

CONTRACT CARRIER AGREEMENT

THIS AGREEMENT (hereinafter referred to as "the Contract") is made and entered into this (date) at Burbank California, by and between the following parties (hereinafter referred to as "the Parties"): Neptune Transportation, Inc., a corporation with its principal place of business at 1300 W. Magnolia Blvd., Burbank California, 91506, for itself and on behalf of its affiliated companies and divisions identified on Appendix A hereto (as may be amended from time to time), which are also parties to this Contract collectively Hereinafter referred to as "Neptune", and (Carrier)with its principal place of business at (Carrier's address), hereinafter referred to as "Carrier".

WITNESSETH

- WHEREAS, Carrier is a motor contract carrier of property, authorized by the Federal Highway Administration (FHWA) in Docket No. MC- and/or intrastate Permit No, all other applicable State or Federal governmental agencies which may be required to conduct operations and provide service in intrastate, interstate or foreign commerce in the transportation of General Commodities (except Household Goods), under continuing contract(s) with (Carrier's Name); and
- WHEREAS, Neptune is a motor carrier property broker duly licensed by the Federal Highway Administration (FHWA) to arrange the transportation of property by authorized motor carriers, which desires from time to time to use the services of Carrier to transport freight for or on behalf of its customers, the transportation of which Neptune controls; and
- WHEREAS, the Parties do hereby enter into this Contract pursuant to 49 U.S.C.14101 (b) for the purposes of providing and receiving specified services under specified rates and conditions, and under which the parties intend to waive certain rights and remedies permitted to be waived under the Interstate Commerce Act to the extent that any provisions therein are inconsistent with any of the provisions of this Contract.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises contained herein, Carrier and Neptune agree as follows:

1. SERIES OF SHIPMENTS AND NEPTUNE'S DISTINCT NEEDS

Neptune hereby commits to tender, and Carrier hereby commits to transport a series of at least three (3) shipments during the term of this Contract. Carrier agrees to provide service designed to meet the unique, distinct and continuing transportation service needs of Neptune and its Customers, which include but are not limited to the following: providing flexible contract freight rates which may be amended through a simplified notice provision; providing Certificates of Insurance to Neptune; Carrier's agreement to issue invoices to and to accept payment from Neptune, rather than from the shipper or receiver; participating with Neptune to use various means of communications and transmitting information to permit the tracking and tracing of shipments accepted by Carrier; and the occasional granting of other business considerations.

2. CONTRACT RATES

Compensation shall be paid to Carrier solely and exclusively by Neptune on all shipments tendered to Carrier. Carrier's compensation shall be as follows:

- a. Carrier's compensation for any specific shipment or shipments may be agreed to orally between the Parties, and the compensation shall subsequently be confirmed by Neptune to Carrier in writing or by electronic means, stating the new contract rate ("the Confirmation"). Unless Carrier objects to the terms and rates of the Confirmation within twenty-four (24) hours after receipt, Carrier shall be presumed to have agreed that the terms are fully and correctly stated. All such Confirmations shall become incorporated as addenda to this Contract, and the Parties agree to retain all such addenda for the period required by applicable law.
- b. If the Parties fail to agree to a negotiated rate as described above, the Contract rate shall be the amounts set forth in Appendix B attached hereto and made a part hereof.

Carrier agrees that any interstate or intrastate tariffs, released value clauses or rates, or other liability limitations which now or in the future may exist in Carrier's schedules or tariffs shall not apply to transportation provided by Carrier to Neptune during the term of this Contract, unless they are expressly stated in this Contract or in a Confirmation addendum.

3. RESPONSIBILITY FOR PAYMENT OF RATES

Neptune shall be solely and exclusively liable for and responsible to Carrier for its freight charges arising out of this Contract and Neptune's Customers' sole obligation with regard to the payment of transportation charges is to make payment to Neptune. Within twenty (20) days after Neptune's receipt of a clear delivery receipt, Neptune agrees to pay to Carrier the contract rates and charges even if the Customer does not or cannot pay Neptune. In exchange for this guarantee of payment Carrier (i) appoints and designates Neptune as its agent for the purpose of billing and collection of freight charges from the shippers whose freight Neptune tenders to Carrier or arranges for Carrier to transport; (ii) will not communicate in any manner, directly or indirectly, with Neptune's customers, consignors, consignees or any party other than Neptune concerning the collection of any charges relating to transportation services accruing in connection with or as a consequence of this Contract; and (iii) waives any right it may otherwise have to proceed or commence any action against any Customer for the collection of any freight bills arising out of transportation services performed by Carrier under this Contract.

Compensation paid to Carrier under this Contract may be withheld in whole or in part by Neptune or any of its subsidiaries or related companies to satisfy claims or shortages arising out of this or other Contracts, or to satisfy advances made to, or on behalf of, Carrier, or to satisfy any debt owed by Carrier to Neptune or any of its subsidiaries or related companies. This offset may occur, at Neptune's discretion, only if the claim or debt has not been acknowledged in writing by Carrier within thirty (30) days of presentation or the claim has not either been paid or denied for a valid cause or reason within ninety (90) days of presentation.

Any claim for overpayment or underpayment of transportation charges in connection with shipments transported under this Contract shall be presented by the party asserting the claim to the other party within sixty (60) days of discovery of the claim by that party, but in no event will any such claim(s) be asserted more than one hundred eighty (180) days after the delivery of the shipment or shipments giving rise to any such claim.

4. NEPTUNE'S COMPENSATION

In consideration for performing services and its guarantee of payment, Neptune is hereby authorized and empowered to keep any amounts over the contract rates stated in this Contract or Confirmations as its broker's commission and Neptune shall not be required to disclose the amount of its commission.

5. CARRIER'S SERVICE WARRANTIES

Carrier warrants that: (i) (unless Carrier is an "exempt carrier" solely transporting exempt commodities) it is a motor carrier of property authorized by the Federal Highway Administration (FHWA), that all transportation performed by it for or on behalf of Neptune and/or Neptune's customers shall be as a contract carrier pursuant to the terms and conditions of this Contract; (ii) all freight tendered to it by Neptune pursuant to this Contract shall only be transported by Carrier on, in or with equipment owned by Carrier or leased to Carrier under a lease having a duration of more than thirty (30) days, operating under Carrier's operating authorities; (iii) except to the extent that Carrier uses the services of "owner operators" in the course of conducting its regular operations, Carrier shall not in any manner, sub-contract, broker or tender to any third party for transportation any freight tendered to Carrier by Neptune for transportation pursuant to this Contract, (iv) while Carrier may also hold authority from The Federal Highway Administration (FHWA) to operate as a motor common carrier, no transportation will be performed by it for or on behalf of Neptune and/or Neptune's customers as a motor common carrier; (v) Carrier's rates and tariffs as a motor common carrier shall not, except as may be specifically provided in this Contract be applicable to any transportation which it shall perform for and on behalf of Neptune; and (vi) Carrier will at all times have a U.S. DOT safety rating that is satisfactory, and that at no time will it allow its safety rating to become unsatisfactory.

In providing services, Carrier represents and warrants that the driver(s) utilized are competent and properly licensed, and are fully informed of their responsibilities for the protection and care of the involved commodities. Carrier agrees that neither Neptune nor its Customer is responsible for paying the involved driver's salary, wages, compensation or charges, nor are either responsible for Workmen's Compensation coverage or any taxes based on salary, wages or compensation. Carrier agrees to provide and maintain the necessary equipment and to provide all fuel and pay all expenses necessary to operate the equipment, and Carrier agrees that in no instance shall Neptune or its Customer be responsible for any of the expenses. Carrier represents that the transportation will be performed without violating local, state or federal laws or regulations, and that Carrier has complied and will comply with all laws and regulations of local, state and federal authorities and regulatory bodies having jurisdiction over the operation of its vehicles. Carrier further warrants that all motor vehicle equipment provided by Carrier for the transportation of food grade products will comply with the requirements of The Sanitary Food Transportation Act, and that none of the equipment provided for the transportation of food or food grade products has been or will be used for the transportation of any waste of any kind, garbage, hazardous materials or any other commodity that might adulterate or contaminate food, food products or cosmetics.

At The time each shipment is received by Carrier from Neptune's customer(s), Carrier will request and obtain instructions concerning all handling, securing and product or freight protection requirements of each shipment, including specifications noted on the bill of lading or otherwise. Carrier is responsible for insuring that all freight is properly blocked and braced for transportation unless tendered to Carrier in a pre-loaded, sealed trailer, and Carrier is instructed not to break the seal(s) on the trailer, which fact must be noted on the bill of lading. Carrier is responsible to determine that the goods being shipped are in apparent good order and condition, to the extent that such is ascertainable through a visual examination of the exterior of the goods shipped, before loading and, in the event that they are not Carrier will contact Neptune for further instructions.

6. BILLS OF LADING AND DELIVERY RECEIPTS

Carrier will issue and sign a standard, uniform straight bill of lading or other receipt acceptable to Neptune and Neptune's customers upon acceptance of goods for transportation. All terms or conditions written or printed on the receipts or bills of lading which have not been specifically agreed to by Neptune, either in this Contract or on any addenda hereto, shall have no binding effect against Neptune. The receipt or bill of lading issued or executed by Carrier shall be prima-facie Carrier Representative evidence of receipt of goods in good order and condition by Carrier unless otherwise noted on the face of said document. Carrier shall submit to Neptune the original signed bill of lading evidencing good delivery of the goods, unless otherwise specifically agreed by Neptune; and in that case, Carrier shall maintain custody of the original signed bills of lading and will provide them to Neptune upon request. If Carrier fails to maintain and provide the bills of lading as agreed, Carrier assumes all risk of loss resulting from the failure to prove good delivery. In the event that Carrier's personnel are not allowed or afforded an opportunity to view and/or examine the goods in order to ascertain the condition of those goods prior to loading on to Carrier's vehicle, Carrier's personnel shall immediately notify Neptune and await instructions prior to transporting the shipment and shall note on the bill of lading that they were not allowed or afforded an opportunity to view and/or examine the goods shipped.

7. INDEPENDENT CONTRACTOR

The Parties understand and agree that the relationship of Carrier to Neptune hereunder is solely that of an independent contractor and that Carrier shall and does employ, retain or lease on its own behalf all persons operating motor vehicles transporting commodities under this Contract and such persons are not employees or agents of Neptune or its Customers. It is further understood and agreed that all drivers of motor vehicles and persons employed in connection with the transportation of commodities under this Contract are subject to the direction, control and supervision of Carrier, and not of Neptune or its Customers. Carrier represents and agrees that such employees are and will at all times be covered by adequate workmen's compensation insurance as provided by law.

8. INSURANCE

Carrier agrees to procure and maintain for the benefit of Neptune and its Customers, at Carrier's own expense, and to provide written proof of all insurance coverage required by the U.S. Department of Transportation or the States in which services are to be performed, including appropriate insurance forms (B.M.C. 91 or 9IX with regard to liability insurance, and B.M.C. 34 with B.M.C. 32 endorsement with regard to cargo insurance), and adequate insurance covering cargo damage, public liability, bodily injury/property damage, and workmen's compensation, all in the form and amounts required by Neptune.

9. CARRIER'S CARGO LIABILITY

Carrier agrees to transport the commodities to the specified destination with reasonable dispatch (defined as the length of time that it would customarily and ordinarily take to transport a like shipment), unless a specified delivery date and/or time is communicated to Carrier prior to the pick-up of any individual shipment. Carrier hereby assumes all liability for cargo loss and damage while such commodities are in Carrier's custody or control, except for loss, damage, injury or delay to the commodities caused by act of God, public enemy, authority of law, act or default of the shipper or owner or for natural shrinkage; and Carrier has the burden of proving that cargo loss, damage, injury or delay was caused by one of the above exceptions. No released value conditions, whether stated in the rates or otherwise, shall apply against Neptune or its customers. In the event branded or labeled goods are damaged, Neptune's customers may determine, within its sole discretion, and subject to a reasonableness standard, whether the goods may be salvaged, and if salvageable, the value of such salvage. Any salvage receipts shall be credited against Neptune's customer's claims against Carrier. Neptune's customers shall have the right to remove all identifying marks or labels when Carrier pays Neptune or Neptune's customers for the full value of the damaged goods and requests possession of the goods for salvage. Alternatively, in the discretion of Neptune or its customers, the goods shall be permanently marked as "damaged" or a similar notation, without debiting or otherwise charging Neptune's customers on account of such notations.

10. CARRIER'S INDEMNIFICATION

The Parties agree that Carrier shall be the solely responsible for operating the equipment necessary to transport commodities under this Contract. Carrier therefore agrees to indemnify Neptune and its Customers and to hold them harmless for: loss or damage to Carrier's equipment; loss resulting from injury, including death, sustained on employee of Carrier, or by any other person while acting in the capacity of a driver or helper in connection with the operation of the equipment; for any bodily injury, property damage or cargo loss, including the defense of any lawsuits there from, arising out of the operation, maintenance or use by Carrier of motor vehicle equipment to perform services under this Contract; for damage sustained by Neptune or its Customers arising out of the furnishing by Carrier of equipment which has been used to haul waste or is otherwise not suitable for hauling food products or which may affect the safety or cleanliness of food products hauled by Carrier; and for any loss or damages sustained by Neptune as a result of any other violation of this Contract by Carrier, including loss or damages due to the negligence, incompetence or dishonesty of Carrier or Carrier's agents or employees; provided, however, that this paragraph shall not apply to any penalty or liability arising solely as a consequence of any wrongful or negligent acts, omissions, or violations by Neptune, its Customers, agents or employees.

11. FACTORING

Carrier shall provide Neptune written notice of any assignment factoring, or other transfer of its right to receive payments arising under this Contract thirty (30) days prior to such assignment, factoring, or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date, date assignment is to begin, and terms of the assignment and shall be considered delivered upon receipt of such written notice by Neptune. Carrier shall be allowed to have only one assignment factoring or transfer legally effective at any one point in time, and no multiple assignments, factoring or transfers by the Carrier shall be permitted. Carrier shall indemnify Neptune against and hold Neptune harmless from any and all lawsuits, claims, actions, damages (including reasonable attorneys fees, obligations, liabilities and liens) arising or imposed in connection with, the assignment or transfer of any account or right arising there under where the Carrier has not complied with the notification assignment requirements of this section. Carrier also releases and waives any right claim or action against Neptune for amount due and owing under this Contract where Carrier has not complied with the notice requirements of this section.

12. COMMUNICATIONS AND CONFIDENTIALITY

Carrier and Neptune intend and hereby agree to use the entire variety of communications and information means available, whether available presently or in the future, to communicate agreements, modifications, rates, instructions, equipment and load location, and any other information helpful or necessary to carry out the intentions of the Parties herein. Such communications and information transmission presently includes telephone, facsimile machine, software, email, internet, electronic funds transfer, satellite, and information received from third parties (including affiliates of Neptune, outside billing companies and freight payment entities), but this is not intended to be limiting the manner of future communications as they develop. All information furnished to one Party to the other in the course of performing work or rendering services under this Contract shall be deemed to be the confidential and proprietary information of the disclosing Party and/or its customers. The Party receiving information agrees not to disclose any such information to any third party, nor to use such information other than in performance of work and/or rendering services under this Contract Carrier agrees not to use Neptune or Neptune's customers' names for promotional or other purposes without prior written consent.

13. CONTRACT TERM AND TERMINATION

The initial term of this Contract shall be a period of one (1) year from the date hereof, and shall continue in full force and effect from year-to-year unless it is terminated as provided for herein. Notwithstanding the above, either Party shall have the right to cancel or terminate this contract upon thirty (30) days' prior written notice to the other party.

14. MISCELLANEOUS

The Parties hereby further agree as follows:

This Contract shall not be rendered unenforceable by virtue of any failure or alleged failure to comply with the provisions of any statute or regulation applicable to transportation contracts, and the parties expressly waive any right that they might otherwise have to challenge the validity of this contract on such grounds, which waiver shall be binding on their respective assigns, heirs, or successors in interest.

Neither party shall assign this Contract or any rights hereunder without the prior written consent of the other party. This Contract shall be binding upon all permitted assigns, heirs and successors of the respective Parties hereto.

All notices required to be given under any of the provisions of this Contract shall be properly given if made in writing and deposited in a United States Post Office by registered mail, postage prepaid, and addressed to the respective parties as set forth above.

Carrier shall have no lien, and hereby expressly waives its right to any lien on any cargo, freight or other property of Neptune or any of its customers.

This Contract constitutes the entire agreement and understanding between the parties and supersedes any and all prior agreements and understanding, either oral or written. Neptune may, from time to time, modify or amend the terms or conditions of this Contract, or the specific Neptune companies which are parties to this Contract and identified in Appendix A, by means of a written amendment which it shall promptly mail or otherwise transmit to Carrier. Said modification or amendment shall become effective three (3) days after transmission by Neptune. Carrier's continued acceptance of freight tendered by Neptune or Neptune's customers thereafter shall constitute acceptance by Carrier of such modification or amendment of this Contract. In the event that any portion of this Contract is declared void or unenforceable, then such provision shall be deemed severed from this Contract which shall otherwise remain in full force and effect.

This Contract may be executed in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

In the event either party incurs attorney's fees, costs or expenses in enforcing any of the provisions of this Contract, or in exercising any right or remedy arising out of any breach of this Contract by the other party, the prevailing party shall be entitled to an award of attorney's fees, costs and expenses against the defaulting party.

The Parties agree that this Contract shall be construed under the laws of the State of California, and agree that all disputes arising under this Contract may be submitted to the jurisdiction of the State or Federal Courts within the States or Districts of California or for administrative proceedings to the appropriate Federal or State government agency having jurisdiction over such matters.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date and year first written above.

Carrier Name: _____
Carrier

Neptune Transportation Inc. and its affiliates

Signature: _____
(Sign by an officer of the company)

By: _____
(Neptune Transportation Inc., officer)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A

**NEPTUNE TRANSPORTATION INC.,
AFFILIATED PARTIES**

This Contract is between Carrier identified in the Contract and the following Neptune affiliated companies:

Neptune Freight

Neptune Logistics

This Appendix A supersedes all prior versions, if any. Carrier agrees that this Appendix A may be further amended to add or delete affiliated companies which will be Parties to this Agreement upon written notice from Neptune to Carrier which shall update, amend or supersede this Appendix A.

Date: ..._____

APPENDIX B

CONTRACT CARRIER AGREEMENT ADDENDUM

The rates and charges to be assessed for transportation performed pursuant to this Contract Carrier **Agreement** unless changed for a specific shipment(s) as provided in paragraph two (2) of the Contract **Carrier** Agreement shall be as follows:

The rates and charges listed below shall be applicable on interstate and foreign shipments on freight of all kinds except household goods between points in the United States (except Alaska & Hawaii).

- a. The rate shall be computed on the basis of \$0.80 per loaded mile
- b. The rate shall include a single pickup and single delivery
- c. Additional pickups and/or deliveries shall be charged at \$25 per each additional stop.

NOTE: the above charges shall only apply in the event that a Rate Confirmation Sheet has not been executed by the parties with respect to a specific shipment.

REQUIRED DOCUMENTS

- Cargo insurance certificate from insurance agent (coverage \$100,000)
- Liability insurance certificate from insurance agent **must** name Neptune Additionally Insured.
- ICC \ MC (FHWA Authority)
- MCP \ California authority (if applicable)
- Signed W-9 form
- Transportation Contract

Complete the following Broker **Reference:** *(Brokers who currently load your trucks)*

Company	_____	Telephone	_____
Contact Name	_____	Date started	_____ Date ended _____
Company	_____	Telephone	_____
Contact Name	_____	Date started	_____ Date ended _____
Company	_____	Telephone	_____
Contact Name	_____	Date started	_____ Date ended _____