



BROKER/SHIPPER TRANSPORTATION AGREEMENT

This agreement is made and intended to be effective this (the) _____ day of _____, 20____ by and between _____ having offices at _____ (Broker) and Furst-McNess Company, having offices at 120 E Clark St, Freeport, IL 61032 (McNess); collectively, the "Parties".

RECITALS

(A) Broker is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-_____, or by appropriate State agencies, and as a licensed Broker, arranges for freight transportation. A copy of Broker's FMCSA license is attached as Appendix A, and a copy of BROKER's Surety Bond or trust fund agreement is attached as Appendix B; and

(B) McNess, to satisfy some of its transportation needs, desires to utilize the services of Broker to arrange for transportation of McNess freight.

NOW, THEREFORE, intending to be legally bound, Broker and McNess agree as follows:

AGREEMENT

- 1. Term.** The term of this Agreement shall be one (1) year, commencing on the date shown above, and shall automatically renew for successive one year periods; provided 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. Acceptance of Goods for Transit.** The Broker undertakes to arrange for any or all of the following services (The Services): Full truckload, less than truckload or sometimes intermodal (via railroad), handling, loading, unloading, storage or transport of goods for McNess, through the selection of licensed and authorized carriers under contract with Broker ("carrier").
- 3. Duties of the Broker when acting as a Broker:** **(A)** The Broker shall procure the Services from Carrier engaged by Broker. **(B)** The Broker shall be permitted to act in any reasonably necessary manner and shall perform its duties using a reasonable degree of care and diligence. **(C)** The Broker shall perform its services within a reasonable time, taking all reasonable steps to perform the transaction in accordance with McNess instructions. **(D)** The Broker shall be permitted to depart from any instruction from McNess if the Broker deems it necessary to do so in order to protect McNess interests. **(E)** The Broker shall seek further instructions from McNess if it becomes impossible at any time for the Broker to fulfill its duties. **(F)** The Broker shall not be liable for loss of or damage to the goods while the goods are in the custody, possession or control of Carrier.

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4. **Duties of McNess:** (A) McNess warrants that it is either the owner or the authorized agent of the owner of the goods. (B) McNess shall provide a full and accurate description of the goods to be transported. (C) Except where carrier engaged by the Broker is instructed to do so, McNess shall properly pack, stow and prepare the goods in a manner suitable and appropriate for shipment by any mode of transport. (D) McNess shall mark the goods and the outside packaging as required by any laws or regulations which may be applicable while the Services are being provided. (E) McNess shall pay all freight charges, duties, or other sums connected with the handling and transportation of the goods. (F) McNess shall pay to the Broker all sums immediately when due, without reduction or deferment on account of any claim. (G) McNess shall remain responsible for the payment of all charges when the Services are to be provided upon instructions to collect freight, duties, charges or any other expenses from another. (H) Confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of McNess to pay all charges or other sums due promptly on demand. (I) McNess shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and § 397 et seq. to the extent that any shipments constitute hazardous materials. McNess is obligated to inform Broker immediately if any such shipments constitute hazardous materials. McNess shall defend, indemnify and hold Broker harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of McNess failure to comply with applicable hazardous materials laws and regulations. (J) McNess shall not deliver any bullion, precious metals, precious metal objects, gold, silver, platinum, precious or semi-precious stones, jewelry, money, securities, accounts, bills, currency, food stamps, lottery tickets, notes, bank notes, coins, bonds, negotiable instruments, evidences of debt, passports, tickets, documents, manuscripts, records, valuable papers, cigarettes, cellular telephones, PDA's, valuable works of art, bloodstock, live animals, plants or cuttings, contraband, or vehicles. (K) McNess shall advise Broker if any goods are liable to taint or affect other goods or are likely to harbor or encourage vermin or other pests.
5. **Indemnification by McNess.** McNess shall indemnify and hold the Broker harmless for: (A) All duties, taxes, fines, or other expenses incurred by the Broker caused by McNess or any party acting on its behalf. (B) Any claim for general average and/or salvage, and McNess shall provide such security as may be required. (C) Where McNess itself has prepared the goods for transport, for any claim by a third party for bodily injury or property damage arising out of McNess failure to pack or otherwise adequately prepare the goods for shipment.
6. **Payments.** Broker shall invoice McNess for its services in accordance with the rates, charges and provisions set forth, and any written supplements or revisions that are mutually agreed to between the Parties in writing. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon Broker's invoice to McNess and McNess payment to Broker. McNess agrees to pay Broker's invoice within 30 days of invoice date without deduction or setoff.
7. **Lien on Cargoes.** (A) The Broker shall not have a general lien on any and all property of McNess in its possession or control, for any claim for charges, expenses or advances incurred by the Broker in connection with any of the Services rendered to McNess. (B) The Broker may, at its option, suspend property delivery until all McNess obligations due to Broker are paid. (C) If such claim remains unsatisfied for thirty (30) days after demand is made, the Broker may sell the goods at public auction or private sale on ten (10) days' written notice to McNess in satisfaction of the sum due to the Broker. (D) Any surplus from such sale, after the payment of any applicable expenses, shall be transmitted to McNess. (E) McNess shall remain liable for any deficiency in the sale.
8. **Presentation of Claims and Liabilities.** (A) In the event that the goods are lost, damaged, delayed or otherwise received in a manner inconsistent with its intended delivery, McNess shall give notice to the Broker, immediately after it learns of the condition, but not later than seven (7) days thereafter. On receipt of such notice, the Broker shall arrange on McNess request an investigation of the circumstances surrounding the matter. (B) McNess shall be responsible for the timely filing of a claim with Broker, and the Broker shall engage the Carrier to respond to such claim and, if the Carrier does not pay a claim and Broker is notified of this act, it is Broker's sole duty to notify McNess in writing, and it is McNess duty to timely file a lawsuit or other dispute (e.g. arbitration) resolution format required for the shipment.

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(C) The Broker shall not be liable for the loss, delay or damage to the goods. Carriers used for the Shipment will assume liability as provided under CFR 370 for all shipment loss and damage claims, including delay and will not exceed the least of (1) The invoice value (2) The declared value or (3) \$100,000 per shipment not to exceed the maximum amount of Carrier's cargo insurance, unless at time of booking the Shipment, McNess requested a higher amount as declared value and paid the appropriate excess valuation charge. Any Shipment of used materials may be subject to lower limitations of liability than the limits set forth in the preceding sentence, as published by Carrier. McNess shall seek restitution from the Carrier by filing a proper claim for loss and damage against the Carrier, and not against the Broker.

9. **Insurance.** Broker agrees to procure and maintain at its own expense, at all times during the term of this Agreement and through any applicable statute of limitations, the following insurance coverage amounts:

(A) Commercial General Liability insurance covering bodily injury and property damage	\$2,000,000
(B) Contingent Cargo Insurance	\$100,000
(C) Errors and Omissions Insurance	\$200,000
(D) Contingent Auto Liability	\$2,000,000
(E) Workers Compensation	Statutory
(F) Employers Liability	\$500,000

Broker shall agree to name McNess as an Additional Insured on the Commercial General Liability policy on a primary and non-contributory basis. Workers' Compensation coverage shall be endorsed to provide a Waiver of Subrogation in favor of Company. Broker shall submit to McNess a certificate of insurance as evidence of such coverage as outlined above. Required liability limits can be satisfied through a combination of Primary and Umbrella limits.

10. **Broker Bond.** Broker shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$75,000 or as otherwise required by the FMCSA and furnish McNess with proof upon request.

11. **Homeland Security.** As applicable to each, respectively, Broker and McNess shall comply with state and federal Homeland Security related laws and regulations.

12. **Assignment/Modification 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.

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- 14. **Independent Contractor.** It is understood between Broker and McNess that Broker is not an agent for the carrier or McNess and shall remain at all times an independent contractor. McNess does not exercise or retain any control or supervision over Broker, its operations, employees, or carriers.
- 15. **Non-waiver.** 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 or email with confirmed receipt) and shall be addressed if to McNess, at:

Furst-McNess Company
 120 East Clark Street
 Freeport, Illinois 61032
 Attention: Jennifer Karstedt
 Telephone: (815) 232-970
 Fax: (815) 232-9838
 Email: jennie.karstedt@mcness.com

If to Broker, at:

Broker name: _____
 Address: _____
 City, State, Zip: _____
 Attention: _____
 Telephone: _____
 Fax: _____
 Email address: _____

- 17. **Indemnity.** Broker and McNess shall each defend, indemnify and hold harmless the other party from and against all loss, damage, expense, including injury resulting in death, and damage to property arising out of or in connection with the indemnifying party's or its agents' and employees' failure to observe and/or enforce the duties and responsibilities set forth herein, including loading, handling, transportation, unloading or delivery of any Shipment hereunder or in any other way related to the indemnified party's or its agents' and employees' negligent acts, omissions or performance of their obligations hereunder, unless such injury is caused by the sole negligence of the indemnifying party.
- 18. **Force Majeure.** Neither Broker nor Carrier shall be liable for any delay in the performance of the Transportation Services resulting directly or indirectly from or contributed to by any force majeure, including, but not limited to, act of God, acts of government or other civil or military authorities, fires, accidents, floods, strikes, lockouts, war, riot or other circumstances beyond their reasonable control.

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19. Waiver of Certain Damages. In no event shall Broker or Carrier be liable for any consequential, incidental, or special damages which may arise from loss, damage, non-delivery, or delay of any shipment. This limitation shall apply to and include, but not limited to damages for loss of profit, loss of income, or loss of business opportunity.

20. Law and Jurisdiction. The terms and conditions of the Services to be provided shall be construed in accordance with the laws of the State of _____. Jurisdiction and venue, if any dispute, shall be with a court residing within _____ County of _____.

21. Entire Agreement: This Agreement, including all Appendices 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. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

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.

(Broker) _____

Furst-McNess Company

Signature

Signature

Printed Name

Printed Name Jennifer Karstedt

Title

Title Insurance and Risk Coordinator

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