

# Transportation Agreement

This agreement is between Domestic Container Transportation, Inc. (DCT) and \_\_\_\_\_ (Customer).

## RECITALS

Customer and DCT desire to receive and supply, respectively, rail transportation and related services in accordance with the terms and conditions hereinafter set forth.

## AGREEMENT

### 1. Term of Agreement

This agreement shall become effective \_\_\_\_\_, and shall continue in effect until terminated by either party upon the giving of not less than thirty days written notice of intent to terminate. In the event of termination, both parties shall be obligated to complete all required performances with regard to containers tendered for movement prior to delivery of the notice of termination.

### 2. Charges for Transportation Services

Customer shall pay DCT the rates and charges set forth in DCT's rate sheets, which are attached hereto as Exhibit A, and revised from time to time by DCT or by mutual agreement.

### 3. DCT Billing and Operating Requirements

Billing information must be received by the designated DCT office prior to gate arrival of container at the rail ramp, and must contain all the information required to bill the containers completely with the railroads. If billing information is not received by DCT prior to gate arrival of container at the rail ramp, Customer shall be responsible for any origin storage, charges and fees that are levied by the railroads.

### 4. Equipment Usage

A. Equipment will be provided to Customer, subject to availability, on a first come, first serve basis.

B. Customer agrees to accept full liability for any damages, storage, loss, fines, fees or charges resulting from the use of DCT supplied equipment. The liability for any damages, storage, loss, fines, fees or charges for equipment supplied by DCT and used by Customer may not be assigned to a third party.

C. Customer agrees to return equipment in the same condition as received, without damage, clean and free from dunnage.

D. Any equipment provided to Customer must use DCT supplied transportation unless previously agreed to by DCT.

E. Customer's designated draymen must have a current Interchange Agreement in effect with Steamship/Equipment Owners, and must maintain insurance as required by Steamship/Equipment Owners, the railroads, or as required by any State or Federal Agency or regulation.

F. Chassis will be allowed one (1) calendar day free time at the origin and one (1) calendar day free time at the destination. The calendar day starts the time the chassis is pulled from a terminal at the origin or the rail at destination and ends at 1159 PM the same day. After expiration of free time chassis will be charged \$25.00 per day or portion thereof thereafter.

G. Containers will be allowed five (5) days free time at the origin and five (5) days free time at the destination. Free time will be measured from the time the container is released at the origin to the time in-gated at the rail, and at the destination from the time out-gated from the rail until the container is returned to the designated termination point. After expiration of free time, container detention charges will be \$50.00 per day, or fraction thereof, for the first five (5) days, and \$100.00 for each day or fraction thereof

thereafter.

H. Unless previously agreed, all DCT supplied empty equipment must be returned to one of the designated locations. A list of the approved termination points will be provided and updated from time to time as necessary. Any equipment terminated at a terminal other than the ones designated will result in a \$200.00 penalty plus any cost involved in recovering the equipment including, but not limited to: per diem, drayage, damage, fines and penalties.

#### **5. Credit and Payment Obligations**

If Customer's application for credit has been approved by DCT, Customer shall have 21 days from the date of DCT's invoice to make payment to DCT, unless otherwise agreed in writing. In response to DCT's claim that it has not been paid in a timely manner by Customer, it shall not be a valid defense on Customer's part that Customer has not been paid by its beneficial owner customer, it being understood by the parties that Customer is responsible for paying all freight charges incurred hereunder.

#### **6. Disputed Charges**

In the event that Customer disputes an DCT invoice, it shall notify DCT in writing within 21 days of the date of invoice detailing the reason(s) that it disputes the amount or the basis for the charge. Within 21 days of invoice, Customer shall pay all DCT charges that are not expressly disputed. Invoiced charges that are not formally disputed by Customer shall be paid without offset or counterclaim. If the parties cannot agree on a resolution of disputed charges, such disputes shall be resolved by way of binding arbitration pursuant to Section 13.

#### **7. Late Charges and DCT's Collection of Unpaid Freight Charges**

Undisputed charges which remain unpaid after 21 days from the date of DCT's invoice shall be subject to a late payment charge at the rate of 18 percent per annum, or the maximum rate permitted by law, if less than 18 percent. The parties agree that this late charge reasonably approximates the additional clerical costs incurred by DCT to process collection of its late-paid invoices.

Notwithstanding the arbitration provision of this Agreement, DCT shall have the right to bring a lawsuit against Customer in a California court of general jurisdiction to recover any unpaid freight charges that are not timely disputed by Customer in accordance with Section 3 above. In any such collection lawsuit, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of litigation.

#### **8. Damage to Customer's or Beneficial Owner's Freight**

DCT shall be responsible to Customer or its beneficial owner customers for all freight loss or damage proximately resulting from DCT's negligent acts or omissions provided, however, that DCT shall not be liable for freight loss or damage proximately resulting from: (i) an Act of God, (ii) the public enemy, (iii) authorized acts of governmental agencies/entities, or (iv) negligent or intentional acts of Customer, the beneficial owner, the consignee, or the consignor. In the absence of DCT negligence, Customer's (or its beneficial owner customer's) sole remedy for freight loss or damage shall be against the underlying rail and/or motor carriers pursuant to the terms and conditions of their relevant tariffs, circulars, contract, or other publications relating to liability for loss of or damage to freight.

With or without fault on its part, DCT will reasonably assist and cooperate with Customer and its beneficial owner customers to investigate and process any freight loss or damage claims against the underlying carriers.

Any claim against DCT for freight damage shall be made in writing within three months of the shipment date, and any claim for freight loss or shortage shall be made in writing within 15 days of shipment. Any arbitration action against DCT for freight loss or damage shall be instituted within one year of the shipment date. Any claims or actions against underlying carrier(s) shall be made in accordance with the

time requirements set forth in their relevant tariffs, circulars, or publications.

Liability for loss and damage to the lading in any container shall be limited to no more than \$200,000 per container as measured by fair-market value. Shipment with a value per container in excess of \$200,000 must be declared in writing to DCT prior to acceptance for transportation and a rate will be established for the container movement. Claim or suits for less than \$50.00 shall not be paid if the amount found is less than \$50.00 per container. The claimant shall be under a duty to take all reasonable steps to mitigate its damages, including using salvage procedures.

### **9. Governing Publications**

Rules, regulations, services and charges not otherwise provided for in these general rules will be governed by each rail carrier's own applicable circular.

### **10. Confidentiality**

Customer agrees that the terms and conditions of this Agreement and Exhibits shall be held in strict confidence and not disclosed to any person, other than beneficial owner customers of Customer, without the written permission of DCT. DCT agrees not to disclose to non-signatories to this Agreement, except for DCT's railroad vendors, confidential information, such as name of consignee or consignor, commodity, number of containers, and origin or destination, concerning the freight consigned by Customer to DCT's trains. DCT shall take responsibility for ensuring that its railroad vendors keep the foregoing information in strictest confidence, accessible to only their personnel with a demonstrable "need to know," and only for their own internal use.

### **11. No Performance Guarantees**

DCT shall use its best efforts to secure on-time scheduled performance from its underlying rail and motor carriers in connection with the movement of Customer's freight. Customer shall have no right, claim, or cause of action against DCT resulting from the failure of DCT's rail or motor carrier's service to meet their published or promised schedules.

### **12. Compliance**

Customer shall be responsible: (i) to work with its beneficial owner customer to ensure that the owner's freight is in compliance with all state and federal weight requirements relating to the movement of containers and trailers on streets and highways; (ii) to advise and assist the beneficial owner in obtaining circulars, diagrams, bulletins, etc., published and distributed by DCT's rail carriers and/or the Association of American Railroads describing proper freight loading, blocking and bracing procedures; (iii) to ensure that the beneficial owner is properly instructed with regard to international federal and state regulations governing the handling, loading, documenting and placarding of dangerous and/or hazardous materials being transported in the US (e.g., 49 USC SS1803, 1804, and 1808; 49 CFR SS 171, 172, 1173, and 176; IMO International Maritime Dangerous Goods Code).

### **13. Arbitration**

The parties agree that any and all disputes arising under or in connection with this agreement or any of its terms or provisions, with the sole exception of Section 7, to collect undisputed freight charges from Customer, whether with respect to enforcement, breach, or interpretation hereof, shall be resolved by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Disputes shall be decided by a panel of three arbitrators with knowledge and experience in the transportation industry, although the parties may agree to use only one mutually acceptable arbitrator. In selecting an arbitration panel, each party shall select one arbitrator, and the two arbitrators shall jointly select the third. The sole right of the arbitrator(s) shall be to endorse or interpret the terms of this Agreement, and not to expand the right or obligations of the parties beyond its express terms.

Any such dispute shall be (i) heard by the arbitrators within 60 days of their selection; (ii) decided within 30 days after all evidence and legal arguments have been presented to the arbitrators; (iii) decided pursuant to California and federal law; and (iv) convened at a mutually agreeable location in California, unless the parties agree to hold it elsewhere.

The prevailing party in any dispute decided under this Section shall be limited to actual, out-of-pocket losses or damages, and neither consequential nor punitive damages shall be recoverable by either party. The prevailing party shall be entitled to recover reasonable attorneys', accountants', and expert witness fees, plus reasonable discovery, travel, and court/arbitration expenses.

#### **14. Indemnification**

Customer shall indemnify and hold DCT harmless with respect to any claim, lawsuit, loss, damage or expense whatsoever, which DCT may sustain, incur, become liable, or as a result of any act, acts, failure, or failures to act of Customer, its agents, servants, employees, or customer's beneficial owner. If any action shall be instituted against DCT, with respect to any claim or occurrence for which Customer is obligated to indemnify and hold DCT harmless from, Customer shall defend the same on behalf of DCT, a Customer's expense, by counsel satisfactory to DCT.

#### **15. Force Majeure**

If, and to the extent that either party may be precluded from performing its duties and obligations under this Agreement as the result of an act of God, authority of law, derailment, other rail or motor carrier accident, strike/lockout/labor dispute, or other cause beyond its control to which it has not contributed, such non-performing party shall be excused to the extent that its performance continues to be precluded by such act or cause. The party claiming Force Majeure shall bear the burden of proof on that issue.

#### **16. Entirety, Amendment and Severability**

This Agreement comprises the entire Agreement between the parties. All amendments, supplements, modifications to , and waiver of the terms of this Agreement shall be in writing and signed by the parties.

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, and unenforceable party were not contained herein.

#### **17. Assignment**

This Agreement shall inure to the benefit of and be binding upon the heirs, administrators, executors, successors, trustees, and assignees of the parties hereto , but shall not be assigned or transferred in whole or in part by Customer without the prior written consent of DCT which shall not be unreasonably withheld and without and express assumption by such assignee or transferee of all past, present, and future obligations of this Agreement. No assignment or transfer shall be effective until all defaults under this Agreement have been cured.

#### **18. Non waiver**

The failure to enforce any provision of this Agreement shall not be construed as a waiver of that provision.

#### **19. Notices**

All written notices to be provided here under shall be delivered to the other party by US Postal Service, Express Mail, Federal Express or other established courier service, telecopy, facsimile or like wire delivery, or any other commercially reasonable and accepted form of delivery, to the following addresses:

To DCT:

Domestic Container Transportation, Inc.  
650 N Rose DR, #611  
Placentia, CA 92870  
Phone: (714) 630-8034  
Fax: (714) 630-8035

To Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone/Fax No: \_\_\_\_\_

Customer's signature below indicates acceptance of the above mentioned Transportation Agreement.

Customer: \_\_\_\_\_

Signature: \_\_\_\_\_

Domestic Container Transportation, Inc.

By: \_\_\_\_\_