



THE TRANSPORTATION PEOPLE

TERMS AND CONDITIONS OF TRANSPORTATION SERVICES PROVIDED BY KTI, INC., a TRANSPORTATION PROPERTY BROKER

Last Updated: January 1st, 2020

All shipments to or from the SHIPPER, which shall include the exporter, importer, sender, receiver, owner, consignor, consignee, transferor or transferee of the shipments, will be arranged for by KTI, Inc., herein called the "KTI") on the following terms and conditions:

RECITALS

A. WHEREAS KTI is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-318105-B, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. As a Property Broker, KTI does not take possession, custody or control of any cargo. KTI does not assume any liability, possessory rights or obligations, and assumes no financial responsibility whatsoever, for cargo, including loss, theft, damage or delayed delivery thereof.

B. WHEREAS SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of KTI to arrange for transportation of SHIPPER's freight. SHIPPER understands that KTI neither owns nor operates any of the motor carriers that will actually transport the goods.

NOW THEREFORE, intending to be legally bound, KTI and SHIPPER agree as follows:

AGREEMENT

1. **TERM.** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE.** BROKER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. KTI's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight.

3. **VOLUME.**

A. SHIPPER agrees to tender a minimum of three (3) shipments per year to KTI, and KTI agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. Shipper is not restricted from tendering freight to other brokers, or directly to motor carriers. KTI is not restricted from arranging transportation for other parties.

B. SHIPPER shall be responsible to KTI for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.

4. **FREIGHT CARRIAGE.** KTI warrants that it has entered into, or will enter into, bilateral contracts with each carrier it utilizes in the performance of this Agreement. KTI further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

A. Carrier "Will defend, indemnify, and hold BROKER and its customers harmless and pay BROKER on demand from any claims, losses, damages, fines, or liability of any kind for damage to freight, personal injury, death, and/or property damage (including, but not limited to, reasonable attorney's fees) arising out of CARRIER's performance of, or violation of, any of the terms of this Agreement";

B. "Carrier's liability for any freight damage, loss, or theft from any cause (regardless of the type of operating authority it has) shall be determined under the Carmack Amendment, 49 U.S.C. §14706". Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability. For shipments outside of the United States the terms in Foreign Shipments Appendix D of this Agreement shall apply.;

C. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:

Auto Liability - \$1,000,000

Cargo Liability - \$100,000

Worker's Compensation – as required by law.

D. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.

E. Carrier shall authorize KTI to invoice SHIPPER for services provided by the Carrier. Carrier shall further agree that KTI is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the shipper, consignee or KTI's customer.

F. Carrier shall agree that, at no time during the term of its contract with KTI, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an Unsatisfactory safety rating, it shall immediately notify KTI. KTI shall not knowingly utilize any carrier with an unsatisfactory safety rating in the performance of this Agreement.

G. Carrier shall agree that the terms and conditions of its contract with KTI shall apply on all shipments it handles for KTI. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract

H. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.

I. KTI further warrants it will require proof of insurance and operating authority from each Carrier and, should KTI utilize the services of any Carrier or other broker on SHIPPER's behalf, which Carrier and/or broker does not have proof of insurance and/or operating authority, KTI agrees to indemnify and hold harmless SHIPPER from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims.

5. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, KTI agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertion of KTI's name on the bill of lading shall be for SHIPPER convenience only and shall not change KTI's status as a property broker. The terms and conditions of any freight documentation used by KTI or carrier selected by KTI may not supplement, alter, or modify the terms of this Agreement.

6. **PAYMENTS and RATES.** KTI shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth in any written supplements or revisions that are mutually agreed to between the PARTIES. Unless otherwise agreed to in writing by both parties, all rate quotes given by KTI through email are only valid for 30 days from the date of the email. Any quote given does not ensure capacity or the arrangement of freight awarded. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon KTI's invoice to SHIPPER and SHIPPER's payment to KTI. SHIPPER agrees to pay KTI's invoice within fifteen (15) days of invoice date without deduction or setoff. KTI shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to KTI shall relieve SHIPPER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges; and KTI hereby covenants and agrees to indemnify SHIPPER, Consignee or other responsible party against such liability.

7. CLAIMS.

A. **Freight Claims:** SHIPPER must file claims for cargo loss or damage with KTI within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against KTI in a Court of Law within two (2) years from the date the carrier or KTI provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by KTI shall agree in writing with KTI to be liable for cargo loss or damage as outlined in paragraph 4.b above. The carriers' cargo liability for any one shipment shall not exceed One hundred thousand dollars (\$100,000), unless KTI is notified by SHIPPER of the increased value prior to shipment pickup and with reasonable advance notice to allow KTI and/or the carrier to procure additional insurance coverage. It is understood and agreed that the KTI is not a Carrier and that KTI shall not be held liable for loss, damage or delay in the transportation of SHIPPER's property unless caused by KTI's gross negligent acts or omissions in the performance of this Agreement. KTI shall assist SHIPPER in the filing and/or processing of claims with the Carrier. If payment of claim is made by KTI to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to KTI so as to allow KTI to subrogate its loss. In no event shall KTI or KTI's Carrier be liable to SHIPPER or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed KTI in written or electronic form, prior to or when tendering a shipment or series of shipments to KTI, of the potential nature, type and approximate value of such damages, and KTI specifically agrees in written or electronic form to accept responsibility for such damages.

B. **All Other Claims:** The PARTIES shall notify each other within sixty (60) days of learning of any claims other than cargo loss or damage claims, and shall file any such claims with the other Party within one hundred eighty (180) days from the date of notice. Civil action, if any, shall be commenced in a Court of Law pursuant to Section 19 of this Agreement within two (2) years from the date either Party provides written notice to the other Party of such a claim.

C. **NO WARRANTIES:** KTI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND EXPRESSELY DISCLAIMS ANY AND ALL WARRANTIES.

D. **EXCLUSIONS:** IN NO EVENT SHALL KTI BE LIABLE FOR LOSS OF MERCHANTABILITY OR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, FINES, INTEREST, PENALTIES, LOSS OF PROFITS, LOSS OF INCOME, LOSS OF MARKET OR LOSS OF BUSINESS OPPORTUNITY WHETHER OR NOT KTI HAD KNOWLEDGE THAT SUCH DAMAGES MIGHT BE INCURRED, WHETHER PLEADED UNDER TORT, CONTRACT OR ANY OTHER LEGAL THEORY. To the extent not prohibited by law, this exclusion applies to damages of any and every kind, including but not limited to, property damage, financial losses and damage to reputation, and whether or not the claim for damage arises directly from any service provided by KTI related to the transportation or the arranging of the transportation of goods.

8. **INSURANCE.** KTI agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

A. Comprehensive general liability insurance \$1,000,000

covering bodily injury and property damage

B. Contingent Cargo Insurance \$100,000

Upon request by SHIPPER, KTI shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder".

9. **SURETY BOND.** KTI shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$75,000 and furnish SHIPPER with proof upon request.

10. **HAZARDOUS MATERIALS.** SHIPPER and KTI 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 KTI immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold KTI harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

11. **DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 (ten) days written notice to the other Party. SHIPPER shall be responsible to pay KTI for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.

12. **INDEMNIFICATION.** Subject to the insurance limits in Section 8, KTI and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party. Although Section 8 only imposes insurance requirements upon KTI, for purpose of this Section 12, those amounts also shall limit the scope of SHIPPER's indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.

13. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.

14. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.

15. **INDEPENDENT CONTRACTOR.** It is understood between KTI and SHIPPER, that KTI is not an agent for the Carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over KTI, its operations, employees, or carriers.

16. **NONWAIVER.** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. **NOTICES.** Unless the PARTIES notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as follows:

KTI
Attn: Legal Department
10301 Wayzata Blvd.
Minnetonka, MN 55305
Phone: 612-378-9731
Fax: 612-378-9738 email: info@ktitrans.com

18. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or KTI, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform. The parties agree that no economic condition, market condition, credit market condition, nor national economic recession or depression shall constitute Force Majeure under this Agreement.

19. **CHOICE OF LAW AND VENUE.** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. Any legal action arising under or pursuant to this Agreement shall be brought and maintained only in courts located in Hennepin County, MN.

20. **ARBITRATION.**

In the event of a dispute arising out of this Agreement, the Party's sole recourse shall be to arbitration within two years from the date of the alleged loss. Proceedings shall be conducted under the rules of the Transportation Arbitration and Mediation PLLC (TAM), the American Arbitration Association (AAA) or Transportation ADR Council, Inc. (ADR) at the discretion of the party filing the complaint. Upon agreement of the PARTIES, arbitration proceedings may be conducted outside of the administrative control of the TAM, AAA or ADR. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

21. **CONFIDENTIALITY.** KTI shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the PARTIES shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. KTI will require its carriers and/or other brokers to comply with this confidentiality clause.

22. **ENTIRE AGREEMENT:** This Agreement, including all Appendices and Addenda, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

23. **TERMS ARE SUBJECT TO CHANGE:**

SHIPPER understands that the terms and conditions under which KTI's services are provided are subject to change. In the event KTI's terms and conditions are modified, the revised or updated version will be posted to KTI's website. Unless SHIPPER and KTI otherwise agree in writing, by using KTI's Services after the effective date, SHIPPER hereby consents to such modifications and agrees that the modified terms and conditions shall apply to all services performed from that effective date forward.