

Freight Forwarding Agreement

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A freight forwarding agreement between a freight forwarder and a shipper requesting freight forwarding services. This Standard Document has integrated notes with important explanations and drafting and negotiating tips for both parties.

READ THIS BEFORE USING DOCUMENT

Scope of Standard Document

This Standard Document is an agreement between a freight forwarder and a customer requesting freight forwarding services (shipper).

A freight forwarder, or a forwarder or forwarding agent, is an expert in logistics management that organizes shipments on behalf of shippers. Freight forwarders are not carriers and do not take possession of the goods. Rather, a shipper who may not be able to negotiate favorable terms directly with carriers engages a forwarder to coordinate all aspects of the transportation of goods. The forwarder contracts with carriers and other logistics providers on behalf of the shipper based on a consolidated price quote obtained by the freight forwarder, which includes the transportation costs charged by the carriers.

For more information on the roles of other key participants in the supply chain, including carriers, see [Practice Note, Supply Chain Overview](#).

This Standard Document is a non-exclusive agreement drafted from the perspective of the forwarder, but aims to be reasonable to reduce the time and expense it takes to get to the final version. The drafting notes contain commentary from the perspective of each party.

Assumptions

This Standard Document assumes that:

- **The forwarder arranges the domestic truck transportation of goods.** The parties must revise this agreement if they contemplate the international transportation of goods involving ocean, air, or multimodal transportation, which is considerably more complicated. For more information about international freight forwarders, see [Practice Note, Logistics: Freight Forwarding: International Freight Forwarders](#).
- **The terms are being used in a business-to-business transaction.** These provisions should not be used for providing freight forwarding services to individual consumers, which may involve legal and regulatory requirements and practical considerations that are beyond the scope of this resource.
- **The parties to the agreement are US entities and the transportation takes place in the US.** If any party is organized or operates in, or any part of the transportation takes place in a foreign jurisdiction, these terms may need to be modified to comply with applicable laws in the relevant foreign jurisdiction.
- **These terms are not industry-specific.** This Standard Document does not account for any industry-specific laws, rules, regulations, or standard practices that may apply in certain industries.

Bracketed Items

Bracketed items in ALL CAPS should be completed with the facts of the transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices, to be selected, added, or deleted at the drafter's discretion.

Freight Forwarding Agreement

This Freight Forwarding Agreement, dated as of [DATE] (this "**Agreement**"), is entered into between [FORWARDER NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] ("**Forwarder**"), and [SHIPPER NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] ("**Shipper**"), and together with Forwarder, the "**Parties**", and each, a "**Party**".

WHEREAS, Forwarder is a domestic freight forwarder licensed by the Federal Motor Carrier Safety Administration ("**FMCSA**") (Docket Number [NUMBER]) and by appropriate state agencies, and as a licensed forwarder, arranges for the transportation of goods;

WHEREAS, Shipper desires to engage Forwarder to arrange for transportation of Shipper's freight; and

WHEREAS, Forwarder is willing to provide domestic freight forwarding services to Shipper pursuant to the terms and conditions set forth herein.

RECITALS

While not legally required, recitals are used to provide information about the basic background and purpose of the agreement. In this agreement, the recitals provide only a general description of the parties and the services to be provided. The parties can supplement or revise these recitals to include additional information that may be helpful to understand the agreement between the parties.

When drafting recitals, the parties should draft them in a way that avoids ambiguity. For example, the parties should not include any language in the recitals that adds legally binding obligations or contradicts the wording contained in any operative provision of the contract. However, if the parties include any language in the recitals that adds legally binding obligations, the parties must incorporate the recitals into the agreement by reference.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Freight Forwarding Services.

1.1 Services. Forwarder agrees to arrange for transportation of Shipper's freight pursuant to the terms and conditions of this Agreement. Forwarder's responsibility under this Agreement shall be limited to arranging with third-party carriers to transport Shipper's freight; Forwarder will not be responsible for the actual transportation of the freight and, unless expressly set forth in this Agreement, will not be deemed a carrier of the freight. The Parties may, upon written mutual agreement, include additional service terms to be attached as Exhibit A. In the absence of a written agreement to the contrary, transit time shall be established as reasonable dispatch. For each shipment, Shipper shall be responsible to Forwarder for timely and accurate delivery instructions, accurate description of the freight to be shipped, and any special handling requirements.

SERVICES

The main service provided by a freight forwarder is to arrange contracts with third-party carriers such as trucking companies on behalf of the shipper and reserve the necessary space on a truck or other mode of transport. Freight forwarders also provide other services, including:

- Rendering advice on packing methods.
- Assisting with filing freight claims for lost or damaged goods.
- Arranging to have the goods:
 - packed for shipment; and

- placed in containers.
- Providing information about hazardous materials shipping compliance.
- Preparing all documents on behalf of a carrier including, for example, the bill of lading.
- After shipment, routing the documents to the shipper, the consignee, or to a paying or other bank, as appropriate.

This Standard Document contemplates the provision of freight forwarding services for the domestic transportation of goods. International freight forwarding services entail a variety of additional services, including working with shippers to:

- Review all documents prepared by the shipper to ensure compliance with letter of credit payment terms in an international sale of goods transaction using a letter of credit (see [Practice Note, Commercial Letters of Credit](#)).
- Process all documents related to foreign trade.
- Assist the shipper in export control compliance, including obtaining export control licenses (see [Practice Notes, Export Regulations: EAR, ITAR, and FTR](#) and [Export Regulation: OFAC Economic and Trade Sanctions](#)).

International freight forwarders must also coordinate the various activities of the various participants in international logistics, including:

- Ocean freight, air cargo, and other international carriers.
- Custom brokers, who arrange for the payment of [tariffs](#) on imported goods and help to clear goods through customs barriers in the destination country (see [Practice Note, US and International Regulation of Tariffs](#)).
- Marine terminal operators (MTOs), who provide wharfage, dock, warehouse, and other marine terminal facilities to ocean freight carriers moving cargo in US foreign commerce. MTOs include:
 - public port authorities that own and maintain and sometimes directly operate the marine terminal facilities; and
 - private terminal operators that lease terminals from a public port authority and operate the leased terminals as a private business.
- Non-vessel-operating common carriers, who are common carriers that hold themselves out to the public to provide ocean transportation services and issue their own bills of lading, but are middlemen who do not operate the vessels by which ocean transportation services are provided.

1.2 **Non-exclusivity.** The parties agree that this is a non-exclusive agreement. Except as otherwise provided in this Agreement, Shipper is not restricted from engaging the services of other forwarders, brokers, or engaging directly with carriers. Forwarder is not restricted from providing freight forwarding services for other parties.

1.3 **Freight Carriage.** Forwarder shall enter into written contracts with each carrier it engages in the performance of this Agreement in form and substance substantially similar to the form of transportation agreement attached hereto as Exhibit B. Forwarder shall be deemed the originating carrier on all shipments transported under this Agreement, even if Forwarder is not listed on the bill of lading.

1.4 **Bills of Lading.** Forwarder shall, within [NUMBER] days of Shipper's request, provide Shipper with proof of acceptance and delivery of goods in the form of a signed bill of lading. The bill of lading will act as a receipt only and any terms, conditions, or provisions contained in, or referenced by, any freight documentation used by Forwarder or a carrier selected by Forwarder shall not apply to the transportation subject to this Agreement or supplement, alter, or modify the terms of this Agreement.

BILLS OF LADING

A bill of lading is a [Uniform Commercial Code](#) (UCC) document of title that performs several functions. For example, a bill of lading:

- Is a receipt that provides the shipper or consignor with evidence that the goods were delivered to the specified carrier (acting as the bailee entrusted to safeguard the goods while providing transportation services on behalf of the shipper or consignor) through which the goods have been placed on their way to the consignee.
- Is a short-form contract that states the terms and conditions under which the carrier agrees to transport the goods.

- Ordinarily entitles the person finally possessing the bill of lading, which is typically the consignee, to receive the goods, after the goods reach their destination.

The carrier, or in this case, the forwarder who acts as the agent for the carrier, issues the bill of lading by signing and sending it to the shipper. The shipper then typically mails the bill of lading to the consignee or its agent, which entitles the consignee to receive the goods at the destination.

For more information about bills of lading, see [Practice Note, Bills of Lading](#). For more information about documents of title generally, see [Practice Note, Documents of Title](#).

1.5 Hazardous Materials. Forwarder is not in the business of arranging for transportation of hazardous materials, and Shipper acknowledges that Forwarder's acceptance of any hazardous shipment is unintended. Without limiting the foregoing, Shipper shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that goods in any shipments constitute hazardous materials. Shipper shall notify Forwarder immediately if any such shipments contain hazardous materials. Shipper shall defend and indemnify, and hold harmless, Forwarder from any liability, loss, damage, or penalties of any kind (including reasonable attorney fees) resulting from Shipper's (a) failure to notify Forwarder of any shipments containing hazardous materials, and (b) any failure by Shipper to comply with all applicable hazardous materials laws and regulations.

2. Price and Payment. Forwarder's fees for providing freight forwarding services shall be based on the rates set forth in [Exhibit A, as it may be modified from time to time by agreement of the Parties/Forwarder's price list in effect from time to time] (the "**Fee(s)**").

Promptly after each shipment, Forwarder shall invoice Shipper for its Fees, including the freight and other charges imposed by the carrier for such shipment. Shipper shall pay Forwarder's invoice within [NUMBER] days after the invoice date except for any amounts disputed by Shipper in good faith. All payments hereunder must be in US dollars and made by [METHOD OF PAYMENT]. Shipper shall pay interest on all late payments at the lesser of the rate of [PERCENT] per month or the highest rate permissible under applicable Law, calculated and compounded daily from the date due until paid in full. Shipper shall also reimburse Forwarder for all [reasonable] costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees; provided that Forwarder shall be responsible for all costs incurred by Forwarder in connection with any fees successfully disputed by Shipper. [Upon Forwarder's receipt of payment from Shipper, Forwarder will pay the carrier's freight charges in accordance with Exhibit B, or if no payment terms have been established, Forwarder will pay the carrier's freight charges within [NUMBER] days after receipt of payment by Shipper.] Payment of the applicable carrier's freight charges to Forwarder shall relieve Shipper, consignee, or other responsible Party of any liability to the carrier for non-payment of its freight charges; provided, however, Shipper shall have no right to withhold payments to Forwarder for freight charges that have been audited and approved for payment by Forwarder.

PRICE AND PAYMENT

There are many ways to set the fee for the freight forwarding services. [Section 2](#) provides that the parties have the option to either:

- Negotiate the prices of the applicable services and list them in an exhibit.
- Set prices based on the forwarder's then-current price list, which allows the forwarder to unilaterally increase its prices from time to time by changing its price list.

The forwarder's fee typically includes:

- Freight charges of the carrier, which the forwarder undertakes to pay on behalf of the shipper.
- Port charges.
- Costs of special records.
- Insurance costs.
- Handling fees.

The shipper can increase its control over pricing by negotiating:

- An objective price adjustment mechanism.
- A clause that makes any price increase subject to the shipper's prior written consent.

- The right to use another forwarder (due to the nonexclusive nature of this agreement) if it does not agree with a unilaterally imposed price increase by the forwarder.

Some freight forwarding agreement forms contain the shipper's:

- Acknowledgement that the carrier may look solely to the shipper for payment of any freight charges to be paid by the forwarder on behalf of the shipper to the carrier.
- Undertaking to indemnify, release, and hold harmless the forwarder from and against any and all claims that the carrier may bring against the forwarder for payment of those charges.

This Standard Document, however, does not contain the above language because it introduces:

- Rights and obligations of potential carriers that may be best left to the agreements that the forwarder arranges with the carriers.
- Potential inconsistency with [Section 8.1](#), which, if drafted as a mutual or unilateral provision (requiring only the shipper to indemnify), will also require the shipper to indemnify the forwarder for third-party claims by the carrier against the forwarder.

3. **Compliance with Laws.** Shipper shall comply with all government requirements pertaining to the freight, including all applicable regulation of Federal, state, and local agencies that apply to the freight. Forwarder shall not be responsible for any liabilities, fines, or penalties resulting from the Shipper's failure to comply with the legal or regulatory requirements of any governmental agency or with a notification issued to the Shipper by any governmental agency. Forwarder shall comply with all laws applicable to this Agreement and its obligations under this Agreement, including Forwarder's provision of freight forwarding services [except to the extent that failure to comply therewith [could/would] not (a) impose any cost, expense, or other liability on Shipper, or (b), in the aggregate, reasonably be expected to have a material adverse effect on Forwarder's ability to comply with its obligations under this Agreement]. Without limiting the generality of the foregoing, Forwarder shall at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the freight forwarding services, including those required by the FMCSA.

COMPLIANCE WITH LAWS

Freight forwarders are subject to regulation by the Federal Motor Carrier Safety Administration (FMCSA), which monitors and ensures compliance with motor carrier safety and commercial regulations. [Section 3](#) contains the forwarder's covenant that it will comply with FMCSA registration requirements for both safety and operating authority, including the obligation to obtain a Department of Transportation identification number (USDOT Number).

While the forwarder is legally bound by regulation to comply with FMCSA requirements, the shipper prefers to add the covenant because the forwarder's breach of the covenant supports the shipper's cause of action for breach of contract. The forwarder can include the bracketed language to limit the covenant to the extent that non-compliance could or would reasonably be expected to have a significant impact on its business or its ability to perform the Agreement. It can further restrict the scope of this covenant by limiting non-compliance to something that will definitely have an effect or is likely to have an effect, instead of something that merely may have an effect (primarily by using would instead of could). The forwarder can also limit its liability by expressly stating that it is not responsible for compliance with laws by the applicable carrier.

For more information about drafting and negotiating compliance with laws provisions generally, see [Standard Clauses, General Contract Clauses: Compliance with Laws](#).

4. **Relationship of the Parties; Solicitation of Carriers by Shipper.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement. [Notwithstanding anything in this Agreement to the contrary, Shipper agrees that it will not solicit carrier services from any carrier that (a) first became known to Shipper as a result of Forwarder's services and related correspondence; or (b) where Shipper's freight was first transported by a carrier in connection with services provided by Forwarder. If Shipper breaches this agreement and contracts directly with such a carrier for the transportation of its freight, Forwarder shall be entitled to the fees from Shipper set forth in this Agreement as if Forwarder provided its services in connection with such freight for a period of

[eighteen (18) months] after Shipper first contracts directly with carrier for shipment of its freight. This provision shall survive the termination of this Agreement for a period of [twenty-four (24) months].]

RELATIONSHIP OF THE PARTIES; SOLICITATION OF CARRIERS BY SHIPPER

[Section 4](#) minimizes the risk of creating an unwanted business relationship between the parties. Creating a relationship other than one between independent contractors may:

- Have undesirable tax consequences.
- Result in one party being bound by the other party in relation to third parties.
- Render a party liable for the acts and omissions of the other party.
- Create fiduciary duties to each other, if the parties are deemed to be partners.

Section 4 adds a provision (the next to last sentence) that aims to prohibit the shipper from bypassing the forwarder and contracting directly with the carrier for the specified period of time (for example, 24 months) and if it does, then the forwarder is entitled to its fees for another specified period of time, as if it had not been bypassed (for example, 18 months).

5. Term; Termination.

5.1 Term. Unless earlier terminated pursuant to [Section 5.1](#), this Agreement shall have an initial term of one (1) year commencing on [DATE] and shall automatically renew for successive one year periods, unless either Party provides the other Party written notice of its intention not to renew this Agreement at least [sixty (60)/[OTHER NUMBER]] days prior to the end of the initial or any subsequent renewal period.

TERM

[Section 5.1](#) provides for an initial term of one year and automatic renewal (evergreen) for additional consecutive periods with an option to cancel by providing advance notice (also known as semi-automatic renewal). Depending on the scope of agreement and the time it may take for a shipper to find an alternative forwarder, the shipper may want to limit the ability of the forwarder to terminate the agreement or provide for a longer notice period for termination. For more information on semi-automatic renewal, its benefits and drafting and negotiating tips for both parties, see [Standard Clauses, General Contract Clauses: Term and Termination: Section 1.2](#).

5.2 Termination.

(a) In addition to any remedies that may be provided under this Agreement, Forwarder may terminate this Agreement with immediate effect upon written notice to Shipper if Shipper fails to pay any amount when due under this Agreement [and such failure continues for [NUMBER] days after Shipper's receipt of written notice from Forwarder stating with specificity the nonpayment] or if Shipper has not performed or complied with any of the other terms or conditions of this Agreement, in whole or in part [and either the breach cannot be cured or, if the breach can be cured, it is not cured by Shipper within [NUMBER] days after Shipper's receipt of written notice from Forwarder of such breach]. If Shipper becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Forwarder may terminate this Agreement upon written notice to Shipper.

(b) In addition to any remedies that may be provided under this Agreement, Shipper may terminate this Agreement with immediate effect upon written notice to Forwarder if Forwarder has not performed or complied with any of the terms and conditions of this Agreement, in whole or in part [and either the breach cannot be cured or, if the breach can be cured, it is not cured by Forwarder within [NUMBER] days after Forwarder's receipt of written notice from Shipper of such breach]. If Forwarder becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Shipper may terminate this Agreement upon written notice to Forwarder. If a Force Majeure Event affecting Forwarder's performance of this Agreement continues for more than [NUMBER] [consecutive] [days/business days], then Shipper may terminate this Agreement upon written notice to Forwarder.

TERMINATION

[Section 5.2](#) is a mutual provision that gives either party the right to terminate if the other party breaches the agreement.

To mitigate the termination rights, the parties can:

- Include the right to cure a breach by adding the bracketed language in [Section 5.2\(a\)](#) and [Section 5.2\(b\)](#) as a condition to the non-breaching party's right to terminate.
- Negotiate to include materiality qualifications in this provision. For more information on materiality and other qualifiers, see [Practice Note, Representations, Warranties, Covenants, Rights, and Conditions: Limiting the Scope and Effect of Covenants and Rights](#).

This Standard Document does not include either party's right to terminate for convenience. If either party desires to negotiate the right to terminate for convenience, it should expect the other party to negotiate the:

- Reciprocal right to terminate for convenience.
- The terminating party's payment of a termination fee.

For more information about drafting and negotiating termination for convenience provisions, see [Standard Clauses, General Contract Clauses: Term and Termination: Section 1.3\(a\)](#).

Termination for Insolvency

[Section 5.2](#) also gives either party the right to terminate the agreement due to the other party's bankruptcy, insolvency, or financial distress. Although a clause allowing a party to terminate an agreement due to the other party's bankruptcy or insolvency (also referred to as an [ipso facto clause](#)) is generally unenforceable against a debtor during its bankruptcy, this clause should still be included in contracts because it can be triggered by events outside of bankruptcy (such as the inability to pay debts as they become due or making a general assignment for the benefit of creditors). Without this clause, none of these events are grounds to terminate the agreement. The clause is also enforceable again once the bankruptcy case is closed.

Consider whether any other event should trigger a termination, including:

- A breach by either party and termination of any other contract between the parties.
- The change of control of either party.

For more information on drafting and negotiating termination clauses, see [Standard Clauses, General Contract Clauses: Term and Termination](#). For a sample pro-buyer, termination clause in a long-form sale of goods agreement, see [Standard Document, Sale of Goods Agreement \(Pro-Buyer\): Section 10.03](#). For a sample pro-seller, termination clause in a long-form sale of goods agreement, see [Standard Document, Sale of Goods Agreement \(Pro-Seller\): Section 11.03](#).

5.3 Effect of Termination.

(a) Expiration or termination of the Term will not affect any rights or obligations of the Parties that:

- (i) come into effect on or after expiration or earlier termination of this Agreement; or
- (ii) otherwise survive the expiration or earlier termination of this Agreement under [Section 11.3](#) and were incurred by the Parties prior to such expiration or earlier termination.

(b) Upon the expiration or earlier termination of this Agreement, all amounts owed by Shipper to Forwarder under this Agreement[, any other agreement or otherwise,] of any kind, shall become immediately due and payable to Forwarder, without further notice to Shipper.

ACCELERATION OF INDEBTEDNESS

[Section 5.3\(b\)](#) provides that, on expiration or termination for any reason, all indebtedness of the shipper to the forwarder (either under this agreement or under any other agreement if the bracketed language is included) becomes immediately due and payable. The

shipper negotiates to limit acceleration to situations where the forwarder terminates for cause, but not to situations where:

- The agreement term expires in the normal course.
- The shipper terminates for cause.

(c) Any notice of termination under this Agreement automatically operates as a cancellation of any shipments that are scheduled to be picked-up after the effective date of termination. Regarding any shipments that are still in transit at the time of termination of this Agreement, Forwarder may require, in its sole and absolute discretion, that all deliveries of such shipments be made on either a cash in advance or certified check basis.

(d) [Shipper/Each Party] shall promptly:

- (i) [return to [Forwarder/the other Party]/destroy] all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on [Forwarder's/the other Party's] Confidential Information;
- (ii) permanently erase all of [Forwarder's/the other Party's] Confidential Information from its computer systems[, except for copies that are maintained as archive copies on its disaster recovery or information technology backup systems. [Shipper/Each Party] shall destroy any copies on the normal expiration of its backup files]; and
- (iii) certify in writing to [Forwarder/the other Party] that it has complied with the requirements of this [Section 5.3\(d\)](#).

RETURN OF CONFIDENTIAL INFORMATION

While the confidentiality section ([Section 6](#)) in this agreement can be drafted to be either unilateral or mutual, [Section 5.3\(d\)\(iii\)](#) can be drafted to favor the forwarder and require only the shipper to return or destroy confidential information on termination or earlier expiration of the agreement.

For more information on returning or destroying confidential information, see [Standard Clauses, General Contract Clauses: Confidentiality \(Long Form\): Drafting Note: Return or Destruction of Confidential Information \(Optional Provision\)](#).

6. Confidentiality.

6.1 Scope of Confidential Information. From time to time during the term of this Agreement, [Forwarder/Shipper/either Party] (as the "**Disclosing Party**") may disclose or make available to [Shipper/Forwarder/the other Party] (as the "**Receiving Party**") information about its business affairs, goods and services, forecasts, confidential information and materials comprising or relating to intellectual property rights, trade secrets, third-party confidential information, and other sensitive, competitive, or proprietary information. Such information, [as well as the [existence and] terms of this Agreement,] whether orally, written, by demonstration, or otherwise, in electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" constitutes "**Confidential Information**" hereunder. Notwithstanding the foregoing, Confidential Information does not include information that, at the time of disclosure [and as established by documentary evidence]:

- (a) Is or becomes generally available to and known by the public other than resulting, directly or indirectly, from any breach of this [Section 6](#) by the Receiving Party or any of its representatives.
- (b) Is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that the third party is not and was not prohibited from disclosing the Confidential Information.
- (c) Was known by or in the possession of the Receiving Party or its representatives before being disclosed by or on behalf of the Disclosing Party.
- (d) Was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.
- (e) Must be disclosed under applicable law.

6.2 Protection of Confidential Information. The Receiving Party shall[, for [NUMBER] [years/months]] from [receipt/disclosure] of the Confidential Information:

(a) Protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care.

(b) Not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement.

(c) Not disclose any of the Confidential Information to any Person, except to the Receiving Party's representatives who must know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party shall be responsible for any breach of this [Section 6](#) caused by any of its directors, officers, employees, agents, and representatives. [[On the expiration or earlier termination of this Agreement/At any time during or after the Term, at the Disclosing Party's written request], the Receiving Party and its representatives shall, pursuant to [Section 5.3\(d\)](#), promptly [return/destroy] all Confidential Information (including copies) and all documents and tangible materials that contain, reflect, incorporate or are based on Confidential Information received under this Agreement.]

CONFIDENTIALITY

This confidentiality provision allows for confidentiality obligations to apply to one or both parties. The definition of confidential information is party-neutral and relatively broad in scope. If the seller is sensitive to disclosure of competitive prices and pricing terms, it should include the optional bracketed language in [Section 6.1\(a\)](#) that deems confidential the terms of the agreement. This provision can be revised to reflect the particular circumstances of the transaction, as well as the parties' respective negotiation positions. For more information about drafting and negotiating confidentiality provisions, see [Standard Clauses, General Contract Clauses: Confidentiality \(Long Form\)](#).

7. Warranties.

WARRANTIES

Article 2 of the UCC, including its provisions dealing with warranties, generally applies only to the sale of goods. However, some courts have applied Article 2 principles to services contracts in certain circumstances, including:

- The scope of any express warranties.
- The imposition of implied warranties.
- The effectiveness of any disclaimer to limit the scope of any express or implied warranties.

For example, under [Section 2-313 of the UCC](#), a seller of goods provides an express warranty if it makes a representation or covenant that becomes part of the basis of the bargain, whether provided:

- In writing (including any description of the goods contained in the agreement).
- Orally.
- In the form of a sample or model.

Therefore, like a seller of goods, a supplier of freight forwarding services should:

- Limit express warranties to specific language stated in the contract.
- Disclaim all other warranties, including:
 - any express warranties that are not expressly stated in the agreement, including any guarantees or other language contained on its website or other documentation that can be construed as a warranty; and
 - all implied warranties.

(See [Section 7.3.](#))

- Expressly limit the customer's remedies for breach of the service warranty (see [Section 7.2](#)).

For more information on express warranties in the context of the sale of goods, see [Practice Note, UCC Article 2 Express Warranties](#). For more information on implied warranties in the context of the sale of goods, see [Practice Note, UCC Article 2 Implied Warranties](#).

7.1 Limited Service Warranty. Forwarder warrants to Shipper that it shall perform the freight forwarding services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with [generally recognized/commercially reasonable] industry standards for similar services.

LIMITED SERVICE WARRANTY

[Section 7.1](#) is a reasonable and customary warranty for the forwarder to give.

Forwarder

The forwarder should resist agreeing to perform the services under "best" industry standards and instead agree to perform under "generally recognized" or "commercially reasonable" industry standards.

The forwarder should limit the scope of its express and implied warranties. It should:

- State that the express warranty is the exclusive warranty made by the forwarder, as it does in [Section 7.3](#).
- Exclude any language that provides that the express warranties are:
 - cumulative and in addition to any other warranty provided by law or equity; or
 - without prejudice to any other remedies provided by law or equity.
- Exclude all implied warranties (see [Section 7.3](#)).
- Limit the scope of any statements about the services contained in:
 - any exhibits to the agreement;
 - any written and oral communications; and
 - its website.
- Draft the indemnification and cumulative remedies provisions to ensure that they do not allow the shipper to pursue any remedies in addition to the remedies provided by any express warranty (see [Standard Clauses, General Contract Clauses: Indemnification: Drafting Note: Sole Remedy](#) and [General Contract Clauses: Cumulative Remedies \(with Exclusive Remedies Carve-Out\): Drafting Note: Exclusive Remedies Carve-Out](#)).
- Draft the integration clause to ensure that the agreement contains the complete and final agreement of the parties and supersedes any other agreements, written or verbal, on the same subject matter (see [Standard Clauses, General Contract Clauses: Entire Agreement](#)).
- Include the warranty disclaimer and non-reliance language in [Section 7.3](#).

Shipper

This is a customary warranty that the shipper should insist be included in the agreement. Courts in some states have found this warranty to be implied in services agreements where it was not expressly included. However, because this may not be the result in all jurisdictions, the shipper should always require that this warranty be expressly included in the agreement.

7.2 Shipper's Exclusive Remedy for Breach of Service Warranties. Except to the extent any claim is actually covered by applicable insurance policies [or self-insurance], Shipper's exclusive remedy for Forwarder's breach of the service warranty contained in [Section 7.1](#) regarding any shipment is Forwarder's refund of the fees paid by Shipper in connection with the corresponding shipment.

THIS SECTION 7.2 SETS FORTH SHIPPER'S SOLE REMEDY AND FORWARDER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7.1.

SHIPPER'S EXCLUSIVE REMEDY FOR BREACH OF SERVICE WARRANTIES

Section 7.2 designates the exclusive remedy for the forwarder's breach of its service warranty and expressly limits the shipper's remedies to a refund of the applicable fees paid by the shipper. The only exception is the amount of any shipper claim that is actually covered by the forwarder's liability under any insurance policy including, if applicable, cargo insurance policy.

A shipper with negotiating leverage would want to insist on deleting the exclusive remedy language and instead expressly state that the contractual remedy is in addition to all other contractual, legal, and equitable remedies available to the shipper.

7.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 7.1, FORWARDER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE SERVICES, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES INCLUDING ANY [(A) WARRANTY OF MERCHANTABILITY;] [(B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;] [; OR] [(C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY;] WHETHER IMPLIED, STATUTORY, ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. SHIPPER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY FORWARDER, OR ANY OTHER PERSON ON FORWARDER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 7.1.

DISCLAIMER

An express disclaimer of implied warranties is often included in contracts for the provision of services to:

- Generally disclaim any warranties not expressly made in the agreement.
- Specifically disclaim the warranties (that is, merchantability, fitness for a particular purpose, and non-infringement) that can be implied under Article 2 of the UCC (although Article 2 of the UCC generally applies only to the sale of goods, some courts have in certain circumstances applied Article 2 principles to services contracts).

Section 7.3 limits the forwarder's potential liability by:

- Limiting its express service warranties to those stated in Section 7.1.
- Limiting its representations and warranties to any contained in the agreement.
- Excluding or disclaiming all implied warranties.
- Excluding all other representations and warranties (of any type, however made).

8. Indemnification.

8.1 General Indemnification. [Forwarder/Shipper/Each Party] ("**Indemnifying Party**") shall indemnify, defend and hold harmless [Shipper/Forwarder/the other Party][and its [officers,] [directors,] employees, agents, affiliates, successors, and permitted assigns] (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including [reasonable] attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, [incurred by Indemnified Party/awarded against Indemnified Party [in a final [non-appealable] judgment]] (collectively, "**Losses**"), [relating to/arising out of or resulting from] any claim of a third party [or Indemnified Party] arising out of or occurring in connection with Indemnifying Party's performance of this Agreement. Indemnifying Party shall not enter into any settlement without Indemnified Party's prior written consent[(unless the settlement solely relates to the payment of cash)]. [Notwithstanding anything to the contrary in this Agreement, Section 8 does not apply to any claim (direct or indirect) for which a sole or exclusive remedy is provided for under another section of this Agreement [, including Section 7].]

GENERAL INDEMNIFICATION

Section 8.1 is a general indemnification provision, which can be tailored to:

- Require either:
 - mutual indemnification, where each party undertakes to indemnify the other party; or
 - unilateral indemnification, where only one party, in this case, either the forwarder or the shipper, undertakes to indemnify the other party.
- Cover third-party claims or to add the bracketed language, [or Indemnified Party], to also cover direct claims of the indemnified party.

This Standard Document contains exclusive contractual remedies for the shipper for the following types of direct claims:

- **Breach of limited warranty.** Section 7.2 provides that the shipper's remedies under Section 7 are exclusive.
- **Freight claims.** Section 9.1(a) provides that the shipper's remedies under Section 9 for freight claims are exclusive.

The parties must ensure that the general indemnification provision contained in Section 8.1 is consistent with all exclusive contractual remedies, especially if the parties include the bracketed language, [or Indemnified Party], to cover direct claims of the shipper.

This last bracketed provision aims to separate a settlement solely for cash from a settlement that may include other elements, such as admission of fault (including fines or penalties that leave a record) and restrictions on future activities. No consent is required if the settlement is reduced solely to a cash payment that the indemnifying party must pay because the indemnified party should have no right to object to any settlement if there is no other cost or harm.

If Section 8.1 is a mutual provision, the forwarder should include the bracketed last paragraph of Section 8.1 to prevent conflict between other exclusive remedy provisions and this indemnification section. Excluded remedies include the exclusive remedies for breach of the forwarder's limited warranty. Parties should revise the list of exclusive remedy sections to reflect deletion or addition of any exclusive remedy provisions.

8.2 Exceptions and Limitations on General Indemnification. Notwithstanding anything to the contrary in this Agreement, [no] Indemnifying Party is [not] obligated to indemnify or defend [an] Indemnified Party against any third-party claim if the third-party claim or corresponding Losses arise out of or result from[, in whole or in part,] the Indemnified Party's or its personnel's:

- (a) [[Gross] negligence or more culpable] act or omission (including recklessness or willful misconduct).
- (b) Bad faith failure to [materially] comply with any of its [material] obligations set out in this Agreement.]

EXCEPTIONS AND LIMITATIONS ON GENERAL INDEMNIFICATION

Optional Section 8.2 includes two common exceptions to the obligation to indemnify to address circumstances where the indemnified party's own actions cause or contribute to the alleged harm triggering indemnification. The clause can be adapted depending on whether Section 8.1 is included and each party indemnifies the other.

The indemnifying party may want to include the optional materiality and other qualifiers to limit the scope of certain exceptions. These exceptions are examples only and should be tailored to reflect the specifics of the transaction.

8.3 Sole Remedy. Section 8 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF [THE/EACH] INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR [THE/EACH] INDEMNIFIED PARTY FOR ANY LOSSES COVERED BY Section 8.

SOLE REMEDY

[Section 8.3](#) protects the indemnifying party from exposure to additional liability beyond the terms set out in the indemnification provision, by clarifying that the remedies set out in [Section 8](#) are the only remedies available to the indemnified party under the agreement for any of the covered losses. For this reason, the indemnifying party should resist any attempt by the other party to delete this provision.

The parties should carve-out the indemnity provision ([Section 8](#)) from the cumulative remedies clause ([Section 11.10](#)) to ensure that the cumulative remedies clause does not conflict with this [Section 8.3](#) by providing the aggrieved party an opportunity to seek damages or remedies beyond the scope of the indemnification provision.

The indemnified party should be aware that if the agreement contains both an indemnity for direct claims (in addition to third-party claims) and a sole remedy provision, then the sole remedy provision cuts off any additional non-indemnification related claims that the indemnified party might otherwise have against the indemnifying party. For more information on sole remedy provisions, see [Practice Note, Indemnification Clauses in Commercial Contracts: Sole Remedy Provisions](#).

9. Claims and Liability.

9.1 Freight and Other Claims.

(a) Freight claims are governed by 49 USC Section 14706 and 49 CFR Part 370, et seq. Shipper is required to file in writing with Forwarder any claims for freight loss or damage within nine (9) months from the earlier of (i) the delivery date, or (ii) in the event of non-delivery, the scheduled delivery date. In the event the applicable carrier disallows any part of Shipper's claim, Shipper must file legal action in a court of law within two (2) years and a day from the date the carrier or Forwarder first provides written notice to Shipper that the carrier has disallowed any part of Shipper's claim. The carrier's freight liability for any shipment shall not exceed the lesser of (x) [\$25.00 per pound] or (y) [\$300,000], unless Shipper provides Forwarder with reasonable advance written notice of the special circumstances that warrant higher limits to allow Forwarder and/or the applicable carrier to obtain additional insurance coverage. The Parties agree that Forwarder shall not be liable for loss, damage or delay in the transportation of Shipper's freight except for any loss, damage or delay caused by the negligent acts or omissions of Forwarder in the performance of this Agreement. With respect to all other claims, Forwarder shall provide reasonable assistance to Shipper in its filing and processing of claims against the applicable carrier. **THIS [Section 9.1\(a\)](#) SETS FORTH SHIPPER'S SOLE REMEDY AND FORWARDER'S ENTIRE LIABILITY FOR ANY FREIGHT CLAIMS OF SHIPPER HEREUNDER.**

(b) Any claims other than freight loss or damage claims require (1) written notification by the claiming party within sixty (days) after of learning of the events that give rise to the claim, and (2) filing of the claim within one hundred and eighty (180) days after the date of such notice. Litigation, if any, shall be filed in a court of law pursuant to [Section 11.16](#) within eighteen (18) months from the date the claiming Party receives written notice that all or any part of its claim has been denied by the other Party.

9.2 No Liability for Consequential or Indirect Damages. [EXCEPT FOR [OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT,] [LIABILITY FOR INDEMNIFICATION,] LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS,] IN NO EVENT IS [FORWARDER/SHIPPER/EITHER PARTY] OR ITS REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES[, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE], ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER THE DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT [FORWARDER/SHIPPER/IT] WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES

In [Section 9.2](#), the parties expressly exclude all consequential, incidental or special damages as well as any other types of indirect damages, subject to the following optional exceptions:

- Payments under this agreement.
- Liability for indemnification.
- Liability for breach of confidentiality.
- Liability for infringement or misappropriation of intellectual property rights.

The parties must also negotiate whether this provision is reciprocal or unilateral.

Forwarder

Depending on its negotiating leverage or strategy and the transaction's nature, the forwarder should try to make this provision unilateral.

If the parties agree to make [Section 9.2](#) reciprocal, of the two parties, the forwarder is more likely to seek damages against the shipper. Therefore, under both a unilateral and a reciprocal version of Section 9.2, the forwarder likely wants to include the maximum number of exceptions.

The forwarder also likely wants this provision to cover:

- Lost profits.
- Lost revenues.
- Diminution in value.

(See [Lost Profits or Revenues and Diminution in Value](#).)

Shipper

The shipper, depending on its negotiating leverage or strategy and the transaction's nature, should try to make this provision reciprocal. The shipper wants to limit its liability and therefore should consider resisting the optional exceptions in [Section 9.2](#). For more information on exceptions to the limitation of liability, see [Standard Clause, General Contract Clauses: Limitation of Liability: Drafting Note: Exceptions](#).

Lost Profits or Revenues and Diminution in Value

Lost profits or revenues and diminution in value can comprise either:

- Direct damages.
- Indirect damages.
- Incidental damages as defined by [UCC Section 2-715](#).

Therefore, by including lost profits, lost revenues and diminution in value in [Section 9.2](#), the parties may inadvertently exclude some direct damages.

9.3 [\[Maximum Liability for Damages\]](#). [EXCEPT FOR [OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT,] [LIABILITY FOR FREIGHT CLAIMS UNDER [Section 9.1](#),] [LIABILITY FOR INDEMNIFICATION,] LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS,] IN NO EVENT SHALL [FORWARDER'S/EITHER PARTY'S] [AGGREGATE] LIABILITY [FOR EACH CLAIM] ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED [[NUMBER] TIMES] THE TOTAL AMOUNT PAID [OR PAYABLE] TO FORWARDER UNDER THIS AGREEMENT [IN THE [NUMBER] [YEAR/MONTH] PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM [OR \$[AMOUNT], WHICHEVER IS LESS]. THE FOREGOING LIMITATIONS APPLY EVEN IF THE [FORWARDER'S/NON-BREACHING PARTY'S] REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.]

MAXIMUM LIABILITY

The parties must negotiate whether:

- To include optional [Section 9.3](#). For more information on the benefits of a maximum liability provision, see [Standard Clauses, General Contract Clauses: Limitation of Liability: Drafting Note: Maximum Liability](#).
- The provision is reciprocal or unilateral, protecting only the forwarder.

- To include any or all of the following optional exceptions from the liability cap:
 - payments under this agreement;
 - liability for indemnification;
 - liability for breach of confidentiality; and
 - liability for infringement or misappropriation of intellectual property rights.
- The amount of the liability [cap](#) is based on:
 - a per-claim basis; or
 - aggregate basis.
- To include a specific dollar amount as a fixed cap.

For more information on drafting and negotiating limitation on liability provisions, see [Standard Clauses, General Contract Clauses: Limitation of Liability](#). For additional information on structuring a contractual liability cap, see [Standard Clauses, General Contract Clauses: Indemnification: Drafting Note: Maximum Liability](#).

Capping the Forwarder's Indemnification Obligations

The forwarder should expect the shipper to strongly resist a cap on the forwarder's indemnification obligations, especially if the shipper has significant negotiating power. If the shipper cannot exclude a cap on the seller's indemnification obligations, then it should ensure that the cap is negotiated in the context of:

- Market expectations.
- The parties' bargaining power.
- Product risk, including intellectual property risk.
- Counterparty risk. For example, the buyer may demand a higher cap from a seller that has many competitors or deep pockets.

10. [\[\[Forwarder/Mutual\] Insurance Obligations](#). During the Term [and for a period of [TIME PERIOD] thereafter], [Forwarder/each Party] shall, at its own expense, maintain and carry in full force and effect[, subject to appropriate levels of self-insurance,] commercial general liability (including product liability) in a sum no less than \$[AMOUNT], contingent cargo insurance coverage of no less than [\$300,000], [OTHER APPLICABLE INSURANCE COVERAGES AND RESPECTIVE AMOUNTS] with financially sound and reputable insurers, and upon [Shipper's/the other Party's] [reasonable] request, shall provide [Shipper/the other Party] with a certificate of insurance evidencing the insurance coverage specified in this [Section 10](#). [The certificate of insurance shall name [Shipper/the other Party] as an additional insured.] [Forwarder/Each Party] shall provide [Shipper/the other Party] with [NUMBER] days' advance written notice in the event of a cancellation or material change in such insurance policy.]

INSURANCE OBLIGATIONS

Each party should determine the appropriate types of insurance coverage and policy limits for a particular transaction in consultation with their respective risk management departments and insurance specialists. When drafting and negotiating [Section 10](#), the parties should consider each party's respective transaction-based risks.

The parties negotiate:

- Whether this provision is:
 - mutual and equal;
 - mutual but unequal and favoring one party over the other; or
 - unilateral.
- How long each insuring party must maintain insurance coverage.

- Whether an insuring party may self-insure.
- The types of coverage in addition to commercial liability insurance.
- The coverage minimums.
- Whether the insuring party must: provide evidence of insurance.
 - provide evidence of insurance;
 - name the other party as an additional insured;
 - notify the other party in the event of a cancellation or material change in its insurance policy, and if so, how much notice; and
 - require its insurance company to waive its subrogation rights against the other party.

11. Miscellaneous.

11.1 Further Assurances. Upon a Party's [reasonable] written request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, as [reasonably] necessary to give full effect to this Agreement.

FURTHER ASSURANCES

For more information on drafting and negotiating further assurances provisions, see [Standard Clauses, General Contract Clauses: Further Assurances](#).

11.2 Entire Agreement.

(a) This Agreement [(including the recitals which are incorporated herein by reference)] constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The terms of this Agreement prevail over any different or additional terms or conditions of [either] Shipper [or Forwarder] contained in any other documentation whether given prior to or after the effective date of this Agreement.

(b) Without limitation of anything contained in [Section 11.2\(a\)](#), each Party acknowledges that except for the representations and warranties expressly contained in [Section 7](#), neither Party has relied on any other express or implied representation or warranty, either written or oral, on behalf of the other Party, including any representation or warranty arising from statute or otherwise in law.

ENTIRE AGREEMENT

This provision (also known as a merger or integration provision) is used to prevent the parties from being liable for any understandings, agreements or representations and warranties other than those expressly set out in the agreement. For more information on drafting and negotiating entire agreement provisions, see [Standard Clauses, General Contract Clauses: Entire Agreement](#).

This section states that this agreement prevails over any terms and conditions of the buyer contained in its consignment request or the seller contained in its consignment confirmation, which is intended to avoid a battle of the forms. For more information on the Battle of the Forms, see [Practice Note, Sale of Goods Agreements: Avoiding Common Pitfalls: Avoid a Battle of the Forms](#).

11.3 Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement for a period of [12/[NUMBER]] months after such expiration or termination; and (b) [SECTIONS] of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement for the period specified therein, or if

nothing is specified for a period of [12/[NUMBER]] months after such expiration or termination. All other provisions of this Agreement shall not survive the expiration or earlier termination of this Agreement.

SURVIVAL

For more information on survival clauses, see:

- [Practice Note, Representations, Warranties, Covenants, Rights, and Conditions: Survival of Representations and Warranties.](#)
- [Standard Clauses, General Contract Clauses: Survival.](#)

For more information about drafting and negotiating explicit contractual statute of limitations provisions, see [Standard Clauses, General Contract Clauses: Contractual Statute of Limitations.](#)

11.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this [Section 11.4](#)). All Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). [Notwithstanding the foregoing, for the purposes of Section[s] [NUMBER(S)], Notice given by facsimile or e-mail (with confirmation of transmission)[, and for the purposes of Section[s] [NUMBER(S)], Notice given by posting to the receiving Party's website below,] will satisfy the requirements of this [Section 11.4](#).] Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the notifying Party has complied with the requirements of this [Section 11.4](#). The Parties may change their respective notice addresses by providing notice as set forth in this [Section 11.4](#).

Notice to Forwarder:

[FORWARDER ADDRESS]

Facsimile: [FAX NUMBER]

E-mail: [E-MAIL ADDRESS]

[Website: [WEBSITE ADDRESS]]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

Notice to Shipper:

[SHIPPER ADDRESS]

Facsimile: [FAX NUMBER]

E-mail: [E-MAIL ADDRESS]

[Website: [WEBSITE ADDRESS]]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

NOTICES

[Section 11.4](#) governs:

- The manner in which any notice under the agreement must be given.
- The time at which the notice is deemed to be formally given.

Section 11.4 does not generally permit the delivery of formal notice by facsimile, e-mail, or website posting. This is intended to protect the receiving party from being bound by a notice that it does not actually see. However, the bracketed language allows the parties to specify certain sections of the agreement under which formal notice may be delivered by facsimile, e-mail, or website posting. Section 11.4 can be

revised if the parties agree to accept facsimile, e-mail, or website posting notices in all instances. For more information on drafting and negotiating notice provisions, see [Standard Clauses, General Contract Clauses: Notice](#).

11.5 **Interpretation**. For purposes of this Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted and this Agreement shall not be construed against a Party as the drafter. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

INTERPRETATION

This provision is designed to reduce repetition in the agreement, making it shorter and easier to read. For more information on drafting and negotiating interpretation clauses, see [Standard Clauses, General Contract Clauses: Interpretation](#).

11.6 **Headings**. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

HEADINGS

For more information on drafting and negotiating headings provisions, see [Standard Clauses, General Contract Clauses: Headings](#).

11.7 **Severability**. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction[; provided, however, that if any fundamental term or provision of this Agreement (including [FUNDAMENTAL TERMS]), is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable. [On a judicial determination that any term or provision is invalid, illegal, or unenforceable, [the Parties shall negotiate in good faith to/the court may] modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible]].

SEVERABILITY

For more information on drafting and negotiating severability provisions, see [Standard Clauses, General Contract Clauses: Severability](#).

11.8 **Amendment and Modification**. No amendment to or modification of [or rescission, termination, or discharge of] this Agreement is effective unless it is in writing[, identified as an amendment to [or rescission, termination, or discharge of] this Agreement] and signed by [an authorized representative of] each Party.

AMENDMENT AND MODIFICATION

For more information on drafting and negotiating amendment clauses, see [Standard Clause, General Contract Clauses: Amendments](#). For a sample amendment agreement, see [Standard Document, Amendment Agreement](#).

11.9 **Waiver**. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

WAIVER

Either party may fail to enforce its rights under a contract, whether as a result of oversight or because of the commercial realities of the situation. This clause provides that a waiver of a breach of the terms on one occasion does not affect the rights of the waiving party if there is a further breach or if that party later requires compliance with the relevant terms.

For more information on drafting and negotiating waiver provisions, see [Standard Clauses, General Contract Clauses: Waivers](#).

11.10 **Cumulative Remedies**. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Shipper's rights under [Section 7.1](#), [Section 9](#) [./and [Section 8.1](#)] are Shipper's exclusive remedies for the events specified therein.

CUMULATIVE REMEDIES

The forwarder should ensure that the shipper cannot pursue cumulative remedies after the shipper receives its exclusive remedies for:

- Breach of service warranty (see [Section 7.1](#)).
- Claims for freight claims (see [Section 9](#)).
- Claims covered under the general indemnification provision (see [Section 8.1](#)).

For more information on drafting and negotiating cumulative remedies provisions, see [Standard Clauses, General Contract Clauses: Cumulative Remedies \(with Exclusive Remedies Carve-Out\)](#).

11.11 **Equitable Remedies**. [Shipper/Each Party] acknowledges and agrees that (a) a breach [or threatened breach] by Shipper of any of its obligations under [Section 6](#) [and Section[s] [NUMBER(S)]] would give rise to irreparable harm to [Forwarder/the other Party] for which monetary damages would not be an adequate remedy and (b) in the event of a breach [or a threatened breach] by [Shipper/such Party] of any such obligations, [Forwarder/the other Party] shall[, in addition to any and all other rights and remedies that may be available to [Forwarder/such Party] at law, equity, or otherwise in respect of such breach,] be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. [Shipper/Each Party] agrees that [Shipper/it] will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this [Section 11.11](#).

EQUITABLE REMEDIES

In this agreement, the equitable remedies provision covers breach of the confidentiality obligations in [Section 6](#). [Section 11.11](#) can be adapted to:

- Apply to both parties.
- Cover any other types of breaches that the forwarder (or shipper) considers appropriate for equitable relief.
- Be less expansive, by deleting the brackets that reference "threatened breach."

For more information on drafting and negotiating equitable remedies provisions, see [Standard Clauses, General Contract Clauses: Equitable Remedies](#).

11.12 Assignment. Neither Party shall assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section is null and void. No permitted assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement. Notwithstanding the above, [Forwarder/Shipper/either Party] may assign any of its rights or delegate any of its obligations [to any affiliate or to any person acquiring all or substantially all of its assets] without the consent of other Party.

ASSIGNMENT

For more information on drafting and negotiating assignment provisions, see [Standard Clauses, General Contract Clauses: Assignment and Delegation](#).

11.13 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

SUCCESSORS AND ASSIGNS

For more information on drafting and negotiating successors and assigns provisions, see [Standard Clauses, General Contract Clauses: Successors and Assigns](#).

11.14 No Third-Party Beneficiaries.

(a) [Subject to the next paragraph, this/This] Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(b) [The Parties hereby designate [NAME/CLASS OF PERSON] as third-party beneficiaries of [SECTION] of this Agreement [having the right to enforce [SECTION]].]

NO THIRD-PARTY BENEFICIARIES

Many agreements expressly state that third parties to the agreement do not have any rights under the agreement. However, depending on the nature of the transaction and each party's negotiating leverage and strategy, a party may want to include certain third-party beneficiaries (such as carriers) by excluding them from the application of [Section 11.14\(a\)](#).

In [Section 8.1](#), indemnified parties include persons who are not a party, for example, officers, directors, partners, members, shareholders, employees, agents, affiliates, successors, and permitted assigns. In most cases, these related persons do not sign the agreement, unless they have joint and several or their own obligations under the agreement. Therefore, these related persons are third-party beneficiaries to the agreement and the interested party must ensure that it carves out these related persons from the restriction under Section 11.14(a). For more information on drafting and negotiating no third-party beneficiaries provisions, see [Standard Clauses, General Contract Clauses: Third-Party Beneficiaries](#).

11.15 Choice of Law. This Agreement, including all exhibits, schedules, attachments, and appendices attached hereto [, and all matters arising out of or relating to this Agreement,] are governed by, and construed in accordance with, the laws of the State of [STATE], without regard to the conflict of laws provisions thereof to the extent these principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of [STATE].

CHOICE OF LAW

In this [Section 11.15](#), the parties negotiate whether to add the bracketed language, [, and all matters arising out of or relating to this Agreement,] to try to capture tort, fraud, statutory, and other matters that arise from the contract but are not explicitly a matter of contract law.

For more information on drafting and negotiating choice of law provisions, see [Standard Clauses, General Contract Clauses: Choice of Law](#) and [Practice Note, Choice of Law and Choice of Forum: Key Issues](#).

11.16 Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement and all contemplated transactions[, including contract, equity, tort, fraud, and statutory claims], in any forum other than [NAME OF US DISTRICT COURT] or[, if such court does not have subject matter jurisdiction,] the courts of the State of [STATE] sitting in [POLITICAL SUBDIVISION], and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the sole and exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in [NAME OF US DISTRICT COURT] or[, if such court does not have subject matter jurisdiction,] the courts of the State of [STATE] sitting in [POLITICAL SUBDIVISION]. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

CHOICE OF FORUM

In [Section 11.16](#), the parties confer personal jurisdiction on the courts of a selected state and agree that the selected forum is the exclusive forum for bringing any claims under (and sometimes, more broadly relating to) the agreement. For more information on drafting and negotiating choice of forum provisions, see [Standard Clauses, General Contract Clauses: Choice of Forum](#) and [Practice Note, Choice of Law and Choice of Forum: Key Issues](#).

11.17 [Waiver of Jury Trial]. Each Party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. [Each Party certifies and acknowledges that (a) no representative of the other Party has represented, expressly or otherwise, that such other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such Party has considered the implications of this waiver, (c) such Party makes this waiver voluntarily, and (d) such Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.]]

WAIVER OF JURY TRIAL

This optional [Section 11.17](#) is frequently included in complex agreements. Many sophisticated parties prefer that a judge hear and decide any dispute arising out of a complex agreement rather than a jury who may not appreciate or understand the potentially complex issues involved in the litigation. Each party should also consider whether potential jurors from the forum selected in [Section 11.16](#) are likely to be sympathetic to that party in an agreement-related trial. For more information on drafting and negotiating waiver of jury trial clauses, see [Standard Clauses, General Contract Clauses: Waiver of Jury Trial](#).

11.18 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. [A signed counterpart of this Agreement delivered by facsimile, e-mail or other means of electronic

transmission is deemed to have the same legal effect as delivery of an original signed counterpart of this Agreement[, if the Party sending the facsimile, e-mail, or other means of electronic transmission has received express confirmation that the recipient Party received the signed counterpart (not merely an electronic facsimile confirmation or automatic e-mail reply)].]

COUNTERPARTS

Section 11.18 permits the parties to execute separate copies of the agreement, which can expedite the agreement's full execution. Include the bracketed second sentence if there is any possibility that the parties may not exchange signed original copies. The parties should include the bracketed language within that sentence addressing confirmation of actual receipt if facsimile and e-mail are not accepted as means of sending notices under Section 11.4. For more information on drafting the counterparts provision, see Standard Clauses, General Contract Clauses: Counterparts.

11.19 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's ("**Impacted Party**") [reasonable] control, including the following events (each a "**Force Majeure Event**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) requirements of applicable law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency[./; and] [(h) strikes, labor stoppages, or slowdowns or other industrial disturbances][./; and] [(i) shortage of adequate power or transportation facilities]. For purposes of the preceding sentence when applied to Forwarder, "Impacted Party" includes any carriers.

The Impacted Party shall give notice [within [NUMBER] days of the Force Majeure Event] to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of [NUMBER] days following written Notice given by it under this Section 11.19, [either Party/the other Party] may thereafter terminate this Agreement on [NUMBER] days' written Notice.

Note: Force Majeure

11.20 No Public Announcements. Neither Party shall make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding the other Party or its business unless: (a) it has received the express written consent of the other Party; or (b) it is required to do so by law [or under the rules of any stock exchange to which it is subject]. When a Party determines that it is obligated by law [or the rules of a stock exchange] to make such a disclosure, it shall notify the other Party prior to such disclosure and the Parties shall cooperate to cause a mutually agreeable release or announcement to be issued.

NO PUBLIC ANNOUNCEMENTS

For more information on drafting and negotiating a public announcements clause, see Standard Clauses, General Contract Clauses: Public Announcements.

IN WITNESS WHEREOF, the Parties' duly authorized representatives have executed this Agreement as of the date first written above.

[FORWARDER NAME]

By: _____

Name:

Title:

[SHIPPER NAME]

By: _____

Name:

Title:

EXHIBIT A

FREIGHT FORWARDING SERVICES [AND PRICES]

EXHIBIT B

FORM OF TRANSPORTATION AGREEMENT

PRODUCTS

PLC US Commercial Transactions, PLC US Law Department

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