

**Kerry Logistics Integrated Solutions Inc. (“KERRY”) Standard Terms and Conditions**

These terms and conditions govern all services provided by Kerry Logistics integrated Solutions Inc. (hereafter, the “**KERRY Terms and Conditions**”). In particular, the KERRY Terms and Conditions apply to all shipments of commodities (hereafter, “Goods”) for which Kerry Logistics Solutions Integrated Inc, (hereafter, “**KLIS**”) arranges transportation or Provides related Services.

The shipper, consignor, consignee, beneficial owner, or any other party requesting or using services of KLIS (hereafter, collectively “**Customer**”) agrees to be bound by the KERRY Terms and Conditions and, pursuant to 49 U.S.C. § 14101(b)(1), waives any and all rights and remedies that it may have under 49 U.S.C. §§ 13101 through 14914 that are contrary to any of the KERRY Terms and Conditions.

**1. Service Freight Provider**

1.1 Customer acknowledges that the insertion of KLIS’ name on shipping documents of any kind, does not represent or imply that KLIS is acting in the capacity of a motor carrier or freight forwarder. The terms and conditions of any freight documentation used by the Customer, KLIS, or any Carrier selected by KLIS, may not supplement, alter, or modify the terms of these KERRY Terms and Conditions.

**2. Services**

2.1 In accordance with the terms herein, KLIS agrees to select duly authorized and licensed Carriers to provide transportation and related services in respect of the Goods.

**3. Credit**

3.1 Customer is subject to credit approval. The amount of credit, if any, granted to Customer is at the sole discretion of KLIS. KLIS reserves the right to withhold services and to have Carriers hold Goods that are in transit to ensure payment of all invoices.

**4. Payment and Fuel Surcharges**

4.1 Payment for Services is due within thirty calendar days of date of invoice. Payment may be made by check, money order, electronic funds transfer. Invoices not paid as agreed will bear interest at an annual rate of 2% per month (24% per annum) or the highest lawful rate, if less. If KLIS retains an attorney or collection agency to collect unpaid charges, Customer will be liable for all related costs and expenses, including attorneys’ fees, costs, and collection agency fees. No charges due or allegedly due to Customer may be set off against charges due to KLIS.

4.2 KLIS will include on its invoice to Customer a fuel surcharge that is determined by KLIS on the Monday immediately preceding dispatch or is otherwise calculated pursuant to Customer’s pre-authorized fuel surcharge program.

**5. KLIS’ Rate Quotations**

5.1 Freight Rate Quotations issued by KLIS are based on information provided by Customer as to the circumstances concerning the shipment of Goods and as required to be provided by the KERRY Terms and Conditions. In accordance with the Kerry Terms and Conditions, final rates may vary from a Rate Quotation as based on Goods actually tendered to a Carrier for carriage at origin and as set forth at paragraph 9 below.

**6. KLIS Cargo Claim Assistance**

6.1 As stipulated above, KLIS is a Freight Forwarder, and is not a motor carrier as those terms are defined under 49 U.S.C. § 13102. As a transportation broker or Freight Forwarder, KLIS is not liable for incidents taking place during transit such loss of, damage to, or delay in the delivery of the Goods (“**Cargo Claims**”).

6.2 KLIS is willing to facilitate the presentation of a Customer’s Cargo Claim against a Carrier. In this regard, it is very important that Customer note the items listed in paragraph 7 below, and that Customer immediately provide KLIS all details

concerning a possible Cargo Claim so that KLIS can present the necessary notice of claim against the Carrier. KLIS will also follow up with the Carrier in question from time to time until the Carrier provides a position on the Cargo Claim.

6.3 In providing the services described at paragraph 6.2 above, KLIS acts as an agent only in terms of facilitating the Carrier's consideration of a Cargo Claim. In the event of the matter not being resolved amicably the Cargo Claim will remain a matter to be dealt with directly between Customer and the Carrier(s).

6.4 As a pre-condition to the filing of any Cargo Claim against a Carrier, any billing by KLIS to Customer in respect to the shipment concerned must be paid in full.

## **7. Cargo Claims and Time Limits**

7.1 Customer is reminded that there are time deadlines to file a Cargo Claim against a Carrier. Customer must note paragraph 6 above. Where Goods are lost, damaged, or delayed in transit, Customer must ensure that the consignee makes a detailed note of same on any bill of lading or other transit document produced by the Carrier at destination. If Customer does not provide KLIS with timely notice and the details of a possible Cargo Claim pursuant to paragraph 6.2 above, Customer is responsible for presenting any Cargo Claim to the Carrier.

7.2 In order to provide an indication on what time limits are involved in the provision of a notice of a Cargo Claim to a Carrier, Customer should note that motor carriers governed by Canadian law require the presentation of a Cargo Claim within 60 days of the Cargo Claim arising and that motor carriers governed by United States law require the presentation of a Cargo Claim within 9 months of the Cargo Claim arising.

7.3 Customer should also note that there are certain deadlines for commencing any legal action against any Carrier considered responsible for a Cargo Claim. In the event that a Cargo Claim dispute remains unresolved, Customer should always timely seek legal advice as to its options and the protection of its interests with respect to the Cargo Claim against the Carrier.

## **8. Cargo Claims: Potential Carrier Exceptions From Liability**

8.1 Customer should note that, under general principles of transportation law, Carriers are not liable for the following: (1) damage to Goods to the extent due to packaging, loading, unloading, blocking, bracing, or securing of Goods (unless Carrier has provided loading or unloading services at Customer's request, in which case such Carrier may be liable for cargo damage caused by such loading or unloading services); (2) inherent vice or defect in Goods, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, or deterioration of perishable products; (3) an act of God or "Queen's" or "public enemy"; (4) any act or default of any Customer, consignee, or consignor, or beneficial owner of Goods; (5) any act taken under authority of law; (6) any act of war or terrorism, riot, or strike; (7) quarantine (8) difference in weights of grain, seed, or other commodities caused by natural shrinkage.

## **9. Cargo Claims: Carrier Limitations of Liability**

### **(a) Rules Governing Shipments from a location in Canada**

9.1 Customer should be aware of the fact that:

(i) a) Under provincial law and/or as may be provided by a carrier's terms of performance that carriers often seek to limit their liability (absent a declaration of value on the bill of lading or contract of carriage at the point of origin) to the amount of \$2 CAD per pound for loss or damage to Goods.

(ii) b) Certain carrier(s) terms of performance also provide that they may also limit their liability to the total amount of \$100,000 CAD for loss or damage to Goods; and/or

(iii) c) Applicable law and/or certain carrier(s) terms of performance may provide that they will not be liable for any loss caused by any delay in the delivery of Goods to destination.

### **Steps to be Taken by Customer so as to be Provided with an Accurate Freight Rate for Billing**

9.2 Customer (or the actual shipper, if someone else) has the option of determining if a declaration of a value is to be given to the carrier on the bill of lading or other carriage document. KLIS shall not be responsible for the declaration of a value of Goods to a carrier.

9.3 KLIS provides freight rate quotations based upon information provided by Customer on the premise and assumption that there will not be a value declared to a carrier at the time of the pick-up of the Goods at the place of origin.

9.4 In the event that Customer wishes for a carrier(s) being arranged by KLIS to carry Goods without recourse to the a “per pound limit of liability” or if Customer tenders freight valued at an amount of more than \$100,000 CAD Customer must make said intention and concerns known, in writing, to KLIS at the time of booking KLIS services herein. KLIS will then communicate such intention and concerns to carrier(s). Where carrier(s) agree to carry Goods without recourse to any per pound or reduced amount of liability it or they may charge a freight ‘surcharge’ which KLIS will endeavor to timely communicate to Customer.

#### **Steps to be Taken by Customer when Desiring to Declare a Value for Carriage**

9.5 Further to the foregoing, in addition to providing the prescribed instruction to KLIS concerning the intention that a carrier carry Goods pursuant to a declared valuation, Customer will be responsible to ensure that the shipper at origin in fact declares the value of the goods on the Bill of Lading or carriage document provided by the carrier at origin. **Customer acknowledges that if shipper does not so declare a value that carrier will be deemed to be able to limit liability as aforesaid.**

9.6 Customer agrees that if a shipper at the point of loading endorses a value on a bill of lading or other carriage document tendered by a carrier at origin (not having already been communicated to Service Freight in accordance with the foregoing) that Customer will be liable for payment of any applicable surcharges billed by carrier.

#### **b) Shipments from a location in the United States of America**

9.7. Customer should be aware of the fact that:

a) While carriers hauling freight across state lines or from the United States into Canada may generally be regarded to have liability for the full actual value of cargo, this will not necessarily be the case in a given situation where a carrier seeks to rely under Canadian law (providing for a \$2 per pound limit of liability, absent a declaration of a value on the bill of lading or contract of carriage) and/or where a carrier accepts cargo for carriage on the basis of a ‘released rate’ (with a freight charge providing for something less than full liability for loss or damage) as provided by a carrier’s terms of performance to limit liability.

b) certain carrier(s) terms of performance also provide that they may also limit their liability to the total amount such as \$100,000 (in U.S. or Canadian dollars) for loss or damage to goods

c) applicable law and/or certain carrier(s) terms of performance provide that they will not be liable for any loss caused by any delay in the delivery of Goods to destination.

#### **Important Reservations by KLIS as Concerns Provision of Services**

9.8 KLIS reserves the right to cancel a freight rate quotation if the shipment actually tendered for carriage deviates from or is different than that described in a freight rate quotation.

9.9 Any freight rate quotation issued by KLIS is subject to carrier availability. KLIS shall be entitled to cancel a freight rate quotation in the event that for any reason a carrier is not available to carry a shipment.

#### **KLIS Limitation of Liability**

9.10 Without prejudice to any of the terms herein, Customer agrees that any liability, whether for breach of any contract or duty or in negligence as may be alleged as against KLIS in connection with any shipment is limited to the lesser of:

(a) the actual value of the goods lost or damaged at the time and place of origin.

(b) an amount equal to \$2.00 CAD per pound, as calculated by the value of the goods actually lost or damaged. But in no event shall any liability of KLIS exceed an amount of \$100,000 CAD in respect of any loss or damage to a shipment.

**10. Claims Procedures**

If Customer wishes KLIS to assist with the processing of a Cargo Claim, Customer must provide KLIS with the following:

- 10.1 Copy of the bill of lading or other document showing receipt of all Goods in good condition by Carrier.
- 10.2 Copy of the delivery documentation showing the shipment was delivered short or damaged. If the shipment was not delivered, Customer should provide other evidence, such as communication from the Carrier or consignee that the shipment was not delivered.
- 10.3 Copy of a vendor's invoice, showing the value of the Goods that are the subject of the Cargo Claim.
- 10.4 A demand for a specific amount of money, with a clear explanation of how that amount is determined.

**11. Consequential Damages**

- 11.1 Under no circumstances will KLIS or any Carrier be liable to Customer or any other person for consequential or indirect damages (including but not limited to, any and all liquidated damages, penalties, late fines, lost profits, loss of use of Goods, business interruption, or loss of business of any kind), incidental damages, or punitive damages related in any way to a Cargo Claim or the services provided by KLIS or any Carrier.
- 11.2 Neither KLIS or any Carrier will be liable for any late fines, penalties or consequential charges related to late shipments or missed appointments unless expressly agreed to in writing before the date and time scheduled for shipment pick up.

**12. Customer's Duties**

- 12.1 Customer is responsible for ensuring that Goods are transit-worthy for the route intended and, where Customer is involved in the loading or securement of the Goods on a carriage conveyance, that they are properly and safely loaded, supported, blocked, braced, and secured.
- 12.2 Customer must provide necessary shipping instructions and properly identify all Goods in the bill of lading or other shipping instructions. Customer will not tender any restricted commodities including, but not limited to hazardous materials and waste, oversize or overweight shipments, coiled or rolled products, or commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation.
- 12.3 Unless Customer and KLIS agree in writing in advance of dispatch that Carrier will count the number of pieces of the Goods at pick-up, Carrier is not responsible for "piece count" and Carrier will be responsible for skid counts only. Customer or their shipper is responsible for affixing a seal on truckload shipments.
- 12.4 If Customer requests that KLIS arrange for equipment to be dropped at a location for Customer's convenience and left unattended by Carrier, Customer and its consignors or consignees will not lose, damage, or misuse the equipment, and Customer will pay for loss or damage to the equipment occurring during or as a result of such custody, control, possession, or use of the equipment.

**13. Insurance**

KLIS and Customer agree that the following insurance policies are in place and will be maintained throughout the relationship between the parties:

13.1 KLIS understands that Customer will have in effect at least the following insurance coverage, for the amount where stated:

- (1) Workers Compensation Insurance
- (2) Employer's Liability Insurance
- (3) Commercial General Liability Insurance (\$1 million CAD)

13.2 Carriers:

KLIS will endeavor to ensure that the Carriers maintain the insurance specified below for the minimum amount required by law:

- (1) Worker's compensation insurance.
- (2) Occurrence based commercial General Liability Insurance with limits no less than required by law.
- (3) Occurrence based Truckers Policy or Automobile Liability Insurance and Hazardous Materials coverage (if hauling Hazardous Materials) with limits no less than required by law, and
- (4) Occurrence based cargo insurance.

13.3 KLIS' sole obligation is to obtain a certificate of insurance from the Carrier's insurers reflecting the foregoing types and amounts of insurance. KLIS' makes no representations or warranties regarding coverage or what exclusions or limitations any particular insurance policy may have.

#### **14. Choice of Law, Venue, and Jurisdiction.**

14.1 Goods Originating in Canada. With respect to shipments of Goods originating in Canada, the Kerry Service Terms and Conditions, and all rights or obligations of Customer and KLIS, shall be governed by and construed in accordance with the laws of the province of Quebec. KLIS and Customer submit to the exclusive jurisdiction and venue of the court of the province of Quebec.

14.2 Goods Originating in the United States. With respect to shipments of Goods originating in the United States, the KERRY Service Terms and Conditions, and all rights or obligations of Customer and KLIS, shall be governed by and construed in accordance with the laws of the State of Delaware, to the extent not inconsistent with applicable federal laws, without regard to any conflict of laws principles. Any court proceeding brought by either Customer or KLIS must be brought, as appropriate, in the United States District Court for the District of Delaware or state court located in Wilmington, Delaware. Each party agrees to personal and subject matter jurisdiction in either court.

#### **15. Indemnification**

The Customer agrees to defend, indemnify, and hold KLIS harmless from any claims and or liability arising from the transportation of the Goods or the conduct of the Customer, which violates any Federal, State, or Provincial, or other laws, and further agrees to defend, indemnify, and hold KLIS harmless against any and all liability, loss, damages, costs, claims, or expenses, including but not limited to reasonable attorney's fees and costs, which KLIS may hereafter incur, suffer, or be required to pay by reason of such claims.

#### **16. Confidentiality**

Customer and KLIS agree that the terms and provisions contained herein, in addition to any and all other information concerning the business operations of Customer or KLIS, are confidential, and that they will not reveal any of its contents or any information concerning the services performed within this contract without the written permission of any party involved or as may be required by law.