



NEW BUSINESS ACCOUNT INFORMATION SETUP

NEW BUSINESS CONTACT INFORMATION (ROAD SKY EXPRESS SALES DEPARTMENT)

Company Name:		D&B #:	
Phone:	Fax:		
Street Address:			
City:		State:	ZIP:
Corporation:	Partnership:	Sole Proprietorship:	Other:

BILLING CONTACT INFORMATION (ROAD SKY EXPRESS ACCOUNTING DEPARTMENT)

Bill to Name:	Billing Address:
City:	State: ZIP:

ACCOUNTS PAYABLE CONTACT INFORMATION

AP Contact Name:		
Telephone:	Fax:	AP E-Mail:

Billing Preference: How would you like to receive your invoices? (Please check one)

- Email** (please provide e-mail to send your invoices to): _____
- Fax:** _____
- Mail / Originals**

AGREEMENT

1. All invoices are to be paid per agreed terms from the date of the invoice, including demurrage charges for the detention of equipment, unloading services, lumper services, etc.
2. Claims arising from invoices must be made within seven working days.

SIGNATURES

Signature: Name
and Title: Date:

Signature: Name
and Title: Date:

FREIGHT FORWARDER AGREEMENT

This Agreement ("Agreement") is entered into by and between:

EP South West Logistics, Inc. dba Road Sky Express (FORWARDER), with a principal place of business at 11343 Rojas Dr. El Paso, TX 79936 ("Road Sky Express");

and (2) _____, with a principal place of business at _____
_____ ("SHIPPER"). Road Sky Express and SHIPPER may be collectively referred to as the "Parties" or individually as a "Party."

WHEREAS FORWARDER is licensed as a Domestic Freight Forwarder by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-018772, or by appropriate State agencies, and as a licensed forwarder, arranges for freight transportation.

WHEREAS SHIPPER, to satisfy some of its transportation needs desires to utilize the services of FORWARDER to arrange the transportation of the SHIPPER's freight.

NOW, THEREFORE, intending to be legally bound, FORWARDER and SHIPPER agree as follows:

AGREEMENT

1. **TERM.** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one-year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.
2. **SERVICE.** FORWARDER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state, and local laws and regulations relating to the transportation of the freight covered by this Agreement. FORWARDER'S responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER'S freight. The PARTIES may, upon written mutual agreement, include additional service terms to be attached to this agreement. In the absence of a written agreement to the contrary, transit time shall be established as reasonable dispatch.
3. **VOLUME**
 - a. SHIPPER agrees to tender shipments to FORWARDER as needed, and FORWARDER agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. SHIPPER is not restricted from tendering freight to other forwarders, brokers, or directly to motor carriers. FORWARDER is not restricted from arranging transportation for other parties.
 - b. SHIPPER shall be responsible to FORWARDER for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.
4. **FREIGHT CARRIAGE**
 - a. FORWARDER warrants that it has entered into, or will enter into, bilateral contracts with each carrier it utilizes in the performance of this Agreement.
 - b. FORWARDER shall be deemed the originating carrier on all shipments transported under this Agreement, regardless of whether FORWARDER is listed on the bill of lading.
5. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, FORWARDER agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. The terms and conditions of any freight documentation used by FORWARDER or carrier selected by FORWARDER may not supplement, alter, or modify the terms of this Agreement.
6. **PAYMENTS.** FORWARDER shall invoice SHIPPER for its services in accordance with the rates, charges, and provisions set forth in the "Tariffs Schedule" found in Appendix A, a Shipper Rate Confirmation Sheet, or any other written supplements or revisions that are mutually agreed to between the PARTIES. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon FORWARDER'S invoice to SHIPPER and SHIPPER'S payment to FORWARDER. SHIPPER agrees to pay FORWARDER'S invoice within thirty days of the invoice date without deduction or setoff. FORWARDER shall apply the payment to the amount due for the specified invoice, regardless of whether there are earlier unpaid invoices. Payment of the freight charges to FORWARDER shall relieve SHIPPER, Consignee, or another responsible party of any liability to the carrier for non-payment of its freight charges; and FORWARDER hereby covenants and agrees to indemnify SHIPPER, Consignee, or another responsible party against such liability.
7. **CLAIMS.**
 - a. **Freight Claims:** Freight claims shall be governed by 49 USC § 14706 and 49 CFR § 370 et seq. SHIPPER must file claims for cargo loss or damage with FORWARDER within 9 months from the date of such loss, shortage, or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against FORWARDER in a Court of Law within two (2) years, and a day from the date

the carrier or FORWARDER provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by FORWARDER shall agree in writing with FORWARDER to be liable for cargo loss or damage as outlined in paragraph 4.b above.

- b. Declared Value for domestic transportation is understood and agreed to be not more than \$0.50 per pound of cargo damaged and/or \$50.00 per claim, whichever is highest unless a higher value is declared by the shipper at the time of tender and applicable charges paid thereon. Declared value exceeding \$50,000 will only be accepted upon prior arrangement with the carrier and applicable charges paid thereon. The shipper may increase the carrier's liability by declaring and initialing a higher value of the face of the bill of lading and paying the additional charges. The declared value may not exceed the actual value. Carrier's liability for complete loss or damage will be the lesser of the total declared value or the total actual value. Carrier's liability for partial loss or damage will be prorated based on the ratio of the total declared value to the total actual value. THE CARRIER WILL NOT BE LIABLE FOR SPECIAL CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER OR NOT THE CARRIER KNEW THAT SUCH DAMAGES MAY BE INCURRED.
 - c. It is understood and agreed that the FORWARDER is a Carrier, but FORWARDER shall not be held liable for loss, damage, or delay in the transportation of the SHIPPER'S property unless caused by the FORWARDER'S negligent acts or omissions in the performance of this Agreement. SHIPPER agrees to look to FORWARDER'S carrier (not FORWARDER) for claims for loss, damage, or delay.
8. The carrier certifies that it has and maintains in force a cargo liability insurance policy. The maintenance of such a policy in no way changes the carrier's liability as stated herein or elsewhere within the Carrier's Rules and Regulations Tariff.
 9. For international shipments, declared value shall be strictly limited to \$0.90 per pound of cargo damaged and/or lost, or \$90.00 per claim, whichever is highest unless a higher value is declared by the shipper at the time of tender and applicable charges paid thereon. Declared value exceeding \$50,000 will only be accepted upon prior arrangement with the carrier and applicable charges paid thereon.
 10. In tendering the shipment for carriage, the SHIPPER WARRANTS that the shipment(s) is packaged adequately to protect the enclosed goods and to ensure safe transportation with ordinary care and handling, and that each package is appropriately labeled and, except and noted on the shipping document, is in good order and condition. FORWARDER shall assist SHIPPER in the filing and/or processing of claims with the Carrier. If payment of the claim is made by FORWARDER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to FORWARDER so as to allow FORWARDER to subrogate its loss. In no event shall

FORWARDER or FORWARDER'S Carrier will be liable to SHIPPER or anyone else for special, incidental, or consequential damages that relate to loss, damage, or delay to a shipment, unless SHIPPER has informed FORWARDER in written or electronic form, prior to or when tendering a shipment or series of shipments to FORWARDER, of the potential nature, type and approximate value of such damages, and FORWARDER specifically agrees in the written or electronic form to accept responsibility for such damages. If you would like a higher released value, please contact **Road Sky Express**.

11. All Other Claims: The PARTIES shall notify each other within sixty (60) days of learning of any claims other than cargo loss or damage claims (such as claims for undercharge or overcharge) and shall file any such claims with the other Party within one hundred eighty (180) days from the date of the notice. Civil action, if any, shall be commenced in a Court of Law within eighteen months from the date either Party provides written notice to the other Party of such a claim.
 12. INSURANCE. FORWARDER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts for Cargo Insurance of \$100,000. FORWARDER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder."
 13. HAZARDOUS MATERIALS. FORWARDER **is not** in the business of arranging for the transportation of hazardous materials. The acceptance of any hazardous shipment is inadvertent on the part of the FORWARDER. SHIPPER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and §173 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform FORWARDER immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold FORWARDER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER'S failure to comply with applicable hazardous materials laws and regulations.
14. DEFAULT.
 - a. Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 (ten) days written notice to the other Party. SHIPPER shall be responsible to pay FORWARDER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.
 - b. All amounts owed by Shipper to Forwarder shall be paid within 30 days of invoice date to Shipper by Forwarder. If any sums are not paid within 10 days after its due date, or if Shipper breaches any other term of this agreement or any other agreement with the Forwarder, Shipper will be in default of this agreement. Should Forwarder be required to incur any costs to collect any amounts due from the shipper, Shipper agrees to pay all such costs and expenses, including reasonable attorney fees, collection agency fees, or other fees incurred in enforcing this Agreement. The shipper agrees

to pay interest on all past due amounts, from the due date, at 1.5% per month, billable immediately upon the first day after the invoice due date described in this paragraph.

15. **INDEMNIFICATION.** Subject to the insurance limits in Section 8, FORWARDER and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement. Neither party shall be liable to the other party for any claims, actions, or damages due to the negligence of the other party. Although Section 8 only imposes insurance requirements upon FORWARDER, for the purpose of this Section 11, those amounts also shall limit the scope of SHIPPER'S indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.
16. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.
17. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.
18. **INDEPENDENT CONTRACTOR.** It is understood between FORWARDER and SHIPPER that FORWARDER is not an agent for the Carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over FORWARDER, its operations, employees, or carriers.
19. **NONWAIVER.** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.
20. **NOTICES.** The PARTIES will notify each other in writing of a change of address, all notices required or permitted to be given under this Agreement shall be in writing.
21. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disasters, war, embargo, riot, civil disorder, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or FORWARDER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provides reasonable notice to the other Party of such inability to perform.
22. **CHOICE OF LAW AND VENUE.** All questions concerning the construction, interpretation, validity, and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed, and enforced in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.
23. **ALTERNATIVE DISPUTE RESOLUTION.** If a dispute arises out of or relates to this AGREEMENT, other than a dispute about cargo claims, and the parties have not been successful in resolving the dispute through negotiation, the parties agree to attempt to resolve the dispute by submitting the dispute to mediation by any method agreed upon by the parties. Each party shall bear its own expenses and an equal share of the expenses of the mediator and the fees of the Texas Arbitration and mediation services. The parties, their representatives, other participants, and the mediator shall hold the existence, content, and result of the mediation in confidence. If such dispute is not resolved by such mediation, the parties shall have the right to resort to any remedies permitted by law. All defenses based on the passage of time shall be tolled pending the termination of the mediation. Nothing in this clause shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending mediation. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate.
24. **CONFIDENTIALITY.** FORWARDER shall not utilize SHIPPER'S name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the PARTIES shall not publish, use, or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. FORWARDER will require its carriers and/or other parties involved in the transportation of SHIPPER'S goods to comply with this confidentiality clause.
25. **SOLICITATION OF CARRIERS BY SHIPPER.** Shipper shall not solicit carrier services from any carrier of FORWARDER where (1) the availability of such motor carrier service first became known to SHIPPER as a result of FORWARDER'S efforts, or (2) where the traffic of the SHIPPER was first tendered to the carrier by FORWARDER. If SHIPPER breaches this agreement and "back-solicits" FORWARDER'S carriers, and/or obtains motor carrier services from such a carrier, FORWARDER is then entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from SHIPPER of (20%) of the transportation revenue paid to carriers within the scope of the Agreement, as liquidated damages. Termination of this contract shall not affect the enforceability and applicability of the foregoing provisions of this clause for a period of 15 months after termination.
26. **ENTIRE AGREEMENT.** This Agreement, including all Appendices, Exhibits, and Addenda, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

IN WITNESS WHEREOF the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully authorized representatives as of the dates first above written.

EP South West Logistics Inc. dba Road Sky Express

[SHIPPER]

Signature

Signature

Name

Name

Title

Title

Date

Date



APPENDIX A TARIFFS SCHEDULE

Please visit us on the web: <http://www.RoadSky-Express.com>
for the most updated Tariffs Schedule

A tariff sheet is also available through our customer service
team members at 915-590-1400 or
ELPdispatch@RoadSky-Express.com