



# Port Contractors, Inc.

529 Terminal Avenue, New Castle, DE 19720

## GENERAL SERVICES TERMS AND CONDITIONS

**BY EXECUTING THAT CERTAIN RATE SHEET BETWEEN CUSTOMER AND PCI, OR ACCEPTING THE SERVICES FROM PCI PROVIDED FOR UNDER THE RATE SHEET, CUSTOMER AND PCI HAVE AGREED TO THESE TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS ARE INCORPORATED BY REFERENCE INTO, AND MADE A PART OF, THE RATE SHEET.**

**I. Definitions.** Capitalized terms used herein without definitions shall have the respective meanings provided therefore in the Rate Sheet. For purposes of these General Services Terms and Conditions, the following terms shall have the meanings specified in this Section I. "Agreement" means the Rate Sheet together with the General Services Terms and Conditions. "Normal Business Hours" means 7:00 am to 5:00 pm (prevailing Eastern Time), Monday through Friday (other than "PCI Holidays"). "PCI Holidays" means any day PCI designates a holiday pursuant to its holiday policy. "Law" means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation or order. "Rate Sheet" shall mean the Rate Sheet between Customer and PCI to which this is an Exhibit. "Terms and Conditions" means these General Services Terms and Conditions.

### **II. Services.**

a. Scope of Work; Provision of Services. PCI shall provide, and the Customer shall accept, the Services identified in the Rate Sheet, during Normal Business Hours (unless otherwise provided in the Rate Sheet), all in accordance with the provisions of this Agreement. This Agreement shall govern all orders or requests for Services issued by Customer and which are accepted by PCI. Unless otherwise provided for in the Rate Sheet, this Agreement shall not obligate Customer to utilize the Services from PCI, nor shall it obligate PCI to provide the Services. To provide the Services, PCI may, in its sole discretion, utilize its employees or contractors. PCI may, in its sole discretion, provide the Services at any PCI Facilities or any other property owned, leased, licensed or operated by PCI (collectively, with the PCI Facilities, the "PCI Properties").

#### 1) Equipment Services.

- i. PCI may rent, license, lease, sublet or otherwise provide certain equipment to Customer, including without limitation loaders, excavators, forklifts, vehicles, tools, machinery, attachments and other mechanical devices, (the "Equipment") from time to time. Equipment may be provided with a PCI operator or Customer may supply the operator of Equipment.
- ii. Regardless of whether Equipment is operated by PCI personnel or Customer personnel, Customer shall at all times supervise, direct and control the activities of the operator of the Equipment and the operator shall follow the instructions, signals, direction and supervision of Customer. Customer, if providing the operator, shall only utilize properly insured, licensed and trained operators.
- iii. Customer shall keep the Equipment well lubricated, properly adjusted and otherwise in good and efficient working order, and provide any daily servicing required by Equipment's manufacturer, including without limitation daily inspection, adding fluids, blow out air filters and adding air to tires. If Customer requests, PCI may provide a field service mechanic to ensure routine servicing is completed in accordance with the manufacturer's requirements, subject to availability and additional rates/charges. Customer shall return Equipment with the same fuel level as received.
- iv. Any and all Equipment damage or loss shall be the responsibility of Customer while Equipment is in Customer's custody and control (which shall include when Equipment is being operated by PCI personnel under Customer's supervision, direction and control). Customer shall insure the Equipment at full replacement value. Customer shall return the Equipment in the same condition as it was received. Customer shall indemnify, defend and hold PCI harmless for any and all Claims arising out of Customer's use of Equipment as provided in this Section II(a)(1), including without

limitation the negligence of personnel or operators provided by PCI, in accordance with Article VII. Customer shall immediately report to PCI any unsafe condition, improper maintenance of Equipment or unsatisfactory performance of an operator or other personnel provided by PCI with sufficient details to permit PCI to investigate and/or take appropriate action.

- v. Customer shall not sublease or sublicense the Equipment or permit any alterations to the Equipment without the express written permission of PCI.
- vi. For the avoidance of doubt, this Section II(a)(1) applies where PCI rents, licenses, leases, sublets or otherwise provides the Equipment for Customer's use and does not apply to situations where PCI utilizes Equipment to perform the Services for Customer.

## 2) Labor Services.

- i. Upon Customer's request from time to time, PCI may furnish to Customer employee(s) of PCI for providing labor and other services to Customer ("Leased Employees"). The parties acknowledge that PCI can only provide the Leased Employees used by it to the extent such Leased Employees remain employed by PCI and are not otherwise unavailable for any reason, including, but not limited to, performing other work, sickness, vacation or other leave of absence (the "Labor Services").
- ii. With respect to all of its work, the Customer is responsible for construction, means, methods, techniques, sequences and procedures and is responsible for the supervision of all Leased Employees used by it during the performance of such work. The Customer shall strictly comply with all applicable federal, state and local laws, ordinances, codes, rules, regulations and orders of any public authority with respect to its work, including, without limitation, with respect to labor matters. The Customer shall cooperate with PCI to allow PCI to comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to PCI's Leased Employees used by the Customer. The Customer shall take all reasonable safety precautions with respect to its work and shall comply with all safety measures and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property including, without limitation, OSHA, and follow all reasonable recommendations concerning a safe work environment from PCI's workers' compensation insurance carrier. The Customer agrees to report immediately to PCI all work-related accidents and injuries involving PCI's Leased Employees used by the Customer. PCI and PCI's workers' compensation insurance carrier shall have the right to inspect the Customer's workplace, including, but not limited to, any job sites at which Leased Employees work. To the extent reasonably possible, such inspections shall be scheduled at mutually convenient times.
- iii. Without limiting the generality of the provisions of Section (II)(a)(2)(ii) hereof, PCI is responsible for the following with respect to Leased Employees furnished to the Customer:
  - a) reserving a right of direction and control over the Leased Employees, including a right to hire, discipline and terminate as to the PCI's employment relationship with the Leased Employees, maintaining the Leased Employees' records, and reserving a right to resolve disputes with respect to those Leased Employees;
  - b) payment of salaries and wages (at levels determined by PCI in its sole and absolute discretion), and compliance with applicable rules and regulations governing the reporting and payment of all federal and state taxes on payroll wages paid for those Leased Employees furnished under this Agreement, including, but not limited to: (i) federal income tax withholding provisions of the Internal Revenue Code; (ii) provisions of state and/or local income tax withholding laws, if applicable; (iii) provisions of the Federal Insurance Contributions Act; (iv) provisions of the Federal Unemployment Tax Act; and, (v) provisions of applicable state unemployment tax laws;
  - c) providing employee benefits (at levels determined by PCI in its sole and absolute discretion) under the terms and conditions, as amended from time to time, of PCI's sponsored plans, if any, and compliance with its obligations under

- the Health Insurance Portability and Accountability Act, if applicable, and the Employee Retirement Income Security Act of 1974, as amended, if applicable, solely with respect to employee benefit plans sponsored by PCI, if any;
- d) designating one or more on-site supervisors from among Leased Employees to serve as PCI's contact for facilitating PCI's Labor Services;
  - e) procurement of workers' compensation insurance and administration of claims for Leased Employees;
  - f) establishing and maintaining driver selection and ongoing driver screening processes and standards, evaluating motor vehicle records, and deciding which Leased Employees have driving privileges; provided, however, that the Customer may object to the selection of any Leased Employee as a driver;
  - g) development and implementation of policies and practices in conjunction with the Customer relating to personnel management services, including, but not limited to, training, evaluating, supervising, disciplining, reassigning, and terminating Leased Employees; provided, however, that notwithstanding PCI's participation in the development of training policies and its retained responsibility for discipline (including termination) of Leased Employees, the Customer is responsible for all training of Leased Employees regarding job skills and safety; and
  - h) providing for or reimbursing Leased Employees' travel, meal, lodging and other reasonable incidental expenses that are incurred when Leased Employees must travel more than 30 miles from Leased Employee's usual PCI work location in order to perform labor services for Customer, provided that the Customer shall reimburse PCI for such expenses on a cost-plus basis as determined by the parties. From time to time, the Customer may elect to provide or reimburse Leased Employees' travel, meal, lodging and other reasonable incidental expenses.
- iv. Without limiting the generality of the provisions of Section (II)(a)(2)(ii) hereof, the Customer is responsible for the following with respect to Leased Employees used by it and furnished by PCI:
- a) the work provided by the Customer;
  - b) the direction and control over Leased Employees as necessary to conduct the Customer's business, including a right to request that PCI cease providing any specified Leased Employees' services to the Customer, and compliance with any applicable licensure, regulatory or statutory requirement of the Customer and/or Leased Employees as to the services they provide the Customer, and maintenance of the Customer's records and documents concerning Leased Employees;
  - c) development and implementation of policies and practices related to the services provided by the Customer, including, but not limited to, determining whether a proposed Leased Employee is qualified to safely and competently perform the job duties, and training, evaluating and supervising the Leased Employees, including, but not limited to, training Leased Employees on job skills and safety;
  - d) compliance with any professional licensing, fidelity bonding, and/or professional liability insurance requirements;
  - e) compliance with Occupational Safety and Health Administration regulations and Environmental Protection Agency regulations, and compliance with federal governmental contracting provisions, and any state and/or local equivalent of any of the foregoing;
  - f) the operation of the Customer's business, equipment or property, including motor vehicles;
  - g) compliance with administrative procedures established by PCI with respect to Leased Employees; and
  - h) providing all the equipment necessary for Leased Employees to perform the work, including all the Personal Protective Equipment required by law and consistent with the best practice in its industry.
- v. Each party will be responsible for its own compliance with all federal, state and local laws, including, but not limited to, Title VII of the 1964 Civil Rights Act; Age Discrimination in Employment Act, including the Pregnancy Discrimination Act; Title I of the Americans with Disabilities Act; Family and Medical Leave Act; Fair Labor Standards Act, including Equal Pay Act; child labor laws; Worker Adjustment and Retraining Notification Act; Uniformed Services Employment and Reemployment Rights Act; Consumer Credit Protection Act, Title III; 42 U.S.C. § 1981; § 503 of the Rehabilitation Act of 1973; Genetic Information Nondiscrimination Act of 2008; Consolidated Omnibus Budget Reconciliation Act;

Sarbanes-Oxley Act of 2002; HIPAA; immigration laws and regulations; whistle-blower or anti-retaliation laws and regulations; and any state and/or local equivalent of the foregoing, as well as any and all personnel management policies and procedures that are maintained by each party and referenced in Section II(a)(2)(iv)(c).

- vi. With respect to the Leased Employees, the parties further covenant agree as follows:
- a) The parties acknowledge that this Agreement is not and will not be construed to be a contract of employment for, or with respect to, any Leased Employee, nor will it be construed as a joint employment relationship.
  - b) The Customer agrees not to engage in any conduct that is inconsistent with the policies and procedures of PCI that are based on applicable laws, regulations or statutes.
  - c) The Customer agrees that PCI will have no responsibility or liability whatsoever for any losses or claims that arise as a result of the negligence, theft, embezzlement, or other unlawful or willful acts committed during the term of this Agreement by any Leased Employee.
  - d) The Customer agrees to comply with all applicable Department of Transportation, Interstate Commerce Commission and Motor Carrier Act requirements and regulations if the Customer uses Leased Employees for such work.
  - e) The Customer agrees to provide PCI, within forty-eight (48) hours of its becoming aware of such notice, complaint, charge or legal action, with a copy of any notice, complaint or charge of a governmental agency and/or legal action concerning (i) the Customer's workplace; (ii) the Customer's compliance with any laws, rules, regulations or ordinances relating to the workplace; or (iii) any Leased Employees used by the Customer.
  - f) The Customer acknowledges that any and all employee benefit plans maintained by PCI, if any, may be amended, modified or terminated at any time at the sole discretion of PCI or its affiliates. Such modifications include but are not limited to, increases or decreases of participant co-pays, deductibles, out of pocket maximums, covered services, and the like.
  - g) The Customer agrees to cooperate fully with PCI in any investigation, including, but not limited to, the defense of any employment-related claim, involving Leased Employees, whether such investigation or claim is initiated by Leased Employees, a government agency or otherwise.
  - h) The Customer acknowledges that at the time of termination of this Agreement, PCI may send Leased Employees employment termination notices terminating PCI's relationship with Leased Employees.
  - i) The Customer warrants it will not request Leased Employees to perform any work outside that person's workers' compensation code or employee's ability or training if such service would expose the individual Leased Employees or other persons to injury.
  - j) Each party is free to hire its own additional employees at any time and there is no requirement to use Leased Employees or a minimum number of Leased Employees that must be used during the Term.
- vii. For the avoidance of doubt, this Section II(a)(2) applies where PCI provides Leased Employees to Customer under Customer's direction and control and does not apply where PCI utilizes such Leased Employees in their capacity as employees of PCI to provide Services to Customer.

b. Customer Obligations. (i) *PCI Access.* If necessary for PCI to provide the Services, Customer shall provide all necessary access to any Product, Cargo and/or the site where the Services are to be performed (the "PCI Access"). PCI shall be excused from performance of the Services if PCI Access is not readily available. When PCI Access is located at a Customer site and/or a location where Customer has the right or ability to control or direct safety and security at the site, Customer agrees to provide a safe and secure working environment for PCI Access, including but not limited to compliance with all applicable OSHA regulations. Customer shall communicate any and all information regarding the safety, security and the environment at the PCI Access site that PCI may request, from time to time, to ensure a safe working environment for PCI, its affiliates and each of its respective employees, agents, contractors, successors and assigns. PCI may charge for its additional costs and expenses if PCI Access is not readily available. (ii) *Customer Supplied Trucking Services and Other Services.* In the event Customer

supplies trucking services or any other services, whether directly by its own employees or through contractors, to pick up or deliver or perform any other services with respect to any Product or Cargo in connection with this Agreement, Customer shall remain solely responsible for the acts or omissions of its employees or contractors in the course of providing such trucking services or other services. Customer's employees and/or contractors shall be solely responsible for possessing and utilizing all Personal Protective Equipment for any Customer supplied services (whether directly by its own employees or through contractors). Customer shall provide loading instructions to its employees and/or contractors. Customer's employees and/or contractors engaging in trucking services shall remain responsible for directing the safe loading and unloading of Product and Cargo at all times during the loading and unloading of trucks or other vehicles.

c. Customer Access. Upon three (3) business days' prior written notice to PCI and in accordance with any rules and regulations of PCI concerning visitors to the PCI Properties, during Normal Business Hours, Customer may inspect any Product or Cargo and take a physical inventory of any Product or Cargo stored at the PCI Properties. In addition, if Customer supplies trucking services pursuant to this Agreement, PCI will, in accordance with any rules and regulations of PCI concerning visitors to the PCI Properties, during Normal Business Hours, provide Customer access to the PCI Properties solely to enable Customer to provide the Customer supplied trucking services. At any time and for any reason, PCI may, in its sole discretion, order any Customer Parties from any of the PCI Properties, whether the Customer Parties are on any of the PCI Properties for an inspection, to supply trucking or otherwise.

d. Compliance with Laws. In connection with its business, the Product and the Cargo, Customer shall comply with all applicable Laws and shall obtain and maintain the permits and licenses that Customer needs to maintain for PCI to provide the Services (not including any general business permits maintained by PCI in the ordinary course of its business or permits or licenses that PCI has agreed to obtain in order for PCI to provide the Services) for so long as the Agreement is in effect. Customer will promptly advise PCI of any legal or regulatory requirements associated with the Services.

e. Change in Laws. If changes in Laws or other circumstances or conditions outside the control of PCI no longer allow the performance by PCI of the Services in a commercially reasonable manner, the parties agree to discuss in good faith revisions to the Services or Rates to allow PCI to perform the Services in a commercially reasonable manner and for commercially reasonable compensation.

**III. Ownership, Risk of Loss, Insurance.** Customer, or other third party designated in writing by Customer and approved by PCI in its sole and absolute discretion, shall be the sole owner of all Product and Cargo at all times until ownership is transferred to a third party, and PCI shall be a consignee of all Product and Cargo until such transfer. Customer bears all risk of loss for all Product and Cargo. PCI shall be responsible only for damage to, loss of or theft of any Product or Cargo caused by PCI's gross negligence or willful misconduct, subject to any limitations on damages provided for in this Agreement. Customer shall be responsible for insuring all Product and Cargo. Customer and PCI shall each obtain and maintain insurance coverage that is standard, customary and ordinary for such party's business. Each of PCI and Customer shall use its best efforts to require its contractors to obtain, maintain and keep in full force and effect, during the time in which such contracts are engaged in performing services or other obligations to be furnished hereunder, adequate insurance coverage in accordance with such party's normal practice and consistent with industry practice. Each of PCI and Customer, at its option, may maintain the insurance coverage for its contractors under such party's insurance policies. Customer shall furnish PCI with a certificate for the insurance policies required to be maintained hereunder and a copy of cancellation provisions (and any other provisions requested to be reviewed by PCI) per PCI's request. All required certificates of insurance shall be in a form reasonably acceptable to PCI. All insurance policies required to be maintained hereunder must be from insurers authorized to conduct business within the State of Delaware. All insurance policies maintained hereunder by Customer shall include a waiver of subrogation in favor of PCI. Each contractor of a party shall deliver to the other party, at the such other party's request, insurance certificates showing the coverage required of it under this section is in full force and effect.

#### **IV. Payments; Other Charges; Rates.**

a. Payments; Late Payments and Interest. Unless otherwise provided for in the Rate Sheet, for each invoice provided to Customer by PCI, Customer shall pay PCI for the Services upon demand, but in all events within 30 days of the invoice date.

Payment on an invoice shall be made in accordance with the payment instructions provided for in such invoice. In the event any payment is not made within five (5) days after the date when due, Customer must also pay to PCI a late charge equal to five percent (5%) of the delinquent payment, such late charge being immediately due and payable. This late charge is fair and reasonable compensation to PCI for administrative costs in collecting and processing late payments, the exact amounts of which are difficult to ascertain. The late charge shall not be construed as interest. Acceptance of any late charge by PCI in no event constitutes a waiver by PCI of Customer's default with respect to such overdue amount nor prevents PCI from exercising any of its other rights and remedies. Customer shall pay interest accrued at the rate of twelve percent (12.00%) per annum or the maximum rate permitted by applicable Law, whichever is less, for payments not received in accordance with this Agreement.

b. Tariffs. Customer shall be subject to the terms, conditions and charges contained in the Port of Wilmington, DE Tariff, as applicable, for Services within the Port of Wilmington, DE.

c. Payment Obligations Absolute. Notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Customer or any assignee of Customer or any action with respect to this Agreement which may be taken by any trustee, receiver or liquidator, by any court or under any Law, Customer shall remain obligated under this Agreement in accordance with its terms and shall not take any action to terminate, rescind or avoid this Agreement. Without limiting the foregoing, Customer, for itself and on behalf of any successor or assigns, waives all rights to terminate, reject, cancel or surrender this Agreement, or to avoid, abate or defer any amounts owed hereunder on account of Customer's bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Customer or any successor or assignee of Customer or any action with respect to this Agreement which may be taken by any trustee, receiver or liquidator or by any court.

d. Demurrage and Detention Charges; Improper Dunnage or Stow. Customer is responsible for all detention and demurrage charges, including, but not limited to, those charges incurred on the account of a marine vessel, barge, railcar or truck (including but not limited to vans, flatbeds and drayers). PCI shall not be responsible for detention and demurrage charges, unless and only if such charges are incurred due to PCI's gross negligence or willful misconduct. PCI shall not be liable for the use of improper or non-compliant dunnage or stow, as applicable. Customer shall be responsible for all additional dunnage charges that apply.

e. Rate Adjustment. Unless otherwise provided for in the Rate Sheet, any fees and rates charged by PCI to Customer pursuant to this Agreement may be increased annually, without the prior written consent of Customer, based on the greater of actual increases of costs of labor and materials or the CPI Increase, or as PCI may otherwise reasonably determine for each particular cost (such increases, an "Adjustment"). As used herein, (i) "CPI Index" shall mean the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all Items) for the Phila-Wilmington-Trenton, PA-DE-NJ-MD Statistical Area on the basis of 1982-84=100, also known as CPI-U (the "Original Index"), provided, however, if the format or components of the Original Index are materially changed during the Term, PCI shall substitute an index that is published by the Bureau of Labor Statistics or similar agency and that is most nearly equivalent to the Original Index in effect on the Commencement Date, which substitute shall thereafter be the CPI Index; and (ii) "CPI Increase" shall mean the greater of (a) 3% or (b) the percent increase in the CPI Index from the CPI Index used to calculate the last Adjustment, or if no Adjustment has been made, the CPI Index in effect on the Commencement Date. Notwithstanding any Adjustment as provided hereinabove, with respect to the rates associated with International Longshoreman Association (ILA) union marine terminal component of Services, Customer recognizes that PCI is not a party to collective bargaining agreement between the ILA and the stevedore and does not exercise control over ILA gang size or other personnel requirements. The rates for the applicable Services shall be adjusted proportionally to the proportion of cost associated with the ILA at the time the adjustment occurs per the ILA's collective bargaining agreement.

f. Rate Qualifications. For security escorting purposes, a day is defined as the stevedoring straight time hours set forth on the Rate Sheet. Overtime is defined as any hours outside the stevedoring straight time hours set forth in the Rate Sheet. All Rates are based upon straight time working hours and exclude any additional charges for Services provided during any day that is a PCI Holiday. All Rates are subject to modification once vessel particulars are known. All Storage Rates will be billed based on the inventory at PCI Properties on the first day following the expiration of Free-Time, if any, as indicated on the Rate Sheet.

Receiving rates for break bulk material are conditioned on all such material being received by PCI in good order and properly palletized, and requiring no additional banding, strapping, or securing to receive, store or load onto trucks. If such receiving conditions are not met, PCI may, in its sole discretion, adjust the Rates accordingly. Any standby time will be billed by PCI at the hourly rates set forth on the Rate Sheet for stevedoring, trucking, loading and other Services.

**V. Security.** In addition to any security interest or lien provided by law (statutory, common law or otherwise) for the benefit of PCI, including under Article 7 of the Uniform Commercial Code, as security for all amounts owed to PCI hereunder, including all expenses and charges earned or incurred (whether for storage or transportation of any Product, Cargo or other goods of Customer deposited with, or in possession of, PCI, including demurrage and terminal charges, insurance, labor or other charges, present or future, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law), and monies advanced, by PCI, if any, in accordance with this Agreement, Customer hereby grants to PCI a first priority continuing security interest in, and PCI shall have a lien in, all of Customer's right, title and interest in and to all Product, Cargo and other goods deposited with PCI, whether now owned or hereafter acquired, and all proceeds thereof ("Collateral"). Customer hereby authorizes PCI to file in any filing office in any relevant Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto describing the Collateral. In connection with any such filing, Customer agrees to furnish any necessary information to PCI promptly upon PCI's request. PCI reserves the right to detain or withhold any or all Product or Cargo, in its sole and absolute discretion, until all Payments and Charges due and owing from Customer to PCI have been paid.

## **VI. Term and Termination.**

a. Term and Post Termination Obligations. Unless this Agreement is terminated earlier as provided for herein, this Agreement shall commence on the Start Date (as defined in the Rate Sheet) or if no Start Date is defined in the Rate Sheet, the date of the Rate Sheet (such applicable date, the "Commencement Date"), and shall end on the End Date (the "Term"). The End Date or the earlier date of termination of this Agreement pursuant to this Section VI shall be the "Termination Date." This Agreement shall automatically renew following the End Date on a month-to-month basis unless either party provides written notice to the other terminating the Agreement. Provided however, PCI may issue a Rate Sheet to Customer during the Term or any renewal period, covering the same or substantially the same Services as an existing Rate Sheet and the new Rate Sheet shall supersede any existing Rate Sheet covering the same or substantially the same Services. Termination of this Agreement for any reason shall be without prejudice to any rights of a party against another party which may have accrued before the Termination Date. Unless otherwise provided herein, upon expiration or termination of this Agreement, all accrued obligations and monies owed shall be satisfied immediately and all property belonging to Customer and in the control or possession of PCI may be returned to Customer or disposed of by PCI at the expense of Customer.

b. Termination Upon Default. Without prejudice to any other right, including any right to terminate provided for in the Rate Sheet (if any), PCI shall have the right to immediately terminate the Agreement upon the occurrence of a Default by Customer and Customer's (i) failure to cure such Default arising from the failure by Customer to pay any amounts due and payable, within ten (10) days after provision of written notice of such Default to Customer, or (ii) failure to cure such Default, other than a Default arising from the failure by Customer to pay any amounts due and payable (such Default being subject to (i) above), within thirty (30) days after written notice thereof to Customer, or, if such failure cannot reasonably be cured within thirty (30) days using commercially reasonable efforts, within such longer period following notice that is necessary to cure such failure using commercially reasonable efforts. In the event of such termination, PCI shall be entitled to pursue any remedy provided in law or equity. As used herein, "Default" means any of the following: (1) failure by Customer to comply with or to perform any provision or condition of this Agreement; (2) Customer (A) becomes insolvent, is unable to pay its debts as they mature or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws, (B) makes an assignment for the benefit of creditors, (C) is named in, or its property is subject to, a suit for appointment of a receiver, (D) is dissolved or liquidated; (3) any representation or warranty made by Customer in this Agreement is breached, false or misleading in any material respect; (4) failure by Customer to fulfill any monetary obligation hereunder; or (5) a default by Customer or its affiliate under any other contract with PCI (or any of its affiliates) that is not cured within any applicable cure period provided for in such other contract.

**VII. Indemnity.** Customer agrees to indemnify, hold harmless, and defend PCI, its respective affiliates, and each of its respective officers, directors, agents, employees, representatives, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims, demands, damages, fines, penalties, losses, causes of action, costs, expenses, liabilities and judgments of every kind (including all expenses of litigation, court costs and reasonable attorneys' fees) (collectively, "Claims") for damage to any property, person or entity, or injury to or death of any person, resulting from, arising out of, or in any way connected with the acts or omissions, of Customer, its officers, agents, employees, representatives or contractors (collectively, the "Customer Parties"), including to the extent any such Claims are based in part upon the joint or concurrent negligence or strict liability of Indemnified Parties, or whether any such Claims are by way of tort or contract or otherwise. Customer will not be required to indemnify Indemnified Parties for any Claims determined by final judgment of a court to have been caused by the willful misconduct or gross negligence of Indemnified Parties. Customer shall also indemnify, hold harmless and defend Indemnified Parties from and against any and all Claims resulting from, arising out of, or in any way connected with any breach of this Agreement by any of the Customer Parties, including breaches of any representation or warranty made hereunder, or the failure of any of the Customer Parties to comply with any third-party requirements or with any Laws (including Claims imposed by any governmental entity, or political subdivision or agency thereof). In addition, Customer shall also indemnify, hold harmless and defend Indemnified Parties from and against any and all Claims resulting from, arising out of, or in any way connected with any customer supplied, coordinated or arranged trucking services. Customer shall further indemnify and hold harmless the Indemnified Parties against all Claims that may arise out of any claim made by federal, state or local agencies or departments or private litigants or third parties with respect to violations or alleged violations by the Customer Parties (including invitees) of the Laws referred to in Section VIII hereunder, or any other claim of an environmental nature.

**VIII. Environmental Matters.** Customer represents and warrants that all Product and Cargo will not include or require the use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Waste Management Act, 7 Del. C., Chapter 60, the Delaware Hazardous Waste Management Act, 7 Del. C., Chapter 63, the Federal Resource Conservation Recovery Act of 1976, as amended, 42 U.S.C. Sec. 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq. and the regulations promulgated under said Acts as well as the provisions of any other similar or successor legislation, which would subject PCI or any of its assets to any liability, including damages, penalties or fines, or any lien on any of PCI's assets under such Acts or under the federal common law or the common law of the State of Delaware. Customer shall comply fully with all Laws and Governmental Orders pertaining to the protection of the environment, including, but not limited to, all Laws regarding the use, generation, storage, transportation, treatment, disposal or other handling of all Product and Cargo. In the event PCI determines that any Product or Cargo does not comply with the requirements of this section, PCI may, without limiting any other rights and remedies of PCI, immediately cease all Services until Customer has removed and disposed of such Product and Cargo, as applicable, in accordance with the Laws referenced in this section or any other Law of environmental nature.

**IX. Confidentiality.** Each party will keep confidential and not disclose, use and/or exploit in any way, directly or indirectly, to any third party, any confidential or proprietary information of the other party, including, without limitation, any financial and/or business information of that party and its parent, subsidiaries, affiliates, customers, employees, officers or directors and methods of doing business and trade secrets, regardless of the form of storage and/or retrieval ("Confidential Information"), except (i) as required by law, (ii) if the information is already in the public domain through no fault of the receiving party, (iii) to any party under obligation to the disclosing party not to disclose such Confidential Information, such as disclosing party's attorneys, accountants or other professionals, or (iv) Confidential Information known by the receiving party prior to disclosure as evidenced by written and dated records existing at the time of initial disclosure. Each party hereby acknowledges that it does not have any rights or interests of any kind, nor can any be inferred, in the Confidential Information of another party. The parties agree that the terms and conditions of this Agreement and the details of the business relationship between PCI and Customer are confidential and proprietary, shall be deemed Confidential Information, and the parties shall keep all terms and conditions of this Agreement and the details of the business relationship between PCI and Customer confidential for the Term and 5 years thereafter.



**X. Force Majeure.** Other than performance of payment obligations under this Agreement, the performance by either party to the Agreement shall be excused to the extent that the performance is delayed or prevented, or such party's rights or ability to perform under the Agreement are adversely affected, by reason of an event of Force Majeure. If a party is reasonably prevented from performing its obligations under the Agreement (or such party's rights or ability to perform under the Agreement are adversely affected) by an event of Force Majeure, such party shall use all commercially reasonable efforts to remove the cause effecting such non-performance. If a Force Majeure event occurs, the parties shall negotiate an equitable adjustment to their respective obligations under the Agreement. If a party claims there is an event of Force Majeure, such party shall notify the other party pursuant to a telephone call of the nature and cause of the event, and the actions the party claiming Force Majeure intends to take to remedy or abate the Force Majeure, as soon as such party recognizes that the Force Majeure event will affect the performance of its obligations hereunder. Such telephone call shall be followed with written notice delivered in accordance with this Agreement. As used herein, "Force Majeure" means an event or cause beyond the reasonable control of either party, including by way of example, but not limited to: (a) acts of God, war, terrorism, riots, insurrection, rebellion, floods, hurricanes, tornadoes, earthquakes, lightning and other natural calamities; (b) acts or inaction of any governmental authority; (c) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of either party; (d) strikes, lockouts and work stoppages; and (e) delay in the performance of either party's obligations under the Agreement to the extent any such delay is attributable to the other party.

**XI. Miscellaneous.**

a. **Notice.** All notices to be given by Customer or PCI pursuant to this Agreement shall be in writing, by private carrier delivery, with a receipt being obtained therefor, by registered or certified mail, return receipt requested, postage prepaid, at the addresses listed on the Rate Sheet, or by electronic mail at the email address listed on the Rate Sheet or at such other addresses of which either party may notify the other in accordance herewith from time to time. Any such notice shall be deemed to have been given when received.

b. **Nonexclusive Agreement.** Unless otherwise provided for in the Rate Sheet, this Agreement is nonexclusive and either party may enter into other contracts for services similar to the services provided for hereunder.

c. **Relationship of the Parties; Rights Cumulative.** Nothing in this Agreement shall be construed to place the parties in the relationship of employer-employee, partner, joint venturer, principal-agent or franchisor/franchisee of each other. Customer shall neither state nor imply, either directly or indirectly, that Customer or its activities, other than pursuant to this Agreement, are supported, endorsed or sponsored by PCI. In providing the Services, PCI is a "warehouse" as such term is used in Article 7 of the Uniform Commercial Code, and as such may afford itself of any rights or remedies provided to a warehouse under such Article, including Sections 7-206, 7-209 and 7-210. The rights and remedies provided herein shall be cumulative and in addition to any other rights or remedies provided by law or equity.

d. **Survival of Terms.** Sections I, III, IV, V, VI.a., VII, VIII, IX, XI.c. through XI.g., XII, and XIV of this Agreement shall survive the expiration or termination of this Agreement.

e. **Assignment.** This Agreement and all rights, duties, obligations and undertakings shall be binding upon and shall inure to the benefit of the parties and their respective officers, directors, representatives, agents, employees, affiliates, successors and permitted assigns, personal and legal representatives and heirs; provided, however, that Customer shall not assign or otherwise transfer (whether by operation of law or otherwise, including, but not limited to, by merger, consolidation, reorganization) any of such rights, duties, obligations or undertakings or any portion thereof to any third party without the prior written consent of PCI, which consent may be granted or withheld in PCI's sole and absolute discretion. Nothing herein is intended to confer upon any person, other than the parties and their successors, any rights or remedies under or by reason of this Agreement. Notwithstanding any provision herein to the contrary, PCI may assign this Agreement and all rights, duties, obligations and undertakings related thereto, without the consent of Customer.

f. **Integration; Conflict with Documents; Amendments and Waivers.** This Agreement supersedes and cancels any and all previous agreements and understandings between the parties pertaining to the subject matter hereof, and the Terms and Conditions together with the Rate Sheet comprise the complete and final expression of the rights, obligations, duties and

undertakings of the parties, sets forth all consideration, covenants, undertakings and inducements pertaining hereto, and shall be deemed, as the context requires, a "storage agreement" as such term is used in Article 7 of the Uniform Commercial Code. Each Schedule and Exhibit, if any, referenced in this Agreement shall be deemed an integral part of this Agreement. In the event of a conflict between the terms of this Agreement and any other document, the terms of this Agreement shall govern. In the event of a conflict between the Terms and Conditions and the Rate Sheet, the terms of the Rate Sheet shall govern. No modifications, amendments or supplements to this Agreement shall be effective for any purpose unless in writing and signed by the parties. Provided however, PCI may issue a Rate Sheet to Customer during the Term or any renewal period, covering the same or substantially the same Services as an existing Rate Sheet and the new Rate Sheet shall supersede any existing Rate Sheet covering the same or substantially the same Services. Any waiver of any term, covenant or condition of this Agreement by either party shall not be effective unless set forth in writing and signed by the party who is granting such waiver, and in no event shall such waiver be deemed to be a waiver of any other term, covenant or condition of this Agreement, or any subsequent waiver of the same term, covenant or condition. Either party shall have the right to declare a default or breach under this Agreement regardless of the number of times it has not declared such default or breach although entitled to do so, and any failure of either party to insist upon strict performance of any of the terms or covenants herein contained shall not be deemed a waiver of any rights or remedies that either party might have or a waiver of any subsequent breach in the terms or covenants herein contained.

g. Severability and Further Acts. In the event that any portion of this Agreement shall, for any reason, be held invalid or unenforceable, it is agreed that the same shall not affect any other portion of this Agreement, but that the remaining covenants and restrictions or portions thereof shall remain in full force and effect, and that if the invalidity or unenforceability is due to the unreasonableness of the covenants and restrictions, the covenants and restrictions shall nevertheless be effective as may be determined to be reasonable by a court of competent jurisdiction. Each party shall perform any further acts, sign and deliver any further documents and offer further cooperation as may be reasonably requested by the other party to carry out the provisions of this Agreement.

**XII. GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL.** THE PARTIES HERETO HEREBY DECLARE THAT IT IS THEIR INTENTION THAT THIS AGREEMENT SHALL BE REGARDED AS MADE UNDER THE LAWS OF THE STATE OF DELAWARE. THIS AGREEMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS. EACH OF THE PARTIES HERETO AGREES THAT ANY ACTION OR CLAIM ARISING OUT OF, OR ANY DISPUTE IN CONNECTION WITH, THIS AGREEMENT, ANY RIGHTS, REMEDIES, OBLIGATIONS OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF, MAY BE BROUGHT IN THE COURTS OF THE STATE OF DELAWARE OR ANY FEDERAL COURT SITTING THEREIN OR ARBITRATION THEREIN AND IRREVOCABLY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF SUCH COURT AND TO BE SUBJECT TO SERVICE OF PROCESS IN THE STATE OF DELAWARE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO UNDER OR IN CONNECTION WITH THE AGREEMENT.

**XIII. Representations and Warranties.** Customer represents and warrants that (a) it is duly authorized under all Laws and has obtained all the permits necessary to conduct the manufacture, distribution, transport and sale, as applicable, of all Product and Cargo; (b) this Agreement has been duly and validly executed and delivered by Customer, and constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms, which has been duly authorized by all necessary company action; (c) Customer is duly formed and validly existing in good standing as an entity of the type and formed under the Laws of the state identified in the Rate Sheet; (d) Customer is qualified to do business in the State of Delaware; (e) the execution and delivery of this Agreement by Customer, and the performance by Customer of its obligations hereunder, do not

violate or conflict with (i) any applicable Laws, (ii) the organizational documents of Customer, or (iv) any Governmental Order; and such performance will not violate or result in a breach of or constitute a default or require any consent (other than such consents as have been duly obtained) under, any provision of any other agreement, contract, instrument or obligation to which Customer is a party or by which Customer or any of the its property is bound; and (f) all Product and Cargo (i) are wholly owned by Customer or other third party designated in writing by Customer and approved by PCI in its sole and absolute discretion and free of any and all claims, liens and encumbrances, (ii) shall be of an acceptable quality to be used by PCI to fulfill its obligations hereunder, and (iii) shall be packaged and transported to PCI in all material respects in accordance with all applicable Laws.

**XIV. Disclaimer; Limitation of Liability.** PCI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, WITH RESPECT TO THE SERVICES, PRODUCTS OR GOODS, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PCI, ITS AFFILIATES OR ITS RESPECTIVE REPRESENTATIVES BE LIABLE TO CUSTOMER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES AND/OR LOST SAVINGS), ARISING OUT OF CONTRACT (INCLUDING FROM A BREACH OR ALLEGED BREACH OF THIS AGREEMENT) OR IN TORT (OTHER THAN FOR PCI'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT). UNLESS PCI IS GROSSLY NEGLIGENT, THE PARTIES AGREE THAT PCI SHALL HAVE EXERCISED CARE WITH REGARD TO THE PRODUCT, CARGO OR OTHER GOODS THAT A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. PCI SHALL NOT, IN ANY EVENT, BE OR BECOME LIABLE FOR ANY LOSS OR DAMAGE TO ANY PRODUCT, CARGO OR OTHER GOODS ARISING OUT OF ANY TRUCKING SERVICES SUPPLIED, COORDINATED OR ARRANGED BY CUSTOMER. IN ADDITION, PCI SHALL NOT, IN ANY EVENT, BE OR BECOME LIABLE FOR ANY LOSS OR DAMAGE TO ANY PRODUCT, CARGO OR OTHER GOODS IN AN AMOUNT EXCEEDING US \$100.00 PER PACKAGE OR IN THE CASE OF ANY PRODUCT, CARGO OR OTHER GOODS NOT SHIPPED IN PACKAGES, THE PER CUSTOMARY FREIGHT UNIT PROVIDED FOR BY THE CARRIAGE OF GOODS AT SEA ACT, PROVIDED, HOWEVER, IN NO EVENT SHALL PCI BE LIABLE FOR MORE THAN THE AMOUNT OF DAMAGE ACTUALLY SUSTAINED. TO THE BROADEST EXTENT LEGALLY PERMITTED, CUSTOMER, THROUGH ITS SHIPPING CARRIER IF NECESSARY, HEREBY EXTENDS TO PCI ALL OF THE RIGHTS AND LIMITATIONS OF LIABILITY INURING TO CUSTOMER OR CUSTOMER'S CARRIER UNDER THE CARRIAGE OF GOODS BY SEA ACT, THE HARTER ACT OR ANY OTHER HIMALAYA CLAUSE IN ITS BILL OF LADING. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PCI, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO CUSTOMER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES, OR TO ANY OTHER PERSON, FOR ANY DAMAGES ARISING FROM THIS AGREEMENT IN EXCESS OF THE AMOUNTS PAID TO PCI AS PROVIDED IN THE AGREEMENT. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE FOREGOING DISCLAIMER AND LIMITATION OF LIABILITY REPRESENT BARGAINED-FOR ALLOCATIONS OF RISK, AND THAT THE PRICING AND OTHER TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT SUCH ALLOCATIONS OF RISK.

\*Revision History Available Upon Request

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