

**TRANSPORTATION MASTER SERVICES AGREEMENT  
MOTOR CARRIER/SHIPPER**

THIS TRANSPORTATION MASTER SERVICES AGREEMENT - MOTOR CARRIER/SHIPPER (this "Agreement"), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between GULF WINDS INTERNATIONAL INC, ("Carrier"), and \_\_\_\_\_ ("Shipper"). Shipper and Carrier are sometimes individually referred to herein as a "Party" and together as the "Parties."

WHEREAS, Shipper desires to contract with Carrier to perform motor carrier transportation service for Shipper in accordance with the terms and subject to the conditions of this Agreement; and

WHEREAS, Carrier desires to perform motor carrier transportation service for Shipper in accordance with the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual agreements and provisions hereinafter set forth, the Parties hereby mutually agree as follows:

1. **TERM.** This Agreement shall remain in full force and effect for a 1 year period beginning on the date first written above and renewing for successive one year periods. Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party, unless otherwise specified in this Agreement. Shipper may from time to time, on a mutually non-exclusive basis, utilize Carrier's services as a motor carrier for the transportation of Shipper's products (the "Products") in interstate or intrastate commerce (the "Services").
2. **SCOPE OF AGREEMENT.** Carrier affirms that it is a motor carrier under 49 U.S.C. 13102(12), and is duly registered with the Department of Transportation pursuant to 49 U.S.C. 13902 and 13905 with a Motor Carrier Safety Rating of "SATISFACTORY", and will provide lawful and responsible transportation service to Shipper under the terms of this agreement. If at any time Carrier's safety rating changes from Satisfactory then Carrier has an affirmative duty under this contract to notify Shipper of same together with an explanation of the reasons for the change.
3. **RELATIONSHIP OF PARTIES.** Carrier shall operate as a Motor Carrier as defined under 49 CFR 390.5 and all applicable rules and regulations. As between the Parties, Carrier shall have the sole and exclusive responsibility for the manner and methods in which its employees, agents and/or independent contractors perform the transportation services hereunder. Nothing in this Agreement or otherwise shall deem Carrier an employee, partner, agent, co-venturer or other ownership participant in the business or activities of Shipper. Carrier shall have no authority to bind Shipper or its subsidiaries in any manner.

#### **4. RATES, CHARGES, AND PAYMENT TERMS.**

- a. Rates and charges for shipments moved under this Agreement shall be as agreed to between the parties hereto in writing and as contained in the Rate Quote provided by Carrier to Shipper prior to the time of transport, on a load by load basis, or as reflected on the Rate Sheet attached as Appendix "A", hereto, if applicable. Changes to the rate agreement pertaining to specific loads may be made as needed and confirmed in writing. All rate agreements and shipment order shall be sent by electronic mail to [orders@gwii.com](mailto:orders@gwii.com). Sufficiently in advance of the shipment to allow processing of the order and arrangement for the transportation services. Rates may be established or amended verbally in order to meet specific shipping schedules, as mutually agreed, but such verbal contract shall be confirmed in writing, by fax or telecommunications, if possible, but in any event within five (5) days of the date of movement of the involved freight. Issuance of an order for services and rendering of service by Carrier shall constitute and acceptance of Carrier's rates, terms and conditions.
- b. Unless specifically indicated in the Rate Quote or other writing approved by Carrier, price does not include charges for detention time, per diem, or additional stops. Any changes in actual dimensions, description, or weight will result in revisions to the quoted price. Any additional services which may be requested by the customer will be provided at additional cost. Fuel Surcharge is adjusted weekly based on the Department of Energy's (DOE) Gulf Fuel Price Index. The DOE's Gulf Fuel Price Index is updated every Monday and Carrier's FSC is adjusted accordingly every Tuesday and will apply for that week ending the following Monday.
- c. Shipper shall pay Carrier, within 30 days of the shipment date shown on the invoice, the amounts calculated in accordance with the rates and charges, including any written supplements thereto, and as otherwise set forth in this Agreement. No offsets may be taken against invoiced charges. Carrier shall apply Shipper's payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Shipper must pay each invoice in full and may not withhold any sums due under one invoice for claims or disputed arising under another invoice or transportation services pertaining thereto.

#### **5. CARRIER REPRESENTATIONS AND DUTIES.**

- a. Carrier represents, warrants and undertakes to Shipper that it has, and for so long as it performs the Services shall have authority from, and is and shall be duly registered with the Federal Motor Carrier Safety Administration ("FMCSA") as a common carrier to transport general commodities (and in particular, without limitation, the Products) as may be required for the provision of the

Services, in interstate commerce and/or as the case may be, with the appropriate state regulatory agencies in which Carrier provides intrastate service.

- b. Carrier agrees that at no time during the term of this Agreement, shall it have an “Unsatisfactory” safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA).
- c. Carrier agrees to use reasonable care to comply with all applicable provisions of the Interstate Commerce Act, related laws, rules and regulations of the FMCSA, and all other federal, state and local laws, rules and regulations relevant and applicable to the Carrier’s operations and the provision of the Services.
- d. Carrier agrees to comply with all federal, state, and/or local statutes, laws and/or regulations and/or the requirements of any relevant governmental agencies, governing workplace safety, including, but not limited to the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651, et seq.), as well as all policies in force at any of the Shipper’s facilities and/or at, any facility or location where product shipped by Companies tendered for transportation or delivered by Carrier or any of its Personnel.
- e. Carrier agrees to promptly, efficiently, and in a professional and workman-like manner discharge the Services to include, but not be limited to, promptly, efficiently, safely, securely and with reasonable dispatch loading, receiving, transporting, delivering and unloading the cargo entrusted to it whether received from Shipper or from third parties at the request of Shipper, and shall use reasonable measures to adequately protect the cargo from exposure to the elements, weather and environmental related hazards.
- f. As between the Parties, Carrier agrees to, at its sole cost and expense, comply with all federal, state and local laws, regulations and requirements regarding its employees, including, but not limited to the payment of wages, the taxation of wages, the payment and provision of employee benefits, unemployment compensation, worker’s compensation and disability. All employees, agents and representatives of Carrier, its affiliates and its sub-contractors and all employees and representatives of Carrier’s affiliates and sub-contractors (if any) shall not, under any circumstances, be or be deemed to be employees of Shipper. Shipper shall not withhold any federal, state or local employment taxes from the fees or other charges payable to Carrier, and Shipper and its sub-contractors and their respective employees or other representatives (or those of its sub-contractors) shall not be covered by Shipper’s worker’s compensation or unemployment insurance, nor shall they be entitled to any overtime, vacation pay, or any other employee benefits offered or paid by Shipper.

- g. Carrier agrees to take reasonable care to file, maintain and retain any required government forms or filings, including, but not limited to, Fuel Tax Trip Reports, Drivers Logs and Daily Vehicle Inspection Reports. Carrier shall be responsible for the selection of appropriate drivers and vehicles to transport the Products tendered for transportation, and for procuring any special permits for over-dimension or overweight cargo to the extent required under the Federal Motor Carrier Safety Regulations or other rules or regulations applicable to Carrier.

**6. FREIGHT DOCUMENTATION.** The terms and conditions of this Agreement shall prevail over those appearing on that form or any other form(s) used by the Parties for the delivery of freight, to the extent there are any differences or inconsistencies. Carrier's Terms and Conditions attached hereto as Appendix B and incorporated herein for all purposes, shall apply to all transportation services performed hereunder, unless those terms or flagrantly inconsistent with the specific terms set forth herein, in which case the terms of this agreement shall apply. Additional form(s) used by the Parties shall be used for the purpose of documenting the pick-up and delivery of freight. Shipper shall supply freight documentation to electronic mail to [orders@gwii.com](mailto:orders@gwii.com). Unless specifically agreed to by the Parties, any joint movement involving another transportation entity to or from a point outside the U.S. shall not be considered as moving on a "through" bill of lading.

**7. INSURANCE.** Carrier shall have in place at the commencement of this Agreement, and maintain for so long as it provides the Services, at Carrier's sole cost and expense, the following policies of insurance, on an occurrence basis, with the following minimum levels of coverage and with insurance companies satisfactory to Shipper:

- a. Workers' Compensation Insurance of at least the statutory minimum in the state where the Services will be performed and Employers Liability with limits not less than \$500,000. Where workers' compensation insurance is not required by law and for Carrier's using Owner-Operators, Occupational Accident Insurance with limits of \$1,000,000 (\$1 million) may be acceptable.
- b. Commercial General Liability Insurance covering the transportation of shipments and other operations under this Agreement in an amount not less than \$1,000,000 (U.S. Dollars) per occurrence.
- c. Commercial Automobile/Trucking Liability insurance coverage, including an MCS-90 endorsement, with limits of not less than \$1,000,000 (U.S. Dollars) per occurrence.
- d. Broad Form Motor Truck Cargo Legal Liability insurance in an amount not less than \$100,000.00 (U.S. Dollars) per occurrence. Such insurance policy shall provide coverage to Carrier, the Customer or the owner and/or consignee for any loss, damage or delay related to any property for transportation services

provided by CARRIER under this Agreement. The coverage provided under this policy shall have no exclusions or restrictions of any type, including any exclusion for the commodities being transported, or unattended or detached trailers that would preclude coverage.

- e. Neither Party waives any right to subrogation it or its insurers may have arising out of the services and work performed provided pursuant to this Agreement. Notwithstanding the foregoing, if Carrier meets all applicable federal requirements, Carrier may self-insure after requesting and receiving written approval from Shipper and furnishing Shipper with proof of self-insurance. Upon request Carrier shall provide Certificates of insurance to Shipper.

**9. REFUSAL OF SHIPMENT.** If the consignee refuses the cargo tendered by Carrier or if Carrier is unable to deliver the lading because of fault or mistake of Shipper or the consignee, or if Shipper advises and instructs Carrier to stop movement of the lading and to hold it in transit, Carrier's liability thereafter immediately shall be that of a warehouseman. The procedures which Carrier agrees to and will take as a warehouseman involve the use of ordinary care to keep the lading in a safe or suitable place or to store the lading properly. Carrier shall (a) attempt to give Shipper notice as soon as possible if the foregoing occurs, (b) place the lading in public storage, if available, unless Carrier receives contrary disposition instructions from Shipper within twenty-four (24) hours, and (c) if disposition instructions are not given by Shipper within ten (10) days of Carrier's initial notification to Shipper, Carrier may offer the lading for public sale. In the case of perishable lading, Carrier may dispose of the lading at a time and in a manner Carrier deems appropriate. Shipper will be responsible for storage costs and reasonable costs Carrier incurs in acting as a warehouseman. To the extent any sale or disposal revenues exceed the storage costs and the costs Carrier incurs as a warehouseman, Carrier shall remit the balance to Shipper. If Shipper gives Carrier timely disposition instructions, Carrier shall use any commercially reasonable steps to abide with such instructions. Shipper will pay Carrier's costs and any additional transportation costs Carrier incurs in doing so.

**10. CARGO LIABILITY.**

- a. Carrier shall be liable to Shipper for loss or damage to lading occurring while it is in Carrier's possession, except to the extent such loss or damage is caused by an act of God or a public enemy, a public authority, an act of Shipper, or the inherent vice or nature of the lading. Carrier's possession of lading under this Agreement shall begin when Carrier has executed the freight documentation form for such lading and shall terminate upon the lading being tendered for delivery to Shipper's consignee (subject to the provisions of paragraph 9).
- b. All shipments are deemed released (and the Carrier's maximum liability as

limited) to a maximum value not exceeding \$100,000, unless the Shipper declares a lesser value on the bill of lading or other shipping documentation, in which case Carrier's liability shall not exceed said lesser value declared by Shipper. If Shipper so requests, the Carrier may accept and transport shipments worth more than \$100,000, up to an absolute maximum of 1 million dollars (\$1,000,000.00). However, it shall be Shipper's responsibility to properly obtain the Carrier's prior signed consent and to pay appropriate excess valuation charges, which are available upon request, to compensate Carrier for such increased cargo risk; otherwise, the Carrier's liability shall remain at \$100,000. If Shipper asserts that the value of lading on a particular shipment shall exceed this amount, Carrier shall be advised twenty-four (24) hours before the time of tendering a load. Carrier may refuse the load or secure additional cargo insurance in the amount of liability Shipper claims, the cost of which shall be invoiced to Shipper as part of freight charges. Shipper also shall note any separately agreed value on the freight documentation form referenced in Section 6 above. If the freight Shipper tenders consistently exceeds the amount of cargo insurance provided in Section 8 above, the Parties shall agree in writing to an alternate cargo insurance amount, which will be reflected in freight charges otherwise assessed.

- c. Claims for loss or damage to lading must be filed in writing by Shipper within nine (9) months from date of delivery, or scheduled date of delivery for lost lading, or in the absence of a scheduled delivery date, the filing period shall begin after a reasonable time has elapsed for delivery, and a civil suit or arbitration proceeding shall be commenced by Shipper within two (2) years from the date Carrier gives Shipper written notice Carrier is disallowing the claim or any part of it. Claims will be filed and resolved in accordance with federal regulations codified at 49 C.F.R. Part 370.
- d. The measure of damages for loss of or physical damage to the cargo shall be the commercial invoice value of the lading, or in the absence of an invoice wholesale destination value.
- e. In no event shall 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 Carrier in written or electronic form, prior to or when tendering a shipment or series of shipments to Carrier, of the potential nature and type of such damages, and Carrier specifically agrees in written or electronic form to accept responsibility for such damages. In no event shall Carrier be liable to Shipper or anyone else for punitive or exemplary damages that relate to loss, damage or delay to a shipment.

- 11. LIMITATION OF LIABILITY.** Carrier's liability for all and claims shall be limited to the amount of applicable and available insurance set forth in Section 8 above. All defenses of Carrier shall ensure also to the benefit of Carrier's employees, agents, servants and independent contractors performing any of Carrier's obligations under any contract of carriage or acting as bailee of the goods or cargo, whether sued in contract or tort, for purposes of extending COGSA's limitation of liability benefits, or for any other purpose allowed by law.
- 12. SEALED SHIPMENT.** If Shipper loads and seals the lading in or on the trailer and Carrier does not have the opportunity to count the lading being loaded and the seal is intact upon delivery, Carrier shall be absolved from any liability for shortages or any damage to the lading except when proximately caused by independent action of Carrier. Such absolution of liability will also occur if (i) the seal is broken at the direction and under the supervision of an agent of a body politic, or (ii) trailers are preloaded and the adequacy of loading or count of such trailer is not practical by a representative of Carrier. Carrier agrees that if a seal is broken and an inspection made by an agent of a body politic, its operator or other representative will take all reasonable steps to secure the count, safety, and integrity of the lading. These steps will include requesting that the body politic reseal the trailer and/or make appropriate notation on the freight documentation form. Carrier may break the seal on a trailer if, upon Carrier's determination or that of its operator or other representative, it becomes reasonably necessary to do so to inspect, reposition, or protect the lading or Carrier's equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations.
- 13. SALVAGE.** Shipper shall have a duty to mitigate all damages. Shipper will have the right reasonably to determine to repair, repackage, salvage, or scrap damaged lading. If Shipper elects to salvage lading, Shipper shall notify Carrier to return the lading to Shipper or allow Carrier to dispose of the lading. If salvage is sought, at least two independent bids shall be obtained, and the highest bid accepted. Any monies received in salvage, whether accomplished by Carrier or Shipper, will be credited, if applicable, against any amount Carrier may otherwise be responsible for in terms of the damages. Shipper may condition salvage upon the removal of all identifying marks or labels or the lading being permanently marked as "*damaged*" or with a similar notation. If Carrier is retained by Shipper to return the damaged lading for repair, salvage, or scrapping, Shipper agrees to pay Carrier freight charges otherwise provided in this Agreement, or at a negotiated rate to be reduced to writing, without prejudice to recovery of such freight charges as damages. Damaged lading will not be scrapped unless repair and/or salvage is not feasible. If Carrier salvages the lading, Carrier may bill a reasonable charge for doing so against salvage receipts.

**14. INDEMNIFICATION.**

- a. Carrier shall defend, indemnify, and hold Shipper and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Carrier or its employees or agents, or (ii) Carrier's or its employees' or agents' violation of applicable laws or regulations.
- b. Shipper shall defend, indemnify, and hold Carrier and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Shipper, its employees, or agents, or (ii) Shipper's or its employees' or agents' violation of applicable laws or regulations.
- c. In the event such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) are caused by the joint and concurrent negligence of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) shall be borne by each Party in proportion to its degree of fault.
- d. In no event shall either Party be liable to the other under this Section to the extent damages are incidental, consequential, special, punitive, or exemplary. Any indemnified party under this Section shall promptly tender the defense of any claim to the indemnifying Party. Carrier's liability for cargo damage shall be governed by Section 10 above.

- 15. LEGAL RESTRAINT.** In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the running of all periods of time mentioned herein and the performance of all obligations required herein shall be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. Carrier shall be permitted an



extension period equal to the period of suspension to complete shipments adversely affected by the suspension. No liability shall be incurred by either Party for damages resulting from such suspensions.

16. **NOTICES.** Any notice required or permitted to be given under this Agreement, unless otherwise indicated, shall be deemed sufficiently given if it is delivered by hand or sent by prepaid mail, registered or certified, return receipt requested, by a nationally recognized overnight courier, or facsimile transmission (with confirming copy sent first class mail) if sent to the address or fax number and to the attention of the individual noted in the signatory provision hereof, or by email with read receipt or delivery receipt or both.
17. **CAPTIONS.** The captions set forth in this Agreement are for convenience only and shall not be considered a part of this Agreement nor affect in any way the meaning of the terms and provisions hereof.
18. **SUCCESSORS AND ASSIGNS; Other Parties.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by either Party without the written consent of the other Party, except to any wholly-owned subsidiary of such Party and, except in the case of Carrier, an assignment in connection with the sale of substantially all of the assets of Carrier or merger by Carrier with or into another entity, or except as provided in Section 5.
19. **ENTIRE AGREEMENT.** This Agreement, the Rate Quote and Order forms promulgated by Carrier and the attached Appendices, together with Carrier's Terms and Conditions, which are expressly incorporated herein unless directly in conflict with express terms of this agreement and available to Shipper upon request, constitutes the entire agreement between the Parties hereto 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.
20. **AMENDMENTS.** No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.
21. **WAIVER.** No waiver of any right, power, or privilege hereunder shall be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.
22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.

- 23. GOVERNING LAW.** The Parties desire that the provisions of this Agreement will have precedence over any federal or state provisions governing or dealing with the specific provisions of this Agreement. The Parties agree that pursuant to 49 U.S.C. § 14101(b)(1) they expressly waive any and all rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated there under, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, et seq., (the "Acts") that are inconsistent with the provisions of this Agreement.
- 24. AGREEMENT.** No Party shall challenge any provision of this Agreement on the ground that any such provision or provisions violates the waived rights and remedies under the Acts. To the extent no conflicts exist with this Agreement or federal law, the law of the State indicated in the Shipper's address in the signatory provision hereof shall apply.
- 25. DISPUTE RESOLUTION.** Unless otherwise specified in this Agreement (for example, the specific exception for Cargo Liability claims covered by Section 10), whenever Carrier intends to assert any breach of this Agreement by Shipper, then Carrier shall provide a thirty day written notice that will clearly state the claimed violation or failure and specify the requested remedy sought by Carrier Thereafter, should Carrier and Shipper not be able to resolve the issue(s) then all parties will commit, within thirty days of the written notice, to have representatives with full authority to resolve the issue, attend a full day mediation in Houston, Texas by a qualified mediator, to resolve any dispute as a condition precedent, before any party may proceed with the filing an action in a court of law. The cost of the mediator will initially be borne equally with recovery of the cost of the mediator to possibly be recovered by agreement.
- 26. CONFIDENTIALITY.** The Parties shall keep in confidence and not disclose to any third party
- a. the terms of this Agreement, and
  - b. any confidential or proprietary information either learns about the other Party, such as, but not limited to, the rates, value, origin, destination, or consignee of any shipment made hereunder. The Parties may disclose such terms and information to the extent required by law, to obtain financing, to substitute service providers to the extent necessary to provide such substitute service, or to auditors retained for the purpose of assessing the accuracy of freight bills.
- 27. FORUM SELECTION.** This Agreement shall be subject to and governed by the applicable federal laws or the applicable laws of the State of Texas, irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The Parties agree that any and all disputes under this Agreement shall be filed in the appropriate state and federal courts located within Harris County, Texas.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by a duly authorized officer effective as of the date first above written.

**CARRIER**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

**SHIPPER**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_