



CREDIT APPLICATION

COMPANY INFORMATION

COMPANY NAME: _____ EIN#: _____ DNB#: _____
STREET ADDRESS: _____
CITY: _____ STATE: _____ ZIP CODE: _____
TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL: _____
ESTIMATED ANNUAL SALES: _____ YEAR ESTABLISHED: _____
BUSINESS IS: _____ SOLE PROPRIETORSHIP _____ PARTNERSHIP _____ CORPORATION
Is your company related to any other company through common ownership, parent subsidy, branch division, etc.? _____ If yes, please explain:

Have you ever filed for bankruptcy? _____ Year: _____ Credit Amount Requested: \$ _____

BANK REFERENCE

BANK NAME: _____
Checking _____ Savings _____
Address _____
City: _____ State: _____
Zip Code: _____
Ph.# _____
Fax# _____

NAME: _____
DBA: _____
Account# _____
Address: _____
City: _____ State: _____
Zip Code: _____
Ph.# _____
Fax# _____

TRADE REFERENCES

1) NAME: _____
DBA: _____
Account# _____
Contact: _____
Address: _____
City: _____ State: _____
Zip Code: _____
Ph.# _____
Fax# _____

2) NAME: _____
DBA: _____
Account# _____
Contact: _____
Address: _____
City: _____ State: _____
Zip Code: _____
Ph.# _____
Fax# _____

TERMS and CONDITIONS

I understand and agree that should credit be extended all payments are payable and due **Net 30 days**. Accounts that are in arrears will not be extended additional credit. A finance charge will be applied to all unpaid balance on bills that are 45 days from date of service. That rate will be applied at 1.50 per month. Any disputed charges must be brought to our attention within 10 business days upon receipt of freight bills for immediate resolution. I further agree to pay all cost including collection fees and / or reasonable attorney fees should this become a credit default. I hereby certify that all my statements made herein are correct and authorized you to obtain any information you require concerned statements herein.

Signature: _____ Title: _____ Date: _____

Printed Name: _____



BROKER/SHIPPER TRANSPORTATION AGREEMENT

This agreement is made and intended to be effective this (the) _____ day of _____, 20_____

by and between KMS Capital Inc, a California Limited Liability d.b.a. KMS Capital Inc hereafter referred to as KMS CAPITAL INC, having offices at 15255 Riverview Lane Victorville, CA 92394 and

_____, (SHIPPER) having offices at _____;

collectively, the "Parties".

RECITALS

(A) KMS Capital Inc is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC 105675, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. A copy of KMS CAPITAL INC FMCSA license is attached as Appendix A, and a copy of BROKER's Surety Bond or trust fund agreement is attached as Appendix B; and

(B) SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of KMS CAPITAL INC to arrange for transportation of SHIPPER's freight. NOW THEREFORE, intending to be legally bound, KMS CAPITAL INC and SHIPPER agree as follows:

AGREEMENT

1. **Term.** The term of this Agreement shall be one (1) year, commencing on the date shown above, and shall automatically renew for successive one-year periods; provided 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. **Acceptance of Goods for Transit.** KMS CAPITAL INC undertakes to arrange for any or all of the following services (The Services): packing, crating, handling, loading, unloading, storage or transport of goods for the SHIPPER. The Services shall be performed under the following terms and conditions which KMS CAPITAL INC has made available to the SHIPPER on the KMS CAPITAL INC website, www.kmscap.net, under the link "Forms & Documents" / "Shipping Terms and Conditions."

3. **Duties of KMS CAPITAL INC when acting as a Broker:** (A) KMS CAPITAL INC shall procure the Services from third parties in the name, and on behalf of, the SHIPPER. (B) There shall be a direct relationship between the SHIPPER and those third parties. KMS CAPITAL INC shall be permitted to act in any reasonably necessary manner and shall perform its duties using a reasonable degree of care and diligence. (C) KMS CAPITAL INC shall perform its services within a reasonable time, taking all reasonable steps to perform the transaction in accordance with the SHIPPER's instructions. (D) KMS CAPITAL INC shall be permitted to depart from any instruction from the SHIPPER if KMS CAPITAL INC deems it necessary to do so in order to protect the SHIPPER's interests. (E) KMS CAPITAL INC shall seek further instructions from the SHIPPER if it becomes impossible at any time for the KMS CAPITAL INC to fulfill its duties.

(F) KMS CAPITAL INC shall not be liable for loss of or damage to the goods while the goods are in the custody, possession or control of third parties.

Initials _____

4. Duties of the SHIPPER: (A) The SHIPPER warrants that it is either the owner or the authorized agent of the owner of the goods. (B) The SHIPPER authorizes KMS CAPITAL INC to contract in the name of the SHIPPER with third parties to perform any or all of the Services on behalf of the SHIPPER. (C) The SHIPPER shall provide a full and accurate description of the goods to be transported. (D) Except where KMS CAPITAL INC is instructed to do so, the SHIPPER shall properly pack, stow and prepare the goods in a manner suitable and appropriate for shipment by any mode of transport. (E) The SHIPPER shall mark the goods and the outside packaging as required by any laws or regulations which may be applicable while the Services are being provided. (F) The SHIPPER shall pay all freight charges, duties, or other sums connected with the handling and transportation of the goods. (G) The SHIPPER shall pay to KMS CAPITAL INC all sums immediately when due, without reduction or deferment on account of any claim. (H) The SHIPPER shall remain responsible for the payment of all charges when the Services are to be provided upon instructions to collect freight, duties, charges or any other expenses from another. (I) The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the SHIPPER to pay all charges or other sums due promptly on demand. (J) SHIPPER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and § 397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform KMS CAPITAL INC immediately if any such shipments constitute hazardous materials. SHIPPER shall defend, indemnify and hold KMS CAPITAL INC 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. (K) The SHIPPER shall not deliver any bullion, precious metals, precious metal objects, gold, silver, platinum, precious or semi-precious stones, jewelry, money, securities, accounts, bills, currency, food stamps, lottery tickets, notes, bank notes, coins, bonds, negotiable instruments, evidences of debt, passports, tickets, documents, manuscripts, records, valuable papers, cigarettes, cellular telephones, PDA's, valuable works of art, bloodstock, live animals, plants or cuttings, contraband, or vehicles except under special arrangements in which notice is given to KMS CAPITAL INC (L) The SHIPPER shall advise KMS CAPITAL INC if any goods are liable to taint or affect other goods or are likely to harbor or encourage vermin or other pests.

5. Indemnification by the SHIPPER. The SHIPPER shall indemnify and hold KMS CAPITAL INC harmless for: (A) All duties, taxes, fines, or other expenses incurred by KMS CAPITAL INC caused by the SHIPPER or any party acting on his behalf. (B) Any claim for general average and/or salvage, and the SHIPPER shall provide such security as may be required. (C) Where the SHIPPER himself has prepared the goods for transport, for any claim by a third party for bodily injury or property damage arising out of the SHIPPER's failure to pack, load, stow or otherwise adequately prepare the goods for shipment.

6. Payments. KMS CAPITAL INC shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth, and any written supplements or revisions that are mutually agreed to between the Parties in writing. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon in KMS CAPITAL INC voice to SHIPPER and SHIPPER's payment to KMS CAPITAL INC. SHIPPER agrees to pay invoice within 15 days of invoice date without deduction or setoff.

7. Lien on Cargoes. (A) KMS CAPITAL INC shall have a general lien on any and all property of the SHIPPER in its possession or control, for any claim for charges, expenses or advances incurred by KMS CAPITAL INC in connection with any of the Services rendered to the SHIPPER. (B) KMS CAPITAL INC may, at its option, suspend property delivery until all Shippers' obligations due to KMS CAPITAL INC are paid. (C) If such claim remains unsatisfied for thirty (30) days after demand is made, KMS CAPITAL INC may sell the goods at public auction or private sale on ten (10) days' written notice to the SHIPPER in satisfaction of the sum due to KMS CAPITAL INC (D) Any surplus from such sale, after the payment of any applicable expenses, shall be transmitted to the SHIPPER. (E) The SHIPPER shall remain liable for any deficiency in the sale.

Initials _____



8. Presentation of Claims and Liabilities. (A) In the event that the goods are lost, damaged, delayed or otherwise received in a manner inconsistent with its intended delivery, the SHIPPER shall give notice to KMS CAPITAL INC immediately after it learns of the condition, but not later than seven (7) days thereafter. On receipt of such notice, KMS CAPITAL INC shall arrange on SHIPPER’s request an investigation of the circumstances surrounding the matter. (B) SHIPPER shall be responsible for the timely filing of a claim with Carrier, if the Carrier does not pay a claim and KMS CAPITAL INC are notified of this act, it is KMS CAPITAL INC sole duty to notify SHIPPER in writing, and it is the SHIPPER's duty to timely file a lawsuit or other dispute (e.g. arbitration) resolution format required for the shipment. (C) KMS CAPITAL INC, shall not be liable for the loss, delay or damage to the goods. Carriers used for the Shipment will assume liability as provided under CFR 370 for all shipment loss and damage claims, including delay, will not exceed the least of (1) The invoice value (2) The declared value or (3) \$100,000 per shipment not to exceed the maximum amount of Carrier’s cargo insurance, unless at time of booking the Shipment, SHIPPER requested a higher amount as declared value and paid the appropriate excess valuation charge. Any Shipment of used materials may be subject to lower limitations of liability than the limits set forth in the preceding sentence, as published by Carrier. SHIPPER shall seek restitution from the Carrier by filing a proper claim for loss and damage against the Carrier, and not against KMS CAPITAL INC. **Note:** SHIPPER should procure cargo insurance to protect for loss, damage or delay that occurs in Mexico.

9. Insurance. KMS CAPITAL INC agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

(A) Comprehensive general liability insurance covering bodily injury and property damage	\$2,000,000
(B) Contingent Cargo Insurance	\$250,000
(C) Errors and Omissions Insurance	\$100,000
(D) Contingent Auto Liability or Hired and Non-Owned Auto Liability Insurance	\$2,000,000

KMS CAPITAL INC shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as “Certificate Holder”.

10. Surety Bond. KMS CAPITAL INC shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$75,000 or as otherwise required by the FMCSA and furnish SHIPPER with proof upon request.

11. Homeland Security. As applicable to each, respectively, KMS CAPITAL INC and SHIPPER shall comply with state and federal Homeland Security related laws and regulations.

12. Assignment/Modification 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.

13. 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.

Initials _____



14. **Independent Contractor.** It is understood between KMS CAPITAL INC 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 KMS CAPITAL INC, its operations, employees, or carriers.

15. **Non-waiver.** 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.

16. **Notices.** Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission or email with confirmed receipt) and shall be addressed as follows:

KMS CAPITAL INC
Attn: Shakeia Smith _____
Address: 15255 Riverview Lane _____
Victorville CA 92394 _____
Phone: (562) 507-0112 _____
Email: info@kmscap.net _____

SHIPPER: _____
ATTN: _____
Address: _____
Phone: _____
Email: _____

17. **Indemnity.** KMS CAPITAL INC and SHIPPER shall each defend, indemnify and hold harmless the other party from and against all loss, damage, expense, including injury resulting in death, and damage to property arising out of or in connection with the indemnifying party's or its agents' and employees' failure to observe and/or enforce the duties and responsibilities set forth herein, including loading, handling, transportation, unloading or delivery of any Shipment hereunder or in any other way related to the indemnified party's or its agents' and employees' negligent acts, omissions or performance of their obligations hereunder, unless such injury is caused by the sole negligence of the indemnifying party.

18. **Force Majeure.** Neither KMS CAPITAL INC nor Carrier shall be liable for any delay in the performance of the Transportation Services resulting directly or indirectly from or contributed to by any force majeure, including, but not limited to, act of God, acts of government or other civil or military authorities, fires, accidents, floods, strikes, lockouts, war, riot or other circumstances beyond their reasonable control.

19. **Waiver of Certain Damages.** In no event shall KMS CAPITAL INC or Carrier be liable for any consequential, incidental, or special damages which may arise from loss, damage, non-delivery, or delay of any shipment. This limitation shall apply to and include, but not limited to damages for loss of profit, loss of income, or loss of business opportunity.

20. **Law and Jurisdiction.** The terms and conditions of the Services to be provided shall be construed in accordance with the laws of the State of California. Jurisdiction and venue, if any dispute, shall be with a court residing in San Bernardino County of California.

21. **Entire Agreement:** This Agreement, including all Appendices 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. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

Initials _____



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.

KMS CAPITAL INC

Signature
Shakeia Smith

Print Name
Shakeia Smith

Title
President/CEO

Shipper

Signature

Print Name

Title
