

# RESTRICTED COMMODITIES AGREEMENT



This RESTRICTED COMMODITIES AGREEMENT (the “Agreement”) dated as of the date set forth below is between *[insert full corporate name]* (“Contract Holder”),  
\_\_\_\_\_ (“Contract Holder”),  
and XPO Stacktrain, LLC (“XPO”).

## RECITALS

Contract Holder wishes to transport the following restricted commodity: \_\_\_\_\_ (the “Restricted Commodity”) for the benefit of its customers and the beneficial cargo owners (“BCO”) of the Restricted Commodity through XPO’s intermodal transportation network. XPO is willing to accept and arrange for the intermodal transportation of these the Restricted Commodity using the rail services of CSX Intermodal and its affiliates (“CSX”) and Union Pacific Railroad Company (“UP”) and other motor and rail transportation providers on the terms and conditions in this Agreement. Collectively UP, CSX, any drayage transportation provider and any other rail or motor transportation providers are referred to in this Agreement as the “Carriers.”

## AGREEMENT

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contract Holder and XPO agree as follows:

1. This Agreement applies to the transportation of the Restricted Commodity tendered by Contract Holder on behalf of any of Contract Holder’s customers or BCOs for intermodal service provided by the Carriers and arranged through XPO. Contract Holder acknowledges that XPO is a provider of intermodal equipment and an arranger of transportation services through rail carriers and that shipment of the Restricted Commodity is restricted under XPO Stacktrain Rules and Procedures (the “XPO Rules”), CSX’s Service Directory No. 1 (as in effect from time to time, “Directory No. 1”), Master Intermodal Transportation Agreement, Union Pacific Exempt Circular MITA 2-A (as in effect from time to time, the “UP MITA”). Collectively the XPO Rules, Directory No. 1, the UP MITA and the rules and directories of any other engaged rail transportation providers are referred to as the “Intermodal Circulars” in this Agreement.
2. The rates for Contract Holder’s shipments of the Restricted Commodity shall be XPO’s special rate quote #: \_\_\_\_\_. Other rates made available to Contract Holder shall not be used for Restricted Commodity shipments. Shipping instructions for the Restricted Commodities will use the following STCC numbers: \_\_\_\_\_. Any hazardous material contents must also be duly noted and tendered under the hazardous materials procedures set forth in the Intermodal Circulars. All hazardous fluids must be removed before shipping. Contract Holder will not tender the Restricted Commodity as FAK (freight all kinds).
3. In consideration of XPO’s rates and permission to transport the Restricted Commodity over its rail network, Contract Holder hereby releases, indemnifies, and holds harmless the Carriers and XPO and their respective affiliates, employees, agents, representatives, and subcontractors from and against all liability, loss, damage, penalty, fee, expense, suits and claims, including but not limited to

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attorney's fees, judgments or settlements, defense and investigation costs and the costs of enforcing this indemnity (collectively, "Losses"), arising out of injury or death of persons, property damage (including cargo loss and damage), environmental contamination or violation of law associated with the transportation of the Restricted Commodity or the performance of services hereunder, from whatsoever cause, including, but not limited to those claims, suits, or causes of action brought by Contract Holder, its customers or by any BCO tendering through movers arising out of or in connection with performance of services hereunder, from whatsoever cause, including but not limited to damage or loss caused solely by derailment or theft of goods while in the possession of XPO or the Carriers. The foregoing release and indemnification shall not apply as to a Carrier when occasioned by the sole negligence of a Carrier or its employees, agents, representatives, and subcontractors (including damage or loss caused solely by derailment or theft of goods while in the possession of such Carrier released persons). The foregoing release and indemnification shall not apply as to XPO when occasioned by the sole negligence of XPO and its affiliates, employees, agents, representatives, and subcontractors in arranging for transportation services. Contract Holder agrees (1) upon request of any Carrier or XPO, to assume defense of any such claim, suit or cause of action and (2) to reimburse XPO immediately upon its request for any and all amounts that XPO incurs or owes to a Carrier (other than linehaul rates, terminal service and other accessorial charges for transportation of the Restricted Commodity) under any release and indemnification arrangement between Carriers and XPO regarding the transportation of the Restricted Commodity arranged by Contract Holder on behalf of its customers and the BCOs.

4. Contract Holder understands and agrees that neither XPO nor the Carriers shall be liable for any direct, indirect, special, consequential or punitive damages that result from delay or interruption of rail services. Neither XPO nor any Carrier guarantees rail service on any schedule, whether published, projected, implied or otherwise.
5. Contract Holder will cause its customer and BCOs to transport all shipments in closed, locked and secured trailers and/ or containers. Contract Holder further understands and agrees that any Restricted Commodity and other cargo must be blocked and braced to prevent any longitudinal or lateral movement within the container in accordance with the Intermodal Circulars. Contract Holder acknowledges that XPO and the Carriers make no representations as to the suitability of the Restricted Commodity for rail transportation, Contract Holder further acknowledges that there are significant differences in the forces exerted on the cargo in rail transportation that may require additional packing measures for the cargo to move safely.
6. Contract Holder understands and agrees on behalf of themselves and any other shipper, consignee, BCO or other person or entity involved in the transportation of the Restricted Commodity tendered for transportation through XPO that Contract Holder accepts full liability for delay, destruction, loss or damage, or any other claim occurring during transit. XPO's and the Carriers' shall have no liability for delay, destruction, loss or damage or any other claim occurring during transit to such the Restricted Commodity.
7. Contract Holder agrees to abide by all of the terms and conditions set forth in this Agreement and the Intermodal Circulars and to notify all persons or entities involved in the transportation, including the shipper, consignee, BCO, and others involved that the provisions of this Agreement and the Intermodal Circulars apply to any Restricted Commodity transported on the XPO intermodal network. Contract Holder further agrees to cause such persons and entities to comply with applicable provisions of this Agreement and the Intermodal Circulars. Contract Holder will provide defense and indemnification (in addition to the indemnification required under Section 3 or under the Intermodal Circulars) from any claims alleging lack of knowledge of the provisions of this

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Agreement or the Intermodal Circulars in accordance with the procedures set forth in Section 3 hereof.

- 8. This Agreement supplements the terms of the transportation agreement between XPO and Contract Holder and shall control in the event of any conflict. This Agreement shall be governed by the laws of Tennessee, without regard to its conflict or choice of law rules, and will remain in effect for as long as Contract Holder tenders the Restricted Commodity to XPO for transportation. This letter agreement may be executed in two or more counterparts, and each such counterpart shall be deemed to be an original instrument and shall be considered validly delivered and become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other parties.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Restricted Commodity Agreement as of the date set forth below.

Contract Holder: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

XPO Stacktrain, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_