

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF LOGISTIC SERVICES

### BACKGROUND

(A) Sims Recycling Solutions is the leading global recycler of waste electronics and electrical equipment.

(B) The Carrier wishes to sell to Sims, logistics services and Sims wishes to purchase such services from the Carrier on the terms and conditions of this Agreement.

### APPOINTMENT

1. With effect from commencement date specified on the document on which these terms and conditions are referenced (or if no date is specified, from the date Sims places its first order from Carrier) (the "**Commencement Date**") Sims appoints the Carrier to provide the Services and the Carrier agrees to provide the Services to Sims upon the terms and conditions set out in this Agreement.

2. The following documents shall be deemed to form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement will include such documents:

2.1 The document on which these terms and conditions are referenced;

2.2 The packaging guidelines as provided by Sims to Carrier from time to time;

If there is any inconsistency or conflict between the above-listed documents, the terms of this Agreement shall prevail.

### 1. DEFINITIONS

1.1 In this document the following words and expressions shall have the following meanings:

**"Agreement"** means these terms and conditions in respect of the carriage of goods entered into between Sims and the Carrier;

**"Business Day"** means any day other than a Saturday or Sunday or a bank or public holiday in the country where the Services are performed;

**"Carrier"** means the person from whom the Company purchases the Services;

**"Confidential Information"** means all information in respect of a party's business including, but not limited to, customer or supplier information, finances, know-how or other matters connected with the Goods or Services;

<b>"Fair Market Value"</b>	means the fair market value for the Goods in a particular month as set out in the agreement between Sims and its clients and/or schedules produced by Sims for its clients;
<b>"Force Majeure"</b>	means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, an act of terrorism, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, fire, flood or storm;
<b>"Broker"</b>	means an individual or legal entity that provides transportation services without actually transporting the Goods themselves, but contracts with carriers and other logistics service providers to move the Goods between locations as specified in an Order;
<b>"Goods"</b>	means the equipment, goods and/or materials to be carried pursuant to the Agreement;
<b>"Order"</b>	means Sims' order for the Services, which may be intimated, without limitation, by e-mail, fax or Ratelinx's transportation management online system and will quote the relevant material management order number (" <b>MMO</b> ") and be placed by Sims on the Carrier and will incorporate these Terms and Conditions. For the avoidance of doubt an Order may consist of but is not limited to the: purchase order, statement of works and bill of ladings;
<b>"Packaging Guidelines"</b>	means the guidelines produced by Sims on the safe packaging and preparation of Goods for transportation, attached as Appendix 1 to these Terms and Conditions;
<b>"Price"</b>	means the price payable for the Services by Sims: (a) as set out in or calculated in accordance with the list of agreed rates set out in Schedule 1; or (b) in the absence of agreed rates, the price agreed by Sims and the Carrier as set out in the Order;
<b>"Ratelinx"</b>	means the online transportation management system through which Sims may intimate Orders to the Carrier and through which it may also settle any invoices due to the Carrier;
<b>"Sims"</b>	means Sims Recycling Solutions, Inc., including any of its subsidiaries and/or affiliates;
<b>"Services"</b>	means any services for the carriage of Goods and any ancillary or other services ordered by Sims pursuant to the Agreement;
<b>"Specification"</b>	means the specification setting out Sims' requirements in respect of the Services, which is contained in the Order or which shall be submitted by Sims to the Carrier and which shall specify the nature and duration of services required;

**“Terms and Conditions”**

means the terms and conditions contained in this document.

- 1.2 Where the context so requires or admits, the masculine will include the feminine and the neuter and the singular will include the plural and vice versa.
- 1.3 The expression “person” means any individual, firm, company, incorporated association, partnership, government, state, or agency of state or joint venture.
- 1.4 The index and headings to the clauses and Schedules of this Agreement will not affect its construction.

**2. ORDERING SERVICES**

- 2.1 If Sims requires the Carrier to provide Services to Sims, Sims will submit an Order to the Carrier, by e-mail, fax or through Ratelinx specifying what Services are required, the Goods to be carried, together with any special conditions of contract, including without limitation, additional security requirements requested by Sims’ clients.
- 2.2 If the Order :
  - 2.2.1 contains Services for which Sims and the Carrier have pre-agreed rates, the Carrier agrees to provide the Services to Sims for the Price unless it notifies Sims within 48 hours of the date of the Order that it is unable to provide the Services; or
  - 2.2.2 does not contain Services for which rates have been pre-agreed or contains special conditions of contract, the Carrier will, within 24 hours of the date of the Order Form, provide Sims with a quotation for the Services. The Carrier acknowledges that it will be bound by any special conditions of contract.
- 2.3 If Sims accepts the Price of the Services quoted by the Carrier or the Price is based on pre-agreed rates and the Carrier has not notified Sims that it is unable to provide the Services, Sims will issue an Order to the Carrier for the Services. The Carrier will provide the Services to Sims in accordance with the terms of the Order. The Order number must be clearly stated by the Carrier on all acknowledgements, invoices and correspondence.
- 2.4 Sims and the Carrier reserve the right to withdraw or cancel any Order by giving 48 hours written notice to the other party prior to the scheduled date and time of the Services. Neither party will incur or be liable for any costs or any compensation whatsoever to the other party where an Order has been cancelled in accordance with this clause 2.4
- 2.5 Each Order will be upon these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Carrier purports to apply under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice or similar document, whether or not such document is referred to in the Agreement.
- 2.6 Sims shall have the right from time to time during the term of the Agreement, by notice in writing, to direct the Carrier to add to or omit from or otherwise vary the Services, and the Carrier shall carry out such variation and be bound by these Terms and Conditions as though the said variations were stated in the Agreement.

### 3. **PRICE AND PAYMENT**

- 3.1 Subject to the Carrier performing its obligations in accordance with the Agreement, Sims shall pay the Price for the Services in accordance with this clause 3.
- 3.2 The Price shall be based on the pre-agreed list of rates set out in Schedule 1 or, if a pre-agreed list of rates is not applicable then the price will be as agreed between the parties by Sims acceptance of the carriers quote. All prices are stated exclusive of any value added tax.
- 3.3 The Carrier shall not make any alteration in the Price and any purported alteration shall not be binding on Sims unless and until confirmed in an Order as accepted by Sims.
- 3.4 The Carrier shall invoice Sims for the Price within 90 days after Sims notifies the Carrier that delivery has been accepted. The Carrier's invoice must be presented together with the relevant proof of delivery document quoting the relevant "MMO". The Price shall be payable within 30 days of the end of the month in which the relevant invoice has been issued in accordance with this clause 3. If the Carrier fails to present an invoice within 90 days from the date of notification that Sims accepts the delivery it will be assumed to have forfeited its right to the outstanding payment:
- 3.5 Any invoices issued by the Carrier under this clause 3 must:
  - 3.5.1 clearly identify individual charges as a separate line item; and
  - 3.5.2 separately identify fuel surcharges from the line-haul rates as outlined in Schedule 1.
- 3.6 Carrier will invoice Sims for any fees payable (including the Price) and approved expenses via the "Ratelinx" transportation management online system. The system can be accessed at: [www.ratelinx.com](http://www.ratelinx.com). Sims provides no warranty or representation as to access or availability of Ratelinx. For the avoidance of doubt, the Carrier accepts that Ratelinx is not owned or managed by Sims and any invoices unpaid, unsettled or otherwise affected due to the unavailability of the Ratelinx website will become payable by Sims if the Carrier issues an invoice in accordance with clause 3.4.
- 3.7 The Carrier will not charge Sims for researching, reporting on and/or correcting any errors relating to its invoices. Carrier will not date its invoices earlier than the date Carrier is entitled to be paid under any applicable Order and/or under this Agreement.
- 3.8 With exception to any disputed invoice, if Sims fails to pay on the due date any amount which is payable to the Carrier under this Agreement then that amount will bear interest from the due date until payment is made in full, both before and after any judgment, at 1% above the base rate of Barclays Bank plc.
- 3.9 For the avoidance of doubt, the Carrier shall not without the written consent (which may be withheld in Sims's absolute discretion) of a statutory officer of Sims, negotiate directly with Sims's customers or vendors to obtain any discount in respect of volumes handled by Carrier, including, without limitation, any: special rates, waivers of fees or other discounts.

3.10 Nothing in this bestows a representative right on the Carrier as a joint-venturer, agent and/or any other partner of Sims.

#### 4. **PACKAGING AND TRANSPORTATION**

4.1 Where the Order specifies that the Goods are to be collected from the premises of a third party and delivered to Sims' premises, the Carrier shall ensure that the Goods are safely packaged, palletised, prepared and loaded for transportation and are safely transported and unloaded all in accordance with the Packaging Guidelines.

4.2 Sims is entitled to refuse to accept delivery of the Goods if, in the reasonable opinion of Sims, the Goods have not been packaged, palletised, prepared, loaded or unloaded safely in accordance with the Packaging Guidelines.

4.3 If Sims, in accordance with clause 4.2 above, refuses to accept delivery of the Goods, the Carrier shall be responsible for and shall meet (and shall indemnify Sims against) the cost of transporting the Goods back to their original location.

4.4 The Carrier must at all times adhere to and abide by all applicable state and federal laws, including without limitation, the Department of Transportation regulation 392.9.

#### 5. **DELIVERY, RISK AND TITLE**

5.1 The Carrier will:

5.1.1 collect the Goods from the premises set out in the Order and will load them onto the collecting vehicle; and

5.1.2 deliver the Goods to Sims at the place and in accordance with the timescales set out in the Order or if none is specified at such place and in accordance with such timescales as Sims may reasonably specify; and

5.1.3 be responsible for off-loading the Goods from the delivery vehicle only where delivery is being conducted at a non-Sims site/facility and is stipulated under the terms of an Order.

5.2 The Carrier shall provide a bill of lading (or if applicable a manifest and/or packing list) ("**Delivery Documents**") for the Goods collected and delivered to Sims with each consignment of Goods. The Carrier will ensure that any damage to the Goods and/or variation in the quantity of Goods delivered from that specified in the Order is clearly indicated on the Carrier's Delivery Documents.

5.3 The Carrier shall present the Delivery Documents for the Goods to Sims when the Goods are being unloaded. The Goods shall not be deemed to be delivered to Sims until the Carrier obtains written confirmation from Sims of the delivery of Goods. Sims' written confirmation is without prejudice to Sims' rights and remedies under the Agreement for any loss or damage to the Goods, including without limitation, as set out in clause 4.2.

5.4 In the event of any delay in delivery of the Goods, the Carrier must notify Sims in writing of any such delay (along with an explanation for such delay) as soon as the Carrier becomes aware of the delay. Sims shall, in this event, without prejudice to any other rights or remedies available to it, be entitled to reject the Services and rescind the relevant Order without any further obligations thereunder and the Carrier shall be responsible for the cost of transporting the Goods back to their original

location if applicable. In addition to the preceding, if Sims is subject to any penalties and/or fines as a result of the Carrier's delay, the Carrier shall indemnify Sims (on a full indemnity basis) for any such fines or penalties.

- 5.5 Risk in the Goods will pass to the Carrier at the point at which the Carrier comes into possession of them and shall remain with the Carrier until they are unloaded at Sims' premises as specified in the Order.
- 5.6 For the avoidance of doubt, legal and beneficial title in the Goods will not pass to the Carrier at any point. The Carrier has no rights in the Goods and will not sell, offer to sell, assign, underlet, pledge, mortgage, charge, retain, encumber or part with possession of or otherwise deal with the Goods or any interest in them nor create or allow to be created any lien over the Goods.
- 5.7 The Carrier will obtain and maintain in force all necessary memberships, licences, registrations, approvals, consents and/or qualifications required by all applicable laws, regulations and good practice necessary to perform its obligations under this Agreement, including without limitation, any environmental permits necessary for the proper performance of the Services.
- 5.8 The Carrier shall provide all necessary equipment, maintained in good repair, to enable Carrier to perform the Services safely. Carrier shall monitor compliance with the Federal Motor Carrier Safety Administration's Compliance, Safety and Accountability safety program (including amendments thereto), and agrees to source transportation resources in a manner that promotes the highest standards of public safety. Sims may suspend some or all Services if Sims reasonably determines that Carrier's equipment poses a safety hazard.
- 5.9 Notwithstanding anything to the contrary, once a Carrier has committed (either verbally, through Ratelinx or any other method which may reasonably be seen as an acceptance by Sims) to picking-up a tendered load and/or shipment the Carrier may not cancel such shipment without giving Sims written notice of no less than twelve (12) hours ("**Minimum Notice**"). If the Carrier does not give Minimum Notice, the Carrier will pay to Sims an amount calculated in accordance with relevant rate sheet as may be attached to this Agreement, or if no rate sheet is attached, such amount as is reasonably estimated by Sims to be equitable compensation for the Carrier's failure to provide Minimum Notice to Sims ("**Liquidated Damages**"). The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that Sims's harm caused the Carrier's breach of this clause would be impossible or very difficult to accurately estimate, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from Carrier's breach.

## 6. **CARRIER'S WARRANTIES**

The Carrier warrants that:

- 6.1 all reasonable skill and care will be taken in the provision of Services and that the Services shall comply with all requirements set out in the Order, the Agreement and the Specification;
- 6.2 it will comply in all respects with the Packaging Guideline and all applicable standards, regulations and other legal requirements concerning the provision of the Services; and

6.3 the Services will be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with the Agreement and at least to such standards of quality generally observed in the industry for similar services.

7. **LIMITATION OF LIABILITY AND INSURANCE**

7.1 Neither party excludes or limits its liability (if any) to the other party for any matter which it would be illegal for a party to exclude or to attempt to exclude its liability for.

7.2 Subject to clause 7.1, neither party will be liable under the Agreement whatsoever (including without limitation under any Order) whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise for any indirect or consequential loss or damage howsoever caused.

7.3 Subject to clauses 7.1, Sims' maximum aggregate liability under this Agreement whatsoever (including without limitation under any Order and SOW) (whether in contract, tort (including negligence), breach of statutory duty, restitution under any indemnity or otherwise) for any damage or loss howsoever caused will be limited to the aggregate Price paid for the Services by Sims during the term of this Agreement

7.4 The Carrier shall keep Sims indemnified in full against all costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings and legal costs and judgments which Sims incurs or suffers as a consequence of or in connection with the negligence or default of the Carrier.

7.5 Carrier shall at its own expense secure and continuously maintain, and shall require its subcontractors (where such subcontractors are providing services to Sims) to secure and continuously maintain, throughout the Term, the insurance coverages outlined in section 7.6 below. Carrier shall, within thirty (30) calendar days of the Commencement Date and prior to commencing work, furnish to Sims certificates and required endorsements evidencing such insurance. Sims shall be named as an "Additional Insured" to the coverages described in in this section for the purpose of protecting Sims from any expense and/or liability arising out of, alleged to arise out of, related to, or connected with the Services provided by Carrier and/or its subcontractors. The certificates shall state the amount of all deductibles and self-insured retentions and shall contain evidence that the policy or policies shall not be cancelled or materially altered without at least thirty (30) calendar days prior written notice to Sims. Carrier and its subcontractors shall pay any and all costs which are incurred by Sims as a result of any such deductibles or self-insured retentions to the extent that Sims is named as an "Additional Insured," and to the same extent as if the policies contained no deductibles or self-insured retention. Carrier and its subcontractors and their underwriters shall waive subrogation against Sims and shall cause their insurer(s) to waive subrogation against Sims.

7.6 Subject to the preceding, the Carrier will maintain the following Insurance Coverages during the Term of this Agreement and for three years thereafter:

7.6.1 Workers' Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws; and

- 7.6.2 Employers' Liability Insurance which limit shall be \$1,000,000 per accident for Bodily Injury and \$1,000,000 per employee/aggregate for disease; and
- 7.6.3 Commercial General Liability Insurance with a minimum combined single limit of liability of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, death, property damage and personal injury. This policy shall include products/completed operations coverage and shall also include contractual liability coverage; and
- 7.6.4 Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Carrier with a minimum combined single limit of liability of \$1,000,000 for injury and/or death and/or property damage; and
- 7.6.5 Carrier shall be responsible for loss to Sims property and its customer property, directly or indirectly, and shall maintain fidelity bond or crime coverage for the dishonest acts of its employees in a minimum amount of \$5,000,000. Carrier shall endorse such policy to include a "Client Coverage" or "Joint Payee Coverage" endorsement. Sims shall be named as "Loss Payee, As Their Interest May Appear," in such fidelity bond.
- 7.7 The failure of Sims to obtain certificates, endorsements, or other forms of insurance evidence from Carrier and its subcontractors is not a waiver by Sims of any requirements for the Carrier and its subcontractors to secure and continuously maintain the specified coverages. Carrier shall notify and shall advise its subcontractors to notify insurers of the coverages required hereunder. Sims's acceptance of certificates and/or endorsements that in any respect do not comply with the requirements of this Section does not release the Carrier and its subcontractors from compliance herewith. Should Carrier and/or its subcontractors fail to secure and continuously maintain the insurance coverage required under this Agreement, Carrier shall itself be responsible to Sims for all the benefits and protections that would have been provided by such coverage, including without limitation, the defence and indemnification protections.
- 7.8 Notwithstanding anything to the contrary, the Carrier accepts that Sims utilizes [www.mycoitracking.com](http://www.mycoitracking.com) ("**myCOI**") to track and verify Carrier's insurance coverage. Upon full execution of this Agreement by the Parties, the Carrier will receive an email from myCOI to register and the Carrier accepts it will register and follow such instructions as sent by myCOI to complete its registration for insurance verification purposes. Upon completion of its registration, myCOI will request proof of insurance directly from Carrier's insurance carriers, agent(s) and/or brokers. Carrier shall not commence work and Sims will be under no obligation to make payments, unless the Carrier is registered with myCOI and a compliant certificate has been received by Sims from myCOI of which the Carrier has been advised by Sims. For the avoidance of doubt, the Carrier will remain fully responsible for carrying and maintaining the insurance coverages as detailed in this Agreement. Sims's verification of such coverages using myCOI does not waive any liability the Carrier has in ensuring these are maintained for the terms detailed in this Agreement.

## 8. **TERMINATION**

8.1 Either party may by written notice served on the other terminate this Agreement immediately if the other party:

8.1.1 is in breach of any material term of this Agreement and, where the breach is capable of remedy, the other party fails to remedy such breach within 30 Business Days' service of a written notice from the party not in breach, specifying the breach and requiring it to be remedied;

8.1.2 becomes bankrupt, insolvent, summons a meeting of or enters into any arrangement with its creditors, makes a proposal for or becomes subject to any voluntary arrangement, is unable to pay its debts, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding up or has a petition presented for winding up, has a provisional liquidator appointed or has an administrator appointed in respect of it;

8.1.3 has any distraint, execution or other process levied or enforced on any of its property or ceases or threatens to cease to trade; or

the equivalent of any of the above occurs to the other party under the jurisdiction to which that party is subject.

8.2 Sims may terminate this Agreement at any time upon no less than 30 days' written notice to the Carrier, provided that the Carrier will complete all outstanding Orders in accordance with the terms of the Agreement upon Sims' request and Sims shall pay the Carrier the Price properly due and payable in relation to any Order properly completed.

8.3 The rights to terminate this Agreement given by this clause will not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

## 9. **TRANSFER OF RIGHTS**

9.1 The Carrier shall not assign or otherwise transfer his rights or obligations under the Agreement in whole or in part without the prior written consent of Sims.

9.2 If Sims written consent is given in accordance with clause 9.1 the Carrier shall be responsible for all acts and omissions of its subcontractors and shall keep Sims indemnified in full against all costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings and legal costs and judgments which Sims incurs or suffers as a consequence of or in connection with any act or omission on the part of any such subcontractor.

## 10. **CONFIDENTIALITY AND DATA SECURITY**

10.1 Both parties agree:

10.1.1 not to make or publish any statement relating to, or disclose to any person any Confidential Information (whether written or oral) of the other which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance of, the Agreement;

- 10.1.2 not to make or publish any statement relating to, or disclose any Confidential Information of the other in whole or in part to any other person without the other's written consent, save to those of its employees, agents and sub-contractors involved in the implementation of the Agreement and who have a need to know the same and are bound to keep it confidential; and
  - 10.1.3 to use the Confidential Information of the other solely in connection with the performance of the Agreement and not otherwise or for the benefit of any third party.
- 10.2 Each party will procure that its employees, agents and sub-contractors will maintain the Confidential Information in strict confidence and will not use the same at any time for any purpose except in performance of their duties pursuant to the Agreement.
- 10.3 Each party will, at its own expense, take all reasonable and appropriate steps to enforce any duty of confidence owed to it by any employee, agent or sub-contractor, insofar as such enforcement appears to be necessary for the protection of the confidentiality of the Confidential Information.
- 10.4 The provisions of clauses 10.1 to 10.3 above will not apply to the whole or any part of the Confidential Information which is:
  - 10.4.1 lawfully obtained after the date of the Agreement free of any duty of confidentiality otherwise than directly or indirectly from the other party to this Agreement;
  - 10.4.2 already in the other party's possession other than as a result of a breach of this **clause 10**;
  - 10.4.3 which either of the parties can demonstrate is in the public domain (other than as a result of a breach of this **clause 10**);
  - 10.4.4 necessarily disclosed pursuant to a statutory or regulatory obligation but then only to the extent of such required disclosure;
  - 10.4.5 disclosed to the professional advisers, lawyers, auditors and bankers of each party under terms of confidentiality and those professional advisers, lawyers, auditors and bankers are bound by a duty of confidence; or
  - 10.4.6 disclosed with prior written consent of the other party.
- 10.5 Each party warrants that it has not made or published any statement relating to, or disclosed any Confidential Information prior to the date of the Agreement which would constitute a breach of **clause 10.1** if it had occurred after the date of the Agreement.
- 10.6 The Carrier acknowledges that it has no rights in the Goods and it will not (and it will ensure that its employees, agents and subcontractors do not) access the Goods or any data therein, nor alter the Goods in any way or remove any part of the Goods, including any branding thereon. The Carrier acknowledges that a breach of this clause 10.6 is a material breach of the Agreement not capable of remedy.
- 10.7 Subject to clause 10.4, the provisions of this **clause 10** will continue to apply after the termination of this Agreement for 2 years.

## 11. **FORCE MAJEURE**

- 11.1 Neither party to the Agreement will be in breach of the Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Agreement due to Force Majeure.
- 11.2 If a party's performance of its obligations under the Agreement is affected by Force Majeure:
- 11.2.1 it will immediately give written notice to the other party, specifying the nature and extent of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure;
  - 11.2.2 subject to the provisions of **clause 11.3**, the date for performance of such obligation will be deemed suspended but only for a period equal to the delay caused by such event; and
  - 11.2.3 it will not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 11.3 If the Force Majeure in question continues for more than 3 months, either party may give notice in writing to the other to terminate the Agreement. The notice to terminate must specify the termination date, which must not be less than 10 Business Days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.

## 12. **NOTICES**

- 12.1 Any notice, demand or communication in connection with the Agreement will be in writing and may be delivered by hand, first class post, Special Delivery post or Airmail (but not by email or facsimile), addressed to the recipient at its registered office or such other address as the recipient has notified to the sender from time to time in accordance with this clause 11.1.
- 12.2 A notice will be deemed to have been duly served:
- 12.2.1 if delivered by hand, when left at the proper address for service;
  - 12.2.2 if given by prepaid first class post or Special Delivery post, 2 Business Days after being posted or if given by Airmail, 10 Business Days after being posted;
- provided that, where in the case of delivery by hand, such delivery occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

## 13. **WAIVER**

No failure or delay by any party in exercising any right, power or privilege under the Agreement shall operate as a waiver nor shall any single or partial exercise preclude any further exercise of any right, power or privilege under the Agreement or otherwise.

## 14. **SEVERABILITY**

If any provision of the Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of the Agreement which shall remain in full force and effect.

15. **RIGHTS OF THIRD PARTIES**

The parties to the Agreement do not intend that any of its terms will be enforceable by any person not a party to it whether by virtue of statute or otherwise howsoever arising.

16. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by the internal laws, and not by the laws regarding conflicts of laws, of the State of Illinois. Each Party hereby submits to the exclusive jurisdiction of the courts of such state, and waives any objection to venue with respect to actions brought in such courts.

17. **SAFETY**

17.1 The Carrier accepts and agrees that for the safety of Sims employees, that Sims does not allow drivers on its loading docks. Therefore the Carrier may, at Sims' discretion, be required to either:

17.1.1 lock its keys in a secure lock box whilst on Sims' property or sites until the trailer is completely loaded or unloaded; or

17.1.2 detach the truck from the trailer until the trailer is completely loaded or unloaded.

18. **ADDITIONAL OBLIGATIONS APPLICABLE TO BROKERS**

18.1 Sims may from time to time contract with a Broker to provide the Services. In such instances, the supplementary obligations as outlined in this clause 18 will apply in addition to those outlined in the remainder of the Agreement and the Broker will assume all obligations in respect of the Carrier as defined. The Broker will ensure that any third party it utilizes ("**Subcontracted Carrier**") will be subject to the same obligations as outlined in this Agreement.

18.2 Broker represents and warrants that it will only utilize Subcontracted Carriers which are certified and licensed by the Illinois Commerce Commission or its equivalent in a relevant state ("**Licensing Authority**").

18.3 Broker will be responsible for all payments due to the Subcontracted Carriers it utilizes when rendering and/or providing the Services to Sims. For the avoidance of doubt, Sims will only make such payments as agreed in

accordance with Schedule 1 and/or Ratelinx and Sims will in no instance be responsible for any surcharges payable to a Subcontracted Carrier unless expressly agreed in writing with an officer of Sims.

- 18.4 Broker shall indemnify Sims for any non-payment of fees, charges and/or any other amounts due to the Subcontracted Carrier.
- 18.5 Broker will only use a Subcontracted Carrier with which it has a written contract in place.
- 18.6 Notwithstanding any sub-contracting of any part of Broker rights or obligations under this Agreement, Broker shall remain liable for such obligations under this Agreement and will be responsible for any failure by its Subcontracted Carriers and/or sub-contractors to observe the conditions of this Agreement
- 18.7 Broker shall carry at all times a surety bond of at least \$75,000.00 (seventy-five thousand United States dollars) or greater for each Order placed with it by Sims.
- 18.8 For the avoidance of doubt, the Broker may only subcontract the Services to a Subcontracted Carrier as per this clause 18. At no stage, is the Broker authorized to subcontract and/or assign its rights or obligations to any third party broker or carrier which may further subcontract the Services (or a portion thereof) without the express prior written consent of Sims.
- 18.9 Broker represents and warrants that each Subcontracted Carrier it utilizes for the Service shall have a safety rating of "satisfactory" or "unrated".

19. **VOLUME COMMITMENT**

Sims does not agree to tender to Carrier any minimum volumes during the term of this Agreement.