**SERVICE CONTRACT NO. 24343**

Tariff of General Applicability: MNC FMC No. 88

The parties to this Contract are:

|  |  |  |
| --- | --- | --- |
| **CARRIER** |  | **MERCHANT** |
| Matson Navigation Company, Inc. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature) Date: Name: Christopher J. DianoraTitle: Vice President, Pricing |  | Fashion Accessories Shippers Association, Inc.DBA Gemini Shipper’s Association\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Signature) Date:Name: Ken O’BrienTitle: President |
| Carrier Address:555 12th StreetOakland, CA 94607Facsimile No.: (510) 628-7365 |  | Shipper Address:137 W 25th Street 3rd Floor,New York, NY 10001Telephone No.: (212) 947-3424Facsimile No. : (212) 629-0361 |

**Affiliates:**

See Appendix Affiliates. All of the Affiliates who are named in the Appendix Affiliates are members (“Members”) of the Fashion Accessories Shippers Association, Inc. DBA Gemini Shipper’s Association (“Association”) either directly or through constituent or affiliated associations (“Affiliated Members”). Hereinafter, Members and Affiliated Members are sometimes collectively referred to as “Participants.”

**Certification of Shipper Status**

The shipper signing this contract warrants that (a) it and each affiliate listed above is identified by its legal name and business address, (b) it is authorized to bind itself and every other shipper and party and (c) its status and that of every other shipper is:

( ) Owner of Cargo ( ) NVOCC

( x ) Shipper Association ( ) Other (Specify) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Boilerplate: Incorporated Herein

**SERVICE CONTRACT**

BOILER PLATE

1. **Parties**
	1. Shipper
		1. Shipper is the party entering into this Contract with the Carrier, including any affiliates of the Shipper listed in the attached Appendix.
		2. The signatory on behalf of the Shipper represents and warrants that it is authorized to enter into this Contract on behalf of the Shipper and the listed affiliates.
		3. If the Shipper or a listed affiliate is an NVOCC, the Shipper shall provide Carrier with proof that the NVOCC is in compliance with 46 C.F.R. Part 530.6(b) and will notify Carrier if, at any time during the term of this Contract, the NVOCC is no longer in compliance. Carrier may terminate the Contract without penalty if the NVOCC is no longer in compliance and cargo transported under the Contract after the date of noncompliance shall be re-rated under Carrier’s tariff.
	2. Carrier - The Carrier is Matson Navigation Company, Inc.
2. **Service Contract**
	1. This Service Contract (the “Contract”), entered into between the Carrier and the Shipper, applies to the transportation of the commodities listed in the attached Appendix between the origins and destinations listed in the Appendix.
	2. The terms and conditions of Carrier’s Bill of Lading (the “Bill of Lading”) are incorporated into the Contract. Shipper expressly agrees to the following:
		1. all claims, proceedings and disputes under the Bill of Lading shall be brought in and subject to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York and no other court in the United States or in any other country per paragraph 21 of the Bill of Lading,
		2. if paragraph 21 of the Bill of Lading is held unenforceable by a court of competent jurisdiction, all claims, proceedings and/or disputes shall be resolved by arbitration in Hong Kong pursuant to the rules of the United Nations Commission on International Trade Law (UNCITRAL),
		3. the receipt, custody, carriage and delivery of goods shall be governed by the U.S. Carriage of Goods by Sea Act, except as provided in paragraphs 2 and 4 of the Bill of Lading,
		4. the words “seven calendar days of such delivery or in the case of containerized Goods, within fifteen days of delivery” shall be substituted for the words “three calendar days” in paragraph 20 of the Bill of Lading,
		5. Carrier’s liability for lost or damaged goods is limited in accordance with paragraphs 2, 4 and 22 of the Bill of Lading.
	3. The governing tariff shall be Matson Tariff FMC No. 88.
	4. This Contract and Appendices, the terms and conditions of Carrier’s Bill of Lading and Carrier’s applicable tariffs constitute the entire agreement between the parties. Any modification to the Contract must be in writing and signed by both parties.
	5. In the event of a conflict, the terms and conditions of Carrier’s Bill of Lading shall take precedence over the Contract and Appendices, which shall take precedence over the tariffs.
3. **Term**
	1. This Contract shall be effective: (i) upon execution and delivery of the parties hereto (“Execution Date”), provided that the Contract is filed with the Federal Maritime Commission within thirty (30) days after its Execution Date; or (ii) if not filed within 30 days after its Execution Date, then 30 days before the date it is filed with the Federal Maritime Commission (in either instance, the “Effective Date”).  This Contract (and any amendments thereto) may only apply to cargo received on or after the Effective Date.  The Contract shall continue in effect until the expiration date listed in the Appendix A unless terminated earlier in accordance with the provisions of the Contract.
	2. The date that the shipment is received by the Carrier for the entire quantity listed in the Bill of Lading shall determine whether a shipment is subject to this Contract.
4. **Minimum Volume Commitment**
	1. The Participants agree to tender to the Carrier the Minimum Volume Commitment (“MVC”) of cargo listed in the attached Appendix during the term of this Contract.
	2. Participants shall book shipments tendered under this Contract on not less than 7 days notice. Carrier shall have no obligation to accept shipments tendered on less than 7 days notice but, if Carrier accepts the shipments, they will count towards the MVC.
	3. The Carrier agrees to carry the cargo booked by Participants if tendered in a timely manner except. That Carrier shall have no obligation to accept cargo tendered in excess of 10% of the annualized MVC during any 30 day period within the term of the Contract, starting with the effective date of the Contract.
	4. If Participant fails to tender the MVC within the term of the Contract, Association shall pay Carrier dead freight in lieu of damages, which are difficult to calculate, for the difference between the MVC and the actual volume tendered at the rate of U.S. $50 per FEU.
	5. If Carrier fails to provide vessel space or equipment for cargo booked by Participant in a timely manner not in excess of 10% of the annualized MV during any 30 day period within the term of the Contract, for causes other than those excused causes listed in Article 6 of this Contract, and the failure results in Shipper being unable to meet its MVC, damages will difficult to calculate. Therefore, Shipper may elect to:
		1. require Carrier to pay liquidated damages to Shipper at the rate of U.S. $50 per FEU for each FEU of cargo timely booked, not in excess of 10% of the annualized MVC during any 30 day period within the term of the Contract, that Carrier does not carry for unexcused causes that results in carriage of less than the MVC;
		2. reduce the MVC by the number of FEUs of timely booked cargo, not in excess of 10% of the annualized MVC during any 30 day period within the term of the Contract, that Carrier was unable to carry for unexcused causes; or
		3. extend the term of the Contract by the following number of days: term of the Contract multiplied by number of FEUs of timely booked cargo, not in excess of 10% of the annualized MVC during any 30 day period within the term of the Contract, that Carrier was unable to carry for unexcused causes divided by total MVC. If Shipper elects to extend the Contract, an amendment extending the Contract must be filed in writing with the FMC on or before the expiration date of the Contract in accordance with 46 C.F.R. § 530.8.
	6. Carrier shall not be liable to Shipper for any direct, consequential or other damages under this Contract, except as set forth in this Article, and in accordance with the terms and conditions of Carrier’s Bill of Lading.
	7. For the purposes of calculating the MVC and dead freight charges, FEUs shall be defined as follows:
		1. 20-foot container = .50 FEU
		2. 40-foot container = 1.00 FEU
		3. 40-foot high cube container = 1.125 FEU
		4. 45-foot container = 1.250 FEU
5. **Freight Rates**
	1. The freight rates set forth in the attached Appendix shall be applicable to all shipments tendered by Shipper under this Contract.
	2. Unless expressly excluded in the attached Appendix, the rates shall be subject to all charges listed in the applicable Tariff(s) and any subsequent increases or decreases to those charges, including, but not limited to fuel surcharges, terminal handling charges, wharfage, demurrage, detention, general rate increases and security-related charges. The increases or decreases shall be applied to the rates for shipments under this Contract on the date that they become effective in the applicable Tariff(s).
	3. Participant shall pay freight and charges to Carrier in accordance with the applicable Tariff(s) and Bill of Lading before the release of the cargo or, in the case of prepaid shipments under negotiable Bills of Lading, before release of the original Bills of Lading.
	4. If at any time during the term of this Contract a General Rate Increase (“GRI”) or an increase in a specific commodity rate occurs in the Tariff, which would otherwise apply to Merchant’s shipments in the absence of this Contract, then the GRI or commodity rate increase shall also be added to and included in the rates and charges set forth or incorporated by reference in the Appendix, as of the same date the GRI or increase becomes effective in the Tariff.
6. **Force Majeure**
	1. Force Majeure shall mean any event or condition beyond the reasonable control of either party which prevents, in whole or in material part, the performance by one of the parties of its obligations under the Contract, including acts of governmental authorities acting alone or in agreement with other governments that impose embargoes, import or export quotas, duties, or other tariff or non-tariff barriers on trade in goods or services; riots; disturbances; war; strikes; lockouts; slowdowns; prolonged shortage of energy or other supplies; mechanical breakdown in equipment, vessels or facilities of Carrier; epidemics and acts of God, including without limitation fire, flood, hurricane, typhoon, earthquake, lightning and explosion. Commercial contingencies, such as market conditions or business decisions, shall not be considered events of Force Majeure.
	2. Upon written notice to the other party, the Contract obligations of a party affected by an event of Force Majeure shall be suspended without any liability on its part, except for the obligation to pay any amounts due and owing hereunder. Such notice shall include a description of the nature of the event of Force Majeure, its cause and possible consequences. The party claiming an event of Force Majeure shall diligently attempt to remove its cause and shall notify the other party promptly of the termination of such event. During the period that the performance by one of the parties of its obligations under this Contract has been suspended by an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder. After the event of Force Majeure has ended, the Contract obligations of the parties shall be reinstated and the MVC adjusted accordingly. If the party encountering the Force Majeure is not able to remove the cause or otherwise meet its obligations under the Contract within thirty (30) days, the other party shall have the right at its option to suspend or terminate this Contract.
7. **Law and Jurisdiction**
	1. This Agreement shall be governed solely by the law of the United States, including, but not limited to, the U.S. Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998.
	2. All claims, suits, proceedings or disputes arising hereunder shall be brought in and be subject to the sole and exclusive jurisdiction of the United States District Court for the Southern District of New York and no other court of the United States or any other country . The parties expressly consent and agree that the United States District Court for the Southern District of New York has personal jurisdiction for this purpose.
8. **Termination**

The parties may mutually agree to terminate the Contract. The MVC shall be pro-rated and Association shall pay dead freight to Carrier if Participant has not tendered the revised MVC during the revised term of the Contract. The cargo previously tendered by Participant under the Contract shall not be re-rated according to the governing tariff in effect at the time of the shipment.

1. **Assignment**

Shipper may not assign this Contract or allow any other person or entity to use the rates under this Contract or tender cargo under this Contract without the written consent of Carrier.

1. **Records**

Carrier shall keep the following records required to be maintained under 46 C.F.R. § 530.15 at its offices: Shipper’s bills of lading, force majeure correspondence and correspondence regarding a failure to perform by Shipper or Carrier. Upon request by Carrier, Association shall promptly provide Carrier with documents sufficient to verify the quantity and nature of cargo shipped under this Contract. Each party shall maintain, for a period of not less than five (5) years, records satisfactory to the other party demonstrating compliance with its obligations under this Contract. Carrier’s General Manager Pricing, located at 555 12th St., Oakland, CA 94607, (510) 628-4501, shall respond to requests for information and records by the FMC.

1. **C-TPAT**

Carrier participates in the Customs-Trade Partnership Against Terrorism (“C-TPAT”) program and is required to send questionnaires to its shippers periodically. Carrier encourages Shipper to participate in the C-TPAT program and to observe the supply chain security guidelines prepared by the United States Customs and Border Protection Service.

1. **Signatures**

The parties may execute or sign this Contract and any subsequent amendments and/or Contract-related communications by electronic signature where such signatures are considered valid under applicable law.  For this purpose, “electronic signature” means an electronic symbol or text attached to or logically associated with the Contract and executed or adopted by a person with the intent and authority to sign this Contract, amendments or related communications.  Such electronic signatures may be transmitted by fax, web interface or email, and shall contain textual or other indication that the party is signing the Contract, amendment or related communication.  Execution of this Contract or any subsequent amendment by electronic or any other form of legal signature shall constitute agreement to be bound by the terms of this Contract and/or amendment.

**APPENDIX A**

SERVICE CONTRACT NO. 24343

**ORIGIN:**

CHINA

VIETNAM

**DESTINATION:**

USA

**COMMODITY DESCRIPTION:**

A1. Fashion Accessories and General Department Store Merchandise, including Garments

**MINIMUM VOLUME COMMITMENT:**

750 FEUS

**DURATION:**

Effective Date: May 1, 2024

 Expiration Date: April 30, 2025

**SERVICE COMMITMENTS:**

See paragraph 4.f of this contract.

**RATES:**

A1. Fashion Accessories and General Department Store Merchandise, including Garments

From: Haiphong, Vietnam (CY)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **SVC** | **Mode** | **20D** | **40D** | **40HC** | **45HC** |
|  | Long Beach, CA  | CY |   | 2245 | 2805 | 2905 | 3155 |

From: Ho Chi Minh City, Vietnam (CY)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **SVC** | **Mode** | **20D** | **40D** | **40HC** | **45HC** |
|  | Long Beach, CA  | CY |   | 3140 | 3925 | 4025 | 4275 |

From: Haiphong/Ho Chi Minh City, Vietnam (CY)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **SVC** | **Mode** | **20D** | **40D** | **40HC** | **45HC** |
|  | Chicago, IL | CY | IPI | 4200 | 5250 | 5350 | 5600 |
|  | Columbus, OH | CY | IPI | 5000 | 6250 | 6350 | 6600 |
|  | New York, NY | CY | MLB | 5800 | 7250 | 7350 | 7600 |

From: Hong Kong/Yantian (CY)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **SVC** | **Mode** | **20D** | **40D** | **40HC** | **45HC** |
|  | Chicago, IL | CY | IPI | 4200 | 5250 | 5350 | 5600 |
|  | Columbus, OH | CY | IPI | 5000 | 6250 | 6350 | 6600 |
|  | Long Beach, CA  | CY |   | 3140 | 3925 | 4025 | 4275 |
|  | New York, NY | CY | MLB | 5800 | 7250 | 7350 | 7600 |

From: Ningbo/Shanghai/Xiamen (CY)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **SVC** | **Mode** | **20D** | **40D** | **40HC** | **45HC** | **20NOR** | **40NOR** |
|  | Chicago, IL | CY | IPI | 3800 | 4750 | 4850 | 5100 |  |  |
|  | Columbus, OH | CY | IPI | 4600 | 5750 | 5850 | 6100 |  |  |
|  | Long Beach, CA  | CY |   | 2740 | 3425 | 3525 | 3775 | 2192 | 3083 |
|  | Long Beach, CA \* | CY |   | 2420 | 3025 | 3125 | 3375 | 1936 | 2723 |
|  | New York, NY | CY | MLB | 5400 | 6750 | 6850 | 7100 |  |  |

\* For the Account of Colordrift only.

From: Ningbo/Shanghai/Xiamen (CY)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **SVC** | **Mode** | **20D** | **40D** | **40HC** | **45HC** |
|  | New York, NY (Croxton)\* | CY | MLB | 6920 | 8650 | 8750 | 9000 |

\* Rates apply to GES Service. Guaranteed Monday availability or a 25% refund of the Ocean Freight. Transit: 19 days from Ningbo; 17 days from Shanghai; 22 days from Xiamen

**SURCHARGES:**

Rates are inclusive of the following Surcharges:

Advanced Manifest Charge (AMS)

Alameda corridor

California Port Congestion Surcharge (PCS)

Intermodal Fuel Charge

Chassis Charge

Destination Delivery Charge (DDC)

Peak Season Surcharge (PSS)

Security Surcharge

Rates are subject to other Surcharges as follows:

Fuel Adjustment Factor (FAF) - Floating

Maximum changes to this amount shall be based on equivalent changes in FAF and

Low-Sulfur Fuel combined as noted on Matson's website <https://www.matson.com/ocean-services/online-services/review-rates-tariffs.html>. The Carrier will publish the actual charges in governing Tariff 88.

 Fuel Adjustment Factor (FAF) shall be adjusted according to the following Schedule:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Destination** | **D20** | **D40** | **D40H** | **D45** | **Effective** | **Expires** |
|  | USA | 451 | 564 | 635 | 714 | April 1, 2024 | June 30, 2024 |
|  | USA | TBD | TBD | TBD | TBD | July 1, 2024 | September 30, 2024 |
|  | USA | TBD | TBD | TBD | TBD | October 1, 2024 | December 31, 2024 |
|  | USA | TBD | TBD | TBD | TBD | January 1, 2025 | March 31, 2025 |
|  | USA | TBD | TBD | TBD | TBD | April 1, 2025 | June 30, 2025 |

Origin Documentation Fee (ODF)

Origin Terminal Handling Charge (THC)

**OTHER:**

Credit

Carrier shall grant Twenty-One (21) calendar days credit from vessel arrival for Customers Steve Madden and related affiliates; Franco Manufacturing Co. Inc.provided shipper maintains a valid credit agreement with the carrier.

Garments on Hangers (GOH)

Single Bar:

$455.00 per 20’

$650.00 per 40’ standard

$730.00 per 40’ hi-cube

$825.00 per 45’

Double Bar:

$650.00 per 20’

$850.00 per 40’ standard

$930.00 per 40’ hi-cube

$1025.00 per 45’

Non-Operating Reefer Containers

Carrier at its sole discretion may substitute 20’ and 40’ Reefer Dry containers to the U.S. West Coast Local only and Hawaii Ports at 90% of the 40' Standard Dry Container rates and 80% of the 20' Standard Dry Container rates, subject to equipment availability.

 **SERVICE COMMITMENTS:**

Reimbursement of Member dues.

See appendix D for terms

Guaranteed Expedited Service (GES)

1. **Eligible Shipments**
	* The shipment must be booked under the GES.
	* The shipment and all required documentation must be received at Matson’s terminal facility in Shanghai or Ningbo, China before the cut-off time for loading cargo to the intended sailing vessel.
	* The shipment will be routed through the port of Long Beach.
	* The destination must be a point within the continental United States serviced by the GES.  Upon request, Matson will provide a list of points serviced by the GES.
	* The Shipper must have entered into a service contract with Matson that sets forth the rate and percentage of refund for the GES.
2. **Ineligible Shipments**
	* Hazardous Cargo
	* Temperature Controlled Cargo
	* Cargo requiring special equipment for inland carriage or delivery
3. **Guaranteed Delivery Date**
	* Matson will provide a GDD at the time of booking.
	* The GDD will be calculated as of the date that the shipment is made available at the destination address listed on the Matson bill of lading, regardless of whether the consignee takes delivery of the shipment.
4. **Exceptions to Guarantee**
	* The Guarantee is not available if delivery by the GDD is frustrated due to an event or condition beyond the reasonable control of Matson or its independent contractors, including but limited to the following conditions:
		+ Incorrect destination address
		+ Refusal or unavailability of person at destination address to take delivery
		+ Acts of governmental authorities acting alone or in agreement with other governments that impose embargoes, import or export quotas, duties, or other tariff or non-tariff barriers on trade in goods or services
		+ Delivery impacted by U.S. observed holidays
		+ riots; disturbances; war; act of public enemies or public authorities
		+ terrorism
		+ strikes; lockouts; work stoppage; labor slowdowns; labor unrest
		+ prolonged shortage of energy or other supplies
		+ mechanical breakdown in equipment, vessels or facilities of Matson and underlying carriers
		+ train derailment
		+ impassable highway or rail line
		+ lack of capacity on a street, road, highway or bridge
		+ epidemics, quarantines
		+ acts of God, including without limitation, fire, flood, hurricane, typhoon, earthquake, lightning, severe weather and explosion
		+ defect or inherent vice in the cargo
		+ compliance with laws, regulations, government orders or requirements
		+ inspection of cargo by government employees
		+ act or omission of nominated customs broker
		+ misdescription or misdeclaration of cargo
		+ shortage documented at time of transloading in U.S.
		+ inadequate shoring, bracing or packing of cargo in container by shipper or its agents
		+ act or omission of shipper, consignee or owner of cargo or their agents or principals
	* The Guarantee is not available if Shipper fails to meet any of the following conditions:
		+ All shipments must be pre-cleared by Customs prior to the vessel arrival in Long Beach and Customs cleared no later than Sunday at 1630 PST.
		+ All freight and related charges must be prepaid before the shipment arrives in Long Beach or the party responsible for paying freight charges must have established credit with Matson.  Full freight charges are completely earned upon receipt of the shipment by Matson.
		+ If the shipment is moving under a negotiable bill of lading, the original bill of lading must be surrendered to Matson before the shipment arrives in Long Beach.
5. **Matson’s Bill of Lading**
All shipments shall be subject to the terms and conditions of Matson’s bill of lading, and all claims for cargo loss and damage shall be determined in accordance with those terms and conditions.  Clause 11 of Matson’s bill of lading terms and conditions is modified by these GES terms and conditions to that extent that Matson shall make a Guarantee Payment if an eligible shipment tendered in the GES and meeting the GES terms and conditions is not delivered by the GDD.  Matson shall not be liable for any incidental, consequential, indirect or punitive damages or claims for loss of profits (even if Matson is advised of the possibility of same) arising from a failure to deliver a shipment by the GDD.  The Guarantee Payment shall be the sole and exclusive remedy for breach of the Guarantee.
6. **Procedure for Making Guarantee Payment**
If Matson fails to deliver an eligible shipment by the GDD, and the delay was not caused by an exception listed in these GES terms and conditions, Matson will issue a freight correction and refund to the Shipper if all freight charges have been paid.

***APPENDIX* TO SERVICE CONTRACT DATED AS STATED IN APPENDIX A UNDER ‘EFFECTIVE DATE’ (HEREINAFTER “Service Contract”) ENTERED INTO BY AND BETWEEN THE UNDERSIGNED OCEAN CARRIER (“CARRIER”) AND THE FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC. d/b/a GEMINI SHIPPERS ASSOCIATION (“ASSOCIATION”).**

1. **Integration With Service Contract**
2. This Appendix is incorporated into and made a part of the Service Contract. Hereinafter, the Service Contract, together with this Appendix, shall be referred to as the “Contract”. Carrier shall file this Appendix with the FMC as part of the Service Contract. If there is a conflict between the terms of this Appendix, on the one hand, and the terms of the Service Contract or Carrier’s tariffs (“Tariffs”), on the other hand, then the terms of this Appendix shall supersede and take precedence over the terms of the Service Contract and/or Tariff. If the Service Contract contains a provision which purports to have or any other document supersede the terms of this Appendix, then such provision shall be deemed null and void and of no legal effect.
3. In the event that conflicting rates may be applied to any shipment transported pursuant to the Contract, then the lowest applicable rate shall apply to such shipment, which rate shall be deemed the “Contract Rate.”
4. The Contract shall not be subject to amendment fees.
5. The Contract shall supersede and take precedence over the terms of the Carrier’s Bill of Lading; provided, however, if the Carrier’s Bill of Lading contains specific terms concerning the Carrier’s liability for damage to persons or property (including cargo) or mis-delivery which terms conflict with the terms of the Contract, then those specific conflicting terms of the Bill of Lading shall supersede the terms of the Contract. Notwithstanding the foregoing sentence, if the Carrier’s Bill of Lading applies the package limitation set forth in the U.S. Carriage of Goods by Sea Act (“COGSA”) to loss or damage claims, then, for purposes of such claims, the term “package” as used in COGSA and the Bill of Lading shall mean an individual package, carton, parcel or box (not contained within another package) contained in a container and not the container itself.
6. **Special Provisions Reflecting Shipper Association Status**
7. Shipper (sometimes referred to as Shipper/Consignee or Association) is a shippers’ association as defined in the Ocean Shipping Reform Act of 1998 (the “Shipping Act”). All of the participants (hereinafter, sometimes collectively referred to as “Participants”)who are named in this Contract are members of the Association either directly or through constituent or affiliated associations. Affiliated companies are participating shippers (i.e. consignors, consignees, owners or beneficial cargo owners) under the Contract. Such Participants and their affiliates may move cargo under the terms of the Contract subject to its terms and conditions and subject to the continued approval of the Association. Each Participant (and not the Association) shall be responsible for payment of its transportation costs for cargo moved under the terms of the Contract. Carrier is satisfied as to the Association’s financial condition and will not invoke any bonding or financial disclosure requirements.
8. If the Association informs Carrier in writing that a Participant is no longer a Member or Affiliated Member, then that person or entity shall have no right thereafter to have its cargo moved pursuant to the Contract. The Association may, on reasonable notice to the Carrier, add Participants permitted to move cargo pursuant to the Contract. If a Participant is added, the MQC may be increased by an amount no greater than the Participant’s reasonably expected volume of shipments during the remainder of the term of the Contract, subject to the consent of the Carrier, which consent shall not be unreasonably withheld or delayed.

# *Confidentiality, Disputes, Reports, MQC/Dead Freight*

1. The terms and conditions of the Contract are confidential and shall be maintained as such by the parties. Unless authorized by the other party, in writing, neither party shall disclose the existence of the Contract nor its terms and conditions, including Contract Rates (collectively, “Service Contract Information”); provided, however, that nothing shall prohibit the disclosure of Service Contract Information that is: (a) disclosed to either parties’ essential employees, tariff filers, or auditors, but only when these persons have a need to know to effect transportation under the Contract; (b) required by law or legal process to be published or disclosed; (c) disclosed to any other carrier participating with Carrier in the transportation of cargo under the Contract provided the Association consents in writing prior to such disclosure and, provided further, that such other carrier agrees in writing to this confidentiality provision; (d) disclosed to any person whom the Association authorizes in writing to receive copies of bills of lading or shipping documents; or (e) disclosed by the Association to Participants and their employees, agents, consignees, vendors and/or customers where such disclosure is necessary to move cargo under the Contract. In no event shall Carrier disclose Service Contract Information to another shipper, shipper’s association, carrier, or carrier group, nor shall the Association disclose Service Contract Information to another carrier, except as permitted in subparagraph (c) hereof. Neither the Association nor Carrier shall be liable for disclosure of Service Contract Information by a third party not under the control of the Association or Carrier. This paragraph shall survive the termination and/or expiration of the Contract.
2. Any dispute between the Association and the Carrier concerning the enforcement and/or interpretation of the Contract shall be heard exclusively in the courts of the State of New York or the United States District Court for the Southern District of New York and the parties hereby consent to jurisdiction of any such disputes in the forgoing courts. If, as a result of such court proceedings it is found that one party has retaliated against the other party or one or more of the Association’s Participants because that party commenced proceedings hereunder, then in addition to any other remedy the court may provide, including an award of damages and attorney fees to the party or entity retaliated against, the court may issue an order enjoining, reversing and/or revoking the action deemed by the trier of fact to be retaliatory. Any dispute between a Participant and the Carrier, however, shall be resolved by arbitration conducted by the American Arbitration Association in accordance with the Expedited Procedures of its Commercial Arbitration Rules, (including procedure for the selection of an arbitrator) in New York City, N.Y., regardless of the amount in controversy. The arbitration shall be before a single arbitrator whose decision shall be final, binding and not subject to further judicial review. 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. Any court having jurisdiction may enforce the order of the arbitrator.
3. This Contract shall be subject to the U.S. Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 and shall otherwise be construed and governed by the laws of the State of New York.
4. No later than the 10th day of each month, the Carrier shall provide the Association, in a form reasonably acceptable to the Association, (a) copies of Bills of Lading; and/or (b) a certified lifting report; and/or (c) electronic data information (“EDI”) for all cargo movements handled by the Carrier under the Contract and occurring during the preceding month. If the 10th day of a month falls on a weekend day or holiday, then the Carrier shall provide such information on the next business day.
5. The parties’ obligations hereunder shall be suspended during periods of Force Majeure; provided, however, that such suspension shall not result in a reduction in the Minimum Quantity Commitment (“MQC”) [also referred to as the Minimum Volume Commitment (“MVC”)] of the Contract unless otherwise agreed in writing by the parties and Carrier. The term “Force Majeure” shall mean any and all events beyond the reasonable control of a party including, without limitation, strikes, work stoppages, lockouts or circumstances arising from the threat thereof; acts of God, states or a public enemy, terrorism, war, hostilities, riots, civil disorder, insurrection, embargo, governmental actions (whether informal or formal government acts) or other similar disruptions or interferences with trade; marine disaster, fire or other casualty; and specifically includes any trade restrictions including, but not limited to, Section 301 actions or loss of Most Favored Nation status.
6. Liquidated damages, if any, for the failure to fulfill the MQC shall be the sole responsibility of the Association and not the Participants and shall be based on the lesser of the amount per FEU contained in the Contract or the difference between the applicable Contract Rate and the tariff rate; provided, however, in no event shall liquidated damages exceed $50 per FEU and under no circumstances shall the Association be liable to Carrier for (a) special, punitive or consequential damages, including but not limited to lost profits and (b) any liability or damages that is or are the result, in whole or in part, of actions of the Carrier.
7. **Commercial Items**
8. Unless otherwise agreed in a writing signed by the parties hereto, during the term of the Contract, there shall be no General Rate Increase (“GRI”), Revenue Recovery Increase (“RRI”) nor any other increase in rates and charges that are stated in the Contract, whether characterized as surcharges, accessorial charges, equipment charges, add-ons and/or extras and the Carrier shall not (i) add any service, whether characterized as accessorial or otherwise, for which it charges or seeks to charge Participants hereunder; (ii) impose or seek to impose any new surcharge and/or accessorial charge that is not otherwise specifically referenced in the Contract; (iii) pass through any charge or cost to Participants that are imposed upon the Carrier by any third party including port and/or terminal operators, equipment providers, or governmental entities; (iv) eliminate or reduce the services included in the Contract Rates which rates are in effect at the commencement of the Contract, including storage and the use or provision of equipment; or (v) otherwise change the terms of the Contract. Notwithstanding the foregoing and subject to the mutual written agreement of the parties, the Carrier may impose a reasonable war risk surcharge or port security surcharge.
9. Carrier undertakes to provide regularly scheduled sailings, space aboard those sailings, containers and service adequate to accommodate Shippers’ participant’s service requirements and minimum cargo commitment during the term of this Contract. Carrier shall be liable for liquidated damages to the Association for failure to fulfill Carrier’s service commitment according to the same formula per FEU that applies to Association dead freight.
10. At the option of Carrier, “reefer” containers may be substituted for “dry” containers destined to the U.S. West Coast Local only and Hawaii Ports set forth in the Contract, at 90% of the 40' Standard Dry Container rates and 80% of the 20' Standard Dry Container rates set forth in the contract, subject to equipment availability.
11. The Carrier will collect membership dues on behalf of the Association. This amount (which is included in the members’ base rate with the Carrier) is $100 per container. Membership dues will be disbursed by the Carrier to the Association on a monthly basis once reconciled with Association.

# *Maintaining the Service Contract’s Competitiveness*

1. The rates contained in this Contract shall not be increased during the term of this Contract and shall be reduced by Carrier without notice to Association or demand upon Carrier by Association, under the following conditions:

 Contract-to-Tariff Relationship. Carrier guarantees that the rates contained in this Contract shall at all times be at least 15% below the Carrier’s corresponding tariff rate and if the Carrier reduces the rates set forth in its Tariff, then the Carrier agrees that it shall reduce the Contract Rates to comply with the requirements of this provision.

1. The Carrier acknowledges that it has received and will receive valuable, confidential and proprietary information provided to the Carrier by the Association during the negotiation and term of this Contract, including information concerning the identity and service requirements of Members and Participants. The Carrier further acknowledges that through the efforts of the Association in assembling the group of Members, Affiliated Members and Participants, the Carrier has obtained valuable business contacts. To protect the Association’s commercial interests under the Contract, the advantageous business relationship the Association enjoys with its Members and Participants, and the proprietary and confidential information to which the Carrier has been given access as a result of its business relationship with the Association, Carrier agrees that during the term of the Contract, the Carrier shall not without the prior written consent of the Association enter into, directly or indirectly, for its own account or the account of any other person or entity, an individual service contract or time volume arrangement with any Participant, including any former Member, Affiliate Member or Participant within 120 days of such former Member’s or Participant’s cessation of membership (“Carrier/Member Agreement”). The Association shall not unreasonably withhold its consent to such individual service contract or time volume arrangement provided that:
2. The Carrier is not in breach of the Contract and;
3. The Association has fulfilled the MQC or, if not fulfilled, the Carrier agrees to amend the MQC to reflect the loss of freight from such Member and;

Nothing contained in this paragraph shall be construed to restrict the right of any Participant to enter into an individual service contract or time volume arrangement with the Carrier after this Contract terminates.

# *Miscellaneous*

1. This Contract and the parties’ rights and obligations hereunder shall inure to the benefit of and be binding upon the parties’ successors and assigns. Without limiting the generality of the foregoing, if the Carrier sells all or substantially all of its operating assets, whether in a single transaction or a series of related transactions, or if the Carrier is merged into or consolidates with another entity, then as a condition of such transaction(s), the Carrier shall require the surviving entity or the entity acquiring the Carrier’s assets to assume the Contract including the Carrier’s liabilities and obligations thereunder.
2. Carrier shall not terminate the Contract, or decline to move additional cargo thereunder upon the fulfillment by the Association of its MQC and the Carrier agrees that during the term of the Contract it shall accept and transport cargo tendered to it by or on behalf of Participants at the Contract Rates. Furthermore, the Contract shall not be terminated, modified, altered, amended or changed in any way without the written mutual agreement of the Carrier and the Association.
3. The requirement of “mutual agreement” referred to in this Contract means that the Carrier and Association may agree to the matter, which is subject to such agreement provided their agreement is evidenced by a writing signed by both parties. Neither the Association nor its Participants shall be deemed to have agreed to any modification, amendment or alteration of this Contract if, at the time of such purported agreement, the Carrier is refusing or has refused to release or ship the cargo of any Participant. Any such purported agreement under these circumstances shall be deemed null and void and of no binding legal effect. The failure to reach a mutual agreement shall not entitle the Carrier to terminate or otherwise opt out of the Contract.
4. It shall not be a factor in the construction or interpretation of any alleged ambiguity in this Appendix that the subject language was drafted or submitted by either party and the Contract shall be deemed to have been negotiated by the parties hereto.
5. Carrier shall have sole responsibility for promptly filing the Contract and all amendments thereto with the FMC. Carrier and Shipper both agree to comply with all laws and regulations, including without limitation those pertaining to safety and security, applicable to the services performed and cargo tendered hereunder. If Carrier is a participant in C-TPAT, Carrier agrees to comply with the standards adopted by U.S. Customs and Border Protection for Ocean Carriers.
6. If any provision of this contract is determined by any Court or government authority to be void or unenforceable, then such determination shall not be construed to apply to any other provision of the Contract, and all such other provisions shall remain in full force and effect. In the event terms and/or conditions (a) not heretofore agreed by the parties are included in the Contract, or (b) that have been agreed upon by the parties are inadvertently omitted from Contract, then the parties agree that this Contract shall be amended to delete or add such terms and conditions, as the case may be, without further action by the parties.

Fashion Accessories Shippers Association, Inc. Matson Navigation Company, Inc.

d/b/a Gemini Shippers Association

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

 Ken O’Brien, President Christopher J. Dianora, Vice President

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**APPENDIX D**

Notwithstanding anything to the contrary contained in this Service Contract (the term “Service Contract” includes all appendices) or any tariff of the Carrier, the Carrier agrees and acknowledges that:

1. As an incentive to Gemini and the Gemini shipper member, time is of the essence in the remittance of Gemini shipper membership dues to Gemini and in the submission of bills of lading and lifting reports to Gemini from which membership incentive dues payments can be calculated. Carrier further agrees that Gemini is legally entitled to prompt and timely remittance.

2. Gemini shipper member dues are collected by the Carrier from the Gemini shipper member (either by inclusion in the Service Contract rates or added to the bill of lading, as Gemini and the Carrier shall have agreed) for cargo transported by the Carrier under this Service Contract and for which cargo the freight and any applicable related charges are paid in full by the Gemini shipper member.

3. As soon as practicable at the end of each month during the term of this Service Contract, Gemini shall calculate, based on bills of lading and lifting reports received for shipments that month, the amount of dues payable on behalf of participating Gemini shipper member for the qualifying cargo volume shipped under this Service Contract during that month and in accordance with the volume incentive formula set forth in paragraph 5 below. Gemini shall transmit, via email, facsimile or other means as Gemini elects, its Bill to the Carrier setting forth the calculation and amount of dues as described in the preceding sentence. Within 21 days of transmittal to the Carrier, Carrier shall deliver to Gemini in US funds the amount of the dues stated in the Gemini Bill for shipments for which the Carrier has received payment of all freight and related charges. Any good faith disagreement that Carrier may have with the calculation of dues must be presented to Gemini in writing within 5 business days of receipt otherwise the Gemini Bill shall be deemed conclusive. If presented in writing within 5 business days, Gemini shall cooperate in efforts to reconcile any discrepancies by reference to bills of lading or by other means. If Gemini confirms that the timely asserted discrepancy as presented by the Carrier in good faith requires further investigation or verification then the Carrier may deduct payment of the disputed amount for such period as Gemini consents in order to resolve the matter but shall pay the remainder of the Gemini Bill in full within said 21 days. If the discrepancy is not resolved to the parties’ satisfaction within the time period as consented by Gemini it shall be deemed a dispute under this Service Contract.

4. Reimbursement of member dues calculation is $100 per container.

5. Gemini may elect to treat any unjustified failure to pay membership dues as provided herein as a material breach of this Service Contract by the Carrier and, in addition to all other remedies Gemini has at law or by contract, Gemini may terminate the Service Contract on notice to the Carrier.

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**MEMBER’S APPENDIX**

