



FURST-MCNESS COMPANY

# Independent Trucking Agreement

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, **20**\_\_\_\_, by and between Furst-McNess Company, located at 1252 Bell Valley Road, Suite 220 Rockford, IL 61108 (hereinafter referred to as "Company"), and \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter referred to as "Independent Contractor"), and collectively referred to as the "Parties".

## STATUS OF INDEPENDENT CONTRACTOR

1. This Agreement does not constitute a hiring by either party. It is the parties' intention that Independent Contractor shall have an independent Contractor status and not be an employee for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code 401(k) and other benefit payments and third-party liability claims. Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture, and the Company shall not be liable for any obligations incurred by Independent Contractor unless specifically authorized in writing. Independent Contractor shall not act as an agent of the Company, ostensibly or otherwise, nor bind the Company in any manner unless specifically authorized to do so in writing.
2. Independent Contractor shall be responsible to the management and directors of Company, but Independent Contractor will not be required to follow or establish a regular or daily work schedule. Independent Contractor shall supply all necessary equipment, materials, and supplies. Independent Contractor will not rely on the equipment or offices of Company for completion of tasks and duties set forth pursuant to this Agreement. Any advice given to Independent Contractor regarding the Scope of Work shall be considered a suggestion only, not an instruction. Company retains the right to inspect, stop, or alter the work of Independent Contractor to assure its conformity with this Agreement.

## AGREEMENT TO WAIVE RIGHTS TO BENEFITS

3. Independent Contractor hereby waives and foregoes the right to receive any benefits given by Company to its regular employees, including, but not limited to, health benefits, vacation and sick leave benefits, profit-sharing plans, such as 401(k) plans. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of their

Initials: \_\_\_\_\_

services to Company and is effective for the entire duration of Independent Contractor's agreement with Company. This waiver is effective independently of Independent Contractor's employment status as adjudged for taxation purposes or for any other purpose.

## **TERMINATION**

4. This Agreement may be terminated prior to the completion or achievement of the Scope of Work by either party giving 30 days' written notice. Such termination shall not prejudice any other remedy to which the terminating party may be entitled, either by law, in equity, or under this Agreement.

## **LEGAL COMPLIANCE**

5. Independent Contractor is encouraged to treat all company employees, customers, clients, business partners, and other affiliates with respect and responsibility. Independent Contractor is required to comply with all laws, ethical codes, and company policies, procedures, rules, or regulations, including those forbidding sexual harassment, discrimination, and unfair business practices.

## **ASSUMPTION OF RISK**

6. Independent Contractor assumes all risk in the use and operation of the Independent Contractor's vehicle(s) and related vehicle equipment and shall be responsible for providing proper safety devices and equipment to safeguard users or operators of the vehicle and related equipment in order to comply with all Federal, State, and Local laws or regulations, and all industry standards applicable to the operation of said vehicle(s) or related vehicle equipment.

## **SAFE WORK ENVIRONMENT**

7. Independent Contractor agrees that it will comply with all health and safety laws, right-to-know laws, regulations, ordinances, directives, and rules imposed by controlling federal, state, and local government, and that it will immediately report all accidents and injuries to Furst-McNess Co.

Environmental factors, equipment, machinery, and all other matters which affect employee health and safety shall be maintained in compliance with OSHA or other applicable standards. Client represents that its working environment, equipment, and machinery currently meet all OSHA or other applicable standards and that they will be maintained in compliance with such standards for the duration of this Agreement. Client agrees that it shall be responsible for any OSHA violations.

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Further, Independent Contractor shall at its own expense provide or ensure the use of all personal protection gear and/or equipment, as required by federal, state, or local law, regulation, ordinance, directive, or rule.

## INDEMNIFICATION

8. To the fullest extent permitted by law, Independent Contractor shall defend, indemnify, hold harmless, and insure Company and its subsidiaries, affiliates, directors, officers, employees, and agents from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against Company as a result of any negligence or misconduct on Independent Contractor's part, or from any breach or default of this Agreement which is caused or occasioned by the acts of Independent Contractor or agents for Independent Contractor. Independent Contractor shall ensure that its employees and affiliates take all actions necessary to comply with the terms and conditions set forth in this Agreement. Additionally, Independent Contractor further agrees to defend, indemnify, and hold harmless Company for any and all claims arising out of any injury, disability, or death of any of Independent Contractor's employees or agents.

## INDEPENDENT CONTRACTOR'S INSURANCE

9. **General Insurance Requirements** - The Required Insurance as outlined below shall cover Independent Contractor, its authorized representatives, employees, agents, and any other person.

(including its authorized representatives, employees, and agents) performing any work under any contract or agreement with Company.

Insurance carriers must have at least an A.M. Best's Rating of "A" and a Financial Size Category of "VIII" or better as set forth in the most current edition of A.M. Best's Key Rating Guide, and shall otherwise be acceptable to Company. Insurance carriers must be admitted in the State of South Dakota and/or North Dakota and admitted in the state in which the Work is being performed.

Independent Contractor shall always obtain and maintain in force policies of insurance covering Independent Contractor's operations during the term of this Agreement and through any applicable statute of limitations, including specifically:

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**Workers' Compensation and Employer's Liability Insurance** - Independent Contractor agrees to provide workers' compensation and Employer's Liability insurance for Independent Contractor's employees and agents during the performance of work by Independent Contractor or its agents for Company. Employer's Liability insurance must be in an amount of at least \$500,000. Where permitted by law, such insurance shall be endorsed to provide for a Waiver of subrogation in favor of Company.

**Liability Insurance** - Independent Contractor agrees to maintain a policy of General Liability (which includes, but is not limited to, premises and operations liability and contractual liability coverage) and Auto Liability insurance in the minimum amount of \$1,000,000 each occurrence to cover any negligent acts committed by Independent Contractor or Independent Contractor's employees or agents during the performance of any duties under this Agreement. General Liability policy shall name Furst-McNess Company as an Additional Insured on a primary and non-contributory basis. Please note that the required liability limits can be satisfied through a combination of Primary and Umbrella limits.

**Cargo Insurance** - Independent Contractor shall procure and maintain in force, motor truck cargo insurance in the minimum amount of \$25,000 on any one shipment covering Furst-McNess Co. property while in the Independent Contractor's care, custody, or control. Such insurance shall be provided on an "all-risk" perils of loss basis.

**Vehicle Physical Damage** - Independent Contractor and/or its assigns assumes and shall bear the entire risk of loss or damage to Independent Contractor's vehicle(s) and related vehicle equipment.

Independent Contractor shall provide to Furst-McNess Co. with certificates of insurance and applicable policy endorsements evidencing this coverage upon request of Furst-McNess Co.

#### PERSONS HIRED BY INDEPENDENT CONTRACTOR

10. All persons hired by Independent Contractor to assist in performing the tasks and duties necessary to complete the Scope of Work shall be the employees of Independent Contractor unless specifically indicated otherwise in an agreement signed by all parties. Independent Contractor shall immediately provide proof of Workers' Compensation insurance and General Liability insurance covering said employees, upon request of the Company.

#### REPRESENTATION

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11. Each party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party hereto, or anyone acting on behalf of any party hereto, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed, and dated by all parties hereto.

### PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

### GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed under, the laws of the State of \_\_\_\_\_.

Jurisdiction and venue for all purposes shall be in the County of \_\_\_\_\_, State of \_\_\_\_\_.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
Independent Contractor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Independent Contractor's Name Printed

\_\_\_\_\_  
FMC Company Representative

\_\_\_\_\_  
Date

Initials: \_\_\_\_\_