

## TRANSPORTATION AGREEMENT

THIS AGREEMENT ("Agreement") is dated as of \_\_\_\_\_, 200\_\_\_\_ between \_\_\_\_\_ including its subsidiaries (collectively, "Shipper"), and Dick Harris and Son Trucking Co., Inc. (Carrier).

Carrier agrees to transport by motor vehicle as and when requested by Shipper, commodities shipped and/or received by Shipper, upon the following terms and conditions:

1. Term; Termination. This Agreement shall become effective on \_\_\_\_\_, 200\_\_\_\_ for a period of one year and shall continue from year to year thereafter, subject to the right of either party to terminate this Agreement at any time upon not less than 30 days prior written notice to the other. In addition, this Agreement shall be terminated automatically upon (i) the effective date of any order of the Department of Transportation, or other regulatory body, canceling or revoking Carrier's operating authority or (ii) the designation of an unsatisfactory safety rating by the Department of Transportation.

2. Transportation Requirements.

(a) Shipper agrees to tender for transportation and Carrier agrees to transport for Shipper, within the scope of Carrier's operating authority such shipments of product as Shipper shall determine necessary on an as needed basis. Carrier agrees to accept such tender and to transport and deliver products promptly and efficiently in accordance with the instructions of Shipper and to the destination determined by Shipper. The actual number of shipments and products to be shipped shall be determined by Shipper. Except as agreed to by Shipper, Carrier shall be prohibited from utilizing any other motor carrier, intermediary or transportation entity to transport the shipments contemplated hereunder. The terms and conditions of the Standard Truckload Bill of Lading shall apply to the extent not inconsistent with this Agreement.

(b) Shipper at or prior to receipt of products by Carrier, shall provide Carrier a shipping document ("Shipping Document") and any other documents necessary for Carrier to take possession of the products and accomplish delivery. Such Shipping Document shall contain all relevant delivery instructions and a complete description of the shipment and its markings. The Shipping Document need not have any specific form or format. The use of the Shipping Document is for the convenience of Shipper and Carrier to acknowledge Carrier's receipt of the shipment and to provide Carrier necessary information to perform under this Agreement. Any information, instruction or provision appearing on the Shipping Document, or the use of any form or bill of lading contract as the Shipping Document, shall not alter, modify or amend the parties' obligation under this Agreement and any language appearing in such a Shipping Document which is in addition to or inconsistent with this Agreement shall have no force or effect.

3. Rates and Charges. Carrier agrees to accept as full consideration for all transportation services performed under this Agreement, compensation at the rates, fees and accessorial charges set forth by Shipper. Any rates, rules, charges in tariffs, schedules, rate quotations, or other pricing documents published or maintained by Carrier, whether filed or not filed with any regulatory agency, will not apply to the shipments hereunder unless such rates, rules, charges in tariffs, schedules, rate quotations or other pricing is specifically agreed to in writing by Shipper and attached hereto as an amendment to the Agreement.

4. Vehicles. Carrier, at its sole cost and expense, shall provide personnel, trucks, tractors, trailers and equipment for use in the services to be performed hereunder, which shall be adequate and suitable to carry Shipper' products and which shall be satisfactory to Shipper. All such vehicles shall remain under the care, custody and control of Carrier while performing the services required under the Agreement. Carrier shall maintain such vehicles and equipment in good, efficient and safe condition, both as to operation and appearance. Shipper or a Shipper vendor may reject any equipment that in its opinion is not suitable for the safe and suitable transportation of products

tendered hereunder for transportation. Carrier shall procure, maintain and make payment for such licenses, taxes, fees and permits as are required by federal, state, or local governmental agencies with respect to such transportation services and shall comply with all laws and regulations of any such agency applicable thereto.

5. Trailers. From time to time, Shipper may request that Carrier agree to haul trailers owned by Shipper. In the event that Carrier agrees to haul such trailers, Carrier shall have each of its employees that participate in such activity successfully complete the training program for unloading such trailers,

6. Loss and Damage.

(a) Carrier agrees that, in the transportation of all goods hereunder, it assumes the liability of a common carrier for full actual loss, subject to the provisions of 49 U.S.C. § 14706 (“Carmack Amendment”) and 49 C.F.R. § 1005 (claim regulations), such liability to exist from the time of the receipt of any of said goods by Carrier until proper delivery has been made.

(b) Carrier’s liability shall be for the original invoice value or the destination wholesale market value of the goods lost or damaged in the quantity shipped, whichever is higher, whether or not lost or damaged enroute to a purchaser. Carrier shall also be liable for Shipper administrative expenses incurred in connection with the filing of claims against Carrier, plus a proportion of the freight charges for the whole shipment, equal to the ratio of the weight of lost or damaged goods to the weight of the entire shipment. Carrier’s maximum liability for cargo loss or damage shall be \$100,000 per truckload unless otherwise agreed in writing.

(c) Carrier’s liability shall begin when it signs the Shipping Documents and

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no other action or documents are needed to tender the shipment to Carrier. Carrier's liability shall end when the shipment is unloaded at the final destination as established by Shipper.

7. Overcharge and Undercharge. Any claim for undercharge or overcharge made by parties to this Agreement must be filed within 180 days from date of delivery of products. Payment or denial notice must be made in writing within 30 days from receipt of claim.

8. Indemnity and Insurance.

(a) Carrier agrees to indemnify, defend and hold Shipper harmless from and against any and all claims, demands, liabilities, damages (except with respect to cargo as set forth in Paragraph 6), losses, judgments, awards, causes of action at law or in equity (as well as reasonable attorney's fees), for death of or injury to persons or loss of or damage to property, by whomsoever owned, to the extent caused by (i) the negligent loading, unloading, transportation and delivery by Carrier, its employees, agents, representatives and/or subcontractors, of the products tendered by Shipper to Carrier hereunder, or (ii) the negligent acts or omissions of Carrier, its employees, agents, representatives and/or subcontractors in connection with the performance of their respective duties/obligations under hereunder.

(b) Carrier shall, while this Agreement is in force, procure and maintain in effect, with companies reasonably satisfactory to Shipper the following types of insurance:

- (i) Workers' compensation insurance with statutory limits and employers' liability insurance with the following limits: Bodily Injury by Accident-\$100,000 each accident;

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- (ii) Comprehensive General Liability Insurance with limits of liability not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- (iii) Comprehensive Automobile and Truck Liability Insurance with limits of liability of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage, insuring all motor vehicles used by Carrier in the performance of its obligations hereunder, whether such vehicles are owned, non-owned, or hired.
- (iv) All-Risk Motor Cargo Insurance for the full insurable value of all products transported from time to time for Shipper by Carrier with a minimum level of \$100,000.
- (v) If Carrier is required to haul trailers for SHIPPER (whether owned or leased), Carrier shall also obtain an endorsement to its Comprehensive Automobile and Truck Liability Insurance for trailer interchange comprehensive and collision coverages with a limit of not less than \$75,000.

9. Payment of Bills. Carrier shall promptly transmit by email, fax or mail invoices for services rendered upon completion of such services and SHIPPER shall pay such invoices within 30 days from the date of receipt without offset. Delinquent invoices shall be subject to interest at the rate of 1½% per month and attorney's fees in the amount of 30% in the event payment is not received within 60 days.

10. Status of Carrier.

(a) The relationship between the parties (and including the drivers and employees of Carrier) shall, at all times, be that of independent contractors and such status shall govern all relationships between Carrier and SHIPPER.

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(b) Carrier represents that it is a duly qualified contract motor carrier in interstate commerce under Permit No. \_\_\_\_\_ issued by the Department of Transportation. Carrier shall furnish to SHIPPER copies of Carrier's permits or authority to transport the products as issued by state or federal regulatory agencies.

c) Carrier assumes full responsibility for the payment of all local, state and federal payroll taxes, federal social security taxes, contributions or taxes for unemployment insurance, workers' compensation insurance premiums and any other obligation of an employer under applicable law with respect to the persons engaged in the performance of transportation services hereunder and Carrier agrees to comply with all applicable rules and regulations promulgated under federal, state and local laws and regulations now in force or hereinafter enacted.

11. Assignments; Successors. This Agreement shall not be assigned by Carrier without the prior written consent of Shipper. The terms of this Agreement shall inure to the benefit of and be binding upon SHIPPER and Carrier and their respective legal representatives and successors.

12. Entire Agreement; Waiver. The term "Agreement" as used herein, shall be deemed to include this instrument and all exhibits hereto. It is further agreed that there are no oral representations, agreements or understandings affecting this instrument; that any further representations, agreements, understandings, or waivers to be binding upon the parties hereto must be reduced to writing and attached hereto; and either party's failure strictly to enforce any provisions of this Agreement shall not be construed as a waiver thereof or as excusing the other party from future performance.

13. Invalidity. If any provision of this Agreement is deemed invalid or unenforceable, the validity and enforceability of all other provisions hereof shall not be affected thereby.

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14. Force Majeure. Neither party hereto shall be liable to the other for default in the performance of any of the terms and provisions hereof if caused by fire, strikes or labor disputes, riot, war, Acts of God, governmental order or regulation, or other similar contingency beyond the reasonable control of the respective parties; provided, however, that nothing in this Section shall relieve Carrier from its liability to Shipper for the full actual loss, damage or injury to the goods shipped as provided in Section 6 hereof unless such loss, damage or injury is caused by the sole negligence of Shipper.

15. Notices. Any and all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party entitled to receive the same by hand, by first-class U.S. mail, postage prepaid, or by telecopier (with hard copy mailed) to the address indicated below:

To SHIPPER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

To Carrier: Dick Harris and Son Trucking Co., Inc.  
178 Elon Road, PO Box 539  
Madison Heights, VA 24572  
Attn: James R. Harris, Jr., President  
Fax No.: 434-528-6767

or to such other address as a party may provide from time to time to the other party.

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16. Confidentiality. Neither party shall divulge to a third person, without the prior written consent of the other party, (i) the terms of this Agreement or (ii) any proprietary information derived in the course of performance of this Agreement. Such proprietary information includes but is not limited to, the names of Shipper' customers to whom delivery is made, any pricing information, or any other information relating to Shipper' customers, product or Shipper. Carrier shall keep such information confidential for the greater of (i) one year after the relationship between the parties is terminated and (ii) any period of confidentiality contained in any separate written confidentiality agreement between the parties.

17. Arbitration. Disputed cargo claims may, at the rest of either party, be submitted to binding arbitration under the rules established by the Transportation Lawyers Association's ADR Council.

18. Governing Law. This Agreement shall be governed by and interpreted in accordance with general principles of federal transportation law and the laws of the Commonwealth of Virginia in which this contract is entered.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date indicated.

SHIPPER:

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

Title \_\_\_\_\_

DICK HARRIS AND SON  
TRUCKING CO., INC.

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

Issuance Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Title \_\_\_\_\_

Issuance Date: \_\_\_\_\_

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Effective Date: \_\_\_\_\_

DICK HARRIS AND SON TRUCKING CO., INC.'S SERVICE CONDITIONS SHALL APPLY.  
SEE [WWW.HARRISTRUCKING.COM](http://WWW.HARRISTRUCKING.COM)

Schedule of Rates and Charges

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DICK HARRIS AND SON TRUCKING CO., INC.'S SERVICE CONDITIONS SHALL APPLY.

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