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Blue Bell, PA 19422

## ***CHEMLOGIX GLOBAL CUSTOMER SERVICES GENERAL TERMS AND CONDITIONS***

### **1. RELATIONSHIP OF PARTIES.**

It is understood that employees, methods, facilities and equipment of ChemLogix shall at all times be under its exclusive direction and control. ChemLogix's relationship to Customer shall be that of an independent contractor, and nothing in these terms and conditions shall be construed to constitute ChemLogix or any of its members, employees or officers, as an employee, associate, joint venture or partner of Customer.

### **2. HAZARDOUS MATERIALS.**

Customer will provide ChemLogix, should ChemLogix be used to tender loads to carriers, with advanced notice of the proposed shipment of any hazardous materials, as that term is used in the Hazardous Materials Transportation Act, 49 U.S.C. 5101, et seq. as amended ("Hazardous Material"), together with a copy of the Material Safety Data Sheet for that Hazardous Material. Customer shall indemnify, defend and hold harmless ChemLogix, its officers, employees, and insurers, against all claims, liabilities, losses, fines, legal fees and other expenses arising out of contact with, exposure to or release of any Hazardous Material including without limitation fines or expenses relating to the removal or treatment of that Hazardous Material or any other remedial action pertaining to that Hazardous Material under the 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"), The Oil Pollution Act of 1990 ("OPA") , or similar Federal, State or Local laws and regulations, except if due to ChemLogix's negligence or willful misconduct.

### **3. INDEMNIFICATION.**

a.) Customer shall defend, indemnify and hold harmless ChemLogix from any and all claims, losses, expenses, fees (including attorney fees), costs, and judgments that may be asserted and/or awarded against ChemLogix that result from the acts or omissions of Customer whether such acts be intentional or negligent. Except to the extent of ChemLogix's negligence, Customer also agrees to indemnify and hold ChemLogix harmless from any and all claims, losses, expenses, fees (including attorney fees), costs, and judgments that may be asserted against ChemLogix that result from third party actions, third party actions of the railroads, railroad contractors or Customer customers.

B.) ChemLogix shall indemnify and hold Customer harmless from any and all claims, losses, expenses (including attorney fees), fees, costs, and judgments that may be asserted or awarded against Customer that result solely from 1) the negligent acts or omissions of ChemLogix and ChemLogix's employees, or 2) any deficiencies of ChemLogix's equipment.

#### **4. LIMITATION OF LIABILITY.**

ChemLogix does not control the services of the railroads or any of the railroad's contractors or other third parties in the performance of transportation for Customer and therefore ChemLogix, except to the extent of its own negligence, is not liable for any services provided by such parties that result in disruption or loss to Customer or Customer Customers.

ChemLogix will on behalf of Customer, where necessary, join with Customer in any claim for losses, against the railroad, railroad contractors or other third parties in the performance of their contract services for ChemLogix in behalf of Customer. Except to the extent of ChemLogix's negligence, in no case shall ChemLogix be liable for any claims, losses, expenses, fees, including attorney fees, costs and judgments that may be asserted by Customer or Customer customers.

In no event shall either party or their representatives be liable for special, or consequential damages (including, without limitation, damages for loss of profits, business interruption, loss of information or other pecuniary loss) even if such party has been advised of the possibility of such damages, whether in contract, tort or otherwise.

ChemLogix's maximum liability arising out of its actions hereunder, whether based on warranty, contract, tort, or otherwise, shall be the actual payments received by ChemLogix from the Customer for the services that ChemLogix performed for the specific move or location where the liability allegedly arose minus any applicable carrier payments or the amount recoverable from insurance whichever is greater.

#### **5. INSURANCE.**

Each party shall procure at their sole expense and keep in force continuously throughout the term of this Contract the following insurance (with a reputable and financially responsible insurance company):

- (a) Workers' Compensation - Statutory, Employer's Liability - \$500,000 per accident/per employee; and such other insurance as may be required by Statutory law; this policy shall include a waiver of subrogation.
- (b) Commercial General Liability, including Contractual Liability Insurance and Broad Form Property Damage covering all operations and work hereunder and shall be written on an "Occurrence Coverage Basis" with a combined single limit of \$1,000,000 per occurrence.
- (c) Business Automobile Liability, in a combined single limit for Bodily Injury and Property Damage - \$1,000,000 per occurrence.
- (d) Cargo insurance of \$500,000 per unit.
- (e) Other insurance appropriate for each Party's business or as required by law.

The Parties shall maintain in force the insurance required by this Section and shall seasonably renew all required coverage during the term of the Agreement.

Upon the request of each Party, ChemLogix shall provide Customer and Customer shall provide to ChemLogix certificates of insurance evidencing the coverage. Such certificates shall provide that the insurer will give the Parties at least thirty (30) days advance notice of any changes in, or cancellation or non-renewal of, coverage and note any exclusion.

They Parties shall require that any subcontractor they employ carry the same coverage in the same limits as set out above, and other coverage as ChemLogix or Customer deems appropriate requiring proof thereof.

## **6. LIMITED AGENCY.**

ChemLogix shall have limited authority to bind Customer and represent Customer to the carrier community in matters involving the transportation management services, subject to any prescribed Customer guidelines.

Nothing in these terms and conditions shall expand ChemLogix's authority beyond their proscribed function nor shall any of its employees or officers be or represent themselves as being employees, general agents, joint venture or partners of Customer. ChemLogix is a broker, intermodal marketing company or other company involved in arranging for motor and/or rail and/or ocean transportation, and in furtherance of such business contracts directly with Customer and its designated receivers to provide such transportation intermediary services, contracts directly as an Intermediary for said Customer with motor carriers, railroads and/or ocean carriers and purchases such motor or rail or ocean transportation as an authorized service for the Customer.

## **7. CONFIDENTIALITY.**

The Parties recognize that certain, confidential and proprietary information (collectively, "Information") are valuable, special and unique assets of the parties and needs to be protected from improper disclosure. In consideration for the disclosure of the Information, the Parties agree that they will not at any time or in any manner, either directly or indirectly, use any Information for their own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of the other Party. The Parties will protect the Information and treat it as strictly confidential. The Parties agree to inform each employee and representative who will assist in the performance of Services under these terms and conditions of the confidential nature of each Party's information and the limitations on care use and disclosure under these terms and agreements. The Parties agree to secure any information, including information in writing and electronically stored, to prevent unauthorized access.

The preceding section shall not apply to any Confidential Information which the recipient can prove (a) has become part of the public domain other than by acts or omissions of the recipient, its employees, representatives, consultants or advisors, (b) has been furnished or made known to the recipient by third parties (other than those acting on behalf of the disclosing party) as a matter of legal right and without restriction on disclosure or use, (c) was in the recipient's possession prior to disclosure by the disclosing party and was not acquired by the recipient, its employees, representatives, consultants or advisors directly or indirectly from the disclosing party, or (d) was or is discovered by or for a party independent of, and not in any material way facilitated by, its access to the other party's Confidential Information hereunder.

A violation of this paragraph shall be a material violation of these terms and conditions.

## **8. UNAUTHORIZED DISCLOSURE OF INFORMATION.**

If it appears that either Party has disclosed (or has threatened to disclose) Information in violation of these terms and conditions, the non-disclosing party shall be entitled to an injunction to restrain the disclosing party from disclosing, in whole or in part, such Information, or from providing any services to any party to whom such Information has been disclosed or may be

disclosed. The non-disclosing party shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

#### **9. FORCE MAJEURE.**

No liability shall result to either party from delay in performance or from nonperformance (except payment of monies where due) caused by circumstances beyond the control of the party who has delayed performance or not performed. The nonperforming party shall be diligent in attempting to remove any such cause and shall promptly notify the other party of its extent and probable duration.

If the nonperforming party who has delayed performance or not performed on account of circumstances beyond its control is unable to remove the causes within fourteen (14) days, the other party shall have the right to terminate, without penalty.

#### **10. DEFAULT.**

If either party fails to perform its obligations under this Contract, then the other party may terminate this Contract upon ninety (90) days' prior written notice to the other. Such notice shall specify all failures to perform and allow the party in default not less than sixty (60) days to correct such failures. However, breach by Customer of the terms of payment described in Section 5 and in Scheduled B of this Contract shall constitute a default, which Customer agrees to correct within fifteen (15) days of receipt of notice from ChemLogix.

#### **11. DISPUTE RESOLUTION.**

The parties shall attempt to settle any dispute between them amicably and agree to exercise their best efforts to resolve the controversy or dispute prior to seeking a judicial resolution. To invoke the dispute resolution process, the invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the controversy or dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the controversy or dispute within ten (10) business days after receipt of such notice. If those designated representatives cannot resolve the controversy or dispute, the parties shall meet and describe the controversy or dispute and their respective proposals for resolution to their respective Chief Operating Officer or another designated person with comparable authority who shall act in good faith to resolve the controversy or dispute. If the controversy or dispute is not resolved within ten (10) business days after such meeting, the parties by mutual AGREEMENT will engage an independent consultant to mediate the controversy or dispute and the charges of the independent consultant shall be shared equally by the parties.

#### **12. ASSIGNMENT.**

This Contract and all of the Sections hereof shall be binding upon and endure to the benefit of the Parties hereto, their successors and permitted assigns. Neither this Contract nor any of the rights, interests or obligations shall be assigned by either of the Parties without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that in the event of a change in control due to sale, acquisition or merger of either Party prior consent of any kind shall not be required

#### **13. AMENDMENT.**

These terms and conditions may be modified or amended if the amendment is made in writing and is signed by both parties.

#### **14. WAIVER OF CONTRACTUAL RIGHT.**

The failure of either party to enforce any provision of these terms and conditions shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of these terms and conditions.

#### **15. SEVERABILITY.**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### **16. THIRD PARTY**

Nothing contained in these terms and conditions shall create a contractual relationship or a cause of action in favor of a third party against either ChemLogix or Customer.

#### **16. APPLICABLE LAW.**

The above referenced terms and conditions will be interpreted in accordance with the laws of the Commonwealth of Pennsylvania, U.S.A., excluding its conflict of law principles; provided that, in case of a dispute arising from the interpretation or enforcement of patents, trademarks, copyrights, confidential information or other proprietary rights held by ChemLogix, federal law shall apply. Any disputes under this Agreement shall be subject to the exclusive jurisdiction and venue of the Commonwealth of Pennsylvania, U.S.A. courts and the Federal courts and the Parties consent to personal jurisdiction in such courts.