

TRANSPORTATION AGREEMENT RISK AND LEGAL TERMS

1. **General Applicability.** These Transportation Agreement Risk and Legal terms (“R&L Terms”) apply to and govern all services provided by Ingram to Customer (individually and collectively the “Services”) pursuant to a Transportation Agreement (“Agreement”) and are made part of and incorporated into the Agreement. Any capitalized terms not otherwise defined herein are prescribed the meaning(s) set forth in Parts I and II of the Agreement. To the extent there is any conflict between the terms in Parts I and II of the Agreement and these R&L Terms, these R&L Terms will supersede and govern unless each conflicting provision in the Part(s) I and II includes the exact following phrase: “The parties specifically intend for the following term to supersede any conflicting term(s) in the Transportation Agreement Risk and Legal Terms.”

2. **Insurance.**
 - 2.1. During the term of the Agreement, Customer shall, at its own expense, procure and maintain, or shall cause the Customer Parties to procure and maintain, and keep in full force and effect while fulfilling its obligations under the Agreement (including any potential or actual indemnification obligations of Customer after the expiration or termination of the Agreement), at least the following types and amounts of insurance coverage subject to the requirements set forth in Sections 2.2 and 2.3:
 - A. Longshore and Harbor Workers’ Compensation Act Insurance or Workers’ Compensation Insurance, whichever is applicable, covering Customer Parties’ respective responsibilities to all workers at the docks and fleets at all origins, destinations and other locations operated by Customer or any Customer Parties with limits no less than the minimum amount required by applicable law;
 - B. Comprehensive Marine Liability Insurance (in any combination of primary and excess coverage) covering the docks and fleets at all origins, destinations, and other locations operated by Customer or the Customer Parties, with limits no less than Ten Million Dollars (\$10,000,000) per occurrence unless otherwise noted below, and including but not limited to:
 1. Protection and Indemnity Liability;
 2. Jones Act (Maritime Employers Liability);
 3. Pollution Liability;
 4. Full Collision Liability;
 5. Marine Operators Liability;
 6. Marine Contractual Liability;
 7. Wharfingers Liability;
 8. Towers’ Liability;
 9. Cargo All Risk Liability;
 10. Hull and Cargo Legal Liability; and
 11. Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable; **and**

- C. Excess Coverage, including Pollution Liability, (in the amount necessary to comply with the minimum financial responsibility requirements by any applicable law or regulation or Ten Million Dollars (\$10,000,000), whichever is greater).
- 2.2.** Within thirty (30) days after the commencement of the Agreement, Customer shall provide Ingram with copies of certificates of insurance and policy endorsements for all insurance coverage required by Section 2.2. (including that of any Customer Parties).
- 2.3.** Customer shall ensure:
- A. that all insurance policies required pursuant to Section 2.2:
 - 1. waive any right of subrogation of the insurers against the Ingram Parties;
 - 2. provide that such insurance carriers give Ingram at least 30 days' prior written notice of cancellation or material change to or non-renewal of policy coverage;
 - 3. provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of the Ingram Parties is excess and non-contributory; and
 - 4. provide that naming other parties as additional insureds and/or waiving rights to subrogation does not impair the rights otherwise inuring to such parties; **and**
 - B. that the Comprehensive Marine Liability policy name the Ingram Parties as additional insureds to the extent of the liability assumed by Customer under the Agreement.
- 2.4.** During the term of the Agreement, Ingram shall procure and maintain, in its name and at its sole cost and expense, and keep in effect while providing services and fulfilling its obligations under the Agreement (including any potential or actual indemnification obligations of Ingram after the expiration or termination of the Agreement), at least the following types and amounts of insurance coverage subject to the requirements set forth in Section 2.5:
- A. Longshore and Harbor Workers' Compensation Act Insurance or Workers' Compensation Insurance, whichever is applicable, covering Ingram's responsibilities with respect to all workers at the docks and fleets at all origins, destinations and other locations operated by Ingram or its vendors, contractors, subcontractors or agents with limits no less than the minimum amount required by applicable law;
 - B. Comprehensive Marine Liability Insurance (in any combination or primary and excess coverage), covering the services provided by the Ingram Parties, to Customer, as related to the Agreement, in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence, or the full replacement value of the vessel or barge, whichever is higher, including but not including, but not limited to:
 - 1. Protection and Indemnity Liability;
 - 2. Jones Act (Maritime Employers Liability);
 - 3. Pollution Liability;
 - 4. Full Collision Liability;
 - 5. Marine Operators Liability;
 - 6. Marine Contractual Liability;
 - 7. Wharfingers Liability;
 - 8. Towers' Liability;
 - 9. Cargo All Risk Liability;
 - 10. Hull and Cargo Legal Liability; and

11. Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable; **and**
- C. Excess Coverage, including Pollution Liability, in the amount necessary to comply with the minimum financial responsibility requirements established by any applicable law or regulation or Ten Million Dollars (\$10,000,000.00), whichever is greater.

2.5. Ingram shall ensure:

- A. that all insurance policies required pursuant to Section 2.4:
 1. waive any right of subrogation of the insurers against the Customer Parties;
 2. provide that such insurance carriers give Customer at least 30 days' prior written notice of cancellation or material change to or non-renewal of policy coverage;
 3. provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Customer is excess and non-contributory; and
 4. provide that naming other parties as additional insureds and/or waiving rights to subrogation does not impair the rights otherwise inuring to such parties; **and**
- B. that the Comprehensive Marine Liability policy name the Customer Parties as additional insureds to the extent of the liability assumed by Ingram under the Agreement. Notwithstanding anything above, Ingram may self-insure any or all of its obligations under the Agreement.

3. Indemnification.

3.1. Definitions applicable to this Indemnification Section and the Indemnification Procedures Section below.

- A. "Affiliate" means any entity that controls another entity, is controlled by another entity, or is under common control with another entity. For purposes of this definition only "control(s)" means holding the voting rights or other direct means of making and implementing minor or major decisions for the entity.
- B. "Customer Parties" means Customer, its affiliates and its and their employees, officers, directors, vendors, vessels, contractors, subcontractors at any tier or agents (but excluding any Ingram Party).
- C. "Fault" means negligence, gross negligence, willful or intentional misconduct, strict liability, absolute liability, unseaworthiness, fraud, or any combination thereof.
- D. "Ingram Parties" means Ingram, its affiliates and its and their employees, officers, directors, vendors, vessels, contractors, subcontractors at any tier or agents (but excluding any Customer Parties).
- E. "Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties (including without limitation penalties for violation of laws and pollution cleanup costs), fines, costs, or expenses of whatever kind, including professional fees, reasonable attorneys' fees and litigation costs, fees and costs of enforcing any right to indemnification under the Agreement, and the cost of pursuing any insurance providers.
- F. "PI Liability" means any personal injury, illness, and/or death claim, or any directly related wrongful death or survival actions.
- G. "Protect" means defend, indemnify, and hold harmless.

- 3.2. Ingram shall Protect the Customer Parties against all Losses arising from or related to Ingram's (i) breach of the Agreement, (ii) the Fault of the Ingram Parties, or (iii) any combination of (i) and (ii), and except to the extent of the Fault of the Customer Parties.
- 3.3. Notwithstanding Section 3.2 above, Ingram shall Protect the Customer Parties against PI Liability (and related Losses) arising from or related to injury, illness, and/or death of any of the Ingram Parties' personnel regardless of how caused—**including the negligence or other Fault (but excluding the gross negligence or intentional misconduct) of the Customer Parties.**
- 3.4. Customer shall Protect the Ingram Parties against all Losses arising from or related to Customer's (i) breach of the Agreement, (ii) the Fault of the Customer Parties, or (iii) any combination of (i) and (ii), and except to the extent of the Fault of the Ingram Parties.
- 3.5. Notwithstanding Section 3.4 above, Customer shall Protect the Ingram Parties against PI Liability (and related Losses) arising from or related to injury, illness, and/or death of any of the Customer Parties' personnel regardless of how caused—**including the negligence or other Fault (but excluding the gross negligence or intentional misconduct) of the Ingram Parties.**
- 3.6. Notwithstanding anything to the contrary herein (including but not limited to Sections 3.2 through 3.5 above), Customer shall release, protect, defend, indemnify and hold Ingram Parties harmless from and against all Losses arising from or related to combustion of any Cargo while on board the Barge, regardless of cause, **including the sole, joint, or concurrent negligence or Fault (whether active, passive, gross, or a combination thereof) of any member of Ingram Parties, any tort, the unseaworthiness of any vessel including but not limited to the Barge, any strict liability, or any other theory of liability which may be available against any member of Ingram Parties, either at law or in equity. For the avoidance of doubt, the Ingram Parties will not, under any circumstances, be (or be deemed) responsible or liable for any heat condition or combustion of any Cargo, or any effects thereof, or any alleged failure to discover the same. Customer will be solely responsible and liable if the Cargo combusts while on board the Barge.**

4. Indemnification Defense Obligations.

- 4.1. The indemnified party shall give the indemnifying party prompt written notice (a "Claim Notice") of any Losses or discovery of facts on which the indemnified party intends to base a request for indemnification under the "Indemnification" Section above. The indemnified party's failure to provide a Claim Notice to the indemnifying party under this Section does not relieve the indemnifying party of any liability that indemnifying party may have to the indemnified party, but in no event shall the indemnifying party be liable for any Losses that result directly from a delay in providing a Claim Notice. Each Claim Notice must contain a description of the claim and the nature and amount of the related Losses (to the extent that the nature and amount of the Losses are known at the time). The indemnified party shall furnish promptly to the indemnifying party copies of all papers and official documents received in respect of any Losses.

- 4.2. The indemnifying party's duty to defend applies immediately, regardless of whether the indemnified party has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any claim.
- 4.3. The indemnifying party may assume, at its sole option, control of the defense, appeal, or settlement (subject to Section 4.7 below) of any third-party claim that is reasonably likely to give rise to of an indemnification claim under Section 3 (an "Indemnified Claim") by sending written notice of the assumption to Indemnified Party on or before 10 Business Days after receipt of a Claim Notice to acknowledge responsibility for the defense of such Indemnified Claim and undertake, conduct, and control, through reputable independent counsel of its own choosing (which must be reasonably acceptable to the indemnified party) and at the indemnifying party's sole cost and expense, the settlement or defense thereof.
- 4.4. If the indemnifying party assumes control of the defense under this Section, the indemnified party:
- A. shall fully cooperate with the indemnifying party in connection therewith; and
 - B. may employ, at any time, separate counsel to represent it; provided, that the indemnified party is solely responsible for the costs and expenses of any such separate counsel.
- 4.5. Notwithstanding anything to the contrary, the indemnified party may defend an Indemnified Claim with counsel of its own choosing and without the indemnifying party's participation if:
- A. the Indemnified Claim is one for which the indemnified party properly gave the indemnifying party a Claim Notice under Section 4.1, and the indemnifying party fails to assume the defense or refuses to defend the Indemnified Claim; or
 - B. representation of the indemnifying party and the indemnified party by the same counsel would, in the reasonable opinion of the indemnified party (or its counsel), constitute a conflict of interest.
- 4.6. If the indemnified party assumes control of the defense for an Indemnified Claim, the indemnifying party shall:
- A. reimburse the indemnified party promptly and periodically for the reasonable expenses properly incurred in defending against the Indemnified Claim (including reasonable attorneys' fees and expenses); and
 - B. remain responsible to Indemnified Party for any Losses indemnified under the "Indemnification" Section above.
- 4.7. The indemnifying party shall give prompt written notice to the indemnified party of any proposed settlement of an Indemnified Claim. The indemnifying party may not, without the indemnified party's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder.
5. **No Warranty. INGRAM HEREBY DISCLAIMS ANY APPLICABLE IMPLIED WARRANTY OF WORKMANLIKE PERFORMANCE.**

- 6. Waiver of Damages.** Neither Ingram nor Customer shall be liable for incidental, consequential, special, or punitive damages related to the Agreement under any circumstances.
- 7. Cumulative Rights.** Any rights to remittance, damages, Losses, indemnity, reimbursement or other payments (for purposes of this Section, "Payments") provided for in the Agreement will be cumulative. In addition, the attempt, or refusal, to obtain any Payments allowed for in the Agreement will not be considered a waiver or sole election of such party that otherwise may restrict any right to obtain any other Payments allowed thereunder. Despite the previous sentences, the parties intend that Ingram's obligation to either (i) clean the Barge, or (ii) provide an alternate Barge for loading within a reasonable amount of time after Customer's rejection of a Barge in accordance with the "Pre-Loading Inspection" Section of the Agreement is Customer's exclusive remedy for Customer's rejection of a Barge.
- 8. Survival.** All obligations herein, which are continuing in nature (including, without limitation, payment, insurance, defense, and indemnification), survive the termination of the Agreement and continue in full force and effect, regardless of the reason for such termination. If any Barges are placed for loading prior to the end of the Term and there is no amendment or new agreement that continues beyond the expiration of the Term, Ingram may, in its sole discretion, continue to perform on behalf of the Customer; such performance will be deemed to be an automatic extension of the Term for purposes of that/those Barge(s) only until released back to Ingram empty and clean. If, however, Customer and Ingram enter into a new transportation agreement with a term that begins after the expiration of the current Term, Ingram may, in its sole discretion, treat the continuation of performance for such Barges placed near the end of the expiring Term as though it occurs under the new agreement for Free Time, demurrage, and billing/payment purposes.
- 9. Prior Performance.** To the extent that any performance by Ingram on Customer's behalf occurs prior to the Effective Date of this Agreement, then any such prior performance will be deemed retroactively governed by this Agreement.
- 10. Independent Contractor.** Nothing contained in this Agreement can be construed as a contract by Customer for the chartering (including a demise charter), hiring or leasing of any barge, towboat or other equipment of Ingram to be provided thereunder; Ingram is in all respects an independent contractor.
- 11. Modification.** If any provision of the Agreement, or the application of any such provision to any person or circumstance is held invalid, illegal, or unenforceable for any reason whatsoever, the remaining provisions of the Agreement and the application of such provision to other persons or circumstances will not be affected thereby and to the fullest extent possible the court finding such provision invalid, illegal, or unenforceable must modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to the party or parties affected within the bounds of validity, legality, and enforceability.

- 12. Adequate Assurances.** If during the term of the Agreement Ingram determines in its sole discretion that grounds for insecurity arise with respect to Customer's payment obligations hereunder, Ingram may demand, in writing, adequate assurance of due performance, in the form of a letter of credit, or, other guaranty or security deemed acceptable by Ingram in its sole discretion. Ingram may, without penalty, suspend performance under the Agreement if such adequate assurance is not received within three days of Customer's receipt of such written request.
- 13. Compliance with Law.** Each party shall at all times comply with all federal, state, and local laws, ordinances, regulations, and orders that are applicable to the Agreement and the party's performance thereunder. Without limiting the generality of the foregoing, each party shall at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses, and permits materially necessary to conduct that portion of its business relating to the exercise of its rights and the performance of its obligations under the Agreement.
- 14. Choice of Law and Venue.** The Agreement is governed by the Maritime Laws of the United States of America; and thereafter the Agreement is governed by the laws of the State of Tennessee, both as to interpretation and performance, and all disputes that arise under the Agreement must be resolved in accordance with Tennessee law. Any litigation arising from the services provided under the Agreement must be brought in a court of competent jurisdiction within the County of Davidson, State of Tennessee. Each party hereby waives any right it may have to transfer the litigation to another forum without the prior written consent on the other party.
- 15. Attorneys' Fees.** In the event of any dispute between the parties concerning the terms and provisions of the Agreement, the prevailing party is entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees. For purposes of this section, the term "prevailing party" means the party obtaining substantially the relief sought, whether by compromise, settlement, or judgment.
- 16. Limitation of Liability.** Nothing contained in this Agreement will be deemed to waive or deprive the Ingram Parties of any right under U.S. law to limit its/their liability, and this Agreement cannot be deemed a personal contract or otherwise operate to deprive Ingram or Customer (or the owner or charterer of any substituted vessel) of any benefit allowed by any statute, regulation, or other law allowing shipowners to limit their liability.
- 17. Both to Blame Collision Clause.** If any of the Barges comes into collision or contact with another vessel or object as a result of the negligence of the other vessel and any act, neglect, or default of Ingram or of the master, mariners, pilot, or servants of Ingram in the navigation, management, or maintenance of the barges, Customer shall indemnify the Ingram Parties against all loss or liability to the other or non-carrying vessel or her owners or any third parties—insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of Customer or Cargo or their underwriters, paid or payable by the other non-carrying vessel or her owners or any third parties to Customer or the owners or underwriters of the Cargo and setoff, recouped, or recovered by the other or non-carrying vessel or her owners or any third parties as part of their claim against Ingram, its officers, employees, or any of Ingram's vessels. The foregoing provisions will also apply where the owners, operators, or those in

charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

- 18. Himalaya Clause.** All exceptions, exemptions, defenses, immunities, limitations of liability, privileges, and conditions granted or provided by the Agreement or by any applicable statute for the benefit of Ingram will be extended to and for the benefit of the barges, Ingram's other vessels, and any substituted vessel as well as their respective owners, demise charterers, operators, master, officers and crew, and will further be extended to and for the benefit of all Ingram Parties.
- 19. General Average.** General average will be payable according to York-Antwerp Rules 1950. The general average will be prepared by average adjusters selected by the Ingram. In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which the Ingram Parties are not responsible by statute, contract, or otherwise, the Customer or Cargo shall contribute with the Ingram Parties for losses or expenses of a general average nature and shall pay applicable salvage and special charges. If a salving vessel is owned or operated by the Ingram Parties, salvage shall be paid for as fully as if such salving vessel or vessels belonged to an independent third party. If required by Ingram, Customer shall make a deposit as Ingram deems sufficient to cover the estimated general average contribution of the Cargo, or any the costs of any salvage, or special charges thereon, before delivery of the Cargo by Ingram.