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| Service Contract No. | 7110315664 |
| Organization No. | 019210 |
| Essential Terms No. | ZIMU-151 |
| FMC File No. | 2DJQBPNO |
| CUCC: | USFACSS |

This Service Contract (“Contract”) is entered into between **ZIM Integrated Shipping Services, Ltd.** and **Fashion Accessories Shippers Association DBA Gemini Shippers Association** (“Gemini”). The parties hereby mutually agree to the rates, terms and related conditions set forth in the following pages. In witness whereof, the parties have executed this Contract through their duly authorized representatives as of the date(s) set forth below.

**Certification**

Pursuant to FMC regulations (46 CFR Part 530.6), **Fashion Accessories Shippers Association DBA Gemini Shippers Association,** by execution of this Contract certifies its status and the status of all Affiliates authorized to use this Contract as

(1) Owner of the Cargo (“Beneficial Cargo Owner” or “BCO”);

(2) Non-Vessel Operating Common Carrier (FMC No. ), having a published

Tariff that has been filed with the Federal Maritime Commission, and Surety Bond No. , dated , issued by ;

(3) X Shipper’s Association.

Note: If, at any time during the term of this service Contract, the above-noted NVOCC license, bond, tariff or other security, expires, is revoked, or otherwise becomes invalid for any reason, the service Contract shall stand null and void;

Carrie Ramage Ken O’Brien

Regulatory Contract / Tariff Manager President

Crystal Kennedy

Vice President and General Counsel

|  |  |
| --- | --- |
| **ZIM Integrated Shipping Services, Ltd.**  Date: | **Fashion Accessories Shippers Association DBA Gemini Shippers Association** |
| 9 Andrei Sakharov St. MATAM  POB 15067, Haifa 3190500 ISRAEL | Date:  137 West 25th Street New York, NY 10001  Tel: 212-947-3424  Email: kobrien@geminishippers.com |
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**1 – DEFINITIONS**

(a) “Merchant” shall mean the company identified on the signature page of this Contract as “Merchant,” and all Affiliates as named in Appendix “C”, herein.

(b) “Carrier” shall mean ZIM Integrated Shipping Services, Ltd.

(c) “General Rate Increase” or “GRI” shall mean an announced increase in freight rate applicable to all cargoes transported on a specified line or within a particular trade or trades. Such notices shall be published in accordance with regulations or rules implemented by relevant government authorities

**2 – GOVERNING TARIFF(S)**

Except as otherwise provided herein, cargo moving under this Contract shall be subject to all charges, rules and conditions as are, or may subsequently be, published in and effective under the applicable governing tariff(s) in effect on the date the cargo is received for shipment by the Carrier or its designated agent.

The term “Governing Tariff(s)” shall mean all of Carrier’s applicable rule and rate tariffs and provisions thereof, as well as the tariff in which the publicly available essential terms of this contract are published or may be published in the future. The governing tariffs applicable to this contract are listed in Appendix “F” of this contract.

Shipments tendered and carried under this Contract shall also be subject to the provisions of Carrier’s Bill of Lading presently on file with the Federal Maritime Commission. In the event of any conflict between the terms of this Contract and those of Carrier’s Bill of Lading, the Carrier’s Bill of Lading shall prevail. Unless otherwise stated herein, this Contract does not concern provisions involving responsibility and liability for carriage of the goods, provisions of which are part of the Carrier’s Bill of Lading contract.

Without limitation on the foregoing paragraph, the rates in this Contract shall be subject to increase by the amount of any increase published in Carrier’s rate tariff applicable to any or all commodities/routings covered by this Contract. Said increase shall be applied by the Carrier automatically and Merchant consents to Carrier filing an amendment to this Contract with the Federal Maritime Commission reflecting said increases, without any further signature or consent of the Merchant.

If rates are increased through application of this paragraph at any time during the term of the Contract, Merchant may in its discretion (a) request a negotiation in good faith regarding a reduction of the increase in this Contract, or (b) terminate the Contract upon thirty (30) days’ written notice to the Carrier.

**3 – TERM**

The term and duration of this Contract shall be as specified in Appendix “A” hereto. For the purposes of determining whether a particular cargo movement occurs during the term of this Contract, the governing date shall be the date upon which the full and/or complete Bill of Lading quantity is received for shipment by the Carrier and/or its authorized agent.

**4 – GEOGRAPHIC SCOPE**

This Contract covers shipments tendered by the Merchant for carriage by the Carrier between origin and/or loading ports and destination and/or delivery ports as identified in Appendix A hereto.

**5 – MINIMUM QUANTITY COMMITMENT**

Merchant agrees to tender to Carrier for shipment hereunder the Minimum Quantity Commitment (MQC) of cargo specified in Appendix “A” of this Contract for shipment from the origins and/or loading ports and destinations and./or discharge ports specified within Clause 4 above and Appendix “A” hereto.

For the purposes of satisfying the MQC, two (2) 20 ft. containers (TEU’s) shall equal one (1) 40 ft. container (FEU); one (1) 40 ft. high cube container (40’ L x 9’6” H) shall be counted as 2.25 TEU or 1.125 FEUs; one (1) 45 ft. container shall be counted as 2.5 TEUs.

**6 – TERMINATION**

Prior to the expiration date of this Contract, either Party shall have the right to terminate this Contract without penalty or further obligation to the other party, provided the MQC has been fulfilled and all outstanding freight and related charges are paid in full. The terminating Party shall deliver written notice of its intent to the other Party no less than thirty (30) days prior to the intended effective date of termination.

**7 - CONTRACT RATES**

Except as otherwise provided herein, cargo moving under this Contract shall be subject to the agreed rates set forth in Appendix “B” hereto. Unless otherwise specified herein, agreed rates set forth hereunder shall be subject to all surcharges, tariff charges, arbitraries, local charges and General Rate Increases (GRI) which are applicable and effective per the applicable governing tariff(s) and essential terms tariff(s) at the time of shipment.

If the agree rates set forth in Appendix “B” do not provide for all sizes of available equipment, rates may be calculated by use of the following formulae:

20 ft Freight Rate = 40 ft Standard Freight Rate x 0.90 (Rounded to the nearest $5 increment)

40 ft HC Freight Rate = 40 Standard Freight Rate x 1.125 (Rounded to the nearest $5 increment)

40 ft Freight Rate = 20 ft Freight Rate x 1.25 (Rounded to the nearest $5 increment)

45 ft HC Freight Rate = 40 Standard Freight Rate x 1.266 (Rounded to the nearest $5 increment)

This provision shall not apply to single factor intermodal rates as specified herein.

**8 – FREIGHT, CHARGES, AND INVOICING**

The Merchant and all affiliates, subsidiaries, association members and agents acting on Merchant’s behalf, as well as all other parties responsible for freight under the Bill of Lading, and the cargo itself, are jointly and severally obligated to pay, on demand, all freight charges, dues, taxes, per diem, collection fees, or charges and/or other expenses in connection with the goods.

Merchant and each of its named Affiliates warrant that each and every Consignee of Record named in Bills of Lading issued under this Agreement shall have contracted with the Shipper of Record on such Bills of Lading for sale or transfer of ownership, transport, and delivery of the cargoes identified thereon and that each Consignee of Record has been notified of, and has acknowledged to the Merchant or named Affiliate, its status as a “billed party’ under Title 46 Part 541 of the U.S. Code of Federal Regulations.

The Carrier, its servants or agents, shall have both a maritime and contractual lien on the goods or any part thereof, and the Carrier or its Agent shall have the right to sell such goods, whether privately or by public auction, upon reasonable notice to the Merchant, for all freight (including additional freight payable as is herein stipulated) primage, deadfreight, demurrage, detention, container demurrage, charges, salvage, average of any kind whatsoever, stamps, duties, fines or penalties. The lien hereby accorded may be exercised by the Carrier, its servants or agents notwithstanding that it or they may have parted with actual or constructive possession of the goods. Nothing in this clause shall prevent the Carrier from recovering from the Merchant the difference between the full amount due, and the net amount realized by the exercise of the rights given to the Carrier under this Clause.

Carrier shall invoice Merchant promptly following lading to the manifested vessel or provision of other services. Payment of each invoice shall be due upon receipt of same by Merchant.

**8a – MERCHANT CREDIT**

If Merchant is granted credit, the following terms and conditions shall apply:

1. Credit / Payment Guarantee

Merchant and its subsidiaries/affiliates guarantee and agree to be jointly and severally liable as applicable to pay all freight and charges due under each contract of carriage within the Credit Period defined herein and no later than (30 Days) from the date of invoice.

Merchant agrees that when the total balance due on the total of unpaid invoices and charges issued against their account, whether overdue or not, exceeds the maximum sum of the Credit Limit, Merchant shall pay all sums exceeding the Credit Limit immediately and without delay.

1. Freight and Charges

Merchant, by tendering shipments to Carrier hereby recognizes and agrees that Carrier shall have an absolute right and obligation, under the terms and conditions of the contract of carriage (Bill of Lading), to collect and receive payment in full of all freight and charges due in accordance with relevant tariffs, service contracts or rate agreements, which shall be previously provided or available to Shipper.

Items in dispute shall be exempt from the Credit Period terms defined herein until such time that the dispute is settled, at which point remaining charges shall be payable in full according to the Credit Terms.

1. Payment in Full

Each payment made pursuant to relevant contracts of carriage and this Agreement shall be made in full, without set-off, withholding or deduction of any kind, unless otherwise agreed by Carrier. In the event that Carrier suspends this Credit Agreement, Credit Terms defined herein shall no longer apply to any contracts of carriage entered into or any shipments tendered to Carrier by the Merchant or its subsidiaries/affiliates as applicable.

Carrier shall provide written Notice (via electronic mail to the address on file) to the Merchant of the suspension of Credit Terms; unless otherwise agreed by the Carrier, such suspension shall take effect immediately upon issuance of the Notice.

1. Suspension of Credit Terms

Merchant and its subsidiaries/affiliates, as applicable, agree and undertake to pay all freight and charges prior to or upon the Due Date of the invoice. In the event that Merchant or its subsidiaries/affiliates do not settle invoices and charges prior to or upon the Due Date, or in the event that Merchant exceeds the Credit Limit defined herein, Carrier reserves the right to take any or all of the following actions:

1. Immediately suspend this Credit Agreement, remove the credit, and cease the extension of credit to the Merchant and/or its subsidiaries/affiliates.
2. Withhold original transport documents (Bills of Lading) until all overdue freight and charges, including any applicable administrative or late fees, are settled in full.
3. Withhold release of any shipments tendered by Merchant or its subsidiaries/affiliates, as applicable, until all overdue freight and charges, including any applicable administrative or late fees are settled in full.
4. Exercise any right to lien over any cargo tendered by Shipper or its subsidiaries/affiliates, as applicable, and suspend the provision of further services until all overdue freight and charges, including any applicable administrative or late fees are settled in full.
5. Apply automatically and without additional notice to the Shipper any administrative fee, late charge or interest charge applicable to the shipment pursuant to this Agreement and the relevant tariffs and/or service contract.
6. Third Party Payment Agents

In the event that the Merchant intends to appoint a Third Party payment agent to settle charges with Carrier on its behalf, Shipper shall first obtain Carrier’s written consent. All terms of this Agreement applicable to the Merchant, with the exception of the granting of credit, shall be inclusive upon and applicable to Merchant’s Third-Party payment agent. Merchant hereby agrees to provide notice to its Third-Party payment agent of the applicable Credit Terms and to further indemnify Carrier for all charges incurred in the event of a default or failure on the part of the Third-Party payment agent. Merchant certifies that it has the authority to bind any appointed Third-Party payment agent to the terms of this Agreement.

Merchant shall provide notice of any dispute within ten (10) days of the date of invoice, detailing the basis for dispute and the specific relief requested; in the absence of notice within the ten (10) day notice period, invoices will be presumed valid and payment due within relevant terms.

**9 – CARRIER SERVICE COMMITMENT**

Carrier agrees to make available the vessel capacity adequate to carry the minimum quantity of cargo (MQC) committed by the Merchant pursuant to Appendix “A” hereto; Carrier may, at its option, provide capacity to carry any additional cargo tendered by the Merchant. Merchant agrees to provide twenty-one (21) days advance booking notice to the Carrier for carriage of its cargo, and that the tender of cargo under this Contract shall be reasonably spaced throughout the term hereof. This service commitment is subject to the schedules and service patterns offered by Carrier from time to time.

Should Carrier fail to provide vessel capacity adequate to carry the MQC during the term of this Contract, then Carrier shall only pay to Merchant liquidated damages of $250 per Twenty-Foot Equivalent Unit (TEU) that was actually tendered to the Carrier by Merchant for carriage within the contract geographic scope, but not moved any portion of the transit by Carrier.

Carrier shall not be liable for such liquidated damages with respect to cargo tendered with less than twenty-one (21) days advance booking notice, or for any cargo tendered in excess of the MQC set forth in Appendix “A” hereto or otherwise not in accordance with contract requirements.

Such liquidated damages shall be the exclusive remedy of the Merchant for Carrier’s breach of service commitment. In no event shall Carrier be liable for consequential or indirect damages or losses.

If during the term of this Contract, Carrier changes the nature or type of service it provides on any of the routing(s) covered by the geographic scope of this Contract, such change is agreed not to be considered a breach of this contract. Carrier shall be under no obligation to absorb the cost of any substitute or alternative service provided. However, if such change in service has an adverse and direct impact on Merchant, and Merchant so notifies Carrier in writing within thirty (30) days of the occurrence, the parties hereby agree to negotiate in good faith an amendment to this contract to address such adverse impact.

**10 – MERCHANT COMMITMENT AND LIQUIDATED DAMAGES**

In the event Merchant fails to satisfy the MQC under Clause 5 and Appendix “A” of this Contract, the Merchant shall upon demand pay the Carrier liquidated damages calculated by multiplying the difference between the number of TEUs in the MQC, and the number of TEU actually tendered and shipped, by $250 USD. In the event Merchant fails to satisfy the Sub-MQC identified at Appendix “A” of this Contract, the Merchant shall upon demand, pay the Carrier liquidated damages calculated by multiplying difference between the number of TEUs in the sub-MQC and the number of TEU actually tendered and shipped by $250 per TEU. The foregoing liquidated damages shall be the exclusive remedy of the Carrier for a breach of the MQC.

**11 – DESCRIPTION AND DECLARATION OF CARGO IN BILLS OF LADING**

No general description of goods shall be allowed on Bills of Lading. Goods must be described according to the actual and verifiable content(s) of the packages or containers and in accordance with the Carrier’s Bill of Lading Terms and Conditions. The Merchant is responsible for providing all cargo declaration data elements required by pursuant to regulations published by a relevant government agency. Merchant shall comply with and adhere to all laws, rules, regulations or guidelines, whether federal, state or local, which would otherwise be applicable to the Merchant and/or the shipments. In the case of mis-declared, inaccurate, generic or insufficiently clear description of goods or commodity, as well as any other particulars furnished by the Merchant, any fine or penalties assessed by any relevant government agency shall be for the account of cargo and the Merchant. Cargo misdeclaration charges, as provided under the Carrier’s governing tariffs, shall also apply.

In the event that Carrier is unable to load Merchant’s cargo as a result of incompleteness or inaccuracy in the cargo declaration data elements provided by Merchant, or as a result of a “Do

Not Load” order issued by relevant government authorities, , the cargo and the Merchant shall be liable for all costs, demurrage, fees, fines, penalties, storage, etc. that may result.

**12 – LAND TRANSPORTATION**

**12a – DESIGNATION OF TRUCKING VENDOR**

For shipments designated for pick up or delivery at any U.S. location or facility located outside the Port or Container Yard (i.e., “Door” pick up or delivery, also referred to as “Carrier Haulage”), Carrier shall normally nominate the Vendor to provide such services.  If, upon Contract of the parties, the Merchant is to nominate the Vendor (“Preferred Trucker”), the following shall apply:

Compensation rates shall be as set forth at Appendix G and shall be subject to review and / or change in accordance with subparagraph 12b (below).

Should Merchant’s Preferred Trucker fail to accept a Transport Order within twenty-four (24) hours of issue, or fail to perform as ordered, Carrier may nominate and provide instruction to an alternate Vendor; or require Merchant to nominate an available Vendor.

Any expense or charge in excess of the Compensation rate set forth at Appendix G, including demurrage, detention, or other storage fees, which accrue or are assessed as a result of the Merchant’s nomination of a new or alternate Preferred Trucker, or as a result of the Preferred Trucker’s failure to accept or perform a Transport Order, shall be to the account of the Merchant.

**12b – CARRIER HAULAGE**

For shipments designated for Carrier Haulage (pick up or delivery at any U.S. location or facility located outside the Port or Container Yard):   The Base Rate for Carrier Haulage services may be reviewed on a quarterly basis, with the first review occurring at the end of the first full quarter following the effective date of this Contract.  Merchant and Carrier shall review haulage rates and any changes to relevant costs and / or charges and shall use reasonable efforts to reach Contract on any change to Base Rates.

In the event that Merchant and Carrier do not agree to adjustment of the Base Rate, either Party may mandate conversion of Carrier Haulage / Door Delivery rate to a CY or Ramp rate. Unless the parties agree otherwise, the rate for CY/Ramp delivery shall be calculated by subtracting the original Carrier Haulage / Door Delivery Rate (valid on the effective date or agreed upon on a previous review, as the case may be) from the filed Through Rate.

For the purposes of this provision, quarters shall end on the following dates:  Q1 – March 31; Q2 – June 30; Q3 – September 30; Q4- December 31.

**12c – CHASSIS**

Merchant Haulage: Carrier will not provide a chassis for shipments designated for Port or Container Yard (CY) delivery; Merchant must secure an appropriate chassis at its own expense prior to receiving containers (empty or loaded) at the nominated Port or Container Yard (CY).

Carrier may provide a chassis at any U.S. location subject to a Chassis Management Fee (CHM) and per diem charges as per Tariff or Appendix below.

Carrier Haulage: For shipments designated for pick up or delivery at any U.S location or facility located outside the Port or Container Yard (i.e., “door” pick up or delivery), a Chassis Management Fee (CHM) and per diem charges shall be applied as per Tariff or Appendix below.

**12d – DEMURRAGE, DETENTION AND FREE TIME**

“Demurrage” shall refer to the charges Merchant pays for Carrier’s equipment kept beyond free time allowed for taking delivery of the goods in the port, terminal or depot (whether inland port, rail ramp, or other interchange point). Demurrage shall include all storage, service, and equipment costs, unless otherwise specified.

“Detention” shall refer to charge the Merchant pays for detaining Carrier's equipment outside the port, terminal, or depot, beyond the free time allowed.

Demurrage and Detention charges set forth in Carrier’s applicable Tariffs shall apply to all shipments tendered and carried under this Contract, subject the terms and conditions delineated in any relevant appendix or appendices to this Contract, and shall be calculated as set forth in the Tariff.

**13 – OVERWEIGHT CONTAINERS**

Merchant shall be responsible for tendering containers for shipment in accordance with maximum weight limits applicable to all ports, states, cities, municipalities, counties, or otherwise that the cargo may or actually does pass through or over during transit under the Bill of Lading. Merchant must not tender overweight containers to the Carrier and shall remain liable for any fines, penalties, delays, costs, diversions, etc. that may result from overweight containers, irrespective of whether the Merchant was aware of the overweight condition or not. Carrier reserves the right to refuse or terminate carriage at any time under the Bill of Lading should Merchant misrepresent and/or misdeclare the weight of any container and the actual container weight is found to be in excess of allowable road weight limits and/or in excess of manufacturer designated weight limits.

**14 – DANGEROUS / HAZARDOUS CARGO**

When tendering dangerous and/or hazardous cargo for shipment, the Merchant and/or his agents must declare to the Carrier the exact nature of the danger and indicate, if necessary, the precautions to be taken. The Merchant must comply with all requirements of any applicable federal, state, or local regulations, including regulations contained in any relevant applicable international treaty or convention. The Merchant shall be liable and shall indemnify the Carrier and any other party or legal body for all expenses, loss or damage caused to the vessel, to a cargo, whether on board or ashore, to the Carrier and to any other(s) as a result of his failure to comply with the terms set forth in this clause and the relevant Bill of Lading.

Upon Carrier’s request and prior to executing this Contract, Merchant shall provide Carrier with a list of the IMDG hazardous cargo classes (UN class) to be tendered for shipment under this Contract. Acceptance of dangerous and/or hazardous cargo is at all times subject to Carrier’s approval at the time of booking and nothing in this contract shall derogate from the duty of the Merchant to provide all required hazardous cargo documents and declarations at the time of booking. Carrier’s non-acceptance of hazardous cargo shall not be considered a breach of this contract nor constitute grounds for a reduction of Merchant’s volume commitment.

Carriage of IMDG Classes 1, 2.1, 2.3, 4.1, 4.2, 5.1, 5.2, 6.2 and 7 shall not be accepted and are strictly excluded from this Contract unless otherwise stated herein and, in any event, always subject to Carrier’s approval at the time of booking.

**15 – SECURITY OF THE CARGO**

It is the responsibility of the Merchant to ensure that a high security seal, compliant with ISO PAS 17712 or other, prevailing international standard, is affixed to the container at the time of stuffing and that Carrier is notified of the relevant serial numbers for annotation on the Bill of Lading.

**16 – CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT)**

Carrier is a certified, participating C-TPAT member, operating in full compliance with US Customs and Border Protection C-TPAT security criteria.

Merchant is a certified, participating C-TPAT member, operating in full compliance with US Customs and Border Protection C-TPAT security criteria.

Verification of C-TPAT status shall be completed through the US CBP C-TPAT Portal.

**17 – QUALIFYING SHIPMENTS / CONTRACT VERIFICATION**

In order for shipments of cargo to qualify for rates and terms set forth in this contract including, without limitation to being counted toward the MQC in Appendix “A” hereto, the Merchant or its Affiliates must appear as “Shipper” or “Consignee” on the face of the applicable Carrier Bill of Lading. In instances where Merchant or its Affiliates appear as “Notify Party” on the applicable Carrier Bill of Lading, Carrier in its sole discretion shall determine whether there is sufficient evidence, or there are other indicia, to conclude that the cargo tendered is owned by, consigned to or moving for the direct account of Merchant, in which event such cargo may also qualify for the rates and terms set forth herein.

Unless otherwise agreed between the parties, each original Bill of Lading governing shipments under this Contract, and all copies thereof, must bear a notation showing the applicable Contract number. Merchant agrees to provide the Contract number to the Carrier upon booking of cargo and insert the Contract number on all documents submitted to the Carrier pertaining to the preparation of the original Bill of Lading.

**18 – RETENTION OF RECORDS / REPORTING**

The Carrier and Merchant shall maintain their respective records supporting performance under this Contract in accordance with the requirements of the Federal Maritime Commission.

Information for U.S. trades set forth in this contract and its appendices shall be filed with the Federal Maritime Commission as required by 46 CFR Part 530. Information for non-U.S. trades, if any, as set forth in this Contract and its appendices shall not be filed with the FMC unless required by law.

Requests for records held by the Carrier may be forwarded to:

ZIM American Integrated Shipping Services Co. LLC

4425 ZIM Way

Virginia Beach, Virginia 23462

ATTN: Regulatory Contract / Tariff Manager

PH: (757) 228-1300

**19 – AMENDMENTS**

This Contract may be amended upon the expressed and written consent of the parties and pursuant to the amendment clause under Appendix “E”. The Carrier party shall file any agreed contract amendments with the Federal Maritime Commission (FMC), retain original filed amendments as may be required by FMC, and provide the Merchant party with copies thereof.

**20 – FORCE MAJEURE**

Each party to this Contract shall be excused from the relevant obligations and requirements under this Contract by way of a force majeure event.

Force majeure as used herein shall be defined as and include, without limitation, strikes, labor shortages or stoppages, lockouts, accidents, fire, marine disasters, acts of God or public enemy, embargoes, riots, civil commotions, government request, or any other causes beyond the control of either party, which causes shall not be deemed to include commercial contingencies (i.e., changing market conditions, poor management decisions, business declines, etc.). The party affected by any such force majeure event shall give written notice of the event to the other party within five (5) days of the commencement of the force majeure event, and separate notice within five (5) days of the termination of the force majeure event.

Such force majeure events shall be considered the “disability period(s)”, and the minimum quantity requirements and carrier service commitment shall be reduced proportionally by the disability period(s), on a calendar day basis, rounded upward to the next full container.

The above provision is separate and apart from any defense(s) available under the terms of the Bill of Lading.

**21 – APPLICABLE LAW / DISPUTES**

This Contract shall be subject to the United States Shipping Act of 1984, as amended, the United States Carriage of Goods by Sea Act, (1936), the United States Bills of Lading (Pomerene) Act and shall otherwise be construed and governed by the laws of the State of New York.

The parties agree that any and all disputes arising out of or in connection with Clauses 5 through 9 of this Contract, including any failure by a Merchant to pay or by Carrier to perform as required by the Contract, shall be resolved by arbitration before the New York Society of Maritime Arbitrators. Arbitration shall take place in New York, New York, or such other place as the parties to the dispute may mutually agree. The arbitration shall be before a single arbitrator to be appointed by Contract of the parties to the dispute or, failing such Contract within twenty (20) days of a demand of arbitration, and upon the application of any party to the dispute, by the President of the Society of Maritime Arbitrators, Inc. (“SMA”), New York, New York. There shall be no restrictions on the nationality of the arbitrator. Except by Contract of the parties to the dispute, there shall be no pre-hearing discovery. 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. The decision of the arbitrator shall be final, binding and not subject to further review. The arbitration shall, otherwise, be conducted in accordance with SMA rules.

Notwithstanding anything contained herein to the contrary, should the sum claimed by each party not exceed U.S. $75,000, the dispute is to be governed by the ''Shortened Arbitration Procedure'' of the Society of Maritime Arbitrators, Inc. (SMA) of New York, as defined in the Society's current Rules for such procedure, copy of which is available upon request.

The decision of the arbitrator may be enforced by any court, tribunal or other forum as may properly assert jurisdiction. In the event a party that has prevailed in arbitration finds it necessary to seek enforcement of the arbitrator’s decision and award, the party seeking such enforcement shall be entitled to receive from the non-prevailing party the costs and expenses of such enforcement, including reasonable attorney’s fees and costs. The parties further agree that any such award may be enforced pursuant to the United Nations Convention of the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.

Notwithstanding the foregoing paragraphs, any and all disputes arising under Carrier’s Bill of Lading shall be resolved in accordance with the dispute resolution provisions (including choice of law and venue) of the applicable Bill of Lading. In the event of disputes involving issues under both this Contract and the Bill of Lading, the Bill of Lading’s dispute resolution provisions shall govern.

**22 – INDEMNIFICATION**

Subject to any defenses available under applicable statute, as well as the terms and conditions of its Bill of Lading or other relevant contract , Carrier will defend, indemnify, and hold Merchant, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents harmless from and against all loss, damage, fines, expenses, actions and claims for injury (including any injury resulting in death) and damage to property where such loss, damage, or injury is proximately caused by acts or omissions of the Carrier, its employees, agents, contractors, or subcontractors and arising out of or in connection with Carrier's discharge of duties and responsibilities as specified in this Contract. In addition, Carrier agrees to defend, indemnify and hold Merchant, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents harmless from and against any claims asserted against Merchant or cargo by third parties as a result of: (i) Carriers' breach of any of its representations, warranties, or obligations under this Contract; (ii) the negligence or willful misconduct of Carrier or any of its employees, agents, contractors, or subcontractors; (iii) Carrier's violation or failure to comply with all applicable regulatory requirements, including, without limitation, those related to transportation of cargo.

Merchant will defend, indemnify, and hold Carrier, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents harmless from and against all loss, damage, fines, expenses, actions and claims for injury (including any injury resulting in death) and damage to property where such loss, damage, or injury is proximately caused by acts or omissions of the Merchant, its employees, agents, contractors, or subcontractors and arising out of or in connection with Merchant's discharge of duties and responsibilities as specified in this Contract. In addition, Merchant agrees to defend, indemnify and hold Carrier, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents harmless from and against any claims asserted against Carrier or its vessels by third parties as a result of: (i) Merchant's breach of any of its representations, warranties, or obligations under this Contract; (ii) the negligence or willful misconduct of Merchant or any of its employees, agents, contractors, or subcontractors; (iii) Merchant's violation or failure to comply with all applicable regulatory requirements, including, without limitation, those related to transportation of cargo.

# **23 – INSURANCE**

Carrier shall obtain and maintain, throughout the term of this Contract and at its sole expense, Marine Liability and Cargo Legal Liability coverage with limits consistent with industry practices. Carrier may insure its legal obligations under this contract by participation in a Protection & Indemnity Club or other industry pool.

**24 – CONFIDENTIALITY**

Unless authorized in writing by the other party, neither party shall disclose the Contract terms and conditions to any party other than to its own employees, agents or auditors (who shall agree to hold such information in confidence). The exception to this requirement of confidentiality arises if:

1. Required by law or legal process to be published or disclosed.
2. Reflected or incorporated herein by reference from a published tariff.
3. Disclosed to any person participating with the Carrier in the transportation under the Contract or receiving copies of Bills of Lading for contract shipments.
4. Without identifying the other party, disclosed in a report, analysis or study of rates or conditions in the trades covered by this contract, or to the Secretariat, or another member of a FMC Contract of which Carrier is a member.
5. Already publicly available or been disclosed to an unauthorized third party by the party seeking limited disclosure.

In no case shall the Carrier disclose the terms and conditions of this Contract to another Carrier or Merchant in the trade, nor shall the Merchant disclose Contract terms and conditions to another Carrier or Merchant in the trade, except under (a) or (b) above. Carrier may disclose to any Third party terms and conditions of this contract for the purpose of collecting outstanding charges due from the Merchant or party related, which includes but is not limited to, ocean freight, demurrage, detention, per diem, or other charges, fines or penalties in connection with the goods.

**25 – AUTHORITY**

Each person executing this Contract on behalf of his/her respective company represents and warrants that he/she personally has authority to sign on behalf of his/her company.

**26 – ASSIGNMENT**

Merchant may not assign this Contract, or any rights or obligations hereunder, to any other person in any manner directly or indirectly (including co-loading or movement of cargo for persons not named herein or not otherwise authorized to act as a Shipper or Consignee by the Shipping Act), without first obtaining the written consent of Carrier.

**27 – ENTIRE CONTRACT**

This Contract, including all applicable governing publications, tariffs and Bills of Lading terms referenced herein, constitute the full understanding of the parties and complete and exclusive statement of the terms of the Contract. This Contract shall only be binding when fully executed and duly filed with the Federal Maritime Commission. Unless otherwise stated herein, no modification or termination of this Contract or waiver of any its terms or conditions shall be of any force or effect unless made in writing and signed by the Carrier and Merchant parties and in compliance with all applicable regulations.

**28 – SEVERABILITY**

If any portion of this Contract shall be found by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions shall survive in full force and effect and shall constitute a continuing Contract between the parties.

**29 – WAIVER**

The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Contract, or to take advantage of any or all its rights hereunder, shall not be construed nor operate as a waiver of any of those rights.

**30 – COMPLIANCE WITH THE LAW**

The Parties shall comply with all applicable laws, rules, regulations, directives, and orders including but not limited to anti-bribery/corruption laws and regulations, issued by any authorities having jurisdiction in relation to this Agreement, inclusive of the United States of America and its subordinate jurisdictions, as may be applicable to this agreement.

**31 – SUSTAINABILITY**

Each Party affirms that it shall fulfill its obligations hereunder according to the minimum industry standards relating to health, safety and environmental protections.

**APPENDIX “A” – ESSENTIAL TERMS**

**TERM 1 – SCOPE - ORIGINS**

**Far East Origins:**

Cai Mep, Vietnam (VNTCT)

Ningbo, China (CNNGB)

Shanghai, China (CNSNH)

Yantian, China (CNOJA)

**APPENDIX “A” – ESSENTIAL TERMS**

**TERM 2 – SCOPE – DESTINATIONS**

**U.S. Destinations:**

Atlanta, GA (USATL)

Baltimore, MD (USBAL)

Cincinnati, OH (USCVG)

Cleveland, OH (USCLE)

Columbus, OH (USCLB)

Dallas - Fort Worth Apt, TX (USDFW)

Detroit, MI (USDET)

Houston, TX (USIAH)

Joliet, IL (USJOL)

Kansas City, KS (USKAN)

Los Angeles, CA (USLAX)

Louisville, KY (USLSV)

Memphis, TN (USMEM)

Nashville, TN (USNVL)

New York, NY (USNYC)

**APPENDIX “A” – ESSENTIAL TERMS**

**TERM 3 – COMMODITIES:**

9999.99.0000 - Commodities Not Specified According To Kind

**TERM 4 – MINIMUM QUANTITY COMMITMENT (MQC)**

Association Member agrees to tender for shipment hereunder during the term of this contract a minimum of **10** x 20 ft. equivalent units (TEU’S) hereinafter referred to as MQC from the origins specified in Term 1 above and to the destinations specified in Term 2 above.

**TERM 5 – DURATION**

This contract shall become effective on **September 11, 2024** or upon the date of filing with the Federal Maritime Commission, whichever is later, and shall expire on **April 30, 2025.**

Amendment No. 11 Effective XX-Dec-2024

**APPENDIX “B” – CONTRACT RATES**

Except as otherwise provided herein, cargo moving under this Contract shall be subject to the agreed rates set forth in the attached “Rates Spreadsheet,” which shall form a part of this contract. Unless otherwise specified herein, agreed rates set forth hereunder shall be subject to all surcharges, tariff charges, arbitraries, local charges and General Rate Increases (GRI) which are applicable and effective per the applicable governing tariff(s) and essential terms tariff(s) at the time of shipment.

**Rates Spreadsheet**



**Arbitraries**



**Notes** – Rates herein are subject to the following notes:

**Note 1: General Rate Increase (GRI)**

Not subject to General Rate Increase for the duration of this contract.

**Note 2: Gemini Appendix (attached)**



**Note 3: New Bunker Adjustment Factor (NBF) / New Low Sulphur Surcharge (GPO)**

Ocean freight is subject to quarterly filed New Bunker charges / New Low Sulphur Fuel charges.

**APPENDIX “B” – CONTRACT RATES**

**(Cont’d)**

**Note 4: Mutual Agreement**

Notwithstanding the assessorial inclusions listed in Appendix B, if at any time during the term of this contract, the carrier publishes in its governing tariff (s) any Peak Season Surcharge (PIS) or establishes any new additional charge, the parties agree to consider and, upon mutual agreement, implement such increase / new charge affecting shipments under this contract. If the parties are unable to reach mutual agreement on the aforementioned, either party may, upon 30 calendar days written notice to the other party, terminate this contract for the affected portion of the contract. Upon termination, the minimum quantity commitment shall be:

1. Prorated in the same proportion as the revised term is to the original contract term, if terminated in its entirety;

2. Reduced by quantities shipped up to that date to/from the affected ports; or

3. As otherwise mutually agreed

**APPENDIX “C” – AFFILIATES**

Merchant hereby certifies that Affiliate name and address information will be provided to the Federal Maritime Commission upon request within ten (10) business days of such request, per 46 CFR 530.8(b)(9)(i).

The following parties are affiliates of the Merchant and shall be entitled to tender shipments under this Contract under the same terms and conditions as the Merchant. The Merchant warrants that all affiliates listed herein are entities controlled by, controlling, or under common control with Merchant. [The term "control" means at least 25% legal ownership.] The Merchant further warrants that it is authorized to enter into this Contract on behalf of the listed affiliates. In consideration of the right to ship under this Contract and to receive the rates and other benefits provided, all such affiliates agree that they are jointly and severally liable for any breach of the Contract, including but not limited to any liquidated damages provided for hereunder.

**AFFILIATES:**

N/A

**ASSOCIATION MEMBERS:**



**APPENDIX “D” – FREE TIME, DEMURRAGE AND DETENTION**

**APPENDIX “E” – AMENDMENTS**

This contract may only be amended upon the expressed, written agreement of the parties. The Carrier party shall file agreed contract amendments with the Federal Maritime Commission (FMC), retain original filed amendments as may be required by FMC and provide the Association Member party with copies thereof.

Carrier will accept either an electronic copy of a signature in place of a handwritten signature or an Electronic Endorsement in substitution of an original “pen and ink” endorsement on approved Service Contract *amendments* only.

Association Member must identify those persons authorized to submit such endorsements as Appendix E(1) to this Contract and shall include the authorized person’s full name, title, electronic mail address, telephone number, and signature exemplar.

Association Member may withdraw such authorization by written notice to Carrier.

**APPENDIX “E1” – AMENDMENTS**

The following persons are authorized to endorse amendments to this Contract by (1) submission of an electronic copy (facsimile or scan) of their signature, or (2) submission of an electronic endorsement (i.e., approval or instruction over their unsigned signature block, transmitted from the email address as identified):

|  |  |
| --- | --- |
| Name: Ken O’Brien  Title: President  Email: kobrien@geminishippers.com  Phone: 212-947-3424  Signature:   * Facsimile Signature   X Electronic Signature | Name: Arlene Blocker  Title: Membership Director  Email: ablocker@geminishippers.com  Phone: 212-947-3424  Signature:   * Facsimile Signature   X Electronic Signature |
| Name:  Title:  Email:  Phone:  Signature:   * Facsimile Signature * Electronic Signature | Name:  Title:  Email:  Phone:  Signature:   * Facsimile Signature * Electronic Signature |
| Name:  Title:  Email:  Phone:  Signature:   * Facsimile Signature * Electronic Signature | Name:  Title:  Email:  Phone:  Signature:   * Facsimile Signature * Electronic Signature |

**APPENDIX “F” – GOVERNING TARIFFS**

Governing publications and tariffs of general applicability which apply to this contract are as follows, including any successor tariffs thereto:

ZIMU-136 – Equipment Interchange Tariff

ZIMU-139 – Bill of Lading Tariff

ZIMU-151 – Essential Terms Tariff

ZIMU-217 – U.S. Inland Tariff

ZIMU-480 – Transpacific Eastbound Rules Tariff (Far East To U.S.)

**APPENDIX “G” – PREFERRED TRUCKERS**

**RESERVED**

**APPENDIX “H” – CREDIT AGREEMENT**

**RESERVED**