and expense resulting from any inaccuracy or inadequacy of such particulars. If applicable the Shipper agrees that it shall inspect the Container before loading the Goods and shall warrant and certify to the Forwarder that the Container is in satisfactory condition and fit for the stowage of the Goods. The Forwarder shall not be liable for any damage, delay, expense or loss of the Goods caused by defective or insufficient packing of Goods or by inadequate loading or packing within Containers or other transport units when such loading or packing has been performed by the Shipper or on its behalf by a person other than the Forwarder. The Forwarder shall not be liable for any damage, delay, expense or loss of the Goods caused by the defect or unsuitability of the Containers or other transport units supplied by the Shipper, or if supplied by the Forwarder if a defect or unsuitability of the Container or other transport unit would have been apparent upon reasonable inspection by the Shipper. The Shipper shall indemnify the Forwarder against all loss, damage, liability and expense so caused.

5. Delivery. The goods shall be deemed to be delivered when it has been delivered to or placed at the disposal of the Shipper or its agent in accordance with this Bill of Lading, or when the goods have been delivered to any authority or other party to which, pursuant to the law or regulation applicable at the place of delivery, the goods must be delivered, or such other place at which the Forwarder is entitled to call upon the Shipper to take delivery. The Forwarder shall also be entitled to store the goods at the sole risk of the Shipper, and the Forwarders liability shall cease upon the Forwarders tender/delivery of the Cargo to the appointed warehouse or storage facility. The cost of such storage shall be paid, upon demand, by the Shipper to the Forwarders. If at any time the Carriage under this Bill of Lading is or is likely to be affected by any hindrance or risk of any kind (including the condition of the Goods) not arising from any fault or neglect of the Forwarder or a Subcontractor that cannot be avoided by the exercise of reasonable diligence, the Forwarder may: abandon the Carriage of the Goods under this Bill of Lading and, where reasonably practicable, place the Goods or any part of it at the Shippers disposal at any place that the Forwarder may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Forwarder in respect of such Cargo shall cease. In any event, the Forwarder shall be entitled to full freight under this Bill of Lading and the Shipper shall pay any additional costs arising out of the aforementioned circumstances.

6. Freight Charges and Expenses. Freight charges shall be paid without any reduction or deferment on account of any claim, counterclaim or set-off, whether prepaid or payable at destination. Freight charges shall be deemed earned by the Forwarder upon its receipt of the Cargo. Earned freight charges are non-refundable. Freight charges and all other amounts set forth in this Bill of Lading are to be paid in U.S. Dollars. The Shipper shall reimburse the Forwarder for any duties, taxes, demurrage, detention, charges or other expenses in connection with the Goods or Bill of Lading. The Shipper shall reimburse the Forwarder for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, military or warlike actions, epidemics, riots, strikes, government directions or force majeure. The Shipper warrants the accuracy of the declaration of contents, weight, measurements or value of the Goods, but the Forwarder has the liberty to have the contents inspected and the weight, measurements or value verified. If on such inspection it is found that the declaration is not correct, it is agreed that a sum equal either to five times the difference between the correct figure and the freight charges, or to double the correct freight charges less the freight charged, whichever sum is less, shall be payable as liquidated damages to the Forwarder for its inspection costs and losses of freight charges on other Goods notwithstanding any other sum having been stated on this Bill of Lading as freight charges payable. Shipper, consignee, and bill-to party are jointly and severally liable for all charges related to this shipment. Charges may be reversed to the responsible parties if shipment is refused or payment is not made by the original bill-to party.

7. Lien. The Forwarder shall have a lien on any and all of the Shippers Goods for all advances, claims, costs, freight charges, duties, taxes, demurrage, money due and payable to the Forwarder, including any lien and collection related costs. The lien on the Goods shall survive delivery to the Shipper. Forwarder may sell the Goods privately or by public auction without notice to the Shipper. If on sale of the Goods the proceeds fail to satisfy the amount due, and the cost and expenses incurred, the Forwarder shall be entitled to recover any difference from the Shipper. If the Goods are unclaimed after 30 days from date the Goods are placed at the disposal of the Shipper, or whenever in the Forwarders judgment the Goods will become deteriorated, decayed or worthless, the Forwarder may, at its discretion and subject to its lien and without any responsibility attaching to it, sell, abandon, or otherwise dispose of such Goods solely at the risk and expense of the Shipper.

8. General Average. The Shipper shall indemnify the Forwarder in respect of any claims of a General Average nature that may be made on it and shall provide such security as may be required by the Forwarder in that connection.

9. Notice. Unless the Shipper provides written notice to the Forwarder of the general nature of any loss or damage to the Cargo at the time that the Forwarder delivers the Cargo to the Shipper, such delivery by the Forwarder is prima facie evidence of the Forwarder's delivery of the Goods in good order and condition. Where the loss or damage is not apparent and/or latent, the same prima facie presumption shall apply if notice in writing is not given within 3 days after the day when the Goods were delivered to the Shipper. The Forwarder has no liability for concealed damage of internally packed Goods in the absence of external damage noted to the specific Goods at the time of delivery.

10. Prompt Communication. Forwarder shall notify Shipper promptly of any damage or delay to, or loss, shortage, overage, inspection, or any other matter that affects or may affect the safe and timely transportation and delivery of, the Goods.

11. Liability of Forwarder. Notwithstanding anything herein to the contrary and to the full extent permitted by law, unless Forwarder acts as a service provider, it is neither a common carrier nor a carrier and shall have no liability as a carrier and shall not be responsible for any loss, damage, expense, or delay to the Goods, unless such loss, damage, expense of delay is solely and directly due to the negligent or willful act or omission of Forwarder, in which case Forwarder's liability shall be for the actual loss sustained up to a maximum of Five Hundred Dollars (\$500) per shipping article. The Goods are at the risk of Shipper and not Forwarder and Forwarder shall not be responsible under any statute or in tort, contract or otherwise for any loss or damage to or deterioration of any Goods or misdelivery or failure to deliver or delay in delivery of any Goods either in transit or in storage for any reason whatsoever, including, without limitation, the negligence or breach of contract or willful act or default of Forwarder or others. The foregoing shall apply to all such loss of or damage to or deterioration of goods or misdelivery or failure to deliver or delay in delivery of goods, whether or not the same occurs (a) in the course of performance by or on behalf of Forwarder of this Agreement, (b) in connection with events which are in the contemplation of Forwarder, Shipper, or both of them, (c) in connection with events which are foreseeable by Forwarder, Shipper, or both of them, or (d) in connection with events which could constitute a fundamental breach of the contract or a breach of a fundamental term thereof. In the event Forwarder acts as a service provider, its liability shall be determined in accordance with Section 6.

12. Liability of Service Providers.

a. Forwarder shall use its commercially reasonable efforts to ensure that the liability of service providers to Shipper for any loss of, damage or delay to, and/or any other expense with respect to the goods shall be determined in accordance with the terms and conditions (including those relating to limitations of liability) set forth in the tariffs, bills of lading, receipts or other documents issued by such service providers; provided, however, that notwithstanding anything to the contrary in this Section 6, in the event that Shipper has a contract with a service provider that governs liability for any Goods handled by such service provider, such contract shall govern the liability of such service provider with respect to the Goods.

b. The carriage, custody and care of the Goods hereunder shall be subject to the Hague Rules, 1924, as enacted in and interpreted under the United States Carriage of Goods by Sea Act, 1936, as amended from time to time. Notwithstanding the foregoing, but only insofar as it may provide greater rights to any service provider, the provisions of the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels, August 25, 1924 as amended by the "Protocol" signed at Brussels, February 23, 1968 and at Brussels, December 21, 1979 (S.D.R. Protocol) shall apply to the Goods whether carried on or under deck, to carriage of the Goods between U.S. ports or otherwise before the Goods are loaded on and after they are discharged from the vessel and throughout the entire time the Goods are in the custody, care and/or control of any service provider,

whether acting as carrier or bailee. For the purposes of determining any limitations of liability available, the descriptions, weights, numbers, packages and customary freight units indicated in any service provider's bill of lading issued to Shipper shall be deemed conclusive and binding as between such service provider and Shipper.

c. No claim in respect of any loss or damage may be made unless notice of the claim is delivered by Shipper in writing to Forwarder within three (3) days after delivery was affected or would in the ordinary course of business have been affected. Notwithstanding anything herein to the contrary, Forwarder and the service providers shall in any event be discharged, and Shipper hereby fully and forever releases Forwarder and the service providers, from all liability whatsoever in respect of the Goods unless suit is brought by Shipper within six (6) months from delivery of such Goods or from the date on which in the ordinary course of business delivery of such Goods would have been effected.

13. Waiver of the ICC Termination Act of 1995. This Agreement is for specified services pursuant to 49 U.S.C. §14101(b). To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, of Title 49 U.S.C., the ICC Termination Act of 1995 (the "Act"), the Parties expressly waive any or all rights and remedies they may have under the Act. For avoidance of doubt, all Services relating to the transportation of Goods, or other Services provided hereunder will not be subject to the Act, and shall only be subject to the liability limiting provisions of this Agreement, including, without limitation, Section 5, Section 6, Section 7 and Section 19.

14. Quotations Not Binding. Quotations as to fees, rates-of duty, freight charges, insurance premiums or other charges given by Forwarder to Shipper are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon Forwarder unless Forwarder in writing specifically undertakes any such Services at a specified rate. Shipper understands and agrees (a) that Forwarder may be relying upon the rates of service providers in offering such rates, (b) that such rates may be subject to space availability, price fluctuations, or unforeseen circumstances, and (c) that such service providers may not honor quoted rates or that agreed upon rates may not be otherwise honored due to circumstances beyond the control of Forwarder. As such, Shipper hereby agrees that Forwarder shall not be liable for any changes in quoted fees, rates, charges or other prices for Services.

15. Representations, Warranties and Covenants of Shipper.

a. Shipper represents and warrants that it has complied with all laws and regulations relating to the nature, packaging, labeling or cartage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of freight forwarding having regard to their nature and hereby indemnifies and holds Forwarder harmless for any liability whatsoever as a result of or arising out of Shipper's or the consignor's failure to comply with any of these warranties.

b. Without limiting the generality of Section 9(a), Shipper shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and §173 et seq. to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform Forwarder immediately if any such shipments do constitute hazardous materials. Shipper shall

defend, indemnify and hold Forwarder harmless from any Losses arising out of Shipper's failure to comply with applicable hazardous materials laws and regulations.

16. Compensation of Forwarder. Forwarder's charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from Shipper's or its affiliate's premises and shall be payable and non-refundable as of such time. Shipper shall pay Forwarder full compensation for the Services performed by Forwarder within three (3) days of the presentation of a properly documented invoice unless other credit terms have been confirmed and agreed to in writing by extension of the Forwarder. Compounding interest shall accrue on any late payment at the lesser of the rate of 1.5% per day and the maximum rate allowed under applicable law, in each case, commencing on the date such payment was due until paid in full. Shipper hereby grants, and shall cause any affiliate of Shipper to grant (as applicable), to Forwarder, and Forwarder has, a first priority lien on the Goods and any other valuables in its or any service provider's possession and on any other goods and valuables of Shipper or its affiliates in the possession of Forwarder or such service provider for any and all claims, whether due or not, for all sums due and payable by Shipper to Forwarder. For such purpose, Forwarder shall have the right to sell any such goods by public auction or private treaty without notice to Shipper or any affiliate of Shipper as is necessary to pay all sums due.

17. Compensation of Service Providers. Shipper shall be responsible for payment of all charges related to the Services, including, without limitation, any levies, fines, expenses, taxes or other outlays arising from such Services. In addition to the compensation of Forwarder for its services, Shipper shall promptly pay to Forwarder, upon presentation of a properly documented invoice, all amounts payable to any service provider for Services provided to Shipper or any of its affiliates at the times and in the amounts set forth in the documented invoices, but in no case later than thirty (30) days after the presentation of such invoice. Forwarder shall be responsible for the prompt remittance of such amounts to any applicable service provider. Forwarder shall be responsible for any and all consequences of its failure to timely remit amounts received from Shipper that are payable to any applicable service provider including, but not limited to, payment of any late fees, interest. For the avoidance of doubt, any late fees or interest charged by any service provider due to untimely payment by Shipper under this Section 11 shall be borne by Shipper and paid in accordance with this Section 11.

18. Overcharges and Undercharges. Any claim by Shipper for overcharge by Forwarder on any freight bill must be sent to Forwarder within sixty (60) days from the initial invoice date and Forwarder shall submit any claim for an undercharge on any freight bill within sixty (60) days from the date of the original freight bill. The expiration of the foregoing 60-day periods shall be a complete and absolute defense to any such action on behalf of either Party, its successors, assigns or representatives. No civil action for collection of undercharge or overcharge claims may be brought unless the required notice of claims within sixty (60) days has been provided and unless such action is instituted within six (6) months after the claim accrues. The provisions of this Section 12 shall survive the cancellation, termination or expiration of this Agreement.

19. Duty to Furnish Information; Recordkeeping. Shipper agrees to promptly provide, and to cause any of its affiliates to promptly provide, Forwarder with such information regarding the Goods as are

legally required and/or reasonably necessary for Forwarder and any service provider to provide the Services. Each Party shall be responsible for the retention of any records it is required to maintain under applicable laws.

20. Declaring Higher Valuation. In addition to the limitations on the liability set forth in this Agreement, the liability of service providers for loss of or damage to the Goods is limited to a specified amount unless a higher value is declared and a charge based on such higher value is agreed to in writing by such service provider, in its sole and absolute discretion. Absent such written agreement between the Shipper and such service provider, Forwarder will not declare a higher value or pay a higher charge and the Goods will be delivered to such service provider subject to the limitations of liability set forth in this Agreement.

21. Indemnification/Hold Harmless:

a. Forwarder will hold Shipper harmless and defend and indemnify Shipper against any and all claims, lawsuits, settlements, judgments, costs, fines, penalties, and expenses including but not limited to reasonable attorneys' fees ("Losses"), resulting from, arising out of or directly relating to, (i) any uncured and material breach of this Agreement by Forwarder; or (ii) any gross negligence or willful misconduct on the part of Forwarder. In the event that any claim, suit or proceeding is brought against Shipper or any Shipper affiliate, it shall give notice in writing to Forwarder in accordance with Section 22.

b. Shipper agrees to indemnify, defend, and hold Forwarder and its affiliates, subsidiaries and commonly controlled companies and their respective past and present agents, employees, representatives, officers, directors, stockholders, attorneys, accountants, insurers, receivers, advisors, consultants, subsidiaries, affiliates, assigns, successors, predecessors in interest, joint venturers, and commonly-controlled entities and any other entities in which any of them have an interest and all other third parties with whom any of the former have been, are now or may hereafter be affiliated, harmless from any and all Losses (i) as set forth in Section 9, (ii) resulting from, or arising out of or in connection with, directly or indirectly, (A) any liability whatsoever in respect of the Goods to any third party who claims to have, who has or may hereafter have any interest in the goods or any part thereof; (Bi) any breach of any representations, warranties or covenants set forth in this Agreement by Shipper or that is caused by any affiliate of Shipper; (C) issuance of any false or fraudulent shipping document or delivery order, or the giving or receiving of any false or fraudulent receipt or delivery order for any freight or for freight charges by Shipper or any affiliate of Shipper; (D) Shipper's or any of its affiliates' failure to comply properly with any licensing, customs, quarantine, inspection, or other regulations of any governmental authority; (E) Shipper's or any of its affiliates' failure to comply in all material respects with the terms of this Agreement; and/or (F) the gross negligence or willful misconduct of Shipper or any affiliate of Shipper. In the event that any claim, suit or proceeding is brought against Forwarder, it shall give notice in writing to Shipper in accordance with Section 22.

c. EXCEPT WITH RESPECT TO BREACH OF CONFIDENTIALITY, NON-SOLICITATION, NON-CIRCUMVENTION OR INDEMNITY OBLIGATIONS OF THE PARTIES HERETO, NEITHER PARTY, NOR ANY OF THEIR RESPECTIVE MEMBERS, STOCKHOLDERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES,

AGENTS OR AFFILIATES, AS APPLICABLE, SHALL HAVE ANY LIABILITY OF ANY TYPE OR UNDER ANY LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT OR STRICT LIABILITY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO THE LOSS OF OPPORTUNITY, LOSS OF USE, OR LOSS OF REVENUE OR PROFIT, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH DAMAGES MAY HAVE BEEN FORESEEABLE BY THE OTHER PARTY. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

d. Any indemnified party may at its expense participate with counsel of its choice in any third party action being defended by an indemnifying party. The indemnified party may assume the defense if the indemnifying party fails to assume the same within a reasonable time, in which case all fees and costs incurred by the indemnified party will be paid by the indemnifying party under this Section 18. In any case, neither party is liable for any costs from any settlement made by a party without the consent of the other party.

22. No Responsibility for C.O.D. Shipments. Goods tendered to Forwarder or service provider by Shipper or any affiliate of Shipper with instructions to "Collect on Delivery" (C.O.D.) by drafts or otherwise, or to collect on any specified terms by time drafts or otherwise, are accepted by Forwarder and/or service provider only upon the express understanding that neither Forwarder nor any service provider will accept responsibility for the collection of cash on delivery or any other payments on behalf of Shipper, its affiliates or any other party. When goods are tendered by Shipper or its affiliates with instructions for Forwarder to collect any such payments, neither Forwarder nor any service provider shall be bound by such instructions notwithstanding that Forwarder may accept the goods as tendered and perform other Services in relation to those goods. Neither Forwarder nor any service provider will be responsible for any act, omission, default, suspension, insolvency or want of care, negligence, or fault of such bank, correspondent, carrier or agent, nor for any delay in remittance lost in exchange, or loss during transmission, or while in the course of collection.

23. Compliance with Applicable Law. Each Party shall comply with all laws and regulations applicable to its performance under this Agreement.

24. Notices. All notices or other communications under this Agreement will be given in writing and will be deemed duly given and received (a) on the third (3rd) Business Day following the day of the mailing thereof by registered or certified mail, (b) on the first (1st) Business Day following deposit with a recognized overnight courier service, (c) when delivered personally or (d) when sent by facsimile or electronic mail transmission (with receipt confirmed). Any such notice shall be delivered to the persons and at the addresses set forth on the signature page hereto or to such other persons as may be designated by a Party in writing and delivered to the other Party in accordance with this Section.

25. Governing Law and Dispute Resolution. This Agreement is made and is to be performed under the law of the State of California and shall be governed by and construed in accordance with said law. This Agreement shall be governed and construed in accordance with the laws of the State of California

without regard to the principles of conflicts of laws thereof. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement that are not resolved by their mutual agreement shall be submitted to final and binding arbitration in San Diego County, California before JAMS, or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Any party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with JAMS, with a copy to the other parties. The arbitration will be conducted in accordance with the provisions of JAMS' Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with JAMS and with one another in selecting an arbitrator from JAMS' panel of neutrals, and in scheduling the arbitration proceedings. The parties covenant that they will participate in the arbitration in good faith, and that they will share equally in its costs. The provisions of this paragraph may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.

26. Confidentiality. Except to the extent required by law, by request of a government or agency thereof, or request of a contractor pursuant to contractual obligation with Forwarder, the Parties shall at all times keep confidential the fact of this Agreement, the terms and conditions of this Agreement, and all documents and information provided to a Party under the terms of this Agreement, and shall not disclose any such information to any third party, unless otherwise provided herein, (not including a parent, subsidiary, or affiliated company), except with the prior written consent of the other Party. Notwithstanding the foregoing, the obligations under this Section shall not apply to: (i) information that, at the time of disclosure, is, or after disclosure becomes part of, the public domain other than as a consequence of a breach of this Agreement; (ii) information that was known or otherwise available to a Party prior to its disclosure to the other Party from third party source (except from a source bound by a confidentiality agreement to the disclosing Party); (iii) information that is necessary to the provision of services hereunder; or (iv) information that is independently developed by either Party. Upon breach of any obligation under this Section, the non-disclosing Party shall have the right to terminate this Agreement effective immediately.

27. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersede all proposals and negotiations not expressly set forth herein. To the extent that Forwarder's bill of lading contains terms and conditions inconsistent with this Agreement, the terms and conditions of such bill of lading shall prevail. Any amendment to or modification of this Agreement or addenda attached hereto shall become effective only upon written amendment signed by both Parties, which shall be attached hereto and made part hereof.

28. Force Majeure. Performance of this Agreement by each Party shall be pursued with due diligence; provided, however, that neither Party shall be in default of this Agreement or liable to the other Party for any loss or damage to the extent that performance of such obligations is delayed or prevented (except the obligation of Shipper to make payments due hereunder), directly or indirectly, due to the occurrence of an event (including fire, flood, terrorism, pestilence, earthquake, elements of nature or acts of God, riots, or civil disorders) beyond the reasonable control of such Party, provided

that such event is not caused directly by the negligence of the Party claiming relief under this Section. The Party suffering such delay or nonperformance shall promptly notify the other Party of any such delay or nonperformance.

29. Independent Contractor Status. The relationship of the Parties under this Agreement is one of independent contractors and no agency, partnership, joint venture or similar relationship is or will be deemed to have been created by it. Except as specifically authorized in this Agreement or otherwise in writing, neither Party shall have any authority to assume or create obligations on the other Party's behalf. Neither Party shall take any action that has the effect of creating the appearance of it having such authority.

30. Specific Performance. The parties hereto hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto or to their heirs, personal representatives, or assigns by reason of a failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or his heirs, personal representatives, or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has an adequate remedy at law, and such person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

31. Survival. The provisions of this Agreement that would by their nature survive any expiration or termination of this Agreement, including, without limitation, Sections 5 through 33, inclusive, shall survive any such expiration or termination in accordance with their terms.

32. Attorneys' Fees. In the event that any proceeding is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

33. Waiver; Default.

a. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving such breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing providing for such waiver so specifies.

b. Failure by any Party to perform, keep or observe any term, provision warranty or condition contained in this Agreement unless otherwise excused shall constitute a default. Should either Party be in default with respect to any of the terms or conditions of this Agreement, the non-defaulting Party may, without prejudice to any other legal remedy, defer further performance hereunder until such

default is remedied. If the non-defaulting Party defers further performance hereunder, the non-defaulting Party's commitment shall be reduced for the period or periods (Saturdays, Sundays and holidays included) of such deferral of performance.

34. Severability. 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 such provisions shall be given full force and effect as if the invalid, unenforceable or unconstitutional provisions do not exist.