

AUTO-logistics

Contract
AUTO-logistics VENDOR AGREEMENT

This Transportation Agreement (“Agreement”) is entered into as of this ____ day of _____, _____, by and between AUTO-logistics (“Shipper Agent”), an Arizona Limited Liability Corporation with its principal place of business in Phoenix, AZ and _____, a(n) _____ corporation with its principal place of business in _____, _____ (“Vendor”).

WITNESSETH:

WHEREAS, Vendor has represented to Shipper Agent that it possesses the expertise, qualified personnel, facilities, licenses, authority, equipment and vehicles necessary to properly and lawfully supply services; and WHEREAS, Vendor is aware of the distinct needs of Shipper Agent and has designed its offering, as reflected in this Agreement, specifically to satisfy these needs; and WHEREAS, Shipper Agent is desirous of entering into an agreement for services; and WHEREAS, both Parties have considered their respective obligations and responsibilities and the legal consequences of entering into a binding legal agreement and are desirous of doing so; NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein the Parties hereby agree as follows:

Article 1: Contract Term.

1.1 This Agreement shall be effective as of the date first written above and shall continue in effect for term of one (1) year unless and until terminated as provided for herein. Provided that neither party is in default and provided further that this Agreement has not been terminated pursuant to Article 13 below, the term of this Agreement shall automatically renew for successive additional one (1) year terms unless prior to the expiration of the initial one-year term or any renewal term one party gives written notice to the other party that it does not want to renew this Agreement. The terms and conditions of this Agreement shall remain in full force and effect during the term of any renewal period, unless the parties agree to amended terms and/or conditions in writing.

Article 2: Scope.

2.1 This Agreement covers the services necessary to fulfill Vehicle Shipping Agreements (“VSA”) to be supplied to Shipper Agent.



- 2.2 Agent shall request that Vendor submit a bid to Shipper Agent for performing the services set forth in a VSA. Whether to request a bid from Shipper Agent for any particular VSA shall be in the sole discretion of Shipper Agent, and Shipper Agent shall have no obligation or liability to Vendor for not requesting a bid for any particular VSA.
- 2.3 If Shipper Agent is requesting a bid from Vendor, then Shipper Agent will supply Vendor with (i) a “VSA Bid Request” form that will contain a summary of the pertinent material terms of the VSA; (ii) and (ii) the date by which Vendor’s bid must be submitted to be considered.
- 2.4 Vendor shall submit its bid online or by completing, signing and faxing the VSA Bid Request form to Shipper Agent, and upon submission the bid shall be deemed to be an offer to perform the services required in the VSA, which offer shall be irrevocable for a period of ten(10) days, at which time it will be deemed to be withdrawn.
- 2.5 To accept a bid, Shipper Agent shall notify Vendor that its bid has been accepted, and Shipper Agent shall email or fax to Vendor a “VSA Notification” which shall incorporate the terms of the Vendor’s bid set out in the VSA Bid Request form, together with a copy of the VSA. Upon receipt of that VSA Notification Vendor shall submit online or sign and fax a copy of the VSA Notification to Shipper Agent, and at that time the VSA and the VSA Notification shall be deemed to be an amendment to and form part of this Agreement, and shall be controlled by the terms of this Agreement.
- 2.6 All VSAs created under this Agreement shall be incorporated herein by reference and deemed to be an integral part of this Agreement.

Article 3: Service Commitment.

- 3.1 After its bid has been accepted, Vendor shall be bound by the terms of the VSA and VSA Notification, and once cargo is accepted by Vendor, or comes into Vendor’s possession, Vendor shall properly and carefully load, handle, store, carry, keep, care for, and/or transport the cargo as described in the VSA.
- 3.2 Vendor shall provide equipment that is in good condition, meeting all applicable laws and safety standards. Vendor will be held liable for any reasonable costs incurred as a result of vendor equipment in the exercise of commercial reasonableness.
- 3.3 Vendor shall deliver/relinquish all cargo in the same condition it was in when accepted by Vendor, free from any and all damage, in a timely manner in accordance with the specifications on the written VSA and VSA Notification.
- 3.4 Vendor shall arrange for transport, storage, and/or delivery of all cargo as directed in the VSA and VSA Notification with reasonable care and dispatch using properly maintained equipment and legally licensed driving personnel. **Vendor may not broker, sub-contract or assign Shipper Agent freight.** Vendor shall perform this service under their Operating Authority and may not



contract a third party under a different operating authority to perform contracted service.

- 3.5 During the term of this Agreement, the parties agree that all shipments handled by Vendor for Shipper Agent are mutually intended to be transported under “contract carriage” (49 U.S.C. 14101 (b)) subject to and/ or consistent with the terms of this Agreement, and any otherwise applicable rights or remedies under U.S.C. Title 49 (except registration, insurance or safety fitness provisions) which are inconsistent with the provisions of this Agreement are hereby waived.
- 3.6 Vendor will perform its obligations as an independent contractor and not as the agent or employee of Shipper Agent.

Article 4: Rates and Charges.

- 4.1 Each VSA Notification will describe the accepted bid amount (the “Accepted Bid”), which shall constitute the rate and charges for the specific shipment covered by that VSA. Shipper Agent shall not pay or be responsible for any charges over and above the Accepted Bid (“Additional Charges”) unless Shipper Agent pre-approves any such Additional Charges.
- 4.2 Payment Responsibility. Each VSA Notification will describe the party responsible for payment in the “Remit To:” section. If the Shipper is listed in the “Remit To:” section, the Shipper, not the Shipper Agent, is responsible for vendor payment. If the shipper Agent is the only party listed in the “Remit To:” section then the Shipper Agent is responsible for vendor payment. Regardless of the party responsible for payment, the Vendor shall send their invoice to Shipper Agent.
- 4.3 Payment by Shipper. If Shipper is responsible for Vendor payment, Shipper Agent agrees to submit Vendor Invoice either by mail or electronically to Shipper within 1 week of date received by Vendor. Shipper Agent also agrees to aid Vendor in receiving payment using reasonable business methods.
- 4.4 Payment by Shipper Agent. Shipper Agent will render payment on the 10th day of the month following the date of freight payment from shipper. Shipper Agent will abide by this payment schedule if Shipper Agent receives a properly completed and correct freight bill and a copy of the original VSA by the 10th day of the month following the month of delivery.
- 4.5 Completed and Correct Vendor Invoicing. Vendor shall invoice Shipper Agent within 90 days of service completion for all service provided hereunder, and said invoice shall include the Accepted VSA Bid Notification, any pre-approved Additional Charges, and a signed BOL. In order to be “completed and correct” for the purposes of this paragraph, any such freight bill must include complete and legible information concerning the cargo being transported, including the VIN, and it must be signed and printed by the originating agent, and signed and



printed by the destination agent. All VIN numbers on the driver's paper work must match the most current VSA Bid Notification. If at any time a driver is trying to pick up a vehicle and the VIN's do not match prior authorization must be given by AUTO-logistics. If there is a price discrepancy from the original Bid amount, an explanation for this must be given at time of the submission of invoice. Prior Authorization must be given by AUTO-logistics in the event that any other services need to be performed. Payment may be made by either bank check or electronic funds transfer and shall be deemed made on the date the bank check is mailed or when electronic funds transfer is initiated by Shipper Agent.

- 4.6 Notwithstanding the foregoing, if Shipper Agent has received notice that the cargo delivered by Vendor was damaged during the execution of the VSA, or that Vendor otherwise failed to comply with the provisions of the VSA or VSA Notification, then Shipper Agent shall be entitled to withhold payment in an amount sufficient to cover any claims by Shipper in relation to the cargo or the VSA.
- 4.7 Vendor shall maintain, in accordance with the law and generally accepted accounting principles and practices, such records as may be necessary to adequately reflect the accuracy of Vendor's freight bills under this Agreement. Vendor's invoice shall be accompanied by such documentation as Shipper Agent deems adequate to verify the billings appearing therein.
- 4.8 If Vendor's bill of lading/invoice does not indicate that Vendor is an incorporated entity, by use of the words (or abbreviations) "Incorporated", "Corporation" or "P.C." as a part of Vendor's company name, then Vendors shall display its tax identification number on the invoice in lieu of such designations. Failure to furnish such information may result in withholding thirty-one percent (31%) of the freight charges in accordance with IRS regulations.
- 4.9 If payment is not received by Vendor as required hereunder, Vendor shall so notify Shipper Agent in writing. Thereafter, Vendor and Shipper Agent shall have thirty (30) days to determine why payment was not received and to take such steps as may be reasonably required to comply with these provisions and ensure ongoing compliance with the same.

Article 5: Taxes.

- 5.1 Vendor assumes full responsibility for the payment of all U.S. and state taxes of whatever sort, social security and unemployment compensation taxes, sales, use, value-added and all other taxes or charges applicable to Vendor's actions, employees, facilities and material for performing services hereunder or applicable to Vendor's income hereunder.



Article 6: Records.

6.1 Each Party shall maintain for a period of not less than five (5) years, records reasonably demonstrating compliance with its obligations under this Agreement. Each Party also shall, upon request, make such records reasonably available to the other for purposes of audit. Such records shall be made available at the holder's place of business (within the United States) for audit during normal working hours.

Article 7: Warranties.

7.1 The Parties warrant that each has the authority and capability to enter into this Agreement and to comply with the terms and conditions herein.

7.2 Vendor hereby represents and warrants that it is and at all times will remain in compliance with all local, state, and federal laws and regulations applicable to the services performed hereunder including, but not limited to, Department of Transportation Safety Fitness Regulations.

7.3 Vendor warrants that it will at all times comply with applicable financial responsibility requirements and maintain adequate insurance coverage as required pursuant to Article 12 herein.

7.4 Vendor further warrants that it will only employ or contract with qualified personnel who are properly licensed pursuant to the applicable regulations, and that it will ensure that all personnel are and will remain in compliance with all applicable local, state, and federal laws and regulations.

7.5 Vendor further warrants that all persons that it employs or contracts with are properly insured in each and every state in which Vendor provides services for Shipper Agent, and that said persons are capable and legally authorized to perform all services that Vendor assigns them pursuant to this Vendor Agreement with Shipper Agent.

Article 8: Force Majeure.

8.1 Neither Vendor nor Shipper Agent shall be liable for damages for any delay or failure to perform any of the terms and provisions of this Agreement arising from causes beyond its control, including but not limited to acts of God or public enemies, acts of civil or military authority, labor disputes, fires, riots, wars or conditions of war, embargoes, epidemics, floods or other severe weather (as would be reasonably defined as force majeure), closing or obstruction of highways, bridges or ferries, or shortage or raw materials or power, any of which have a material, substantial and adverse effect on either party's ability to perform pursuant to the terms of this Agreement.

8.2 The Party suffering force majeure shall diligently attempt to remove such cause or causes and shall promptly notify the other party of the extent and probable duration of the force majeure event.



8.3 If the Party suffering the force majeure is unable to remove the cause or causes within ten (10) days, the other party shall have the right to suspend or terminate this Agreement or any portion thereof (including the right to suspend or terminate any VSA and VSA Notification that is then in effect between the parties) without penalty.

Article 9: Indemnification, Insurance & Liability.

9.1 Vendor shall indemnify and hold Shipper Agent harmless for all liabilities, fines, penalties, loss and expense (including reasonable attorneys fees, settlement and judgments) resulting from injury to or death of any person and for loss of or damage to property incurred by Shipper Agent or a third party arising out of or relating to Vendor's performance under this Agreement unless caused solely by the negligence or intentional acts of Shipper Agent.

9.2 Further, Vendor shall indemnify and hold Shipper Agent harmless for all liabilities, penalties, losses and expenses (including reasonable attorneys fees, settlement and judgments) suffered by Shipper Agent resulting from any damage or loss to the cargo listed in the VSA, including, but not limited to, damages incurred by Shipper as a result of any physical damage to the cargo, any lost or stolen cargo, and any damages suffered by Shipper due to Vendor's failure to timely deliver the cargo as required in a VSA.

9.3 During the term of the Agreement, Vendor agrees to maintain worker's compensation coverage as required by law. Further, during the term of this Agreement Vendor shall maintain, with an insurance company approved by Shipper Agent, at least \$1,000,000 of commercial automobile liability insurance covering all cargo and equipment used under this agreement; and at least \$300,000 of cargo insurance per cargo being transported under any VSA, or at such other limits as directed by Shipper Agent pursuant to the terms of any VSA issued under this Vendor Agreement.

9.4 Vendor shall have Shipper Agent named as an additional insured under all such insurance policies, and the policy or policies shall provide that they can be cancelled only after written notice of intent to cancel has been delivered to Shipper Agent at least ten (10) days before the cancellation date. Upon request, Vendor shall furnish Shipper Agent with insurance certificates or other evidence of such insurance coverage.

9.5 If any cargo is lost, stolen or damaged, Shipper Agent shall have the full power to make a claim for and to collect any and all insurance proceeds and to apply them as Shipper Agent chooses, including, but not limited to, to replace or repair the lost or damaged cargo.

9.6 Vendor contractually assumes the liability of an interstate common motor Vendor (see 49 U.S.C. § 14706) for cargo loss or damage to goods shipped hereunder, subject, however, to any modifications, limitations and exclusions set forth in this Agreement.



- 9.7 Vendor shall indemnify and hold Shipper Agent harmless for all liabilities, penalties, losses, expenses (including reasonable attorney's fees, settlement and judgment costs) and damages suffered by Shipper Agent resulting from any claims made by its customers against it due to any loss or damage suffered by Shipper Agent's customers because of the negligence, error, omission, breach of this Agreement, or other action or omission attributed to Vendor while performing services pursuant to this Vendor Agreement.

Article 10: Personnel, Freight, Cargo and Equipment Claims & Payments.

- 10.1 Vendor agrees not to employ or attempt to employ or engage as an independent contractor any of the Shipper Agent's employees. Vendor will obtain written approval from Shipper Agent prior to initiating any contact to Shipper Agent's employees concerning working for Vendor in any capacity.
- 10.2 To the extent practicable, notification of loss or damage to cargo will be reported to Vendor within thirty (30) days after Shipper Agent has been notified by Shipper of any such loss or damage. Copies of any written documentation in support of a loss or damage claim received by Shipper Agent from Shipper will be given to Vendor. Vendor shall acknowledge receipt in writing to Shipper Agent within thirty (30) days after the date of receipt of each loss and damage claim. Vendor will pay, decline to pay, or make a firm compromise offer in writing to Shipper Agent within thirty (30) days after receipt of a loss and damage claim.
- 10.3 To the extent allowed by Shipper, Vendor and/ or Shipper Agent shall be afforded an opportunity to inspect the damaged material or product in the shipment at a time mutually agreeable to Vendor, Shipper Agent and Shipper, and if at all possible within thirty (30) days of receipt of notice.
- 10.4 In addition to being liable for any loss or damage related to the cargo being delivered, Vendor hereby specifically acknowledges that it shall also be liable to Shipper Agent for any additional amounts for which Shipper Agent may be liable to Shipper that may be caused by Vendor's default, including, but not limited to, damages suffered by Shipper for Vendor's failure to timely deliver any cargo as required in the VSA.
- 10.5 Under no circumstances is Vendor to dispose of any cargo covered by a VSA without the prior written consent of Shipper Agent.
- 10.6 If Shipper Agent makes a claim against Vendor or Vendor's insurer under the provisions of this Article 10 or Article 9 above, then, in addition to any claim payment by Vendor to Shipper Agent required by this Agreement, Vendor shall also be liable to Shipper Agent for an additional ten (10) percent of said claim, to compensate Shipper Agent for the additional time and costs (excluding attorneys' fees and costs) incurred by Shipper Agent in making and pursuing said claim.



Article 13: Termination.

- 13.1 Either party may terminate this Agreement for convenience at any time by giving ninety (90) days prior written notice to the other party, and said termination shall be effective on the ninetieth day following that notice.
- 13.2 If either party ceases to perform or fails to comply with any of the terms and conditions of this Agreement, and fails to cure any such default following ten (10) days prior written notice to cure, the non-defaulting party shall have the right to terminate this Agreement upon ten (10) days prior written notice to the other party.
- 13.3 Notwithstanding the foregoing, if (i) Vendor defaults under this Agreement by damaging the cargo it is transporting under a VSA, or otherwise fails to timely deliver the cargo as required by the terms of the VSA, or if Vendor breaches Section 3.4 of this Agreement, then Shipper Agent shall have the option of immediately terminating this Agreement without notice to Vendor and/or (ii) if Shipper Agent's contract with its prime customer is canceled for any reason, then Shipper Agent shall have the option to terminate this Agreement upon a ten (10) day written notice to Vendor. Although any such termination shall be effective immediately and without notice, Shipper Agent shall be required to thereafter give notice of said termination to Vendor within 72 hours of that termination.
- 13.4 If either party (1) is adjudicated bankrupt, or a trustee, receiver or liquidator or other person or entity is appointed or otherwise gains control of all or part of such party's operations or assets; or (2) makes an assignment for the benefit of creditors; or (3) files a voluntary petition of bankruptcy; or (4) has filed against it an involuntary petition of bankruptcy, then the other party hereto may terminate this Agreement upon ten (10) days prior written notice to the other party.
- 13.5 Upon termination, Shipper Agent shall have no further right or obligation to request any bids from Vendor, and Vendor shall have no further right or obligation to submit any further bids to Shipper Agent. Further, following termination neither party shall have any further right or obligation to enter into or execute a VSA Notification. Any pending bid by Vendor shall be deemed to be revoked by termination, and any VSA Notification that has been submitted to Vendor but not signed by the time of termination shall be deemed to be revoked and shall be returned to Shipper Agent.
- 13.6 If at the time of termination a VSA Notification has been signed by both parties, but Vendor has not obtained possession of the cargo to be moved under that VSA, then the VSA Notification shall be deemed mutually cancelled by both parties, and neither party shall have any further obligation to the other in regard to that VSA or VSA Notification, and the VSA shall be returned to Shipper Agent.
- 13.7 If at the time of termination a VSA Notification has been signed by both parties, and Vendor, has obtained possession of the cargo, then despite the termination of this Agreement, the parties shall carry out the VSA and VSA Notification and the terms and conditions in this Agreement shall be deemed to remain in full



force and effect in relation to that VSA and VSA Notification (and any similarly situated VSA or VSA Notification).

- 13.8 Following termination, and except as set out herein, all of the parties' rights and obligations that accrued prior to termination shall remain in full force and effect, including those set out in Articles 9 and 10 above, and Article 15 below.

Article 14: Bankruptcy & Reorganization.

14.1 If Vendor files a petition for an order of relief under the United States Bankruptcy Code, then, in addition to any termination rights set out above, Shipper Agent shall have any and all rights afforded Shipper Agent of claim for any and all amounts due to Shipper Agent under this Agreement including any damages which may be due to Shipper Agent for any reason including those damages which may be asserted for any breach of contract, and the right to file a motion to force assumption or rejection of this Agreement.

14.2 If during the term of the Agreement Vendor shall dissolve, transfer, sell, assign, mortgage, encumber, pledge, or otherwise dispose of (a) substantially all of its assets used to provide the services herein; (b) its accounts receivable from Shipper Agent; (c) over twenty percent (20%) of its ownership or controlling interest (whether in the form of stock or otherwise); or if Vendor shall consolidate with or merge into another corporation or permit one or more other corporations to consolidate or merge into it; or if it contemplates or reasonably expects the occurrence of any event referred to in this Article, then Vendor shall give Shipper Agent notice of such occurrence as soon as is legally permissible. If such occurrence or proposed occurrence is unacceptable to Shipper Agent, Shipper Agent may terminate this Agreement upon written notice to Vendor without penalty.

Article 15: Dispute Resolution/Arbitration.

15.1 Should a dispute arise under this Agreement, Shipper Agent and Vendor agree to negotiate with each other in good faith to attempt to resolve such dispute in a manner acceptable to both parties.

15.2 If Server Agent and Vendor are unable to resolve the dispute within thirty (30) calendar days of the date that the first party initially requested the other to engage in such negotiations pursuant to subparagraph 15.1 above, then the dispute shall be resolved by arbitration. Arbitration shall take place in the State of Arizona or such other place as the parties may mutually agree. The arbitration shall be before a single arbitrator to be appointed by the parties to the dispute or, failing such agreement and upon the application of any party to the dispute, by the American Arbitration Association ("AAA"). There shall be no restrictions on the nationality of the arbitrator. The costs and expenses of the arbitration (including reasonable attorney's fees and costs) shall be borne by the non-prevailing party or as the arbitrator shall otherwise determine. For the purpose of



this Section 15.2, “prevailing party” means the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the “prevailing party” shall be as determined by the arbitrator and under those circumstances, the arbitrator, in his, its or their discretion may allow costs or apportionment of costs between the parties on the same or adverse sides pursuant to the rules of AAA. The decision of the arbitrator shall be final, binding, and not subject to further review. In all other respects, the procedural rules of the (“AAA”) shall govern the conduct of the arbitration; provided, however, if the procedural rules of the AAA do not contain a provision applicable to a given procedural issue, then the law of the State of Arizona shall govern.

Article 16: Miscellaneous.

- 16.1 *Choice of Law.* This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Arizona.
- 16.2 *Binding Effect.* All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, subject to the terms of this Agreement, each party its successors or assigns. Any request, notice, direction, consent, waiver or other action taken by a party in connection with this Agreement or related transaction shall bind such successors and assigns.
- 16.3 *Entire Agreement.* This Agreement, including all appendices constitutes the full understanding of the parties and the complete and exclusive statement of the terms of the Agreement and supersedes any prior understandings and agreements between the parties, whether written or oral, respecting the subject matter herein. No modification or termination of this Agreement or waiver of any of its terms or conditions shall be of any force or effect unless made in writing and signed by the party claimed to be bound thereby.
- 16.4 *Assignment.* Neither Party may assign any of its rights or obligations hereunder to a third party without the other party’s express written consent, which consent shall not be unreasonably withheld.
- 16.5 *Severability.* If for any reason any provision or provisions hereof which are not of the essence of this Agreement are determined to be invalid or contrary to any existing or future law, such invalidity shall not impair the validity of those portions of the Agreement which are valid.
- 16.6 *Counterparts.* This Agreement may be signed in counterparts each of which shall be deemed an original and all of which when taken together shall constitute but one and the same agreement.
- 16.7 *Non-waiver.* The waiver of a default of any provision of this Agreement shall not be considered as a waiver of either a subsequent or continuing default. Failure by either party at any time to require performance by the other party or to claim a



breach of any provision of the Agreement shall not be construed as affecting any subsequent breach of the right to require performance with respect thereto or to claim a breach with respect thereto.

16.8 *Time of the Essence.* The time of performance of all obligations under this Agreement is of the essence.

16.9 *Headings.* All headings of the provisions of the Agreement are inserted for convenience only and shall not effect any construction or interpretation of this Agreement.

IN WITNESS WHEREOF THE PARTIES CAUSE THIS AGREEMENT TO BE EXECUTED AS OF THE DATE FIRST ABOVE WRITTEN.

SHIPPER AGENT:

AUTO-logistics, Arizona Ltd Liability Co.

Sign: _____

Print: _____

Title: _____

Date: _____

VENDOR:

Sign: _____

Print: _____

Title: _____

Date: _____

