

## Transportation Agreement

THIS TRANSPORTATION AGREEMENT (this "Agreement") is entered into on this \_\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_ (hereinafter called "Customer") having an office at \_\_\_\_\_ and KB Logistics Management, Inc., an Illinois company, (hereinafter called "KBL").

### W I T N E S S E T H:

**WHEREAS**, KBL arranges transportation of property by motor carriers and indirect air carriers for its customers and is duly registered as a property broker with the FMCSA in Docket No. MC 632011-B as may be amended from time to time; and

**WHEREAS**, Customer desires to hire the KBL to perform services for Customer that would involve the transportation of its goods;

**THEREFORE**, in consideration of the mutual agreements, conditions, covenants, promises, undertakings set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree to the following terms and conditions:

#### 1. Term and Termination

- a. Term: This Agreement shall be automatically renewed for successive periods of twelve (12) months from the effective date above unless cancelled by either party in accordance with the provisions of this Agreement.
- b. Termination: Either party to this Agreement may cancel or terminate this Agreement either (i) by written prior notice to the other, given at least thirty (30) days in advance, if the other party breaches or fails to meet any of its obligations hereunder, and fails to cure such breach or failure within said thirty (30) day period, or (ii) by prior written notice to the other party, given at least ten (10) days in advance, if the other party (a) commences any proceeding relating to its reorganization, dissolution or liquidation; (b) discontinues its business, becomes insolvent or fails to pay obligations as they become due, or (iii) by sixty (60) days prior written notice if terminated for any other reason. KBL agrees that it shall maintain a copy of this Agreement on file for a period of at least one (1) year after the expiration or earlier termination of this Agreement.

#### 2. KBL's Operations

- a. KBL shall be solely an arranger of services and those functions include solely those functions as an arranger of services and no others and all other responsibilities or risks are those of the motor carrier or indirect air carrier (herein collectively referred to as "Carrier") transporting the shipment. KBL is not a Carrier or an agent for a Carrier.
- b. KBL possesses a license for brokerage operations issued by the Federal Motor Carrier Safety Administration ("FMCSA") and, as such, does not and assume liability for services, including specifically, but not limited to, transportation, warehousing and cargo liability of any type and kind. Any Customer using KBL services expressly recognizes this as a material condition and shall indemnify and hold KBL harmless (inclusive of legal fees and costs) from any costs arising from an assertion of claim liability against KBL.
- c. Governing Publications: In accordance with the obligations under the Interstate Commerce Commission Termination Act, Section 13710, a Carrier is required to provide, upon request, publication of its rate, classification, rules and practices, herein referred to as the Carrier's "General Rules Tariffs". Upon request KBL will assist Customer in obtaining these General Rules Tariffs. The General Rules Tariffs, as set forth by Carriers, will in every instance take precedence in all legal proceedings and when applicable, will take precedence over KBL's Rules and Regulations Tariff stated herein. If not in conflict with the Carrier's General Rules Tariff, KBL's Rules and Regulations Tariff as stated herein shall control. The arrangement of transportation of any and all cargo shall be subject to Rules and Regulations Tariff KBL100, as made available for public review via the Internet at [www.kblmi.com](http://www.kblmi.com), and by this reference incorporated herein as though fully set forth, in haec verba.

### **3. KBL's Insurance**

- a. KBL hereby represents that, at its sole cost and expense, it maintains insurance policies for liability, property damage, and personal injury insurance under such terms as will meet the requirements of all laws and applicable government bodies and agencies. KBL shall provide Customer upon request with written evidence of such insurance on an annual basis. Such insurance shall be maintained in amounts of not less than the following:
- \$500,000-Workers Compensation
  - \$1,000,000-Public Liability and Property Damage – Comprehensive General Liability

### **4. Mutual Indemnification**

- a. To the maximum extent permitted by law, both parties agree to indemnify, defend and hold harmless each other and their agents, contractors, and employees from and against any and all claims, actions, losses, damages, expenses, judgments, and costs (including reasonable attorney fees and costs) resulting from or arising out of damage or injury to persons (including employees, agents, or subcontractors of Customer) or property, caused in whole or in part by the willful conduct, error, omission or negligent act of either party or its directors, officers, employees, agents or subcontractors in the performance of this Agreement or any breach of any term of this Agreement.

### **5. Customer Warranty**

- a. The Customer is responsible for and warrants their compliance with the following: (1) The information stated on shipping documentation is complete and accurate, that each package and/or article is properly and completely described on the shipping documentation and is adequately packaged to protect the enclosed goods to ensure safe transportation to withstand the normal rigors and perils of transportation, (2) Customer is in compliance with all applicable laws, rules, and regulations including but not limited to customs laws, import and export laws, hazardous materials or dangerous goods regulations, and governmental regulation of any country to, from, through or over which the shipment may be carried, (3) Any individual or entity acting on behalf of the Customer in scheduling shipments hereunder warrants that it has the right to act on behalf of the Customer and the right to legally bind Customer, (4) Customer agrees to indemnify KBL for any and all claims or damages incurred as a result of Customer's failure to comply with the provisions of these Rules and Regulations, or the General Rules Tariff of the Carrier.

### **6. Independent Contractor**

- a. KBL and Customer agree that the employees of the KBL, in performing services hereunder, shall be and remain exclusively the employees of KBL and shall not, for any purpose, be considered employees of Customer. Customer shall not be responsible for any act or omission of said employees. KBL shall in no event be considered an employee or agent of Customer, but to the contrary, shall be deemed and treated as an independent contractor of Customer and agrees that it shall not have any right or power to incur any debt, obligation or liability on behalf of the Customer, without the express written consent, or at the direction of, Customer.

### **7. Claims Management**

- a. KBL shall provide claims coordination services to Customers for whom it arranges transportation by:
- i. Accepting claims as an accommodation and not as a responsible entity to the shipper or other similar claiming entity;
  - ii. Forwarding claims received to the applicable Carrier
  - iii. Relaying information to/from any applicable party in an effort to expedite and resolve the claim;
- b. The General Rules Tariff as established by the Carrier will in every instance take precedence over the processing of claims, and the liability associated. Any terms and conditions of the shipping documentation presented by Customer shall not apply if inconsistent with KBL's Rules and Regulations or the General Rules Tariff of the Carrier.
- c. KBL only possesses authority as an arranger of services, and does not act in any capacity as a Carrier,

- the General Rules Fair of the Carrier.
- c. KBL only possesses authority as an arranger of services, and does not act in any capacity as a Carrier, therefore, there is no direct claim liability assumed by KBL. Any Customer using KBL services expressly recognizes this as a material condition and shall indemnify and hold KBL harmless (inclusive of legal fees and costs) from any costs arising from an assertion of claim liability against KBL.

## 8. Force Majeure

- a. Either party's performance hereunder may be suspended and its obligation hereunder excused in the event and during the period that its performance is prevented by a cause or causes beyond its reasonable control, such as, by way of example and not limitation, acts of God; acts of war; riots; fire; explosions; floods or other adverse weather conditions; failure of power, labor troubles; strikes; judicial, administrative or governmental laws, regulations, requirements, rules, orders or actions; national defense requirements, or other reasons of a like nature beyond the reasonable control of the party delayed in performing its obligations required under the terms of this agreement.
- b. In the event of an occurrence of a Force Majeure, the affected party shall notify the other party immediately in writing, setting forth the particulars of the circumstances, its expected duration, and the steps it is taking to overcome the cause. Notice shall be given after the effect of such occurrence has ceased. Notwithstanding anything herein to the contrary, the provisions of this Section VIII shall not delay or postpone any of the rights specifically granted to either party to terminate this Agreement.

## 9. Credit Terms

- a. Credit terms shall be 30 days from the date of billing
- b. In the event that payment is past due, KBL reserves the following rights:
  - i. Any outstanding invoice, which is unpaid 30 days from the date of billing, is subject to an additional charge at a rate of 1½ percent per month of the outstanding balance, or the highest rate of interest permitted by applicable law, whichever is greater.
  - ii. Any outstanding invoice, which is unpaid 60 days from the date of billing, is subject to an additional charge at a rate of 1½ percent per month of the outstanding balance, or the highest rate of interest permitted by applicable law, whichever is greater, and the Customer shall forfeit any and all discount rates, skid rates or spot pricing.
  - iii. In the event KBL engages a collection agent and/or attorney to collect unpaid balances, or to enforce any part of this Agreement, the Customer acknowledges that by entering into this Agreement, it shall pay all reasonable costs including, but not limited to, professional fees and costs, 33% of the balance due or a flat fee of \$200.00, whichever is greatest. KBL shall have a lien on any cargo shipped for the Customer's failure to pay for charges payable on account of any shipment pursuant to this Agreement. KBL may refuse to surrender possession of the cargo until such charges are paid.

## 10. Other Provisions

- a. Entire Agreement: This Agreement constitutes the entire agreement between the parties. All provisions of this Agreement shall be strictly complied with and conformed to by the parties, and no amendment to this Agreement shall be made except upon the written consent of both the parties.
- b. No Construction against Drafter. Each Party has participated in negotiating and drafting the Agreement, so if an ambiguity or a question of intent or interpretation arises, the Agreement is to be construed as if the Parties had drafted it jointly as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.
- c. Effect of Waiver. The failure of either Party to enforce any of the rights given to it under the Agreement shall not be construed as a waiver of that right.
- d. Non-Disclosure: Except as required by law, the terms and conditions of this Agreement and information pertaining to any shipment or service hereunder shall not be disclosed by either party hereto to persons other than its directors, officers, employees, agents, attorneys, accountants, or auditors.
- e. Notices: All notices which may be given in connection with this Agreement or required by law or regulation shall be in writing, shall be sent postage prepaid by the party desiring to give such notice to the other party; by registered or certified mail, return receipt requested; by reliable overnight courier; or by making personal delivery thereof to such other party, as such other party may from time to time specify in writing.

shall be in writing, shall be sent postage prepaid by the party desiring to give such notice to the other party; by registered or certified mail, return receipt requested; by reliable overnight courier; or by making personal delivery thereof to such other party, as such other party may from time to time specify in writing. All such notices shall be addressed to such party at its address shown as follows:

Customer	KBL:
	KBL Logistics Management, Inc.
C/O:	C/O Kevin Blazyk
Title:	President
	PO Box 5026
	Woodridge, IL 60517

f. Validity of Provisions: If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

g. Venue: This Agreement shall be governed by and construed in accordance with, the laws of the State of Illinois, without regard to conflicts of law principles thereunder and except to the extent expressly preempted by federal law. The parties acknowledge that by entering into this agreement, they have sufficient contact with the State of Illinois to vest jurisdiction therein and hereby forever waive any objection to exclusive Illinois jurisdiction, agreeing to proper venue within Dupage County, Illinois, agree to be subject to the jurisdiction of the State of Illinois, and waive any right to a trial by jury.

h. No Assignment: This Agreement may not be assigned by either party without the prior written consent of the other party.

i. Authority to Execute: The individual or individuals that execute this Agreement represent that they are duly authorized to execute this Agreement on behalf of the entity and that no other signature, act or authorization is necessary to bind such entity to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Customer:	KB Logistics Management, Inc.
Printed Name:	Printed Name:
Title:	Title:
Signature:	Signature: