

## **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 tendering any shipment to the Company for the performance of Transportation Services, executing or acknowledging any bill of lading or other document relating to a shipment for which the Company provided Transportation Services, or by otherwise utilizing the Transportation Services provided by 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. “Brokerage Services” means the services provided by the Company as a transportation broker of freight in interstate commerce, including by arranging for the pick-up, transport, and delivery of freight shipments to and from various points in the continental United States exclusively by Carriers that hold the proper government authority to perform the requested services.
- c. “Carrier” means third-party, independent motor carriers selected by the Company.
- d. “Carrier Services” mean transportation of freight in interstate commerce directly with equipment operated by or through the Company.
- e. “FMCSA” means the United States Federal Motor Carrier Safety Administration.
- f. “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.
- g. “Special Damages” means, individually or collectively, any punitive, incidental, indirect, or consequential damages.
- h. “Transportation Services” means the Brokerage Services and/or the Carrier Services provided by the Company.

2. **Tender of Shipments.**

You acknowledge and agree that tendering any shipment or series of shipments to the Company for the purpose of having the Company provide Transportation Services does not create an exclusive relationship between you and the Company, and the Company shall at all times remain free to accept freight or shipments for transportation from other customers and shippers, and likewise, you shall be free to tender freight for transportation to other brokers or carriers. You agree to provide the Company with complete and accurate information regarding each shipment tendered hereunder, including, without limitation, the nature of the goods being shipped, dimensions, weight, packaging details, destination, and any special handling requirements. You are responsible for ensuring that each shipment tendered to the Company is properly packaged, labeled, ready for transport, and otherwise in compliance with all Applicable Law, including, without limitation, those concerning hazardous materials, customs requirements, and export/import restrictions. You agree to be responsible for (and in no event shall the Company be liable for), any costs, fines, or penalties resulting from inaccuracies or omissions in the information you provide to the Company.

3. **Transportation Services.**

For all shipments you tender to the Company and that are accepted by the Company, the Company shall provide Transportation Services in accordance with these Terms and Conditions.

- a. **Brokerage Services.** The following terms and conditions shall apply to any Brokerage Services provided hereunder, (i) Carriers selected by the Company will, at all times, be independent contractors retaining complete control over and complete responsibility for their own operations and employees, (ii) the Company will have no contact with drivers employed by or leased to Carriers and will only communicate with Carriers via non-driver representatives designated by the Carrier, (iii) the Company will not be responsible for packaging, handling, loading, or unloading of freight which will instead be your responsibility or the responsibility of the Carriers, and (iv) the Company shall have the sole right to select the Carriers used to perform services.
- b. **Carrier Services.** The following terms and conditions shall apply to any Carrier Services provided hereunder, (i) the Company will provide services of a motor carrier pursuant to the Company's motor carrier authority granted by the FMCSA, (ii) the Company shall have the sole and exclusive responsibility for the costs and over the manner in which it performs Carrier Services, and (iii) unless otherwise agreed in writing, the Company will not be responsible for packaging, handling, loading, or unloading of freight which will instead be your responsibility.

4. **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. Except as otherwise provided in these Terms and Conditions, the Company will not be liable for any obligation incurred by you.

5. **Payment Terms.**

You will pay the Company for its quoted freight charges for each shipment (including, without limitation, additional charges incurred for any shipments that are rejected by the consignee, re-consigned, or returned to you for any reason (including those returned at your request, which will result in a new/additional charge to you for such return shipment)) within thirty (30) days from receiving of the Company's invoice or statement for Transportation Services. Time is of the essence with respect to payment of the Company's charges. In the event that you fail to pay any invoice within the time period set forth in this Section 5, the Company will be entitled to recover, in addition to its quoted freight charges, compound interest at the highest legal rate not to exceed 1.5% per month, plus all costs of collection, including attorneys' fees. The Company may change payment terms upon reasonable notice at any time and with or without any reason.

6. **Receipts.**

The applicable Carrier, with respect to Brokerage Services, or the Company, with respect to Carrier Services, will issue a bill of lading at origin (which may be prepared by you or the Company) signed by the driver evidencing receipt of each shipment tendered to it, and will obtain a receipt for delivery for each shipment from the consignee thereof or other party accepting delivery. In the event of a conflict between these Terms and Conditions and a provision in the bill of lading, the provisions of these Terms and Conditions will govern.

7. **Carrier's Charges.**

The Company will be solely and exclusively liable and responsible for the payment of rates and charges to Carriers. Your sole obligation with regard to the payment for the Transportation Services provided under or in relation to these Terms and Conditions is to timely pay the Company as required by Section 5 hereof.

8. **Cargo Loss or Damage.**

- a. **Claim Notification.** If any shipment under which the Company provides Transportation Services suffers loss or damage, you will, as a condition precedent to any recovery or payment from the Company, submit, or cause to be submitted, to the Company a detailed claim, in writing. Claims for alleged loss or damage must be submitted to the Company within thirty (30) days of delivery of the

shipment, or in the case of non-delivery, within thirty (30) days from the date the shipment was first scheduled to be delivered. Failure to submit a claim within such thirty (30) day period will forever bar any action at law for recovery of same. The time limits for filing of loss and damage claims, and the time limits for filing any action at law for disallowance of claims, will be governed by the provisions contained in 49 USC Section 14706.

- b. Liability Providing Brokerage Services. If any shipment tendered to a Carrier in connection with the Company's Brokerage Services suffers loss, damage, or destruction, the Company will use commercially reasonable efforts to require Carriers to assume full liability for the lower of (i) the replacement cost, (ii) the commercial invoice value, or (iii) the market value of such shipment; provided, however, in no event will a Carrier's liability exceed One Hundred Thousand Dollars (\$100,000) per shipment. You shall deduct from your damages the reasonable salvage value, if any, of any damaged cargo. In no event may you bring a claim against the Company for loss or damage to cargo in connection with any Brokerage Services provided hereunder, nor may you withhold any payment due to the Company based upon a pending cargo claim arising in connection with the Brokerage Services provided hereunder.
  
- c. Liability Providing Carrier Services. The Company will be liable to you as set forth in the Carmack Amendment and applicable common law for loss of or damage (injury) to cargo transported in connection with the Company's Carrier Services, occurring while in the possession or under the control of the Company. In no event will the Company's liability exceed One Hundred Thousand Dollars (\$100,000) per shipment for any Carrier Services provided by the Company. Except as set forth in this Section 8(c), the Company has no liability to you in any respect.
  
- d. Sealed Shipments. If you load or seal the lading in or on the trailer and the Company, for any Carrier Services provided hereunder, or the Carrier, for any Brokerage Services provided hereunder, does not have the opportunity to count the lading being loaded and the seal is intact upon delivery, the Company or the Carrier (as applicable) will be absolved from any liability for shortages or any damage to the lading except proximately caused by independent action of the Company or the Carrier (as applicable). Such absolution of liability will also occur if (i) the seal is broken at the direction and under the supervision of an agent of any governmental authority; provided, that such agent reseals the trailer and/or makes appropriate notation on the freight documentation form, or (ii) trailers are preloaded and the adequacy of loading or count of such trailer is not practical by a representative of the Company or a Carrier (as applicable). The Company or a Carrier (as applicable) may break the seal on a trailer if, upon the Company or the Carrier's determination, or that of their respective operator or other representative, it becomes reasonably necessary to do so to inspect, reposition, or protect the lading or the Company's or the Carrier's equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations. Your consignee may not refuse delivery of a shipment solely because the seal on a trailer is broken.

- e. Delay. Carriers (with respect to Brokerage Services) and the Company (with respect to Carrier Services) will only be bound to transport any shipment with reasonable dispatch. “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.

9. **Indemnification; Limitation of Liability.**

- a. You agree to indemnify, defend, and hold harmless the Company, its subsidiaries, and affiliated companies of each of them and their respective owners, directors, officers, agents, and employees, from and against any and all any and all fines, loss, damage, injury, liability, and claims, including reasonable attorney’s fees relating to the foregoing (collectively “Losses”), resulting or arising directly or indirectly from (i) your negligent acts or omissions or (ii) your breach of these Terms and Conditions. This indemnity will not apply to an indemnitee to the extent any liability is caused or contributed to by the grossly negligent acts or omissions of such indemnitee. You agree that the Company has no obligation under these Terms and Conditions or otherwise to indemnify you in any respect.
- b. You agree to give the Company or the applicable indemnitee prompt notice of any claim or suit coming within the purview of the foregoing indemnity. You agree to assume the defense of any claim, demand or action against the Company or such indemnitee and will, upon the request of the Company or such indemnitee, allow the Company or such indemnitee to participate in the defense thereof, such participation to be at the expense of the Company or such indemnitee.
- c. **IN NO EVENT WILL YOU OR THE COMPANY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL DAMAGES OF ANY KIND IN CONNECTION WITH THE TRANSPORTATION SERVICES OR THESE TERMS AND CONDITIONS, EVEN IF THE PARTY WHO IS LIABLE HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES. THE FOREGOING LIMITATION OF LIABILITY WILL NOT APPLY TO CLAIMS MADE BY THIRD PARTIES FOR INJURY TO PERSONS, INCLUDING DEATH, OR DAMAGE TO PROPERTY.**
- d. Except as expressly set forth herein, the Company will have no liability to you for Losses arising from or related to the performance of Transportation Services or these Terms and Conditions.

10. **Insurance.**

The Company shall at all times maintain such insurance coverages and amounts as may be required by Applicable Law to provide the Transportation Services, including, without limitation, maintaining a surety bond or other financial assurance as required by the FMCSA.

11. **Hazardous Materials.**

You agree not to tender any hazardous materials, as defined within 49 C.F.R., Subtitle B, Parts 105 through 180 (“Hazardous Materials”), to the Company for the purpose of having the Company provide Transportation Services, without providing prior written notice to the Company of the existence of such Hazardous Materials. If you, without such notification, knowingly or unknowingly tenders a Hazardous Materials shipment to the Company which the Company accepts, you hereby agree to indemnify, defend, and hold the Company and the Carrier harmless against any and all liability which may arise from or relate to the transportation of such Hazardous Materials shipment, such liabilities including but not limited to any cargo loss or damage and/or any party and/or third party claims for personal injury, death and/or property damage, including but not limited to damage to the environment.

12. **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.

13. **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 (except for your obligations to make payments to the Company as set forth in Section 5) 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.

14. **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.

15. **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.

16. **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.

17. **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 Company's provision of 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 the Company, 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.