

LICENSE, SWITCHING AND STORAGE AGREEMENT

This Agreement is made and entered into at Portland, Oregon between:

RAILROAD: PENINSULA TERMINAL COMPANY
11645 N. Force Avenue
Portland, OR 97217
Phone: (503) 285-5023
Fax: (503) 285-6154

Phone: _____
FAX: _____

In consideration for the respective covenants and undertaking of Railroad and Industry, it is agreed:

1) **TRACK LEASE AND RAILCAR STORAGE**. Railroad grants Industry a non-Exclusive license to utilize track at Railroad's facility for purposes of storing rail cars containing industry product and transferring Industry product from rail to truck or vice versa. Industry shall pay Railroad on a per car per day basis for use of Railroad's track as follows:

Scale	Rate
0 – 30 Days	N/C
31 – 40 Days	\$10.00 Per Day
41 – 50 Days	\$20.00 Per Day
50 + Days	\$30.00 Per Day

2) **TERMINAL SWITCHING**. Railroad will move inbound Industry rail cars from the interchange track to Industry's lease track and return same to interchange as part of the line haul switching. Intra-terminal switching of Industry railcars shall be done as directed by Industry and charged to Industry at Railroad's then prevailing tariff for local switching. As of the making of this Agreement, the local switching charge is \$149.00 per car. Railroad shall have no liability to Industry for delays in switching or transfer from the BN or UP. Railroad shall also be free to allocate the scheduling of switches among its industry customer without being deemed in breach of the Agreement.

- 3) **INVOICING AND PAYMENT.** Railroad shall invoice Industry for the rail car storage and switching fees for the prior month. All invoices are due within 20 days of invoice date. Past due invoices shall bear interest at the rate of 1% per month until paid
Industry shall also pay any applicable Federal, State or Local taxes on inventory contained in Industry rail cars.
- 4) **INSURANCE AND WAIVERS.** Industry shall maintain comprehensive casualty insurance upon all rail cars and rail car contents delivered to Railroad at interchange. Such policy of insurance shall provide coverage for the value of any product released from an Industry rail car upon Railroad property and the cost to remove the released product from Railroads property unless the release result from derailment of the tank car or collision of the tank car when being moved by locomotive power. Railroad shall maintain comprehensive general liability insurance for the loss of Industry product and cost of remediation if the release results from a derailment of the tank car or collision of the tank car when being moved by locomotive power. Neither party shall have any liability for any risk insured by the other or which the other is responsible for insuring under this Agreement. Industry acknowledges its awareness that Railroad's comprehensive general liability insurance only provides coverage for property damage and remediation resulting from a Railroad accident as described above. In no event, regardless of the theory of liability advanced, shall Railroad be liable for lather loss or release of Industry product if the loss or release is not covered by Railroad's comprehensive general liability policy.
- 5) **Term and Termination.** This Agreement shall commence upon its execution by both parties and continue until terminated. Either party may terminate this Agreement by providing the other with 90 days advance notice of termination. If Industry fails to pay any invoice, rent or any part thereof within thirty (30) days of presentment, or if Industry defaults in the performance of any other material term or condition of this Agreement and fails to correct such delinquency or commence to cure such default within thirty (30) days after receipt of written notice from Railroad describing the default within unless Industry has required dispute resolution procedures as outlined below. Railroad may consider Industry to have breached this Agreement.
- 6) **DISPUTE RESOLUTION, CESSATION OF SERVICE, DEFAULT.** All disputed arising under this Agreement shall be resolved as follows:
6.1 If this Agreement has not expired, both parties shall continue to perform in accordance with this Agreement during resolution proceedings of any type.

6.2 First, Railroad's President or his designee and Industry's Regional Operations Manager or his designee shall confer by telephone, in person (hereinafter meet) within seven (7) work days after notice of any unresolved dispute and shall review the facts involved in the dispute and terms of this Agreement and attempt in good faith to resolve the issues. Both railroad and Industry shall actively gather all relevant facts available at the time and shall present them each to the other at the resolution meeting.

6.3 If the dispute is not resolved through negotiations, it shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association. The arbitration shall be conducted before a single arbitrator in Portland, Oregon unless the parties agree to a different venue. The arbitrator shall render a written decision in accordance with the laws of the state of Oregon, excluding the conflicts provision of Oregon law. Railroad and Industry shall each deposit one-half (1/2) of the requisite filing fee. Unless extended upon the mutual consent of the parties, the arbitration shall be conducted within ninety (90) days of demand. The arbitrator shall award the prevailing party its expenses, which may include reasonable attorney fees if the arbitrator finds that any claim or defense was asserted without reasonable justification. The arbitrator's award shall be final and may be enforced in any court of competent jurisdiction.

IN WITNESS HEREOF, the parties have executed this Agreement in duplicate this day of _____.

RAILROAD:
Peninsula Terminal Company
11645 N. Force Avenue
Portland, OR 97217
Phone: (503) 285-5023
Fax: (503) 285-6154

INDUSTRY:

Phone: _____
Fax: _____

By: _____

By: _____

Kent A Warnes
General Manager
Date: _____

Date: _____

