

ENRON FREIGHT MARKETS CORP.
GENERAL TERMS AND CONDITIONS FOR SPOT SALES
OF MOTOR CARRIER TRANSPORTATION CAPACITY TRANSACTIONS
[Rev. 4/21/01]

These terms and conditions (these "Terms") are made part of a binding verbal or written agreement for a motor carrier transportation capacity purchase and sale transaction ("Transaction") by which a Seller has agreed to sell and provide to a Buyer (Buyer and Seller being "Parties"), and Buyer has agreed to purchase and receive from Seller motor carrier transportation capacity (the "Capacity").

1. **TERMS.** The written confirmation, if any, of the binding verbal or written agreement between the Parties will be referred to as the "Confirmation." Terms capitalized but not defined shall have the meanings given them in the Confirmation. Enron Freight Markets Corp., when a Party to the Transaction, will be referred to as "EFM."

2. **EFFECT OF CONFIRMATION.** The Parties have reached the agreement relating to the Transaction (the "Agreement"), and the Confirmation confirms its specific terms and conditions. Failure to execute or accept a Confirmation shall not invalidate the previous Agreement. In the event of an irreconcilable conflict between the Confirmation and these Terms, the Confirmation will control.

3. **AUTHORITY.** A Party designated in the Agreement or holding itself out in the Transaction as (a) a "Broker," certifies that it provides transportation brokerage services, including arranging interstate and intrastate transportation of general commodities, except household goods and Class A & B Explosives ("Shipments"), that it is properly registered with the U.S. Department of Transportation ("DOT") in any Motor Carrier Docket ("MC Docket") indicated in the Confirmation, and that it holds an effective Surety Bond or Trust Fund Agreement as required by 49 U.S.C. §13906(b) and 49 C.F.R. Part 387; (b) a "Carrier," certifies that it is a motor contract carrier in interstate, intrastate or foreign commerce, that it is properly registered with the DOT pursuant to 49 U.S.C. §13902 in the MC Docket indicated in the Confirmation, and that it is fully authorized to transport Shipments tendered to it for motor contract carrier transportation between all points in the United States, except Alaska and Hawaii; and (c) a "Shipper," certifies that it is legally empowered and fully authorized to enter into the Transaction and is bound by the Agreement.

4. **BROKER'S DUTIES.** A Party designated in the Agreement or holding itself out in the Transaction as a Broker shall perform pursuant to the Agreement the following ("Broker's Duties"): (a) arrange for the provision of interstate motor carrier transportation services for its shipper-customer, including the pick-up, transportation, and delivery of Shipments by motor contract carriers, and (b) when the other Party to the Agreement is designated as the Shipper, monitor and keep the other Party advised of the progress of each Shipment for which the Broker arranges transportation.

5. **BROKER'S WARRANTIES.** When the other Party is designated as the Shipper, a Party designated in the Agreement or holding itself out in the Transaction as a Broker warrants and covenants to other Party, as follows: (a) the Broker will make reasonable efforts to assure that all motor contract carriers used in the Transaction (i) comply with all applicable national, federal, state and municipal registration and safety regulations, including the holding of currently effective operating authorities and of satisfactory DOT safety ratings; (ii) maintain (A) cargo liability insurance in the amount of no less than one hundred thousand dollars (\$100,000) per Shipment; (B) commercial general liability insurance in the amount of no less than one million dollars (\$1,000,000) per occurrence; (C) automobile liability insurance in the amount of no less than one million dollars (\$1,000,000); and (D) workers' compensation insurance in an amount no less than the minimum limits established by applicable statutes and regulations; and (iii) retain proof of each carrier's insurance at the Broker's office, and make such proof available to the other Party and the Shipper during normal business hours, (b) the Broker will assure that a written or electronic record of rates and charges will exist between each such

carrier and the Broker, and (c) the Broker will assure that a contract exists between the Broker and each such carrier defining the rights and obligations of the parties thereto. Broker shall function only as an intermediary in the Transaction, shall not be or be deemed to be a carrier or agent of the other Party or of the carrier, and shall be an independent contractor having exclusive responsibility over the manner in which it or its employees, contractors or agents fulfill its and their respective obligations. EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, A PARTY FUNCTIONING AS A BROKER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY OR ITS SHIPPER, EXPRESSED OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

6. **SHIPPER'S OBLIGATIONS.** The Shipper in the Transaction (whether a Party is so designated in the Agreement or holding itself out in the Transaction as a Shipper, or the shipper-customer of a Party designated or holding itself out as the Broker, or any Carrier or Broker securing Capacity under the Agreement as a Shipper), and no other Party, shall be deemed to be solely responsible for all aspects of the inspection, packaging, loading, and unloading of each Shipment. Such responsibilities shall include, but not be limited to, the following:

a. If Shipper is the Buyer, Shipper authorizes Seller to arrange for the transportation of Shipments contemplated by the Agreement, including the arrangement of carrier personnel and motor vehicle equipment.

b. Shipper represents, warrants and covenants that each Shipment can and will be transported in the manner contemplated for the Transaction under the terms of the Agreement. Shipper indemnifies and holds harmless any other Party from and against any adverse claim, cause of action, lien or encumbrance now or hereafter asserted or imposed by any other person or entity against the Shipment or any party or the carriers of any party.

c. Shipper shall provide proper and complete documentation and shipping instructions for each Shipment in accordance with the shipping instruction documentation of EFM and the carriers, including without limitation, the proper and complete documentation and identification of any hazardous materials to be transported within a Shipment. Without limiting the requirements of the preceding sentence, Shipper shall completely and accurately provide the following information relating to each Shipment: (1) Origin (address, city, state), (2) Destination (address, city, state), (3) Delivery time, date, location, days/hours of operation, (4) applicable accessorial services required, (5) equipment type and grade, (6) commodity description ("Freight All Kinds," "FAK," etc. being unacceptable), (7) Actual Shipper (address, city, state), (8) Consignee (address, city, state), (9) 24-hour, seven-day per week contact information, (10) weight certification, (11) Hazardous Materials shipping documents and information (when applicable). Shipper shall at all times describe the contents of each Shipment with sufficient particularity to comply with applicable legal requirements and to permit EFM and the carriers of the Shipment to comply with such legal requirements and to carry out the transportation of the Shipment safely and knowledgeably. Shipper shall reasonably describe the condition of assembly of the contents

of each Shipment as well as the manner in which it was packaged.

d. Shipper shall carefully inspect all vehicles and related equipment tendered for use in transporting cargo ("Vehicles") and shall determine if the Vehicle is suitable to protect and preserve the Shipment during transit. Shipper releases and discharges the other Party and any carrier utilized in transporting a Shipment for any and all present and future claims, liabilities, losses and damages, or any other expense, liability or loss, caused by defects in a Vehicle that the Shipper's inspection could have discovered prior to loading.

e. Shipper shall provide and properly affix seals to doors of each Vehicle upon loading, and shall properly package, placard, load and unload cargo within and from each such Vehicle, securing, blocking and bracing cargo.

f. Shipper shall ensure with respect to each Shipment that the gross and axle weights of each Vehicle conform to all applicable laws, regulations and safety and weight limitations ("Safety and Weight Limitations"), at origin, en route and at destination; shall properly distribute the weight within each Vehicle to comply with all Safety and Weight Limitations; and shall comply with applicable laws and regulations requiring a person or entity to certify the gross weight of the cargo and packing materials transported in a Vehicle. If a Vehicle is rejected, stopped in transit, or subjected to any fine or penalty, for being overweight or otherwise not being in compliance with applicable Safety and Weight Limitations, Shipper shall (in addition to all other duties and liabilities imposed on it in relation thereto) retrieve the vehicle at Shipper's sole expense.

g. Upon being notified that a loaded Vehicle, while in transit, is deemed unsafe for movement due to a load shift or any damage determined to have been caused by improper packaging, loading, blocking or bracing, Shipper shall arrange at its own expense, or any party or the carrier may arrange at Shipper's expense, for the repair of the Vehicle, securement of the cargo, or transfer of cargo to another Vehicle. If any carrier assesses an additional accessorial charge in connection with such situations, Shipper shall be solely responsible for payment of such charges.

h. Shipper shall be solely responsible for unloading cargo without damaging the Vehicle, and must completely unload the Vehicle, including all packing, blocking and bracing material and any other debris. If Shipper fails to comply with these cleaning requirements, the carrier can clean or reject the Vehicle. If a carrier cleans the Vehicle and assesses the cleaning cost or related accessorial charges, Shipper shall be solely responsible for such charges.

i. If any Shipment tendered to a carrier is lost or damaged, Shipper shall submit or cause any claim for loss or damage to be submitted directly to the carrier responsible for the Shipment. Although Seller will reasonably cooperate with Shipper in making such claims, Shipper acknowledges that Seller is not an agent of the carrier or Shipper for purposes of, and Seller assumes no obligation or responsibility regarding, the physical transportation of Shipper's commodities.

j. If Shipper tenders for transportation a hazardous material as defined under the Hazardous Materials Transportation Act, as amended (49 U.S.C. 5101 *et seq.*), and regulations issued thereunder, Shipper warrants that it is familiar with the requirements in such law and regulations and shall comply with those requirements including, but not limited to (i) registering with DOT; (ii) properly identifying the hazardous material and completing shipping documentation related thereto; (iii) properly packaging, marking, labeling and placarding the

shipment, where required, (iv) providing employee training; and (v) maintaining adequate emergency response systems and contacts in place to be utilized in the event any incident involving the shipment of hazardous materials occurs.

k. Shipper shall indemnify, defend and hold harmless the other Party, its affiliates and/or carriers and its and their respective directors, officers, employees, agents, insurers, successors and assigns, against all claims, liabilities, losses, fines, and other expenses, including but not limited to costs of court, expert fees and attorneys' fees arising out of or relating to (1) any breach of or noncompliance with this paragraph 6; (2) any incomplete, incorrect or misrepresented information provided to a party or any carrier arranged by a party in connection with Shipments; (3) any failure to comply with the Federal Hazardous Materials Transportation Regulations (49 CFR Parts 100-180) and any contact with, exposure to or release of Hazardous Material, including fines or expenses relating to the removal or treatment of that Hazardous Material or any other remedial action pertaining to that Hazardous Material under Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as amended ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, as amended ("RCRA"), or any comparable state law; and (4) any and all loss or damage claims relating to each Shipment.

7. CARRIER'S DUTIES AND OBLIGATIONS. A Party designated in the Agreement or holding itself out in the Transaction as a "Carrier" undertakes and agrees to perform, pursuant to the Agreement, the following duties and obligations:

a. Carrier shall make the Capacity available to the Shipper and transport Shipments on the agreed terms.

b. Carrier shall, at its sole cost and expense (i) furnish all facilities and equipment necessary or required for the performance of its obligations under the Agreement ("Equipment"); (ii) furnish Equipment for each Shipment that meets all applicable national, federal, state and municipal safety regulations and licensing requirements; (iii) pay all expenses related, in any way, to the use and operation of the Equipment; (iv) maintain the Equipment in good repair, mechanical condition and appearance; and (v) utilize only competent, able and legally licensed personnel.

c. Unless otherwise agreed, Carrier agrees to maintain (i) cargo liability insurance in the amount of no less than one hundred thousand dollars (\$100,000) per Shipment; (ii) commercial general liability insurance in the amount of no less than one million dollars (\$1,000,000) per occurrence; (iii) automobile liability insurance in the amount of no less than one million dollars (\$1,000,000); and (iv) workers' compensation insurance in an amount no less than the minimum limits established by applicable statutes and regulations. Carrier's insurance shall be in the form required by applicable regulations and shall have no exclusions or restrictions that have not been made known to the other Party in writing or that would not be accepted by DOT in a filing under 49 U.S.C. §13906. Upon request, Carrier shall cause its insurance carrier to forward to the other Party a standard Certificate of Insurance which Certificate of Insurance shall require the insurance carrier to give the other Party written notice thirty (30) days prior to the cancellation of such cargo insurance.

d. Carrier shall ensure that its employees and drivers will comply with all applicable safety laws and regulations and that it shall promptly report to the other Party, Shipper and any

applicable authority as required by law any accident or hazardous materials incident that may occur during the performance of services hereunder. Carrier shall maintain and provide upon request proof of a satisfactory DOT safety rating.

e. Upon being advised by the other Party that the other Party or a shipper-customer of that Party has a Shipment available for transportation, and being directed by the other Party to pick up the Shipment, Carrier shall issue a uniform standard Bill of Lading or other documentation acceptable to the other Party for each Shipment tendered to it for transportation. Any provision of such bill of lading or other document purporting to incorporate any term or condition inconsistent with the Agreement or not otherwise agreed to in writing by the other Party prior to receipt of the Shipment by Carrier shall be ineffective as the basis for any claim or defense asserted by Carrier or anyone acting on its behalf or as its successor-in-interest or assignee. Failure to issue a bill of lading or other documentation shall not affect the liability of Carrier. Immediately upon delivery of a Shipment, Carrier shall fax to the other Party, followed by first class, postage prepaid mail, a copy of the freight bill with attached bill of lading (or a readable copy thereof) signed by the consignee at the destination of the Shipment.

f. Carrier acknowledges that all aspects of the inspection, packaging, loading, and unloading of any Shipment shall be the sole responsibility of the Shipper (whether so designated in the Agreement, holding itself out in the Transaction as a Shipper, actually the shipper-customer of a Party designated or holding itself out as the Broker, or a Broker or other Carrier securing Capacity under the Agreement as a Shipper).

g. Carrier shall be liable to the other Party's shipper-customer, and as applicable, to the other Party as agent or assignee of a claim of its shipper-customer, as applicable, for loss, damage or delay of any Shipment received by Carrier for transportation under the Agreement. Carrier's liability for a Shipment shall begin at the time the Shipment is loaded on the Equipment at the origin of the Shipment, and shall continue until the Shipment is delivered, or tendered for delivery, to the designated consignee at the Destination. Carrier's liability shall be for the full value of the Shipment less salvage. Unless otherwise agreed, "full value" shall mean either (i) the declared value, (ii) the replacement cost of the lost or damaged merchandise as of the point and time the Shipment was received by Carrier, or (iii) \$100,000 per Shipment, whichever is less. Carrier shall process all claims for loss, damage or delay in accordance with the provisions of 49 CFR §370.

h. By accepting any Shipment containing a hazardous material, Carrier warrants that it is familiar with the Federal Hazardous Materials laws and regulations and that it shall comply with the requirements thereunder, including but not limited to ensuring that (i) the Vehicle and Equipment are properly placarded as to material being shipped, when required, based on information provided by the Shipper; (ii) the material is properly described and packaged; (iii) its drivers and employees are properly trained and hold any endorsements and licenses required to handle, stow, and carry the material; and (iv) its drivers and employees have access to an emergency response contact with respect to all hazardous shipments carried.

i. Except for the negligent or intentional acts or omissions of the other Party, Carrier agrees to defend and hold harmless the other Party, its affiliates, shipper-customers, and its and their respective directors, officers, employees and agents from and against any and all loss or damage claims for each Shipment transported by Carrier under the Agreement or any expense, fine, costs, claims or liabilities incurred that in any way arise out of Carrier's failure to comply with all applicable laws and regulations or the duties or

obligations assumed by Carrier under the Agreement respecting the Transaction, including but not limited to the responsibility for road, fuel and other taxes, fees or permits, related to each such Shipment.

8. PAYMENT. Seller shall invoice Buyer for sums due under the Agreement, including any and all freight charges and accessorial charges paid or to be paid to the carrier or carriers that transport the Shipments; provided that, such charges have been expressly authorized by Buyer or set forth in the Confirmation or the Agreement. Seller shall only invoice Buyer for amounts due under the Agreement and shall not invoice Buyer's customer, the consignee, or third parties. Each invoice shall be submitted with an attached bill of lading for the Shipment (or a readable copy thereof) signed by the consignee at the Destination as proof of delivery. Buyer shall, upon receipt of such documentation, make timely payment to Seller in accordance with the Agreement. Overdue payments shall accrue interest from the agreed due date at the rate of two percent over the prime lending rate as published from time to time in the Wall Street Journal, but shall not exceed the maximum lawful rate. The Shipper hereby waives any and all rights it may have, at law, in contract, in equity or otherwise, to offset or reduce amounts payable in connection with the Transaction on the basis of any amount actually or allegedly due the Shipper by the other Party.

9. DEFAULT / CREDIT. The Agreement can be terminated (and any Shipment rejected without liability to the non-breaching Party) by the non-breaching Party for any material breach of the Agreement, or of any other agreement or obligation between the Parties, or of any representation or warranty contained herein or therein, or upon the insolvency or bankruptcy of the other Party (or its guarantor, if any). In addition, if Buyer (other than EFM) exceeds its credit limit with Seller, or if Seller determines in good faith that (a) the financial condition of Buyer (other than EFM) or its guarantor (if any) has become impaired or unsatisfactory, or (b) it has become necessary to obtain additional security or adequate assurances of Buyer's (other than EFM's) financial responsibility, Seller may, upon written notice, require Buyer to provide satisfactory security for or adequate assurance of Buyer's performance as a condition to the continuation or performance of the Transaction. The remedies in this paragraph 9 shall not be exclusive.

10. FORCE MAJEURE. If, because of Force Majeure, either Party is unable to carry out an obligation with respect to the Transaction, and if such Party promptly gives notice thereof to the other Party, then the obligations of the Party giving such notice shall be suspended with respect to the Transaction to the extent required by such Force Majeure and during its continuance; provided, however, that the Party giving such notice shall use its reasonable efforts to eliminate such Force Majeure. "Force Majeure" means any cause or causes not reasonably within the control of the claiming Party, and without the fault or negligence of such Party, which wholly or partially prevents the performance by such Party of its obligations (except the payment of money), but only if such Party is unable in good faith to obtain a commercially reasonable substitute therefor.

11. NOTICES. Notices shall be deemed given when delivered by (a) hand delivery, (b) facsimile, or (c) on the mailing of the same in a post-paid sealed envelope forwarded by first class, mail to the facsimile numbers and/or addresses (as applicable) provided in the Confirmation or as otherwise notified in writing by one Party to the other.

12. RELATIONSHIP. Seller and Buyer are independent contractors. Seller and its employees and subcontractors shall not be deemed employees of Buyer or Buyer's customers. Shipments shall be transported under the control, direction and supervision of the carrier of the Shipment. The Agreement shall not imply an exclusive relationship between Buyer and Seller or their customers or carriers.

13. GOVERNING LAW; FORUM. The Agreement is governed by, and construed in accordance with, the laws of Texas, without regard to conflicts of law principles. Disputes relating to the Agreement or the Transaction shall be submitted to and resolved by the state district courts of the State of Texas. Each Party irrevocably submits to the jurisdiction of such courts. THE PARTIES WAIVE THEIR RIGHTS,

IF ANY, TO TREBLE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

14. NO WAIVER; NO ASSIGNMENT. A Party's failure to require performance of a provision of the Agreement, or to exercise a right, shall not constitute a waiver of that provision or right, nor affect the right of the non-enforcing Party to thereafter enforce all provisions hereof. The Agreement is not assignable without the written consent of both Parties, which consent shall not be unreasonably withheld.