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**RATES, RULES AND SERVICE REQUIREMENTS FOR  
MOTOR CARRIER SERVICES PERFORMED  
ON BEHALF OF SPACE LOGISTICS**

**STANDARD TERMS AND CONDITONS**

**ISSUED BY  
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## ITEM 100. DEFINITIONS

- **CARRIER.** The term “CARRIER” means and refers to a motor common carrier and/or a freight forwarder registered with the FMCSA, the Republic of Mexico, and/or appropriate State regulatory agencies, operating as an independent contractor, and desiring to furnish motor carrier services to FORWARDER for the transportation of general commodities in interstate commerce.
- **FMCSA.** The term “FMCSA” refers to the Federal Motor Carrier Safety Administration.
- **FORWARDER.** The term “FORWARDER” means and refers to North Cray Company, LLC d/b/a Space Logisgistics, a surface freight forwarder registered, pursuant to 49 U.S.C. § 13903, with the Federal Motor Carrier Safety Administration under Docket Number FF-04610. FORWARDER shall be deemed to be a shipper vis-à-vis the CARRIER in connection with transportation services provided by CARRIER on behalf of FORWARDER.
- **STC.** The term “STC” means and refers to these Standard Terms and Conditions of FORWARDER.
- **TSA.** The term “TSA” means and refers to Transportation Service Agreement.

## ITEM 200. APPLICABILITY

1. The provisions of this STC shall apply, as of its effective date, to transportation services provided on behalf of FORWARDER, as well as its wholly owned subsidiary corporations, divisions and its parent company, and affiliated warehouses under subcontract with FORWARDER, which are listed in **Appendix A**.
2. Transportation services provided by CARRIER shall be performed in accordance with the rate schedules and between origin and destination points and/or places as more specifically named in **Appendix B** and additions thereto, subject to the equipment and service requirements and rules set forth in the Terms of Service Requirements. Additional rates, rules, or services may be included from time to time upon amendment, supplements or reissues of this STC.

## ITEM 210. CARRIER'S OBLIGATIONS

1. **Compliance with Laws, Rules and Regulations.** CARRIER shall have authority from the FMCSA as a common carrier to transport general commodities in interstate commerce and shall comply with all of the provisions of the Interstate Commerce Act, related laws, rules and regulations of the FMCSA to the extent they govern CARRIER's operations. CARRIER shall also comply with all provisions of applicable state and local laws, rules and regulations to the extent they govern CARRIER's operations.





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1. Prompt Service. CARRIER shall promptly and efficiently receive, transport with reasonable dispatch and deliver safely the goods entrusted to it hereunder, whether received from FORWARDER or from third parties at the request of FORWARDER.
2. Period of Carrier Responsibility. CARRIER's duties and responsibilities shall commence when CARRIER takes possession and control of the shipment tendered by FORWARDER or upon execution of such bill of lading or receipt by CARRIER, whichever occurs first, and shall end when consignee signs the bill of lading or delivery receipt and CARRIER delivers the shipment in good condition.
3. Interlining; Substituted Service. CARRIER shall not interline or use other motor carriers, or brokers, or use "substituted services" by rail for FORWARDER's shipments without prior written agreement of FORWARDER, except that, for CARRIER's convenience and at its expense, CARRIER may use a pickup or delivery agent to serve a point it is authorized to serve. If CARRIER uses other carriers, brokers or a substituted service of any type, with or without FORWARDER's permission, CARRIER agrees to remain liable for any loss, damage or delay to the goods incurred in transit to the same extent that CARRIER would be liable if it performed the transportation directly.
4. Transloading Truck Loads. CARRIER shall not transload shipments, which are tendered to CARRIER as a full truck load (FTL), from the original trailer, in which the FTL shipment was loaded, to any other trailer, whether owned or operated by CARRIER or another carrier or forwarder utilized by or under subcontract with CARRIER, unless such transloading is authorized or directed, in writing, by FORWARDER.
5. COD Shipments. Payments for all "COD" shipments must be by cash or certified check. CARRIER shall collect payments for COD shipments, in cash or by certified check, prior to delivery of such shipments to the consignee. Monies or checks collected, whether on COD shipments or otherwise, shall be kept separate and apart from all other monies and turned over promptly to FORWARDER, but in no event later than 10 days from collection.
6. Disclosure; Freight Bills. CARRIER shall comply with the provisions of 49 U.S.C. Section 13708 requiring carriers to disclose the actual rates, charges or allowances on freight bills, prohibiting false or misleading information on documents, and requiring a statement on freight bills that "a reduction, allowance or other adjustment may apply" when rates are established that provide for such reductions, allowances or other adjustments are dependent upon FORWARDER's performance of a service, such as tendering a volume of freight over a stated period of time.

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8. **Diversion and Reconsignment.** CARRIER shall not divert or reconsign any shipment except upon written instructions of FORWARDER. CARRIER shall not accept instructions for diversion or reconsignment from any consignee without notice to FORWARDER, and written consent of FORWARDER.
9. **Hazardous Waste.** CARRIER hereby covenants and agrees that no trailer or other vehicle which transports commodities for FORWARDER hereunder shall ever have been used to transport refuse, garbage, trash or solid or liquid waste of any kind whatsoever, whether hazardous or non-hazardous.
10. **Delay; Accidents.** CARRIER shall notify FORWARDER immediately by telephone, fax or e-mail of any accidents, spills, theft, hijacking or other events which impair the safe and prompt delivery of the goods in its control.
10. **On-Hand Freight.** CARRIER shall immediately notify FORWARDER by telephone, fax or e-mail of any refused or "on-hand" freight and request additional instructions regarding delivery or storage of the "on-hand" goods. CARRIER shall immediately confirm such notice in writing, stating the amount, date and time storage charges will begin to accrue, if any, provided, however, that the date and time of accrual shall not begin until confirmed in writing by FORWARDER.

### ITEM 220. RECEIPTS AND BILLS OF LADING

1. **Bill of Lading or Receipt.** Each shipment received by CARRIER shall be evidenced by a bill of lading or receipt in a form agreed to by the parties, in accordance with 49 U.S.C. § 14706(a)(2), and signed by CARRIER showing the kind, quantity and condition of commodities received by CARRIER. Such bill of lading or receipt shall be evidence of receipt of such commodities by CARRIER in apparent good order and condition unless such commodities are not readily observable (contents and condition of contents of packages unknown) or as may be otherwise noted on the face of such receipt. However, the absence or loss of any such bill of lading or receipt shall not relieve CARRIER of its obligations and responsibilities with respect to any services provided hereunder.
2. **Through Bill of Lading.** All bills of lading shall be "through bills of lading" to ultimate destination and CARRIER shall be liable to FORWARDER for loss, damage or delay in accordance with the terms of this STC regardless of any separate agreements entered into by CARRIER with connecting carriers, subcontractors, cartage agents, or third parties, and regardless of any separate agreements entered into by FORWARDER with shippers, consignees, brokers, connecting carriers, subcontractors, cartage agents, customs agents or other third parties.
3. **Delivery Receipt.** CARRIER shall obtain an acknowledgement of delivery for all shipments by notation on the bill of lading or a delivery receipt, signed and dated by the consignee, and CARRIER shall provide copies of same to FORWARDER in sufficient detail to substantiate billing for the services provided.
4. **Conflict Between STC and Bill of Lading.** The bill of lading or other form of receipt shall be used solely as a receipt for shipment and to identify the kind and quantity of goods,

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place of pickup and delivery, shipper and consignee and other information as required by FORWARDER. References to CARRIER's classifications, tariffs, service guides or other publications and/or contractual terms and conditions on the face or reverse side of the document shall be null and void, and the terms of this STC shall govern the rights and obligations of the parties to the extent there is a conflict between the STC and the bill of lading.

### TEM 230. EQUIPMENT AND DRIVERS

1. Lawful Operation. CARRIER shall, at its cost and expense, operate its motor vehicle equipment in a proper and lawful manner and further agrees to maintain the equipment in good, safe and lawful operating condition at all times.
2. Qualified Personnel. CARRIER shall, at its cost and expense, employ in the operation of such vehicles and equipment fully qualified personnel, shall 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.
3. Operating Expenses. CARRIER shall bear the cost and expense of all fuel, oil, tires, parts, road service, maintenance and repair in connection with the use and operation of the equipment and which may be required to keep the equipment in good repair and mechanical condition. FORWARDER shall not be liable to CARRIER for any damage sustained by or to CARRIER's equipment or for loss by confiscation or seizure of CARRIER's equipment by any public authority.
4. Exclusive Control. CARRIER shall have sole and exclusive control over the manner in which CARRIER and its agents perform the transportation service provided for hereunder, and CARRIER shall utilize such individuals as it may deem necessary in connection therewith, it being understood and agreed that such individuals shall be subject to discharge, discipline, and control solely and exclusively by CARRIER. CARRIER represents that it is entirely independent and that it is not substantially economically dependent upon the FORWARDER and there is no
5. functional integration of the FORWARDER's and the CARRIER's respective operations.
6. Display of FORWARDER's Customer's Name. CARRIER shall not display the name of the FORWARDER's customers upon CARRIER's vehicles.
7. Clean Equipment. CARRIER's equipment offered to FORWARDER for loading of the commodities to be transported is to be clean, odor-free, dry, leakproof and free of contamination and infestation. Said equipment shall be subject to inspection for suitability and cleanliness by FORWARDER. The cleanliness or suitability of equipment must meet FORWARDER's standards of acceptability for the specific products to be transported.

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## ITEM 300. COMPENSATION AND PAYMENT

### 1. Rates and Charges.

- a. Applicable Rates and Charges. For each shipment tendered to CARRIER a written Rate Quote shall be submitted by CARRIER to FORWARDER establishing the applicable rates and charges for that shipment. FORWARDER shall confirm and authorize each Rate Quote in writing with a Letter of Instruction. FORWARDER agrees to pay the rates and charges established by the Rate Quote and Letter of Instruction as full and complete compensation for the services to be provided hereunder. As a condition of payment, CARRIER must submit, along with its invoice, the bill of lading and/or proof of delivery signed clear and free by the consignee. Said rates and charges are intended to apply to all goods shipped or received by FORWARDER and/or third parties for FORWARDER's account from or to all of FORWARDER's shipping and receiving points.
- b. Rate Schedule. If CARRIER accepts shipments from FORWARDER, or its agents, which are not covered by a Rate Quote and Letter of Instruction, FORWARDER agrees to pay the rates and charges set forth in **Appendix B** hereto.
- c. Shipments Not Covered by Rate Schedule. Rates may be established or amended verbally in order to meet FORWARDER's changing shipping schedules and needs. If CARRIER accepts shipments from FORWARDER, or its agents, which are not covered by a Rate Quote and Letter of Instruction, in the first instance, or by **Appendix B**, in the second instance, then FORWARDER agrees to pay reasonable rates and charges for such contract transportation. In determining the reasonable rates and charges for such transportation, the parties shall consider the then-prevailing level of rates and charges being quoted and assessed for similar transportation services.
- d. Prepaid, Collect and Third Party Billing. CARRIER shall accept shipments tendered as outbound "freight prepaid", inbound and outbound "freight collect", and "bill to third party" when FORWARDER, or its agent, is named as the payor of the charges. On outbound "freight collect", CARRIER agrees to look solely to the consignee for the payment of its charges, and shall not have recourse against FORWARDER if the consignee fails to pay. Rates and charges established between FORWARDER and CARRIER shall also apply to shipments from FORWARDER's vendors or suppliers to its customers or to other destinations for which FORWARDER or its agent pays the freight charges.
- e. Shipper's Affiliates. If any of FORWARDER's wholly owned subsidiary corporations, divisions, or affiliates has rates and charges in effect on the date of shipment lower than those resulting from this STC, such lower rates and charges shall continue to apply and take precedence over this STC.





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2. **Credit Period.** Upon the extension of a credit line by CARRIER to FORWARDER, CARRIER shall invoice FORWARDER promptly following delivery of freight, and payment of each invoice shall be made by FORWARDER within thirty (30) days of receipt a valid, uncontested freight bill. The establishment of a credit line may be verbally, in writing, or based on the course of conduct of the parties.
3. **Late Payment; Accessorial Charges.** CARRIER agrees that no penalties, loss of discount, interest or any other late charge will be assessed to FORWARDER for past due amounts. CARRIER is prohibited from adding an accessorial charge or surcharge to its invoice that was not identified in the original Rate Quote, unless the CARRIER notifies FORWARDER of such additional charge prior to delivery and such additional charge is authorized in writing by FORWARDER.
4. **Right to Set Offs Claims.** FORWARDER shall have the right to set off claims for loss, damage or delay, and claims for overcharge or duplicate payment, against freight or other charges owed to CARRIER.
5. **Chargebacks.** Carrier acknowledges that FORWARDER's customers have specific requirements for delivery by appointment or at specified times ("delivery windows") due to the nature of their businesses and receiving facilities, and that if delivery is not made at an appointed time or within a delivery window, FORWARDER's customers may incur penalties or chargebacks from its customers. In such event, Carrier shall be liable for any penalties or "chargebacks" which may be imposed on FORWARDER's customers, up to a maximum of \$400 per shipment.
6. **No Lien.** CARRIER shall have no lien for the retention of freight to secure payment of freight charges. If CARRIER imposes a lien, it will cause irreparable damage to FORWARDER, and may harm other entities with which the FORWARDER does business. If CARRIER, or its agents, servants or employees, impose a lien on FORWARDER's goods, (i) the damages sustained by FORWARDER as a result of CARRIER'S delay in delivering the goods may be impossible to ascertain and as such CARRIER shall pay FORWARDER the sum of \$500.00 for each day that CARRIER, its agents, servants or employees impose a lien against FORWARDER's goods, and that said sum constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty; (ii) the FORWARDER shall have the right to seek and recover such further or other damages from CARRIER as shall be available at law or in equity; and (iii) in addition FORWARDER shall have the right to an injunction to prevent further violation of CARRIER's obligations under this Paragraph. Moreover, these remedies shall be in addition to any and all other remedies that may be available at law, and including but not limited to the right to reimbursement of reasonable attorneys' fees incurred by the FORWARDER to enforce its rights hereunder.
7. **Back-Solicitation.** CARRIER shall not directly or indirectly solicit traffic from any shipper, consignee or customer of FORWARDER, where: (i) the availability of such traffic first became known to CARRIER as a result of FORWARDER's efforts, or (ii) the traffic of the shipper, consignee or customer of the FORWARDER was first tendered to the CARRIER

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by the FORWARDER. In the event CARRIER "backsolicits" the FORWARDER's customers and obtains traffic from such customers in violation of this Item, FORWARDER shall be entitled to receive and CARRIER shall pay a monthly commission in the amount of fifteen (15%) percent of the monthly transportation revenue received by CARRIER from such traffic, for a period of 18 months after the date on which CARRIER first begins to move the involved traffic in violation of this Item. In the event FORWARDER is required to commence litigation to enforce the provisions of this Item, CARRIER shall further be responsible for reasonable attorneys fees, costs and expenses incurred by FORWARDER in such a proceeding.

8. Time Limits; Overcharge and Undercharge Claims. CARRIER shall have 180 days from the date of shipment to file a claim with FORWARDER for undercharges. FORWARDER shall have 180 days from the date the original freight bill was received to file a claim with CARRIER for overcharges, except that claims resulting from or based on unidentified payments or duplicate payments may be filed by FORWARDER at any time. All overcharges, unidentified and duplicate payment claims shall be processed by CARRIER in accordance with 49 CFR Part 378.
9. Time Limits; Suits for Freight Charges. CARRIER must bring a civil action to recover charges for transportation or service provided by CARRIER on behalf of FORWARDER within eighteen (18) months from the date of shipment. FORWARDER must bring a civil action to recover overcharges within eighteen (18) months from the date FORWARDER receives written declination of its claim.

### ITEM 350. RULES; TARIFFS

1. Governing Publications; Incorporation by Reference. Tariffs, service guides or similar publications maintained by CARRIER are not applicable to transportation provided by CARRIER on behalf of FORWARDER. The parties may, for their convenience, incorporate classifications, tariffs, service guides or similar publications ("publications") in whole or in part by reference in the TSA, Rate Quote, or Letter of Instructions, subject to the following conditions: Any publication or part thereof that is to be incorporated shall be specifically identified by name, issue date and effective date. The CARRIER shall provide full and complete copies of each and every publication referred to, and a copy shall be furnished to FORWARDER. Unless an entire publication is to be incorporated by reference, the parties shall specifically identify those sections or items that are to be incorporated, and only those sections or items will be incorporated. No changes, supplements, reissues, etc. will be effective unless specifically agreed to in the manner provided for herein. If the National Motor Freight Classification is to be used for the rating of shipments, any reference thereto shall be deemed to mean NMFC 100-AC, issued November 21, 2002, effective December 21, 2002, and the section containing the Classification of Articles (Items 1010 through 201060), and shall be limited solely for the purpose of determining the Class of an Article described therein.

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2. **Mileages.** Where rates are based on mileage, mileages will be determined through the use of any recognized electronic mileage guide acceptable to the parties and shall be identified in **Appendix B** hereto.
3. **Pallet Weights.** If freight charges are based on weight, the chargeable weight will not include the weight of pallets, skids or other protective devices.
4. **Non-Alternation.** Except as provided in Item 300-1-5 herein, the rules, rates and charges in this STC will apply to the exclusion of all other rules, rates or charges published between the same points, and the same routes, in CARRIER's tariffs or publications, if any.
4. **Classification and Weight.** The Rate Quote issued by CARRIER for each shipment shall identify the class of the products and weight of the shipment. FORWARDER's Letter of Instruction shall confirm and authorize the classification and weight of shipment stated in the CARRIER's Rate Quote. In the event CARRIER subsequently determines the classification of the products or weight of the shipment appearing on the Rate Quote are incorrect, CARRIER shall either return the shipment or request written authorization for a new Rate Quote prior to moving the shipment. CARRIER agrees that it may not make adjustments to Rate Quotes, unless it receives written authorization to do so from FORWARDER.
5. **Conflict Between Rate Quote and Letter of Instruction.** In the event of a conflict between the Rate Quote and Letter of Instruction, the provisions of the Letter of Instruction shall govern and control.

#### ITEM 400. LIABILITY FOR LOSS, DAMAGE OR DELAY

1. **Common Carrier Liability.** At all times in the course of providing transportation services on behalf of FORWARDER, CARRIER assumes the liability of a common carrier for full actual loss, subject to the provisions of 49 U.S.C. Section 14706, ("Carmack Amendment") and 49 CFR Part 370 (claim regulations), such liability to exist from the time of the receipt of any of said goods by CARRIER until proper delivery has been made.
2. **Measure of Damages.** The measure of damages for loss or damage shall be: (i) for goods sold to a customer, the invoice price to the customer, or (ii) for goods not sold to a customer, the destination market value of the goods.
3. **Additional Damages.** CARRIER shall also be liable for reasonable expenses incurred in mitigation of damage, including inspection, sorting, segregating, refurbishing, repackaging and re-shipping, plus a proportion of the freight charge for the whole shipment, equal to the ratio of the weight of lost or damaged goods to the weight of the entire shipment.
4. **Non-Applicability of Tariffs, Service Guides, etc.** Irrespective of any provisions in CARRIER's bills of lading, tariffs, service guides or similar publications, CARRIER's liability for loss, damage or delay shall be determined solely by the terms of this STC.

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L O G I S T I C S

Any attempts to limit CARRIER's liability by tariff or other provisions incorporated by reference shall be deemed null and void. Irrespective of any separate agreements, tariffs, service guides, or terms and conditions entered into between FORWARDER and its customers, brokers, connecting carriers, subcontractors, cartage agents, customs agents or other third parties, CARRIER's liability for loss, damage or delay shall be determined solely by the terms of this STC.

5. Refused Shipments. If a shipment is refused by the consignee, or CARRIER is unable to deliver it for any reason, CARRIER's liability as a warehouseman shall not begin until it has placed the goods in CARRIER's terminal or in a public warehouse or other storage facility under reasonable security.
6. Replacement Shipments. FORWARDER may utilize other carriers to facilitate the movement of delayed shipments, or to ship replacement goods. If CARRIER fails to make timely delivery of any shipment, CARRIER shall be responsible for reasonable and necessary costs, charges, fees and expenses resulting from such delay.
7. Return of Damaged Shipments. CARRIER shall return all damaged shipments at its expense to the point of origin or, with CARRIER's consent, to other points as instructed by FORWARDER.
8. Claims; Filing Requirements. The following shall constitute filing a claim:
  - 8-1. A written or electronic notice of claim to CARRIER, containing facts sufficient to identify the shipment and that reasonably informs CARRIER that loss, damage or delay has occurred.
  - 8-2. An exception notation written on the delivery receipt by the consignee or its agent;
  - 8-3. CARRIER's receipt and/or sale of damaged or rejected goods with knowledge of facts sufficient to identify the shipment and the claim.
9. Time Limits; Claims for Loss or Damage. The time limit within which FORWARDER must file a claim against CARRIER shall be twelve (12) months from the date of delivery or twelve (12) months of a reasonable time for delivery if a complete loss, provided that a claim shall not be invalidated when FORWARDER is unable to determine the amount of the claim within twelve (12) months. All claims shall be paid, settled or disallowed by CARRIER within 60 days of filing. Disallowances shall state a lawful reason for declining to accept responsibility for the claim, and shall be stated by the CARRIER, not its insurer.
10. Time Limits; Suits for Loss or Damage. The time limit within which FORWARDER must institute suit against CARRIER to recover on a claim shall be two years and a day from the date FORWARDER receives a written disallowance from CARRIER.

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11. **Suits, Expenses and Attorneys' Fees.** If FORWARDER is successful in recovering a claim against CARRIER in a court of law or arbitration proceeding, FORWARDER shall be entitled to recover all of its expenses incurred in collecting its claim, including reasonable attorneys' fees, costs and interest from the date of delivery or scheduled delivery of the shipment. Notwithstanding the foregoing, if applicable state law imposes an obligation of mutuality, each party shall bear its own attorneys' fees and costs.
12. **Concealed Damage Claims.** Claims based on a concealed loss or damage reported to CARRIER within 15 days of the date of delivery shall be treated by CARRIER as though an exception notation had been made on the delivery receipt at the time of delivery.
13. **Damaged or Refused Shipments; Salvage.** CARRIER shall not dispose of damaged or rejected product without the prior written consent of FORWARDER. FORWARDER may determine, within its sole discretion, whether the goods may be salvaged, and if salvageable, the value of such salvage. Any salvage receipts shall be credited against FORWARDER's claim against CARRIER. FORWARDER shall have the right to remove all identifying marks or labels when CARRIER pays FORWARDER for the full value of the damaged goods and requests possession of the goods for salvage. Alternatively, the goods shall be permanently marked as "damaged" or a similar notation, without debiting the FORWARDER for such notations.
14. **Shipper Load and Count.** If shipments are loaded and counted by the FORWARDER (SL&C), CARRIER will count the goods at the first breakbulk point and report damages, overages and shortages via phone or e-mail to FORWARDER, and confirmed in writing, or CARRIER will be liable for all such damages and shortages.
15. **Willful Misconduct.** Willful misconduct, gross negligence, fundamental material breach or conversion on the part of CARRIER, its employees, officers, directors or agents shall vitiate any and all agreed-upon liability limitations.

#### ITEM 450. INSURANCE

1. **Public Liability, Cargo, Workers Compensation.** CARRIER shall have and maintain in full force and effect, Public Liability, Property Damage, Cargo, and Workers' Compensation Insurance with reliable insurance companies acceptable to FORWARDER, and in the following minimum amounts, which amounts may be modified by FORWARDER subsequently upon thirty days' written notice: \$1,000,000/3,000,000 Bodily Injury; \$500,000 Property Damage; \$250,000 Cargo per shipment, and Workers' Compensation which complies with applicable state requirements. CARRIER will hold harmless and indemnify FORWARDER for any claim for insurance premium or any claim by any employee of the CARRIER for injuries sustained in the ordinary course of business, including, but not limited to, drivers, lumpers, helpers, agents or sub-contractors of CARRIER.
2. **Cargo Insurance.**

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2-1. Employee Infidelity. CARRIER's cargo insurance policies shall not exclude coverage for infidelity, fraud, dishonesty or criminal acts of CARRIER's employees, agents, officers or directors. If said policy contains such exclusions, CARRIER shall obtain and furnish a policy extension or surety bond providing such coverage to the satisfaction of FORWARDER.

2-2. BMC-32 Endorsement. CARRIER shall also obtain and deliver to FORWARDER a BMC 32 Endorsement to its cargo insurance policy in the form required by the FMCSA in 49 CFR Section 387.313. Said endorsement shall protect FORWARDER for loss of or damage to its goods while in the possession or control of CARRIER, up to the limits of said endorsement, and subject to its limitations. Notwithstanding that CARRIER may have a permit to operate as a contract carrier, CARRIER has assumed the liability of a common carrier and thus shall be deemed to be a common carrier for purposes of application of the BMC 32 Endorsement.

2-3. Loss Payee on Cargo Policy. FORWARDER shall be named "Loss Payee" on the cargo liability policy.

3. Additional Insured on Public Liability Policy. FORWARDER shall be named as an "Additional Assured" on the Bodily Injury and Property Damage policies and said policies shall provide that: (i) FORWARDER shall not be obligated to pay premiums for any such insurance; (ii) such insurance shall be primary with respect to all insured and (iii) such insurance shall be applicable separately to each insured and shall cover claims, suits, actions or proceedings by each insured against any other insured.
5. Waiver of Underwriter's Rights. CARRIER's insurance policies shall provide for waiver of underwriter's subrogation rights against FORWARDER, its officer, directors, employees, subsidiaries and affiliates.
4. Certificates of Insurance; Policies. CARRIER shall provide certificates of insurance evidencing the insurance coverage required by FORWARDER, and that such coverage cannot be altered or canceled without first giving FORWARDER thirty (30) days' prior written notice. Upon request of FORWARDER, CARRIER shall deliver to FORWARDER full and complete copies of the insurance policies required by FORWARDER.
5. Self-Insurance. If CARRIER is self-insured, it shall provide evidence of such, including proof of acceptance of self-insurance status by the FMCSA or other governing agency.
6. No Representation as to Adequacy. It is expressly understood that FORWARDER does not represent that the types or minimum limits of the insurance set forth herein are adequate to protect the CARRIER's interests. Deductible amounts under the foregoing policies shall be paid by CARRIER

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### ITEM 470. INDEMNITY

CARRIER shall, at all times, indemnify, defend and hold harmless FORWARDER, its agents and employees against and from any and all claims directly or indirectly arising out of or related to the services provided on behalf of FORWARDER (including, without limitation, claims for personal injury, death and damage to property, clean-up costs from commodity spills and damage to the environment) asserted against FORWARDER (i) by any agent or employee of CARRIER or (ii) by any other person. CARRIER further agrees to, at all times, indemnify, defend and hold harmless FORWARDER, to the full extent of any payments for loss, damage or delay made by FORWARDER to its customers, subject to the terms and conditions of this STC and without regard to any limitations of liability that may exist in FORWARDER's tariffs, service guides, agreements, or such other Terms and conditions which may be applicable to FORWARDER's arrangement with its customers.

### ITEM 490. INDEPENDENT CONTRACTOR

CARRIER shall perform the services on behalf of FORWARDER as an independent contractor and shall have exclusive control and direction of the persons operating equipment, loading or unloading, or otherwise engaged in providing transportation services. CARRIER assumes full responsibility for the acts and omissions of such persons and, when applicable, shall have exclusive liability for the payment of local, state and federal payroll taxes or contributions or taxes for unemployment insurance, workers' compensation, old age pensions or other social security and related protection, and agrees to comply with all applicable rules and regulations pertaining thereto. If under the applicable State Unemployment Compensation Law, CARRIER has the right to elect whether or not to come under and be bound by the terms of such law, CARRIER shall either self-insure or promptly register under said law.

### ITEM 500. ALTERNATIVE DISPUTE RESOLUTION

If the parties agree to arbitrate, disputes shall be submitted to the Transportation Arbitration Board for arbitration under that organization's Rules and Procedures. If so submitted to arbitration, no court action can be taken by either party prior to conclusion of the arbitration proceeding (other than the filing of suit to protect against the running of any period of limitations set forth in this STC or applicable statute), and the Arbitrator's decision shall be final and binding.

### ITEM 510. ELECTRONIC DATA INTERCHANGE

Shipping instructions, bills of lading, delivery receipts, claims for loss, damage, undercharges or overcharges, and related communications may be transmitted by EDI in such format as may be approved by FORWARDER. Each party shall retain or archive such transmissions in a suitable permanent media and shall make print copies of such records available on reasonable request. The records maintained in the manner provided herein shall be admissible for all purposes in the event of dispute or litigation.

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## ITEM 520. RECORD RETENTION

All bills of lading, delivery receipts, freight bills, manifests, logs, claims, archived EDI transmissions and any other shipping or claim documentation shall be retained by CARRIER for a period of three (3) years from the date of signature on the bill of lading or one (1) year after final resolution of a disputed or unsettled claim, whichever is later, or for such greater period of time as may be required by federal or state laws, rules or regulations. All such records shall be available for inspection and copying at CARRIER's expense and use of FORWARDER during such period.

## ITEM 530. GOVERNING LAW

To the extent not governed by the Interstate Commerce Act or other applicable federal statutes, the laws of the State of Texas shall govern the validity, construction and performance of this STC. All controversies, claims, actions, suits or proceedings arising hereunder shall be brought in the State of Texas; except that FORWARDER has the option of commencing actions to recover claims for loss, damage or delay under **Item 400** in such other jurisdiction as may be permitted under 49 U.S.C. § 14706.

## ITEM 540. FORCE MAJEURE

1. Neither CARRIER nor FORWARDER shall be liable to the other for default in the performance of their respective obligations if caused by fire, strikes or labor disputes, riot, war, Act of God, governmental order or regulation, or other similar contingency beyond the reasonable control of the respective parties; provided, however, that nothing in this Item shall relieve CARRIER from its liability to FORWARDER for the loss, damage, or delay to the goods shipped as provided in **Item 400** hereof unless such loss, damage, or delay is caused by an Act of God, the public enemy, the authority of law, or the sole negligence of the FORWARDER.
2. In the event of a labor dispute at FORWARDER's facilities, CARRIER shall provide equipment and normal transportation services.
3. The party claiming *force majeure* shall notify the other party within twentyfour (24) hours of when it learns of the existence of such a condition and shall similarly notify the other within a period of two (2) working days after the condition is remedied.

## ITEM 550. SEVERABILITY

If any phrase, clause, sentence, or other provision contained in this STC violates any applicable statute, ordinance, rule or law, such phrase, clause, sentence or provision shall be ineffective to the extent of such violations without invalidating any other provision of this STC. All of the provisions of this STC shall be performed in strict compliance with all applicable Federal, State and local laws, rules and regulations pertaining to employment discrimination and the parties hereto agree that in performing their respective obligations hereunder, neither shall discriminate by reason of race, color, creed, religion, national origin, age, sex or as otherwise provided by law.

### ATTACHMENTS:

**APPENDIX A - FORWARDER'S FACILITIES AND LOCATIONS – Not Applicable**

**APPENDIX B - RATES AND CHARGES – Not Applicable**

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