

Terms and Conditions for Transportation Services

These Terms and Conditions for Transportation Services (“Terms and Conditions”) set forth the terms and conditions applicable to the Transportation Services provided by Kelle’s Transport Service, LLC dba Soar Transportation Group, a Delaware limited liability company with a primary business address of 977 W 2100 S, Salt Lake City, UT 84119 (the “Company”). By accepting any shipment tendered by the Company for the performance of Transportation Services, executing or acknowledging any bill of lading or other document relating to a shipment the Company provided to you for Transportation Services, or by otherwise providing Transportation Services to the Company, you consent to, and acknowledge and agree to, be bound by the following terms and conditions:

1. Definitions.

When used in these Terms and Conditions, the following terms shall have the respective meanings assigned to them in this Section 1:

- a. “Applicable Law” means all applicable federal, national, state (including cantonal), local, international, governmental, regulatory, and administrative orders, laws, rules, ordinances, regulations, statutes, treaties, or similar requirements.
- b. “Carmack Amendment” means 49 USC § 14706 and the case law relating to such statute.
- c. “Customers” means the Company’s customers, shippers, owners, consignors, consignees and receivers.
- d. “FMCSA” means the United States Federal Motor Carrier Safety Administration.
- e. “Load Confirmation” means for each shipment, the established pick-up and delivery schedule and deadlines, regardless of whether agreed verbally or as set forth in bills of lading or other shipping documents provided to you at or prior to the time of shipment pick up.
- f. “Rate Confirmation” means a rate compensation confirmation issued by the Company in written or electronic format.
- g. “Reasonable Dispatch” is the delivery schedule agreed to between you and the Company or, if no specific delivery time is agreed, the length of time that it would customarily and ordinarily take to transport a like shipment, but in each case only in accordance with Applicable Law.
- h. “Receipt” means a uniform straight bill of lading (or other receipt) and documentation evidencing proof of delivery.

- i. “Special Damages” means, individually or collectively, any punitive, incidental, indirect, or consequential damages.
- j. “Transportation Services” means all services you provide to the Company in connection with the transportation of freight in interstate commerce as an independent motor carrier.

2. **Transportation Services.**

From time to time, the Company may offer shipments to you for transportation by motor vehicle. Upon acceptance by you of any such shipments, you agree to transport such shipments by motor vehicle in compliance with Applicable Law. You acknowledge that all estimates regarding shipment volumes provided by the Company in any bid, forecast, or other communication are estimates only and are in no way a commitment by the Company to tender any specific volume of freight. The Company makes no guarantee or commitment to tender any minimum quantity of shipments to you. You agree to meet any promised pick-up and delivery schedule and deadlines to the extent such schedules and deadlines and schedules can be met in accordance with Applicable Law. Each Load Confirmation will be incorporated into and considered a part of these Terms and Conditions. You agree not to accept a Load Confirmation if pick-up and delivery schedules cannot be made in compliance with Applicable Law, including then-applicable hours-of-service regulations. If you have are able to receive Load Confirmations through email, fax, or some other mutually agreed upon means of electronic communication, then those terms or directions in the verbal agreement or the applicable fax, email, or other electronic communication (including but not limited to shipping directions) related to pick-up and delivery schedule and deadlines will control; provided, however, any such terms or directions shall not affect the rates and compensation paid to you in connection with the Transportation Services, which will instead be controlled by these Terms and Conditions and the related Rate Confirmation issued by the Company (if any).

3. **Independent Contractor.**

The Company’s relationship with you is that of an independent contractor, and not that of an agent or employee. Nothing in these Terms and Conditions shall be construed as establishing an employment relationship, partnership, or joint venture between you and the Company. You shall at all times have exclusive control, supervision, and direction over (i) the manner in which Transportation Services are provided, (ii) the persons engaged by you in providing Transportation Services, and (iii) the equipment selected and used to provide transportation. You acknowledge that the Company may provide routing information; however, these instructions are for informational purposes only and are not mandated. You agree to assume full responsibility for the payment of local, state, and federal payroll taxes or contributions or taxes for unemployment insurance, retirement pensions, workers’ compensation, or other social security and related protection with respect to the persons engaged by you in the performance of such Transportation Services and agree to comply with all Applicable Law related to the foregoing. Nothing herein will be construed to grant either party any right or authority to assume or create any obligation on behalf, or in the

name of the other, to accept summons or legal process for the other, or to bind the other in any manner whatsoever.

4. **Compensation and Rates.**

Your compensation will be paid solely and exclusively by the Company, and not by the Customers, on all shipments tendered to you for the provision of Transportation Services. You will be compensated by the Company based on the following:

- a. You and the Company may agree to a written rate schedule setting forth the rates and compensation to be paid to you for any shipment tendered by the Company.
- b. You and the Company may orally agree upon the rate or compensation to be paid to you for any shipment tendered by the Company. The Company will subsequently confirm the oral agreement by issuing a Rate Confirmation that sets forth the rates, terms and conditions agreed upon. Unless you object to the contents of the Rate Confirmation within twenty-four (24) hours of receipt, you will be deemed to have assented to the Rate Confirmation, which will be binding. Each Rate Confirmation will be incorporated into and considered a part of these Terms and Conditions.
- c. The Company will pay you for the transportation of authorized freight under these Terms and Conditions within thirty-seven (37) days after receiving (i) your invoice covering such shipment, (ii) the Receipt signed by the applicable Customer upon receipt of the shipment, and (iii) any other documents reasonably requested by the Company (including delivery receipts and other proof of delivery in compliance herewith). You agree that you will only seek payment of all freight invoices exclusively from the Company, and under no circumstances will you seek payment from any Customer.
- d. You agree not to claim or demand, in whole or in part, broker's commissions earned by the Company on shipments tendered for Transportation Services. In no event will the Company be required to disclose the amount of its broker's commission to you, and you expressly waive your right to receive and review information, including broker's commission information, pursuant to 49 CFR 371.3.
- e. In its sole discretion, the Company may withhold or deduct compensation owed to you for any Transportation Services (including failure to timely provide a Receipt as required by Section 5 of these Terms and Conditions) or to satisfy any debt or obligation you owe to the Company. The Company's withholding or deduction of compensation will not allow or permit you to seek payment from the Customers or any other third party, and you agree not to, under any circumstances, claim, demand, or pursue payment from the Customers or other parties for Transportation Services provided hereunder.
- f. Any claim for overpayment or underpayment for Transportation Services provided pursuant to these Terms and Conditions will be presented by the party asserting the

claim to the other party within sixty (60) days of discovery of the claim, but in no event will any such claim(s) be asserted more than one hundred eighty (180) days after the delivery of the shipment or shipments giving rise to any such claim. Claims must be supported by appropriate documentation showing the amount of the overcharge or the undercharge, as the case may be. The parties will pay, deny, or make a firm compromise offer within forty-five (45) days of receiving a claim. Any civil action to recover overcharges or undercharges will be instituted within eighteen (18) months of the date of delivery of the shipments comprising the overcharge or undercharge claim.

5. **Receipts.**

You will, on each shipment, issue a Receipt, and the shipment will move under the terms and conditions of such Receipt. Notwithstanding the foregoing, to the extent any of the terms or provisions of these Terms and Conditions conflict or are inconsistent with any Receipt, shipping document, Load Confirmation, tariff, terms and conditions, or any other writing by the parties related to the services provided hereunder that is not an express amendment to these Terms and Conditions signed by the parties, the parties expressly agree that the terms and provisions of these Terms and Conditions will prevail and supersede such conflicting or inconsistent terms or provisions. If the Receipt or related Load Confirmation indicates that the shipment covered therein is "C.O.D.," then you will collect from the consignee at the time of delivery the dollar amount indicated on the Receipt and remit such sum to the Company. If you fail to collect such sum from consignee, then you will remain responsible for remitting such sum to the Company. If you permit the Customer to prepare the Receipt, you will ensure that the Receipt properly names you as the "carrier" on the load prior to signing it and will strike through and correct any erroneous designation of any other person as "carrier" (including the Company) on the Receipt. In the event that a Receipt issued in connection with cargo hauled under these Terms and Conditions names the Company as the "carrier" in contravention of this Section 5, you agree that you will be deemed the "carrier of record" on the Receipt or other receipt upon acceptance of a tendered load. The Receipt issued or executed by you will be prima facie evidence of receipt of the shipment in good order and condition by you unless otherwise noted on the face of said document. You will submit a copy of the Receipt to the Company evidencing proper delivery of the shipment within 48 hours of delivery unless otherwise instructed by the Company in writing, in which case you will retain custody of the Receipt and provide it to the Company upon request. If you fail to maintain and provide the Receipt, you assume all risk of loss resulting from the failure to prove good delivery. Additionally, failure to provide the Receipt to the Company within 48 hours of delivery will result in a \$25 per day charge thereafter until the Receipt is received.

6. **Cargo Loss or Damage.**

- a. You will have the sole and exclusive care, custody, and control of the shipments tendered by the Company from the time you pick up a shipment until proper and complete delivery to the appropriate consignee. You will be liable to the Company for actual loss and damage to shipments, arising from your performance of or

failure to perform the services required by these Terms and Conditions. Any seals applied to a trailer are not to be broken or removed prior to delivery at destination without prior written consent from the Company. For purposes of these Terms and Conditions, the terms “actual loss and damage” and “full actual value” shall have the meaning set forth in the Carmack Amendment.

- b. You represent and agree there is no limitation of liability or released rates applicable to any shipment made pursuant to these Terms and Conditions that would alter or change your liability to the Company for the full actual value of the freight transported regardless of any limitation contained in any of your insurance policies or the insurance limits described herein.
- c. Within ninety (90) days of receiving a claim from the Company for loss or damage, you will pay the Company or deny the claim (in which case the reasons for denial will be fully explained), or make a firm compromise offer. All claims for loss, damage, or injury to shipments will be processed and adjusted in accordance with the Carmack Amendment, as the same may be amended from time to time, unless stated otherwise in these Terms and Conditions.
- d. You agree not to dispose of any damaged freight transported hereunder without the prior written consent of the Company. You will call the Company for instructions immediately if damage occurs and take reasonable steps to protect the integrity of the freight. In the event branded or labeled goods are damaged, the Company may determine, in its sole discretion, whether the goods may be salvaged.

7. **Indemnification; Limitation of Liability.**

To the fullest extent permitted by Applicable Law, you will indemnify, defend and hold the Company, its Customers, and their respective officers, directors and employees, harmless from and against any and all losses, harm, injuries, damages, claims, costs (including reasonable attorney fees), expenses and liabilities arising from or in connection with (i) services provided by you, your employees, agents, and contractors or otherwise related to these Terms and Conditions, or (ii) a breach by you of these Terms and Conditions or any violation of Applicable Law. Your obligations include, without limitation, liability for payment of any and all costs and/or fees incurred by the Company in the adjustment or defense of any claim for cargo loss or damage and/or claims for personal injury or death or property damage (including cleanup costs from commodity spills and damage to the environment) arising out of or in any way related to the providing of services under these Terms and Conditions. You agree that your obligation to defend, indemnify, and hold harmless the Company and its Customers and their respective officers, directors, and employees from and against any and all claims and liabilities resulting from or arising out of transportation operations and services under these Terms and Conditions will not be limited by any insurance coverage held by you or any limitation contained in any insurance policy held by you or any insurance policy to which any certificate of insurance applies or the insurance limits described herein.

8. **Insurance.**

- a. **Cargo Insurance.** You agree to maintain “all risk” cargo insurance in the minimum amounts of One Hundred Thousand Dollars (\$100,000.00) per load (or such greater amount as may then be required by Applicable Law) to provide coverage for loss or damage to property belonging to Customers, which property comes into your possession in connection with the Transportation Services hereunder. You are solely responsible to pay the full deductible towards any claim. All exclusions or restrictions in the cargo insurance policy must be approved by the Company.
- b. **Automobile Liability.** You will maintain a primary, non-contributory automobile liability insurance policy with limits not less than One Million Dollars (\$1,000,000.00) per occurrence (or such greater amount as may then be required by Applicable Law).
- c. **Workers’ Compensation and Other Coverage.** You agree to procure and maintain workers’ compensation insurance as required by Applicable Law and any other insurance coverage required by any government body for the types of transportation and related services performed under these Terms and Conditions, including, without limitation, any additional BMC 32 and MCS 90 Endorsements or requirements.

You agree to furnish written evidence of insurance coverage to the Company upon the Company’s request and will advise the Company of any change in insurance coverage thirty (30) days prior to the effective date of such change. Your liability for cargo loss or damage described herein and its indemnification described herein will not be reduced or limited by the actual insurance policy limits that you choose to purchase. You will cause the required insurance to be procured naming the Company as "additional insured" on any General Liability and/or Automobile Liability policies, and as "loss payee" on the Cargo Insurance policy.

9. **Liability of the Company.**

The Company will be liable to you for freight charges and all other applicable charges agreed to and contained in the Load Confirmation and Rate Confirmation, except that if the Company stipulates, either in writing or verbally followed by a written confirmation sent to you either by U.S. Mail, fax, email or other type of Electronic Communication, that you may not make delivery without obtaining payment of charges by the designated payor and you make delivery without obtaining payment, then the Company will not be liable for freight charges and other applicable charges owing you contained in the Load Confirmation and Rate Confirmation. The Company will have no other obligations or liabilities to you.

10. Additional Covenants, Representations and Warranties.

- a. You represent that you are fit, willing, and able to provide the Transportation Services contemplated herein. You further represent and warrant that you are presently in compliance and will, at all times while performing Transportation Services, remain in compliance with all Applicable Law having jurisdiction over any of your operations and/or the Transportation Services.
- b. You further represent and warrant that you (and any of your drivers performing Transportation Services) will remain in compliance with all Applicable Law (including but not limited to driver hiring, hours-of-service, and electronic logging device regulations) of the DOT, FMCSA, and any other federal, state or local authorities and that you are solely responsible for compliance with any Applicable Law. You agree to immediately notify the Company in the event of any suspension, cancellation, termination, or withdrawal of your operating authorities.
- c. You further agree that, at your sole cost and expense, you will provide and maintain all equipment required for the Transportation Services requested by the Company and will only use and provide equipment that is clean, in good operating condition and repair, odor-free, dry, leakproof, free of contamination and infestation, in compliance with Applicable Law, and is suitable and properly configured to safely load, transport, and unload the shipments tendered by the Company. You will ensure that all equipment and all loads are in compliance with the environmental standards of any and all jurisdictions on its route and must act in accordance with these environmental standards. Any deviation from prescribed environmental standards is contrary to the Company's policy and you will be solely and independently responsible for any consequence arising from said deviation. All equipment used by you for shipments traveling through the State of California will comply with requirements of the California Air Resources Board rules and regulations (including any amendments or restatements thereto) and similar Applicable Law from other jurisdictions.
- d. You further agree that, at your sole cost and expense, all equipment used by you for the transportation of food or food grade products will comply with the requirements of the Food Safety Modernization Act, and all other Applicable Law, and none of the equipment so provided will have been or will be used for the transportation of any waste of any kind, garbage, hazardous materials, or any other commodity that might adulterate or contaminate food, food products, or cosmetics. You will verify that such equipment is suitable for the transportation of food or food grade products, or cosmetics, and will comply with all Applicable Law related thereto, including, without limitation, maintenance of permits and record keeping requirements. You agree to inspect or hire a service representative to inspect any refrigeration or heating unit at least once each month. You warrant that you will maintain a record of each inspection of refrigeration or heating unit and retain the records of the inspection for a least one year. Copies of these records must be provided upon request to the Company. Each such unit will maintain temperature data recorders

in good working condition and provide the temperature readings upon request. You warrant that you will maintain adequate fuel levels for the refrigeration or heating unit and assume full liability for claims and expenses incurred by the Company or its Customers for failure to do so.

- e. You further agree that, at your sole cost and expense, you will employ in the operation of such vehicles and equipment, fully qualified, trained, and licensed personnel that are competent and capable of safely handling and transporting the shipments hereunder.
- f. You further agree that, at your sole cost and expense, you will provide and ensure completion of all preventive maintenance and ongoing maintenance of the equipment used hereunder including, but not limited to, periodic safety inspections, annual safety inspections, and emissions testing pursuant to any Applicable Law.
- g. You further represent and warrant that you will at all times maintain a DOT safety rating that is “satisfactory,” or “unrated” (subject to the Company’s policies as amended from time to time). You agree to promptly notify the Company if you are assessed an “unsatisfactory” or “conditional” safety rating or if any equipment used by you is known to be or reported as defective or not in compliance with any Applicable Law.
- h. You further agree that you will follow guidelines designed by the Company and/or its Customers for loads that require specific actions to ensure compliance with Applicable Law.
- i. You further agree that all communications with the Company will be conducted by or through your dispatch or other designated department or non-driver representative and that you will prohibit any of your drivers from contacting or communicating with the Company for any reason, unless you do not have such a separate dispatch or other designated department or non-driver representative capable of relaying information to the your driver when necessary. You acknowledge and agree that the Company will not accept, respond to, or engage in communications with any of your drivers, unless you do not have a separate dispatch or other designated department or non-driver representative capable of relaying information to your driver when necessary. Any such necessary communication between the Company and any such driver (i) will be limited to providing critical shipment information between the Company and you, (ii) will not affect your status as an independent contractor or imply any type of agency relationship between the Company and you, and (iii) will not be deemed to be any type of control of you. You will use your best efforts to have a non-driver representative to communicate with the Company and in no event will you accept a shipment or directions from the Company that cannot be executed in compliance with Applicable Law, including compliance with hours-of-service regulations.

- j. Without limiting the foregoing, in the event that you accept a shipment containing hazardous materials, you agree that you will be solely responsible for all hazardous material requirements, including, without limitation, all (i) permits and licenses related thereto, (ii) driver training, (iii) vehicle and placarding requirements, (iv) safety requirements in transporting and loading and unloading, (v) security matters, and (vi) other Applicable Law concerning hazardous materials.

11. **Assignment of Freight.**

You specifically agree to be solely responsible for operating the equipment necessary to transport freight tendered hereunder and will not, in any manner, subcontract, broker, or tender to any third party for transportation any freight tendered to you under these Terms and Conditions. In the event you employ any subcontractor or other person for the performance of all or any portion of the Transportation Services required hereunder to be performed by you, you will be and remain liable to the Company under these Terms and Conditions, including, without limitation, liability for loss, damage, or delay of any shipments, regardless of whether such loss, damage, or delay occurred while such shipment was in your possession or the possession of such subcontractor or other person. You will be solely and exclusively responsible to pay any charges of any subcontractor or other person and agrees to indemnify and defend the Company and its Customers from and against any claims made by any such subcontractor or other person in connection with its provision of Transportation Services required to be performed by you hereunder. The prohibition against subcontracting does not apply to a person leased to you pursuant to the provisions of 49 CFR 376, as amended from time to time. Notwithstanding the terms of this provision, if you violate these Terms and Conditions and sub-contract any freight tendered to you hereunder, the Company may, in its sole discretion, do one or more of the following: (a) terminate the Company's relationship with you; and/or (b) require you to immediately provide security (cash, bond or letter of credit) in a minimum amount of fifty thousand dollars (\$50,000), or such greater amount required by the Company, to secure your liability to carriers you engage. You further acknowledge and agree that the Company may, in its sole discretion, withhold payment to you and make payment directly to carriers engaged by you.

12. **Non-Solicitation.**

You will not solicit traffic from any Customer of the Company where (i) the availability of such traffic first became known to you as a result of working with the Company or (ii) where the traffic of the Customer of the Company was hauled by you through the Company. If you breach these Terms and Conditions and "back solicit" the Company's Customer and obtain traffic from such Customer, the Company will then be entitled, for a period of fifteen (15) months after such traffic first begins to move as a result of such back solicitation, to a commission from you of thirty percent (30%) of the transportation revenue received by you on the movement of such traffic.

13. **Waiver of Carrier's Lien.**

You will not withhold any Customer freight on account of any dispute as to rates or any alleged failure of the Company to pay charges incurred hereunder. You hereby waive and release all liens that you might otherwise have to any freight of the Company or its Customer(s) in the your possession or control.

14. **Notices.**

All notices made with respect to the Transportation Services will be provided in writing and delivered by email, facsimile, certified mail, or overnight courier. Notices transmitted by email will be deemed received as of the date and time of the receipt confirmation noted by the sender's email system. Notices transmitted by facsimile will be deemed received as of the date and time of confirmation printed by the sender's machine. Notices transmitted by certified mail or overnight courier will be deemed received as of the date and time signed for by recipient. Notices to the Company will be addressed as set forth above.

15. **Force Majeure.**

Neither you or the Company shall be liable for any delay in the performance of such party's respective obligations with respect to these Terms and Conditions or the Transportation Services resulting from force majeure, including, but not limited to, acts of God, acts of government or other civil or military authorities and acts of terror, war or riots. Whenever possible, in the event of force majeure, the affected party shall promptly notify the other party in writing, stating the reasons for the inability to comply with the provisions of these Terms and Conditions and the expected duration of force majeure.

16. **Confidentiality.**

You and the Company agree to keep confidential any information provided by the other party relating to that party's operations or business activities, including, but not limited to, the names of suppliers, carriers, vendors and Customers. You and the Company agree to hold all such information in confidence and not use any such information other than for the benefit of the other party or in performance of such party's respective obligations under these Terms and Conditions. Neither you nor the Company will disclose any information regarding these Terms and Conditions or any amendments or hereto, except: (a) as may be required by Applicable Law; (b) as is necessary to affect or further the purposes of these Terms and Conditions; (c) when such disclosure is between a parent and its subsidiary or corporate affiliate; or (d) when required in connection with an audit by an accounting or law firm, so long as the disclosing party is responsible for ensuring compliance with this confidentiality requirement by the audit or law firm.

17. **Arbitration.**

Any controversy or claim arising out of or relating to the Transportation Services or these Terms and Conditions, or the breach hereof, will be settled by binding arbitration by a

single arbitrator in accordance with the rules of the National Alternative Dispute Resolution Advisory Council, and judgment upon the award rendered may be entered in a court having jurisdiction. The arbitrator will have no authority to award punitive or exemplary damages. Such arbitration will be conducted in Salt Lake City, Utah or such other location as determined by the Company.

18. **Assignment.**

Except as expressly set forth within these Terms and Conditions, neither party may assign, voluntarily, by operation of law or otherwise, any rights or delegate any duties under these Terms and Conditions without the other party's prior written consent, which consent will not be unreasonably withheld, except in the case of a merger, acquisition or sale of all or substantially all of the assets of the party, subject to the successor entity expressly assuming the obligations of the assigning party. These Terms and Conditions will bind and inure to the benefit of the parties and their respective successors and permitted assigns. Notwithstanding the foregoing, the Company may subcontract or co-broker any shipments tendered by you under these Terms and Conditions.

19. **Miscellaneous.**

These Terms and Conditions shall be expressly superseded by, and shall not apply in the event of, you and the Company having previously entered into a valid and binding written agreement with respect to the Transportation Services, provided such prior written agreement shall be in full force and effect in accordance with its terms when such Transportation Services are performed by you, and if no such prior written agreement exists in full force and effect, these Terms and Conditions and the agreements referred to herein comprise the entire agreement between you and the Company relating to the subject matter herein. These Terms and Conditions may be amended or modified at any time by the Company. Headings are for reference only and do not affect the meaning of any paragraph. These Terms and Conditions will be governed by and interpreted in accordance with the laws of the State of Utah without giving effect to the choice of law rules thereof. In the event any provision of these Terms and Conditions is violative of any Applicable Law, such provision will be amended to conform thereto without invalidating the remainder of these Terms and Conditions. The parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Salt Lake City, Utah for the purposes of adjudicating any matter arising out of or relating to these Terms and Conditions. These Terms and Conditions may be accepted electronically in one or more counterparts and each such counterpart will, for all purposes, be deemed an original, but all such counterparts will together constitute but one and the same instrument. All accrued obligations of the parties will survive the termination or expiration of these Terms and Conditions. The failure of a party to object to or take action with respect to any breach of any term of these Terms and Conditions by the other will not be construed as a waiver of any rights hereunder by the non-objecting party, nor of any claims, past, present or future, for any breach of these Terms and Conditions.