

## **ASBESTOS-CONTAINING MATERIALS TRANSPORTATION AGREEMENT**

This Agreement, made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ by and between Alaska Marine Lines, Inc., a Washington corporation, ("Carrier") with its principal place of business at 5615 West Marginal Way, S.W., Seattle, WA 98106, and a mailing address of P.O. Box 24348, Seattle, Washington 98124-4348 and \_\_\_\_\_ its principal place of business \_\_\_\_\_ ("Shipper").

CARRIER AND SHIPPER AGREE AS FOLLOWS:

**1. PURPOSE:**

Shipper is in the business of contracting with third parties to remove Asbestos-containing Materials, or desires to remove Asbestos-containing Materials on its own behalf, which occasionally requires the use of a carrier to transport said materials. Carrier is in the business of providing certain permitted transportation services. Shipper desires to retain Carrier to provide certain transportation services on an as-needed, non-exclusive basis.

**2. DEFINITIONS:**

- 2.1 "Asbestos-containing Materials" shall include those materials containing Asbestos and shall not contain any other materials defined as Hazardous Waste.
- 2.2 "Shipment" shall be a particular load of Asbestos-containing Materials to be transported pursuant to this Agreement.

**3. SERVICES:**

- 3.1 Shipper shall tender on an as-needed basis certain Asbestos-containing Materials or cause certain Asbestos-containing Materials to be tendered to Carrier, and Carrier agrees to accept same for transportation under the terms and conditions set forth herein.
- 3.2 Carrier's acceptance and transportation of a Shipment is contingent upon prior notification to Carrier of Shipper's intent to ship, on the availability of Carrier's equipment, and on

Shipper's furnishing information sufficient to allow Carrier to determine the characteristics of the Asbestos-containing Materials being shipped, including, but not limited to, hazard profile data, applicable U.S. Department of Transportation ("DOT") and U.S. Environmental Protection Agency ("EPA") hazard classification and any other information reasonably deemed necessary and requested by Carrier.

- 3.3 Shipper will be responsible for properly describing, packaging, labeling, and placarding Asbestos-containing Materials making up shipments tendered to Carrier and issuing all

required documentation in compliance with all United States and Canada federal, state, provincial, and local government laws and regulations.

3.4 Shipper shall tender all Asbestos-containing Materials Shipments to Carrier in loaded barrels, canisters, or other appropriate packaging, which shall themselves be loaded in twenty or forty foot shipping containers. Packaging must provide a leak-proof barrier between the walls of the shipping container and the Asbestos-containing materials. The shipping containers shall be tendered to Carrier at Shipper's dock, where Carrier shall take possession thereof without opening them for inspection, and shall load and stow them on the carrying vessel. Shipper acknowledges and agrees that the shipping containers shall be carried as deck cargo. At Seattle, Washington, the Carrier shall offload the shipping containers and load them aboard trucks furnished by Shipper. Shipper shall select the packaging, dunnage and shipping containers, and shall pack the Asbestos-containing Materials in their packages and shipping containers, in such a fashion that the Asbestos-containing Materials therein will not leak from their packaging or from the outer shipping containers while in transit due to insufficiency of packaging or shipping containers, insufficient or improper dunnage or stowage within the shipping containers, or any cause other than any cause that is external to the shipping containers. Carrier shall safely and properly load, stow, lash, and unload the shipping containers from the carrying vessels. If Shipper does not nominate legally proper and safe trucks on which to deliver any Shipment within 10 days after arrival of the carrying vessel in Seattle, Washington, Carrier may, at its sole option, return any or all of the Shipment to the place where it was loaded, or dispose of any or all of the Shipment at a qualified asbestos waste site selected by Carrier, at Shipper's risk and expense.

3.5 Upon completion of loading, stowing and securing a Shipment at point of origin, Shipper will have issued, and Carrier's representative will sign: (i) a properly completed standard bill of lading; ii) if required by the shipment, a properly completed EPA form "Hazardous Waste Manifest", designating Carrier as the Transporter for the shipment; iii) if additional space is required to list the contents of the shipment, official Hazardous Waste Manifest Continuation Sheets will be used for shipment documentation and accompany the original Hazardous Waste Manifest. If the Shipment will transit through Canadian waters and if required, Shipper will also provide iv) Environment Canada Hazardous Waste Manifest, v) Environment Canada form "Transit Notice", and vi) Environment Canada "Written

Confirmation (Transit)" which provides permission to ship through such waters. Upon such signature, Carrier shall be deemed to have accepted the Asbestos-containing Materials for transport.

3.6 All Shipments tendered to Carrier under this Agreement shall move pursuant to Carrier's straight bill of lading, its tariffs in effect at the time of the shipment, and this Agreement. Shipper specifically acknowledges and agrees to the terms and conditions of Carrier's tariffs and bill of lading, including but not limited to Carrier's Tariff ICC AKMR 100 and subsequent revisions thereto. Carrier's tariffs are incorporated by reference. Where provisions of such bill of lading or any tariff of Carrier conflict in any way with terms and conditions of this Agreement, this Agreement shall take precedence and control the resolution of such conflicts.

3.7 The Asbestos-containing Materials shall be delivered to and accepted by Carrier at such times and on such schedules and in such a manner as will reasonably permit the most efficient and economical operation by Carrier. Carrier will make available to Shipper current service schedules and equipment availability.

3.8 All services and activities performed by Carrier and Shipper under this Agreement will be completed in accordance with all applicable statutes and regulations including, without limitation, the regulations of the EPA, DOT, the U.S. Occupational Safety and Health Administration ("OSHA"), the U.S. Coast Guard, and any other United States or Canada federal, state, provincial or local law or regulation applicable to Carrier or Shipper and to the services being provided hereunder.

3.9 Nothing contained in this Agreement is intended by the parties, nor shall this Agreement be so construed, to place any responsibility or obligation on Carrier for the selection of a proper disposal site for the Asbestos-containing Materials, for making the necessary arrangements for further transportation or proper disposal of the Asbestos-containing Materials, or for the further transportation or disposal of such Asbestos-containing Materials. Notwithstanding the foregoing, Carrier is responsible for conducting its services in a manner which facilitates the proper transfer of the Asbestos-containing Materials to the transporter or disposer who is next in line to receive the Shipment. As between Carrier and Shipper, Shipper hereby agrees to be responsible for such activities.

**4. RATES:**

Shipper agrees to pay Carrier in accordance with the rates set forth in Carrier's applicable tariff in effect as of the date of shipment.

**5. TERM:**

This agreement shall be effective from the date of execution for a period of one year, and shall be automatically renewed for successive periods of one year each, provided, however either party may terminate this Agreement at any time without cause upon sixty (60) days written notice.

**6. INVOICES:**

Carrier shall invoice Shipper for all charges which accrue pursuant to this Agreement. Shipper shall pay Carrier's invoice within thirty days of date of invoice. Thereafter, interest shall accrue at the rate of one and one-half percent (1½%) per month until paid.

**7. EQUIPMENT:**

Carrier shall furnish all vessels and other equipment necessary to perform the transportation services required of it hereunder.

**8. INDEPENDENT CONTRACTOR STATUS OF EACH PARTY:**

Transportation services hereunder from point of origin to point of destination shall be the responsibility of Carrier as an independent contractor, and shall be performed under its sole supervision, management, direction and control in accordance with the terms and conditions of this Agreement.

**9. INSURANCE:**

9.1 During the term of this Agreement, Carrier shall provide the following insurance at its sole cost and expense in the stated minimum amounts:

Comprehensive General Liability (Combined Bodily Injury & Property Damage Liability)	\$ 10,000,000 per occurrence
	\$ 10,000,000 aggregate
	\$ 10,000,000 aggregate
Workers' Compensation	Statutory
Employer's Liability	\$ 1,000,000 each accident
Protection & Indemnity	\$ 10,000,000 per occurrence
Marine Seepage & Pollution	\$ 10,000,000 per vessel for OPA & CERCLA
Hull & Machinery and if applicable:	Per Vessel's Agreed Market Value
Truck Liability (Combined Bodily Injury & Property Damage Liability)	\$ 10,000,000 per occurrence
	\$ 10,000,000 aggregate

9.2 Shipper shall be named as an additional assured and subrogation shall be waived as to Shipper on the following policies of Carrier: (i) Comprehensive General Liability and (ii) Truck Liability. Any of the foregoing policies which are on a "claims made" basis shall continue to name Shipper as an additional assured for ten (10) years following completion of the last transportation services provided by Carrier under this Agreement.

9.3 During the term of this Agreement, Shipper shall provide the following insurance at its sole cost and expense in the stated minimum amounts, covering its obligations under this Agreement, including its obligation to indemnify Carrier. All such insurance shall be claused as primary to any insurance provided by Carrier, and shall be in a form and with such underwriters as are acceptable to Carrier:

Comprehensive General Liability (Combined Bodily Injury & Property Damage Liability, including sudden & accidental seepage & pollution coverage and broad form contractual liability endorsement if not covered by Contractor's Pollution)	\$ 10,000,000 per occurrence
	\$ 10,000,000 aggregate
Workers' Compensation	Statutory
Employer's Liability	\$ 1,000,000 each accident
	\$ 1,000,000 each employee
Contractor's Pollution (includes coverage for pollution conditions, sudden and nonsudden)	\$ 10,000,000 per occurrence
	\$ 10,000,000 aggregate
and if applicable:	
Truck Liability (Combined Bodily Injury & Property Damage Liability, including pollution liability)	\$ 10,000,000 per occurrence
	\$ 10,000,000 aggregate

9.4 Carrier shall be named as an additional assured and subrogation shall be waived as to Carrier on the following policies of Shipper: (i) Comprehensive General Liability, (ii) Truck Liability, and (iii) Contractor's Pollution Liability. Any of the foregoing policies which are on a "claims made" basis shall continue to name Carrier as an additional insured for ten (10) years following completion of the last transportation services provided under this Agreement.

9.5 Carrier and Shipper shall furnish each other a copy of insurance certificates evidencing the coverages required above in 9.1 and 9.3 prior to performance of any services under this Agreement. Each certificate shall stipulate whether coverage is provided on a "claims made" or "occurrence" form, and shall provide Shipper or Carrier, as the case may be, with thirty (30) days written notice prior to effective date of any cancellation, non-renewal, or material change in the coverage.

**10. RESPONSIBILITY AND INDEMNIFICATION:**

10.1 Shipper hereby agrees to defend, indemnify and hold harmless Carrier, its officers, directors, employees, agents, subcontractors and affiliates, from and against any and all claims, liabilities, damages, costs and expenses (including costs of defense, settlement and reasonable attorney, consultant or other professional fees and the reasonable cost of investigation, response, containment and cleanup) which Carrier may incur, become responsible for, or pay out as a result of death or personal injury to any person, loss of or damage to property, contamination of or adverse effects to the environment caused by or arising out of (a) breach by Shipper of any of its obligations, representations or warranties herein or in the applicable tariff, (b) any negligence or willful misconduct of Shipper, (c) any events pertaining to any cargo that occur either before Carrier takes possession of that cargo at loading or after Carrier relinquishes possession of that cargo on discharge of that cargo onto trucks nominated by Shipper, or otherwise discharges

the cargo at Shipper's premises or at a hazardous waste disposal site in conformity with this Agreement or the applicable tariff, (d) all disposal fees, expenses, or liabilities connected with any disposal of any of the Shipment by Carrier at a hazardous waste disposal site pursuant to Section 3.4 above, or (e) environmental pollution caused by the Asbestos-containing Materials, or expenses, costs, or liabilities incurred due to a threatened release of any of the Asbestos-containing Materials that occurs, except to the extent such release or threatened release is caused, in whole or in part, by the lashings of the relevant shipping containers on a carrying vessel not holding, a carrying vessel collision or grounding, a sinking of carrying vessel, or an escape or threatened escape of any of the Asbestos-containing Materials from the shipping container due to a cause external to them, provided however, such agreement to defend, indemnify and hold harmless shall not apply to the extent such claims or damages are caused by Carrier's negligence or willful misconduct. Shipper agrees to accept full responsibility for all aspects of the shipment of the Asbestos-containing Materials, notwithstanding the fact that other parties may be involved in the shipment in other capacities, including generator of the Asbestos-containing Materials or consignee. Shipper shall, at the option of Carrier, defend Carrier at Shipper's sole expense in any litigation involving the same, provided however, that such defense, indemnification and hold harmless provisions shall not apply to claims for loss, damage, injury or death to the extent caused by negligent or willful acts or omissions of Carrier. The terms of this indemnity, hold harmless, and defend provisions shall survive any termination of this Agreement.

10.2 Except as set forth in section 10.1, Carrier hereby agrees to defend, indemnify and hold harmless Shipper from and against any and all claims, liabilities, damages, costs and expenses (including costs of defense, settlement and reasonable attorney, consultant or other professional fees and the reasonable cost of investigation, response, containment and cleanup) which Shipper may incur, become responsible for or pay out as a result of death or bodily injury to any person, loss of or damage to property, other than Asbestos-containing Materials, contamination of or adverse effects to the environment caused by or arising out of (a) any breach by Carrier of any of its obligations, representations or warranties herein or in the applicable tariff, (b) any negligence or willful misconduct of Carrier, or (c) any environmental pollution caused by the Asbestos-containing Materials, or expenses or liabilities incurred due to a threatened release of any of the Asbestos-containing Materials that occurs between the time Carrier takes possession of an delivers the Asbestos-containing Materials in accordance with this Agreement under circumstances which would not give rise to an obligation of Shipper to indemnify and hold harmless the Carrier pursuant to Section 10.1 above. Carrier shall, at the option of Shipper, defend Shipper at Carrier's sole expense in any litigation involving the same, provided however, that such defense, indemnification and hold harmless provisions shall not apply to claims for loss, damage, injury or death to the extent caused by negligent or willful acts or omissions of Shipper, consignee or generator of the Asbestos-containing Materials, nor for matters arising after delivery of the Hazardous Waste by Carrier. The terms of this indemnity, hold harmless, and defend provisions shall survive any termination of this Agreement.

10.3 The parties hereto acknowledge and agree that the Asbestos-containing Materials that are the subject of this Agreement have no market value, and are being transported solely for reasons of disposal thereof.

**11. LIMITATION OF ACTIONS:**

No action arising under this Agreement shall be valid unless the same is brought in an appropriate court having jurisdiction over the party to be charged within one (1) year after the earlier of (i) the act giving rise to such cause of action; or (ii) the termination of this Agreement.

**12. ASSIGNMENT:**

Neither Shipper nor Carrier shall assign or transfer this Agreement or any interest or obligation arising hereunder without the prior written consent of the other party.

**13. FORCE MAJEURE:**

In the event either party is unable to meet its obligations under this Agreement due to causes beyond its control, including but not limited to Acts of God, war, compliance with law, insurrection, restraint by government action, quarantine restrictions, acts or omission of Shipper, its agents or representative, strikes, lockouts, or other restraints of labor (whether or not caused by Carrier), riot, civil war or commotion, saving or attempting to save life or property at sea, the obligations of the party affected by the force majeure condition shall be suspended for the duration of same; PROVIDED, HOWEVER that each party shall make all reasonable efforts to continue to meet its obligations for the duration of the force majeure condition, and PROVIDED FURTHER that the party declaring force majeure shall notify the other party promptly in writing of when the force majeure begins, the nature of the force majeure conditions, when the condition is expected to terminate, and when the condition is terminated.

**14. ENTIRE AGREEMENT:**

- 14.1 This Agreement, including the documents incorporated herein, constitutes the entire understanding between the parties, and cancels and supersedes all prior negotiations, understandings and agreements, oral or written, relating to the transportation of Asbestos-containing Materials covered by this Agreement.
- 14.2 This Agreement may not be modified except by an express written agreement signed by the parties hereto.
- 14.3 If any terms or conditions presented in this Agreement conflict with any terms or conditions presented in the applicable Tariff, this Agreement takes precedence.

**15. SAVINGS CLAUSE:**

If any one or more of the provisions contained in this Agreement shall, for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, unenforceable provision had never been contained herein.

**16. GOVERNING LAW AND VENUE:**

This Agreement shall be construed and governed in accordance with the laws of the State of Washington. Any suit, action or proceeding brought by either party to enforce any term or provision in this Agreement, or dispute arising therefrom, must be commenced either in King County Superior Court in Seattle, Washington, or in the United States District Court for the Western District of Washington at Seattle. Prior to the commencement of any litigation, the parties agree to engage in at least four (4) hours of mediation in accordance with the mediation procedures of a mutually agreeable mediation service.

**17. ATTORNEY'S FEES:**

In the event that a dispute under this agreement results in legal or arbitration proceedings being instituted, the losing party agrees to pay the prevailing party its reasonable expenses, including attorney's fees, incurred as a result of such proceedings, including the costs of appeals.

**18. NOTICES:**

All notices shall be given in writing to the parties at their respective addresses shown below and shall be effective upon delivery to the applicable party by hand or wire, other electronic device, or U.S. Certified mail, return receipt requested.

Shipper:

Carrier:

Alaska Marine Lines, Inc.  
5616 West Marginal Way S.W.  
P.O. Box 24348  
Seattle, WA 98124-4348  
Telephone: 206/763-4244  
Fax: 206/764-5782

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized officers on the date first written above.

SHIPPER:	_____	CARRIER:	Alaska Marine Lines, Inc.
By:	_____	By:	_____
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____