



A subsidiary of ATS Logistics, Inc.

## SHIPPER/DOMESTIC FREIGHT FORWARDER AGREEMENT

THIS AGREEMENT, "Agreement", made and intended to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between ATS Express, Inc. having offices at Charleston, SC (FORWARDER), and \_\_\_\_\_ having offices at \_\_\_\_\_ (SHIPPER), collectively, the "PARTIES".

### RECITALS

A. WHEREAS FORWARDER is licensed as a Domestic Freight Forwarder by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number FF-001877, or by appropriate State agencies, and as a licensed forwarder, arranges for freight transportation.

B. WHEREAS SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of FORWARDER to arrange for transportation of SHIPPER's freight.

NOW THEREFORE, intending to be legally bound, FORWARDER and SHIPPER agree as follows:

### AGREEMENT

1. **TERM** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.
2. **SERVICE** FORWARDER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the transportation of the freight covered by this Agreement. FORWARDER'S responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER'S freight. The PARTIES may, upon written mutual agreement, include additional service terms to be attached as Appendix A. In the absence of a written agreement to the contrary, transit time shall be established as reasonable dispatch.
3. **VOLUME**
  - (a) SHIPPER agrees to tender a minimum of three (3) shipments per year to FORWARDER, and FORWARDER agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. SHIPPER is not restricted from tendering freight to

other forwarders, brokers, or directly to motor carriers. FORWARDER is not restricted from arranging transportation for other parties.

- (b) SHIPPER shall be responsible to FORWARDER for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.
4. **FREIGHT CARRIAGE** FORWARDER warrants that it has entered into, or will enter into, bilateral contracts with each carrier it utilizes in the performance of this Agreement. FORWARDER further warrants that those contracts are/will be substantially similar to the Exemplar Forwarder-Carrier Agreement found at [www.atsinc.net/ATSEcarriercontract.html](http://www.atsinc.net/ATSEcarriercontract.html). FORWARDER shall be deemed the originating carrier on all shipments transported under this Agreement, regardless of whether FORWARDER is listed on the bill of lading.
5. **RECEIPTS AND BILLS OF LADING** If requested by SHIPPER, FORWARDER agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. The terms and conditions of any freight documentation used by FORWARDER or carrier selected by FORWARDER may not supplement, alter, or modify the terms of this Agreement.
6. **PAYMENTS** FORWARDER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth either in an attachment listed as Appendix A, a Shipper Rate Confirmation Sheet or any other written supplements or revisions that are mutually agreed to between the PARTIES. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon FORWARDER'S invoice to SHIPPER and SHIPPER'S payment to FORWARDER. SHIPPER agrees to pay FORWARDER'S invoice within thirty days of invoice date without deduction or setoff. FORWARDER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the 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; and FORWARDER hereby covenants and agrees to indemnify SHIPPER, Consignee or other responsible party against such liability.
7. **CLAIMS.**
- (a) **Freight Claims:** Freight claims shall be governed by 49 USC § 14706 and 49 CFR § 370 et seq. SHIPPER must file claims for cargo loss or damage with FORWARDER within 9 months from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against FORWARDER in a Court of Law within two (2) years and a day from the date the carrier or FORWARDER provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by FORWARDER shall agree in writing with FORWARDER to be liable for cargo loss or damage as outlined in paragraph 4.b above. The carriers' cargo liability for any one shipment shall not exceed \$25.00 per pound or \$100,000 (whichever is less), unless FORWARDER is notified by SHIPPER of the increased value prior to shipment pickup and with reasonable advance notice to allow FORWARDER and/or the carrier to procure additional insurance coverage. It is understood and agreed that the FORWARDER is a Carrier but FORWARDER shall not be held liable for loss, damage or delay in the transportation of SHIPPER'S property unless caused by FORWARDER'S negligent acts or

omissions in the performance of this Agreement. SHIPPER agrees to look to FORWARDER'S carrier (and not FORWARDER) for claims for loss, damage, or delay. FORWARDER shall assist SHIPPER in the filing and/or processing of claims with the Carrier. If payment of claim is made by FORWARDER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to FORWARDER so as to allow FORWARDER to subrogate its loss. In no event shall FORWARDER or FORWARDER'S Carrier be liable to SHIPPER or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed FORWARDER in written or electronic form, prior to or when tendering a shipment or series of shipments to FORWARDER, of the potential nature, type and approximate value of such damages, and FORWARDER specifically agrees in written or electronic form to accept responsibility for such damages. If you would like a higher released value, please contact ATS Express at 843-747-3333.

(b) **All Other Claims:** The PARTIES shall notify each other within sixty (60) days of learning of any claims other than cargo loss or damage claims (such as claims for undercharge or overcharge), and shall file any such claims with the other Party within one hundred eighty (180) days from the date of notice. Civil action, if any, shall be commenced in a Court of Law within eighteen months from the date either Party provides written notice to the other Party of such a claim.

8. **INSURANCE** FORWARDER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

Contingent Cargo Insurance - \$100,000.

FORWARDER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder."

9. **HAZARDOUS MATERIALS** FORWARDER is not in the business of arranging for transportation of hazardous materials. The acceptance of any hazardous shipment is inadvertent on the part of FORWARDER. 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 any shipments constitute hazardous materials. SHIPPER is obligated to inform FORWARDER immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold FORWARDER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER'S failure to comply with applicable hazardous materials laws and regulations.

10. **DEFAULT.**

(a) Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 (ten) days written notice to the other Party. SHIPPER shall be responsible to pay FORWARDER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.

(b) All amounts owed by Shipper to Forwarder shall be paid within 30 days of the date invoice

is issued to Shipper by Forwarder. If any sums are not paid within 10 days after its due date, or if Shipper breaches any other term of this agreement or any other agreement with Forwarder, Shipper will be in default of this agreement. Should Forwarder be required to incur any costs to collect any amounts due from shipper, Shipper agrees to pay all such costs and expenses, including reasonable attorney fees, collection agency fees or other fees incurred in enforcing this Agreement. Shipper agrees to pay interest on all past due amounts, from the due date, at 1.5% per month, billable immediately upon the first day after the invoice due date described in this paragraph.

11. **INDEMNIFICATION**. Subject to the insurance limits in Section 8, FORWARDER and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party. Although Section 8 only imposes insurance requirements upon FORWARDER, for purpose of this Section 11, those amounts also shall limit the scope of SHIPPER'S indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.
12. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT** Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.
13. **SEVERABILITY/SURVIVABILITY** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.
14. **INDEPENDENT CONTRACTOR** It is understood between FORWARDER and SHIPPER that FORWARDER is not an agent for the Carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over FORWARDER, its operations, employees, or carriers.
15. **NONWAIVER** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.
16. **NOTICES** Unless the PARTIES notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as follows:

(FORWARDER)

\_\_\_\_\_  
Attn: \_\_\_\_\_  
ATS Express, Inc.  
2465 Air Park Rd.  
Charleston, SC 29406  
Phone: 843-747-3333  
Fax: 843-747-3589

(SHIPPER)

\_\_\_\_\_  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

17. **FORCE MAJEURE** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disorder, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or FORWARDER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.
18. **CHOICE OF LAW AND VENUE** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.
19. **ALTERNATIVE DISPUTE RESOLUTION** If a dispute arises out of or relates to this AGREEMENT, other than a dispute about cargo claims, and the parties have not been successful in resolving the dispute through negotiation, the parties agree to attempt to resolve the dispute by submitting the dispute to mediation by the AMERICAN ARBITRATION ASSOCIATION (“AAA”) or by any method agreed upon by the parties. Each party shall bear its own expenses and an equal share of the expenses of the mediator and the fees of the AAA. The parties, their representatives, other participants and the mediator shall hold the existence, content and result of the mediation in confidence. If such dispute is not resolved by such mediation, the parties shall have the right to resort to any remedies permitted by law. All defenses based on the passage of time shall be tolled pending the termination of the mediation. Nothing in this clause shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending mediation. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate.
20. **CONFIDENTIALITY** FORWARDER shall not utilize SHIPPER’S name or identity in any advertising or promotional communications without written confirmation of SHIPPER’S consent and the PARTIES shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. FORWARDER will require its carriers and/or other parties involved in transportation of SHIPPER’S goods to comply with this confidentiality clause.
21. **SOLICITATION OF CARRIERS BY SHIPPER** Shipper shall not solicit carrier services from any carrier of FORWARDER where (1) the availability of such motor carrier service first became known to SHIPPER as a result of FORWARDER’S efforts, or (2) where the traffic of

the SHIPPER was first tendered to carrier by FORWARDER. If SHIPPER breaches this agreement and “back-solicits” FORWARDER’S carriers, and/or obtains motor carrier services from such a carrier, FORWARDER is then entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from SHIPPER of ( 20% ) of the transportation revenue paid to carriers within the scope of the Agreement, as liquidated damages. Termination of this contract shall not affect the enforceability and applicability of the foregoing provisions of this clause for a period of 15 months after termination.

22. **ENTIRE AGREEMENT** This Agreement, including all Appendices, Exhibits, and Addenda, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

IN WITNESS WHEREOF , the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

FORWARDER

SHIPPER

ATS Express, Inc.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title