

GULF WINDS MASTER TRANSPORTATION AND WAREHOUSING AGREEMENT

THIS TRANSPORTATION AND WAREHOUSING AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of _____, 20__, by and between GULF WINDS INTERNATIONAL INC, hereinafter designated as "Gulf Winds" and _____, hereinafter designated as "Customer". Gulf Winds and Customer are sometimes individually referred to herein as a "Party" and together as the "Parties."

RECITALS:

WHEREAS, Customer desires Gulf Winds to provide suitable equipment and qualified personnel to perform initial pickup and/or final delivery services of shipments between intermodal shipping ports, rail yards or designated drop yards and Gulf Winds' warehouse and the final destination and to provide warehousing and storage of cargo and shipments.

WHEREAS, Gulf Winds desires to perform motor carrier transportation, drayage and warehousing services for Customer in accordance with the terms and subject to the conditions of this Agreement;

WHEREAS, Gulf Winds warrants that it is willing and capable of and legally authorized to perform the services contemplated by this Agreement, including but not limited to any certificates or permits which may be required by the Surface Transportation Board, all other federal agencies and governmental authorities, and any state or local regulatory authorities.

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein and intending to be legally bound, the Parties agree as follows:

I.

PRIMARY TERMS AND CONDITIONS APPLICABLE TO BOTH TRANSPORTATION AND WAREHOUSING SERVICES

1. **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.
2. **2. SCOPE OF AGREEMENT AND SERVICES.**
 - a. a. Transportation and Drayage. 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 Customer under the terms of this agreement. Gulf Winds agrees to transport shipments and cargo between various intermodal shipping ports, rail yards or designated drop yards, or to and from such other points between which service may be required and Gulf Winds is legally authorized to serve. Gulf Winds shall accept said shipments and perform the drayage and transportation services in a prompt, competent and efficient manner within the generally-accepted service standards of the trucking industry.

- b. Warehousing and Storage. Gulf Winds will provide to Customer such warehouse and storage services as may reasonably be requested by or with the authority of Customer from time to time with respect to certain property, supplies, wares, merchandise and goods (the "Goods"). Gulf Winds shall provide the facilities, equipment, and trained personnel required to fulfill its obligations under this Agreement, exercise reasonable care, receive, carry, process and store the Goods tendered to it by Customer and promptly ship Goods to and from destinations designated by Customer.
- c. **3. RELATIONSHIP OF PARTIES.** As between the Parties, Gulf Winds shall have the sole and exclusive responsibility for the manner and methods in which its employees, agents and/or independent contractors perform the transportation and warehousing services hereunder. Nothing in this Agreement or otherwise shall deem Gulf Winds an employee, partner, agent, co-venturer or other ownership participant in the business or activities of Customer. Gulf Winds shall have no authority to bind Customer or its subsidiaries in any manner.

II.

TRANSPORTATION AND DRAYAGE

Sections 4 – 14 relate specifically to the transportation and drayage services only.

a. **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 Gulf Winds to Customer 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. 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.
- b. Unless specifically indicated in the Rate Quote or other writing approved by Gulf Winds, 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 our FSC is adjusted accordingly every Tuesday and will apply for that week ending the following Monday.

c. c. Customer shall pay Gulf Winds, within 30 days of the shipment date shown on the invoice, the amounts calculated in accordance with the schedule of rates and charges attached here, including any written supplements thereto, and as otherwise set forth in this Agreement. No offsets may be taken against invoiced charges. Gulf Winds shall apply Customer's payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Customer 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.

a. **5. GULF WINDS REPRESENTATIONS AND DUTIES.**

- a. Gulf Winds represents, warrants and undertakes to Customer 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 Gulf Winds provides intrastate service.
- b. Gulf Winds 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. Gulf Winds 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 Gulf Winds's operations and the provision of the Services.
- d. Gulf Winds 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 Customer's facilities and/or at, any facility or location where product shipped by Companies tendered for transportation or delivered by Gulf Winds or any of its Personnel.
- e. Gulf Winds 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 Customer or from third parties at the request of Customer, 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, Gulf Winds 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 Gulf Winds, its affiliates and its sub-contractors and all employees and representatives of Gulf Winds's affiliates and sub-contractors (if any) shall not, under any circumstances, be or be deemed to be employees of Customer. Customer shall not withhold any federal, state or local employment taxes from the fees or other charges payable to Gulf Winds, and Customer and its sub-contractors and their respective employees or other representatives (or those of its sub-contractors) shall not be covered by Customer'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 Customer.

g. Gulf Winds 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. Gulf Winds 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 Gulf Winds.

a. **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. Gulf Winds' 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 are 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. Customer shall supply freight documentation to electronic mail to 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.

a. **7. INSURANCE.** Gulf Winds shall have in place at the commencement of this Agreement, and maintain for so long as it provides the Services, at Gulf Winds'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 Customer:

a. 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.

- a. 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.
- a. 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.
- a. 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 Gulf Winds, the Customer or the owner and/or consignee for any loss, damage or delay related to any property for transportation services provided by GULF WINDS 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.
- a. 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 Gulf Winds meets all applicable federal requirements, Gulf Winds may self-insure after requesting and receiving written approval from Customer and furnishing Customer with proof of self-insurance. Upon request Gulf Winds shall provide Certificates of insurance to Customer.
- a. **8. REFUSAL OF SHIPMENT.** If the consignee refuses the cargo tendered by Gulf Winds or if Gulf Winds is unable to deliver the lading because of fault or mistake of Customer or the consignee, or if Customer advises and instructs Gulf Winds to stop movement of the lading and to hold it in transit, Gulf Winds's liability thereafter immediately shall be that of a warehouseman. The procedures which Gulf Winds 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. Gulf Winds shall (a) attempt to give Customer notice as soon as possible if the foregoing occurs, (b) place the lading in public storage, if available, unless Gulf Winds receives contrary disposition instructions from Customer within twenty-four (24) hours, and (c) if disposition instructions are not given by Customer within ten (10) days of Gulf Winds's initial notification to Customer, Gulf Winds may offer the lading for public sale. In the case of perishable lading, Gulf Winds may dispose of the lading at a time and in a manner Gulf Winds deems appropriate. Customer will be responsible for storage costs and reasonable costs Gulf Winds incurs in acting as a warehouseman. To the extent any sale or disposal revenues exceed the storage costs and the costs Gulf Winds incurs as a warehouseman, Gulf Winds shall remit the balance to Customer. If Customer gives Gulf Winds timely disposition instructions, Gulf Winds shall use any commercially reasonable steps to abide with such instructions. Customer will pay Gulf Winds's costs and any additional transportation costs Gulf Winds incurs in doing so.

9. CARGO LIABILITY.

- a. Gulf Winds shall be liable to Customer for loss or damage to lading occurring while it is in Gulf Winds'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 Customer, or the inherent vice or nature of the lading. Gulf Winds's possession of lading under this Agreement shall begin when Gulf Winds has executed the freight documentation form for such lading and shall terminate upon the lading being tendered for delivery to Customer's consignee (subject to the provisions of paragraph 9).

- b. All shipments are deemed released (and the Gulf Winds's maximum liability as limited) to a maximum value not exceeding \$100,000, unless the Customer declares a lesser value on the bill of lading or other shipping documentation, in which case Gulf Winds's liability shall not exceed said lesser value declared by Customer. If Customer so requests, the Gulf Winds 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 Customer's responsibility to properly obtain the Gulf Winds's prior signed consent and to pay appropriate excess valuation charges, which are available upon request, to compensate Gulf Winds for such increased cargo risk; otherwise, the Gulf Winds's liability shall remain at \$100,000. If Customer asserts that the value of lading on a particular shipment shall exceed this amount, Gulf Winds shall be advised twenty-four (24) hours before the time of tendering a load. Gulf Winds may refuse the load or secure additional cargo insurance in the amount of liability Customer claims, the cost of which shall be invoiced to Customer as part of freight charges. Customer also shall note any separately agreed value on the freight documentation form referenced in Section 6 above, if the freight Customer 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 Customer 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 Customer within two (2) years from the date Gulf Winds gives Customer written notice Gulf Winds 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.
 - a. 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.

 - a. e. In no event shall Gulf Winds be liable to Customer or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless Customer has informed Gulf Winds in written or electronic form, prior to or when tendering a shipment or series of shipments to Gulf Winds, of the potential nature and type of such damages, and Gulf Winds specifically agrees in written or electronic form to accept responsibility for such

damages. In no event shall Gulf Winds be liable to Customer or anyone else for punitive or exemplary damages that relate to loss, damage or delay to a shipment.

- 10. LIMITATION OF LIABILITY.** Gulf Winds'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 Gulf Winds shall ensure also to the benefit of Gulf Winds's employees, agents, servants and independent contractors performing any of Gulf Winds'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.
- 11. SEALED SHIPMENT.** If Customer loads and seals the lading in or on the trailer and Gulf Winds does not have the opportunity to count the lading being loaded and the seal is intact upon delivery, Gulf Winds shall be absolved from any liability for shortages or any damage to the lading except when proximately caused by independent action of Gulf Winds. 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 Gulf Winds. Gulf Winds 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. Gulf Winds may break the seal on a trailer if, upon Gulf Winds'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 Gulf Winds's equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations.
- 12. SALVAGE.** Customer will have the right reasonably to determine to repair, repackage, salvage, or scrap damaged lading. If Customer elects to salvage lading, Customer shall notify Gulf Winds to return the lading to Customer or allow Gulf Winds 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 Gulf Winds or Customer, will be credited, if applicable, against any amount Gulf Winds may otherwise be responsible for in terms of the damages. Customer 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 Gulf Winds is retained by Customer to return the damaged lading for repair, salvage, or scrapping, Customer agrees to pay Gulf Winds 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 Gulf Winds salvages the lading, Gulf Winds may bill a reasonable charge for doing so against salvage receipts.

13. INDEMNIFICATION.

- a. a. Gulf Winds shall defend, indemnify, and hold Customer 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 Gulf Winds or its employees or agents, or (ii) Gulf Winds's or its employees' or agents' violation of applicable laws or regulations.
 - a. b. Customer shall defend, indemnify, and hold Gulf Winds 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 Customer, its employees, or agents, or (ii) Customer's or its employees' or agents' violation of applicable laws or regulations.
 - a. 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.
 - a. 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. Gulf Winds's liability for cargo damage shall be governed by Section 9 above.
- 14. 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. Gulf Winds 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.

**III.
WAREHOUSE AND STORAGE**

Sections 15 - 33, relate specifically to the warehousing and storage services only.

15. SHIPMENTS TO AND FROM GULF WINDS. Customer agrees that all Goods shipped to Gulf Winds shall identify Customer on the bill of lading or other contract of carriage as the named consignee, in care of Gulf Winds, and shall not identify Gulf Winds as the consignee. If, in violation of this Contract, Goods are shipped to Gulf Winds as named consignee on the bill of lading or other contract of carriage, Customer agrees to immediately notify carrier in writing, with copy of such notice to Gulf Winds, that Gulf Winds named as consignee is the “in care of party” only and has no beneficial title or interest in the Goods. Customer further agrees that if it fails to notify carrier as required herein, Gulf Winds shall have the right to refuse such Goods and shall not be liable for any loss, misconsignment, injury or damage of any nature to, or related to, such Goods. In the event of a shipping error, Customer shall reimburse Gulf Winds for such error and shall pay the reasonable transportation charges incurred to return the misshipped goods. Whether Gulf Winds accepts or refuses Goods shipped in violation of this Section, Customer agrees to indemnify and hold Gulf Winds harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever.

16. TENDER AND STORAGE OF GOODS.

- a. a. All Goods shall be delivered to Gulf Winds’ Warehouse properly marked and packaged for storage and handling. The Customer shall furnish at or prior to such delivery, documentation to clearly identify the Goods tendered for storage and distribution at Gulf Winds’ Warehouse and such other information as is required for Gulf Winds to perform its duties pursuant to this Agreement, including a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired.
- a. b. Gulf Winds shall store the Goods tendered to it by Customer in accordance with instructions provided by Customer at the time the Goods are tendered to Gulf Winds or in accordance with the terms and conditions contained herein. Gulf Winds’ Warehouse Terms and Conditions attached hereto as Appendix C and incorporated herein for all purposes, shall also apply to all transportation services performed hereunder, unless those terms are flagrantly inconsistent with the specific terms set forth herein, in which case the terms of this agreement shall apply.
- a. c. Gulf Winds shall be responsible for selecting the area within its Warehouse Facility for storing the Goods and may, without notice, cost or interruption to Customer move the goods within the facility set forth to which it was original transported, but shall not, without Customer’s prior written consent, move the Goods to another Facility.

- a. d. Customer shall notify Gulf Winds of the characteristics of any of Customer's Goods that may in any way be likely to cause damage to Gulf Winds' premises or to other Goods that may be stored by Gulf Winds.
- a. e. Gulf Winds may refuse to accept any Goods that, because of infestation, contamination, or other damage may cause infestation, contamination, or other damage to Gulf Winds premises or to other Goods in the custody of Gulf Winds and Gulf Winds shall notify Customer of such refusal and shall have no liability for any demurrage, detention, transportation or other charges by virtue of such refusal.

17. STORAGE PERIOD AND CHARGES. Unless otherwise agreed in writing, all charges for storage are for the time periods, the storage of goods, and the amounts, fees and charges as reflected on the Rate Quote on a load by load basis, or the Rate Sheet, attached hereto as Appendix "A."
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18. RECEIPT OF GOODS.

- a. Gulf Winds shall issue a sign a Warehouse Receipt, for each shipment tendered to it. A signature may be by an electronic acknowledgement, unless either party expressly requires otherwise.
- b. Upon delivery of each shipment, Gulf Winds shall obtain a receipt from the consignee, in a form acceptable to Customer, showing the Goods delivered, the condition of such Goods, and the date and time of delivery.

19. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS.

- a. a. Instructions to transfer Goods on the books of Gulf Winds are not effective until such written instructions are delivered to and accepted by Gulf Winds, and all charges up to the time transfer is made are chargeable to the Customer. If a transfer involves rehandling the Goods, such will be subject to a charge. When Goods in storage are transferred from one party to another through issuance of a new Gulf Winds receipt, a new storage date is established on the date of transfer.
- b. b. Gulf Winds reserves the right to move, at its expense, 14 days after notice is sent by certified mail or overnight delivery to the Customer, any Goods in storage from the Facility in which they may be stored to any other of Gulf Winds' Facilities. Gulf Winds will store the Goods at, and may without notice move the Goods within and between, any one or more of Gulf Winds buildings which comprise the Warehouse Facility identified on the front of the Warehouse Receipt.
- c. c. Gulf Winds may, upon written notice of not less than 30 days to the Customer and any other person known by Gulf Winds to claim an interest in the Goods, require the removal of any Goods by the end of the next succeeding storage month. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of next succeeding storage month the Gulf Winds may sell them in accordance with applicable law.

- d. d. If Gulf Winds in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Gulf Winds's lien before the end of the next succeeding storage month Gulf Winds may specify in the notification any reasonable shorter time for removal of the Goods and if the Goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.
- e. e. If as a result of a quality or condition of the Goods of which Gulf Winds had no notice at the time of deposit the Goods are a hazard to other property or to the Facility or to persons, Gulf Winds may sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods. If Gulf Winds after a reasonable effort is unable to sell the Goods it may dispose of them in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale or return of the Goods, Gulf Winds may remove the Goods from the Facility and shall incur no liability by reason of such removal.

20. HANDLING.

- a. The handling charge covers the ordinary labor involved in receiving Goods at Gulf Winds door, placing Goods in storage, and returning Goods to Gulf Winds door. Handling charges are due and payable on receipt of Goods.
- b. Unless otherwise agreed in writing, labor for unloading and loading Goods will be subject to a charge. Additional expenses incurred by Gulf Winds in receiving and handling damaged Goods, and additional expense in unloading from or loading into cars or other vehicles not at Gulf Winds door will be charged to the Customer.
- c. Labor and materials used in loading rail cars or other vehicles are chargeable to the Customer.
- d. When Goods are ordered out in quantities less than in which received, Gulf Winds may make an additional charge for each order or each item of an order.
- e. Gulf Winds shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, or any delays in obtaining and loading cars, trailers or other containers for outbound shipment unless Gulf Winds has failed to exercise reasonable care.

21. DELIVERY REQUIREMENTS.

- a. No Goods shall be delivered or transferred except upon receipt by Gulf Winds of Customer's complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, E-Mail or similar communication, provided Gulf Winds has no liability when relying on the information contained in the communication as received. Goods may be delivered upon instruction by telephone in accordance with Customer's prior written authorization, but Gulf Winds shall not be responsible for loss or error occasioned thereby.
- b. When a negotiable receipt has been issued, no Goods covered by that receipt shall be delivered, or transferred on Gulf Winds' books, unless the receipt, properly endorsed, is

surrendered for cancellation or for endorsement of partial delivery thereon. If a negotiable receipt is lost or destroyed, delivery of Goods may be made only upon order of a court of competent jurisdiction and the posting of security as provided by law.

- c. When Goods are ordered out a reasonable time shall be given Gulf Winds to carry out instructions, and if it is unable because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots or civil commotions, or any reason beyond Gulf Winds's control, or because of loss of or damage to Goods for which Gulf Winds is not liable, or because of any other excuse provided by law, Gulf Winds shall not be liable for failure to carry out such instructions and Goods remaining in storage will continue to be subject to regular storage charges.

22. RATES AND CHARGES.

- a. Rates shall be as quoted on a load by load basis, or as reflected on Appendix "A" attached, which is the Rate Sheet which contains the scheduled rates and charges (and related terms and conditions) applicable during the first annual term of this agreement. Changes to the rate agreement pertaining to specific loads may be made as needed and confirmed in writing. 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.
- b. A minimum handling charge per lot and a minimum storage charge per lot per month will be made. When a Gulf Winds receipt covers more than one lot or when a lot is in assortment, a minimum charge per mark, brand, or variety will be made.
- c. A minimum monthly charge to one account for storage and/or handling will be made. This charge will apply also to each account when one customer has several accounts, each requiring separate records and billing

23. EXTRA SERVICES (SPECIAL SERVICES).

- a. Gulf Winds labor required for services other than ordinary handling and storage will be charged to the Customer.
- b. Special services requested by Customer including but not limited to compiling of special stock statements; reporting marked weights, serial numbers or other data from packages; physical check of Goods; and handling transit billing will be subject to a charge.
- c. Dunnage, bracing, packing materials or other special supplies, may be provided for the Customer at a charge in addition to Gulf Winds' cost.
- d. By prior arrangement, Goods may be received or delivered during other than usual business hours, subject to a charge.
- e. Communication expense including postage, overnight delivery, or telephone may be charged to the Customer if such concern more than normal inventory reporting or if, at the request of the Customer, communications are made by other than regular United States Mail.

24. BONDED STORAGE .

- a. A charge in addition to regular rates will be made for merchandise in bond.
- b. Where a Gulf Winds receipt covers Goods in U.S. Customs bond, Gulf Winds shall have no liability for Goods seized or removed by U.S. Customs.

25. LIABILITY AND LIMITATION OF DAMAGES

- a. GULF WINDS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED OR HANDLED HOWEVER CAUSED UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY GULF WINDS TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND GULF WINDS IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.
- b. GULF WINDS CARRIES NO INSURANCE POLICY WHICH IS AVAILABLE TO COVER ANY CLAIMS RELATED TO LOSS OR DAMAGE HOWEVER CAUSED.
- c. THE CUSTOMER DECLARES THAT DAMAGES ARE LIMITED TO \$0.10 PER POUND, PROVIDED, HOWEVER, THAT SUCH LIABILITY MAY AT THE TIME OF ACCEPTANCE OF THIS CONTRACT BE INCREASED UPON CUSTOMER'S WRITTEN REQUEST ON PART OR ALL OF THE GOODS HEREUNDER IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.
- d. WHERE LOSS OR DAMAGE OCCURS TO TENDERED, STORED OR HANDLED GOODS, FOR WHICH GULF WINDS IS NOT LIABLE, THE CUSTOMER SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR DAMAGE TO THE GOODS.

26. NOTICE OF CLAIM AND FILING OF SUIT

- a. Claims by the Customer and all other persons must be presented in writing to Gulf Winds within a reasonable time, and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by Gulf Winds or (ii) 60 days after Customer is notified by Gulf Winds that loss or damage to part or all of the Goods has occurred.
- b. No lawsuit or other action may be maintained by the Customer or others against Gulf Winds for loss or damage to the Goods unless timely written claim has been given as provided in paragraph (a) of this section and unless such lawsuit or other action is commenced by no later than the earlier of: (i) nine months after date of delivery by Gulf Winds or (ii) nine months after Customer is notified that loss or damage to part or all of the Goods has occurred.
- c. When Goods have not been delivered, notice may be given of known loss or damage to the Goods by mailing of a letter via certified mail or overnight delivery to the Customer. Time limitations for presentation of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by Gulf Winds.

27. LIABILITY FOR CONSEQUENTIAL DAMAGES

- a. Gulf Winds shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

28. LIABILITY FOR MISSHIPMENT

- a. If Gulf Winds negligently misships Goods, Gulf Winds shall pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility. If the consignee fails to return the Goods, Gulf Winds's maximum liability shall be for the lost or damaged Goods as specified in Section 13 above, and Gulf Winds shall have no liability for damages due to the consignee's acceptance or use of the Goods whether such Goods be those of the Customer or another.

29. MYSTERIOUS DISAPPEARANCE

- a. Gulf Winds shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Customer establishes such loss occurred because of Gulf Winds' failure to exercise the care required of Gulf Winds under Section 13 above, and then Gulf Winds's maximum liability shall be for the lost Goods as specified in Section 13 above. Any presumption of conversion imposed by law shall not apply to such loss and a claim by Customer of conversion must be established by affirmative evidence that Gulf Winds converted the Goods to Gulf Winds' own use.

30. RIGHT TO STORE GOODS

- a. Customer represents and warrants that Customer is lawfully possessed of the Goods and has the right and authority to store them with Gulf Winds. Customer agrees to indemnify and hold harmless Gulf Winds from all loss, cost and expense (including reasonable attorneys' fees) which Gulf Winds pays or incurs as a result of any dispute or litigation, whether instituted by Gulf Winds or others, respecting Customer's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Gulf Winds' lien.

31. ACCURATE INFORMATION

- a. Customer will provide Gulf Winds with information concerning the Goods which is accurate, complete and sufficient to allow Gulf Winds to comply with all laws and regulations concerning the storage, handling and transporting of the Goods. Customer will indemnify and hold Gulf Winds harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Gulf Winds pays or incurs as a result of Customer failing to fully discharge this obligation.

32. SEVERABILITY AND WAIVER

- a. If any provision of this Contract, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provision of this Contract shall not be affected thereby but shall remain in full force and effect.
- b. Gulf Winds' failure to require strict compliance with any provision of this Contract shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Contract.

- c. The provisions of this Contract shall be binding upon the heirs, executors, successors and assigns of both Customer and Gulf Winds; contain the sole agreement governing Goods tendered to Gulf Winds; and, cannot be modified except by a writing signed by Gulf Winds and Customer.

33. LIEN

a. Gulf Winds shall have a general Gulf Winds lien for all lawful charges for storage and preservation of the Goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Gulf Winds further claims a general Gulf Winds lien for all such charges, advances and expenses with respect to any other Goods stored by the Customer in any other facility owned or operated by Gulf Winds. In order to protect its lien, Gulf Winds reserves the right to require advance payment of all charges prior to shipment of Goods.

IV.

ADDITIONAL PROVISIONS OF AGREEMENT

- 34. 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.
- 35. 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.
- 36. 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 Gulf Winds, an assignment in connection with the sale of substantially all of the assets of Gulf Winds or merger by Gulf Winds with or into another entity, or except as provided in Section 5.
- 37. ENTIRE AGREEMENT.** This Agreement and the attached Appendices 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.
- 38. AMENDMENTS.** No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.

- 39. 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.
- 40. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
- 41. 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.
- 42. 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 Customer's address in the signatory provision hereof shall apply.
- 43. DISPUTE RESOLUTION.** Unless otherwise specified in this Agreement (for example, the specific exception for Cargo Liability claims covered by Section 10), whenever Gulf Winds intends to assert any breach of this Agreement by Customer, then Gulf Winds shall provide a thirty day written notice that will clearly state the claimed violation or failure and specify the requested remedy sought by Gulf Winds Thereafter, should Gulf Winds and Customer 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.
- 44. 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.
- 45. 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.

GULF WINDS:

GULF WINDS:

GULF WINDS INTERNATIONAL, INC.

Signature _____

Signature

Printed Name: _____

Printed

Name:

Title: _____

Title:

APPENDIX A Schedule of Payment for Drayage Services

Gulf Winds agrees to pay Gulf Winds for drayage services provided under this contract according to the Schedule(s) outlined below, unless there is a separate agreed-upon rate. On any agreed-upon rate, Gulf Winds will fax to the Gulf Winds a confirmation of the agreed-upon rate prior to pick-up of the individual load. Such confirmation shall be properly signed and dated by authorized representatives of both parties, and attached hereto as an addendum.

GULF WINDS:

GULF WINDS:

GULF WINDS INTERNATIONAL, INC.

Signature _____

Signature

Printed Name: _____

Printed

Name:

Title: _____

Title: