



## CREDIT APPLICATION

### **BUSINESS INFORMATION**

Full Name of Organization \_\_\_\_\_ Federal Tax ID# \_\_\_\_\_  
Physical Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Billing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Type of Business: Corporation ☐ Partnership ☐ Sole Prop ☐  
Email \_\_\_\_\_ Years in Business \_\_\_\_\_

### **PRINCIPAL OWNERS AND OFFICERS**

Name \_\_\_\_\_ Title \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_

### **CREDIT INFORMATION**

Amount of Credit Requested \_\_\_\_\_ Commodities Shipped \_\_\_\_\_  
Payment coming from (ie. Payment company) \_\_\_\_\_  
Special billing instructions \_\_\_\_\_  
Account Payable Contact \_\_\_\_\_ Email \_\_\_\_\_ Telephone \_\_\_\_\_

### **Odyssey Division you're working with: (see below)**

Managed Services: Enterprise \_\_\_\_ Brokerage \_\_\_\_ Fulfillment \_\_\_\_ Freight All Kinds \_\_\_\_ Tank Intermodal \_\_\_\_  
Transport & Warehouse: Specialized Logistics \_\_\_\_ Consumer Warehousing \_\_\_\_ Metals Warehousing \_\_\_\_  
Intermodal: Rail Intermodal \_\_\_\_  
Integrated Marine Logistics: Alaska \_\_\_\_ Hawaii \_\_\_\_ Puerto Rico \_\_\_\_ International \_\_\_\_

**Account Executive you're working with:** \_\_\_\_\_

### **AUTHORIZED CORPORATE OFFICER:**

**I HAVE READ AND DO ACKNOWLEDGE AND AGREE TO THE TERMS AND CONDITIONS OF THIS APPLICATION, INCLUDING THOSE ON PAGE 2 OF THIS APPLICATION.**

Name & Title (please print) \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

## Odyssey Credit Terms & Conditions

This Credit Application with the Credit Terms and Conditions ("Application") is entered into as of the date specified above and by the undersigned ("Applicant"), on behalf of itself and all subsidiaries and affiliates identified in Section IV hereto ("affiliates" and collectively with Applicant and all freight and cargo are the "Obligors," and each individually is an "Obligor"). Obligors desire to transport freight or goods with or through or to otherwise utilize services offered by Odyssey, or its affiliates, ("Odyssey") or Odyssey's providers (the "Services"). Obligors have requested an extension of credit to Obligors from ODYSSEY through the issuance and release of bills of lading, freight receipts, shipping documents, freight or goods, or a combination thereof or in conjunction with any Services or transportation by ODYSSEY or its providers, without limitation, directly or through duly authorized freight forwarders, carriers, providers, or other agents or providers of Obligors. Obligors request a credit amount not to exceed that amount set forth in Section III hereto (the "Credit Request"); and have requested an extension of credit to Obligors from ODYSSEY. Obligors represent and warrant that all statements, representations, and information provided or made in support of this Application are true and correct and fairly and accurately present the financial condition of Obligors as of the date indicated therein and the results of operations for the period indicated therein. Obligors have not withheld any material contingent liabilities, liabilities for taxes, material forward or long-term commitments, or unrealized or anticipated losses from any unfavorable commitments, and no material adverse change in the condition, financial or otherwise, or operations of Obligors have occurred before or after the date of this application. Obligor shall promptly notify ODYSSEY of any change that may affect its Application or credit profile. Obligors acknowledge that ODYSSEY is willing to extend credit to Obligors only because Obligors guarantee that all freight, dead freight, tariff charges, demurrage, container equipment, detention, storage, general average, salvage, damages, loss charges, surcharges, arbitraries, expenses, warehouse charges, consolidation and deconsolidation charges, handling charges, attorneys' fees and costs, Application and related liabilities, expenses, fees, and costs, and all other charges, fees, and sums payable, due and owing to ODYSSEY by Obligors (the "Obligations") will be paid by Obligors, or by the cargo or freight or other agent of Obligors, in accordance with the terms and conditions set forth herein;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Obligors hereby agrees to the terms and conditions as part of any Credit Extension by ODYSSEY:

### **1. AUTHORIZATION OF APPLICANT**

Applicant hereby represents and attests that (i) it is authorized and empowered to enter into this Application by and on behalf of each affiliate set forth in Section IV hereto, (ii) represents such affiliates in all matters related to this Application, and (iii) has the authority and power to bind such affiliates to the terms and provisions of this Application.

Obligors give ODYSSEY permission to make inquiry on financial and related matters at Obligor's bank, vendors or suppliers, and authorizes such firms to release information regarding the same to ODYSSEY. Each Obligor and the principal(s), proprietor(s), and guarantor(s) of each hereby consent to ODYSSEY using consumer credit reports to further evaluate creditworthiness in conjunction with Obligors and the Services and any extension or continuation of credit.

### **2. OBLIGORS; SHIPPING DOCUMENTATION**

Obligor shall be fully responsible for and liable to ODYSSEY for all charges, costs, and expenses, without limitation, as such may arise from or relate to any Obligor or any shipping documents, including, but not limited to, any bills of lading, freight receipts, or other documents (without limitation, "Shipping Documentation"), and without regard for any endorsement, non-endorsement, or transfer of any Shipping Documentation.

### **3. AGENT FOR PAYMENT**

If an Obligor engages or utilizes the services of an agent or provider in connection with the payment of Obligations due to ODYSSEY (a "Paying Agent"), Obligor agrees that such Paying Agent acts as the agent for said Obligor and not as an agent of ODYSSEY.

### **4. UNCONDITIONAL PROMISE TO PAY, GUARANTEE AND JOINT AND SEVERAL LIABILITY**

For value received, receipt of which is hereby acknowledged, Obligors agree they shall be absolutely and unconditionally liable to ODYSSEY, without notice or demand, setoffs, withholdings, counterclaim, discount, or other fees, for payment of all Obligations due and owing by Obligors to ODYSSEY. Obligors hereby absolutely and unconditionally guarantee payment to ODYSSEY of the Obligations irrespective of whether or not funds for payment of the Obligations have been advanced to any Paying Agent or other agent or any other by Obligors. If Obligors provide funds to a Paying Agent or other agent or any other to pay the Obligations, and such Paying Agent or other agent or other converts such funds to its own use, becomes insolvent, or is adjudged bankrupt, or for any other reason fails to pay such funds to ODYSSEY, Obligors shall remain absolutely and unconditionally liable to ODYSSEY for the payment of any and all Obligations due. Obligors understand and agree that they shall be jointly and severally bound and liable for any and all Obligations owed to ODYSSEY by any Obligor or anyone using any Obligor's credit.

### **5. NO WAIVER OR ESTOPPEL**

In no event shall any demand for payment of Obligations, freight, charges, or other fees by ODYSSEY, a carrier, or a vessel upon an Obligor's Paying Agent or other agent constitute a waiver or an estoppel of ODYSSEY's right to enforce the promises and guarantees set forth in this Agreement against Obligors. All Obligors shall be jointly and severally liable to ODYSSEY for the payment of the Obligations, as well as for any and all expenses of ODYSSEY, including, but not limited to, fees and expenses incurred under Section 14 hereto.

### **PAYMENT TERMS**

(a) All Obligations shall be due in full (without deduction, setoff, counterclaim, discount, or other fees) in immediately available funds at New York, New York, as may be prescribed in any resulting Credit Extension.

(b) In the absence of any applicable payment terms in any Credit Extension, all Obligations shall be due in full (without deduction, setoff, counterclaim, discount, or other fees) in immediately available funds at New York, New York, in U.S. Dollars (the "Payment Currency") within 30 days from date of invoice.

(c) Overdue payments shall be subject to, at ODYSSEY's discretion, interest at the rate of one and one-half percent (1.5%) per thirty (30) day period or the maximum rate permitted under applicable law, and a \$35.00 late payment fee for each invoice.

### **FINANCIAL STATEMENTS**

(a) In support of this Application and as a condition of any continued Credit Extension, each Obligor agrees furnish to ODYSSEY promptly upon request, a copy of the annual audited financial statements of the Obligor for such year containing balance sheets (reflecting, without limitation, all contingent liabilities), income statements and statements of changes in financial position (reflecting without limitation, cash flow changes) as of the end of such year in each case setting forth in comparative form the figures for the preceding year, all in reasonable detail, and all of the above prepared in accordance with GAAP by a certified public accountant and containing only qualifications acceptable to ODYSSEY in ODYSSEY's sole discretion.

(b) Promptly upon request by ODYSSEY, each Obligor agrees to furnish to ODYSSEY interim financial statements containing balance sheets and income statements for calendar months, which shall be certified by the President or Chief Financial Officer of such Obligor as to their accuracy, completeness, and truthfulness, and any additional information concerning the financial condition of Obligor which ODYSSEY may reasonably request.

### **LIENS**

ODYSSEY shall have a continuing lien on any and all freight, cargo, goods, Shipping Documentation, and any documents related thereto, shipped by Obligors with services provided by ODYSSEY or as a part of any Services, all of which shall survive delivery, for all Obligations, including but not limited to all freight, dead freight, demurrage, storage, general average, salvage, damages, loss, charges, expenses, warehouse charges, forwarder costs, and any other sums whatsoever payable by or chargeable to or for the account of Obligors under this Application, any contract, any bill of lading, any tariff, the Services, and any other contracts of carriage or other agreements or services with Obligors whatsoever, whether they may be relevant to this Application or not, and the cost and expenses of recovering the same; ODYSSEY may sell the goods privately or by public auction without notice to Obligors. If on sale of the goods, the proceeds fail to cover the amount in default and the cost and expenses incurred, ODYSSEY shall be entitled to recover the deficit from Obligors. Nothing herein shall be construed to restrict, limit, or prohibit ODYSSEY from asserting a maritime lien or any other lien, its right to arrest any vessel, or encumber any Obligor property, or any other rights or legal remedies of ODYSSEY to collect the Obligations. Obligors hereby expressly grant to ODYSSEY an enforceable security interest under any applicable commercial code, including as such may be enforced under the Uniform Commercial Code, against any and all Obligor property whether shipped with ODYSSEY or not and whether related to this Application or not.

### **RIGHT TO SET-OFF AND SECURITY INTEREST**

ODYSSEY shall have the right to set off and apply against the Obligations in such manner as ODYSSEY may determine, at any time and without notice to Obligors, any and all deposits (general or special, time or demand, provisional or final) or other sums at any time credited by or owing from ODYSSEY to Obligors, whether or not Obligations are then due and owing. As further security for the Obligations, Obligors hereby grants to ODYSSEY a security interest in all money, instruments, and other property of Obligors now or hereafter held by ODYSSEY, including, without limitation, property held in safekeeping, to secure payment of the Obligations. In addition to ODYSSEY's right of setoff and as further security for the Obligations, Obligors hereby grant to ODYSSEY a security interest in all deposits (general or special, time or demand, provisional or final) and other accounts of Obligors now or hereafter on deposit with or held by ODYSSEY and all other sums at any time credited by or owing from ODYSSEY to Obligors. The rights and remedies of ODYSSEY hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which ODYSSEY may have.

### **GENERAL WAIVERS**

To the extent permitted by law, Obligors severally waive any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by ODYSSEY. No failure or delay on the part of ODYSSEY, and no course of dealing between ODYSSEY and the Obligors, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

### **SEVERABILITY**

If a court of competent jurisdiction determines any term or provision in this Application is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Application without invalidating the remainder of either the affected provision or this Application or any related documents to this Application.

### **SURVIVAL**

The rights and privileges of ODYSSEY hereunder shall inure to the benefits of its successors and assigns, and the terms of this Application shall be binding on all heirs, executors, administrators, assigns, and successors of Obligors.

### **ASSIGNABILITY**

ODYSSEY may assign, pledge or otherwise transfer this Application or any of its rights and powers under this Application without notice, with all or any of the obligations owing to ODYSSEY by Obligors, and in such event the assignee shall have the same rights as if originally named herein in place of ODYSSEY. Obligors may not assign this Application or any benefit accruing to it hereunder without the express written consent of ODYSSEY, which may be withheld for any reason or no reason.

### **PAYMENT OF COSTS AND ATTORNEYS' FEES**

Obligors agree, jointly and severally, to pay all costs and expenses of ODYSSEY, including, without limitation, all reasonable attorneys' fees and costs of ODYSSEY's chosen legal counsel, in connection with any claims arising under or related to (a) a Credit Extension pursuant to this Application, (b) this Application, (c) any and all legal proceedings brought by ODYSSEY for the collection of any and all Obligations owed to ODYSSEY by Obligors, or (d) any combination of the foregoing.

### **FORUM SELECTION/CHOICE OF LAW AND TIME FOR SUIT; ARBITRATION**

(a) Any and all disputes arising out of or in connection with this Application and any Obligations due hereunder may be referred to by either party to litigation before any court of competent jurisdiction. Alternatively, the parties may agree to resolve disputes by arbitration in New York, New York (or such other place mutually agreed upon by the Parties) under the rules of the American Arbitration Association. The arbitration shall be before a single English speaking arbitrator appointed by the parties or, failing such appointment and upon the application of either party, by the American Arbitration Association. There shall be no restrictions on the nationality of the arbitrator. The decision of the arbitrator shall be final, binding, and not subject to further review.

(b) The decision of the arbitrator may be enforced by any court, tribunal, or other forum as may properly assert jurisdiction. The parties hereto expressly consent and agree that the United States District Court for the Southern District of New York ("SDNY") has personal jurisdiction for this purpose, and the parties expressly waive any objections to the SDNY for this purpose.

(c) This Application shall be construed pursuant and subject to the applicable maritime law of the United States, including but not limited to the United States Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, as codified at 46 U.S.C. § 40101 et seq. To the extent the maritime law of the United States is silent on any given legal issue that might arise under this Application, reference shall be made to the laws of the State of New York, without reference to its conflicts of laws provisions.

(d) ODYSSEY may bring suit in its own name or in the name of any ODYSSEY related company.

### **OBLIGATION TO COLLECT FREIGHT AND CHARGES**

The undersigned recognizes that ODYSSEY has an obligation to collect and receive all freight and charges due under any pertinent agreements, and Shipping Documentation, any bills of lading or other shipping documents, and any tariff or tariffs.

### **REMEDIES ARE CUMULATIVE**

The rights and remedies available to ODYSSEY under this Application are cumulative and are in addition to every other remedy in law or equity. The exercise of any remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other remedy.

### **EXECUTION, MODIFICATION, AND TERMINATION OF CREDIT EXTENSION**

Execution of this Application by Obligors authorize(s), but does not require, ODYSSEY to extend credit in accordance with the terms hereof (a "Credit Extension"). To the extent ODYSSEY agrees to extend credit subject to the terms hereof, ODYSSEY reserves the right to terminate any Credit Extension to Obligors at any time without cause or reason. Furthermore, Obligor acknowledges and agrees that ODYSSEY's Terms and Conditions may be modified by ODYSSEY without further notice, and that the Terms and Conditions posted on ODYSSEY's website as of the date of tender of cargo or request for performance of services shall govern the parties' relations regarding such cargo or services. Obligors agree, to the fullest extent permitted by law, that upon termination of any Credit Extension to Obligors for any reason or no reason, Obligors recovery from ODYSSEY for any and all claims, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, shall not exceed 1,000.00 U.S. Dollars. Any Credit Extension shall be in the form of a Credit Extension Letter. Obligor recognizes that any additional or different terms contained in any Credit Extension Letter shall apply, and in the event of any conflict among any documents or agreements, the order of governance shall be, first, the Credit Extension Letter, second, these terms and conditions, third, any other signed written contract, fourth, the language most favorable to ODYSSEY in any shipping document or bill of lading, and last, ODYSSEY's applicable tariff.

### **OVERCHARGES, DUPLICATE PAYMENTS; OVER COLLECTION; INVOICING AND CHARGES**

Obligor shall have ninety (90) days from the day of the applicable invoice to dispute any amounts or charges, paid or unpaid, collected or uncollected. Any invoice or amount not disputed within ninety (90) days of the date of the applicable invoice shall be deemed correct. ODYSSEY, in its sole discretion, may correct any invoice or charge, and Obligor shall thereafter have thirty (30) days to dispute the invoice, or it shall be deemed correct.

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