

FMC Agreement No. 217-011643

217-011643

SPACE CHARTER AGREEMENT

BETWEEN

KAMBARA KISEN CO., LTD. AND KYOWA SHIPPING CO., LTD.

(A space charter agreement as defined in 46 C.F.R. § 572.104 (bb))



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THIS AGREEMENT is entered into on this 20<sup>TH</sup> day of November, 1998 by and between KAMBARA KISEN CO., LTD. ("KAMBARA"), a Japanese Corporation, having its Principal place of business at 1083 Tsuneishi, Numakuma-Cho, Numakuma-gun, Hiroshima-Pref, 720-0313, Japan, and KYOWA SHIPPING CO., LTD. ("KYOWA"), a Japanese Corporation having its Principal place of Business at 12-7, Shiba Daiimon 2-Chome, Minato-Ku, Tokyo, 105-0012, Japan, on the following terms and conditions.

ARTICLE 1: AGREEMENT NAME

This Agreement's full name is "Space Charter Agreement Between KAMBARA KISEN CO., LTD. and KYOWA SHIPPING CO., LTD."

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit the parties to achieve efficiencies and economies in conducting their respective Pacific Islands ocean common carrier services by permitting KYOWA to make use of space on vessels owned, operated or chartered by KAMBARA, on specified terms and conditions, within the geographic scope of this Agreement as set forth in Article 4 hereof.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to this Agreement are: (1) Kambara Kisen Co., Ltd., a Japanese Corporation and an ocean common carrier in the trade covered hereby, having its principal place of business at 1083 Tsuneishi, Numakuma-Cho, Numakuma-Gun, Hiroshima-Pref, 720-0313, Japan and (2) Kyowa Shipping Co., Ltd., a Japanese



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Corporation and an ocean common carrier in the trade covered hereby, having its principal place of business at 12-7, Shiba Daimon, 2-Chome, Minato-Ku, Tokyo 106-0012, Japan.

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement shall extend to the trade between Hong Kong, Kaohsiung, Keelung, and South East Asia, on the one hand, and ports of Guam and Saipan, on the other hand, whether any such ports or points are served by direct vessel call, relay or transshipment and includes the inland intermodal carriage of cargoes by the parties via such ports(the "Trade").

ARTICLE 5: OVERVIEW OF AGREEMENT AUTHORITY

- A. KAMBARA will provide to KYOWA 100 TEU slots per month in the Trade, on terms, conditions, and compensation to be adopted by the parties, provided, however, that the parties may from time to time decrease or increase the number of such slots(up to a maximum of 200 TEU per month) with such adjustments to terms, conditions and compensation as the parties may adopt. KYOWA shall pay for slots actually utilized.
- B. KAMBARA schedule adjustments and/or alterations in service in Trade, including cancellations or substitutions of ports and/or vessels are at the sole convenience of KAMBARA. KAMBARA shall give KYOWA notice of any such adjustments and/or alterations as soon as it is practicable.



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- C. Any movement or repositioning of KYOWA containers will be required only to the extent permitted by the laws of the United States and applicable regulations issued thereunder, including, but not limited to, the Jones Act(46 U.S.C. § 883) and related U.S. Government regulations.
- D. The liability and obligations as between KAMBARA and KYOWA with respect to cargo and containers carried for the account of KYOWA("KYOWA CARGO") while in the custody of KAMBARA shall be governed by the terms and conditions of the KAMBARA long-form combined transport Bill of Lading in use at the time as if KAMBARA were the "Carrier" and KYOWA the "Merchant" referred herein.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY.

There are no officials of the Agreement. Legal counsel for the parties are hereby authorized to file and process this Agreement, together with any subsequent amendments thereto adopted by the parties, with the Federal Maritime Commission.

ARTICLE 7: MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION.

None

ARTICLE 8: VOTING

None



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ARTICLE 9: DURATION AND TERMINATION

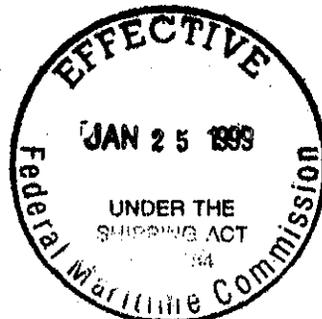
- A. This Agreement shall continue in effect until terminated by either party giving written notice to the other not less than sixty(60) days prior to the termination date specified in that notice of termination shall be given by either party before March 1, 1999, unless a mutual decision to terminate is agreed by the parties; and further provided that as to any voyage begun while this Agreement is in effect but not completed at the time of this Agreement's termination, this Agreement shall remain applicable to such voyage until completed. Termination of this Agreement shall not relive the parties of any obligations which they incurred under this Agreement prior to the termination date.
- B. Upon termination of this Agreement, the parties shall promptly so notify the Federal Maritime Commission.

ARTICLE 10: EFFECTIVE DATE

This Agreement shall be effective on the earliest date it may lawfully be carried out under the Shipping Act of 1984.

ARTICLE 11: FORCE MAJEURE

Neither party to this Agreement shall be held responsible with respect to its failure to perform any term or condition of this Agreement if such failure to civil commotion, invasion, rebellion, hostilities, sabotage, strikes, labor disputes, work slowdowns or work stoppages, governmental(national, state, territorial, prefectural, municipal, or other) regulation, controls or actions, acts of God, or any other cause whatsoever beyond the control of the party.



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ARTICLE 12: LIMITATIONS.

A. Each party to this Agreement shall issue its own Bill of Lading applicable to its cargoes and each party shall maintain individually its own tariff unless the parties should each be members of the same Conference or Rate Agreements.

ARTICLE 13: NOTICES.

A. Any notices or other communication between the parties in connection with this Agreement shall be sent by first class airmail, postage prepaid, addressed as follows:

Kambara Kisen Co., Ltd.  
1088 Tsunelshi, Numakuma-Chu,  
Numakuma-Gun, Hiroshima-Pref 720-0818  
JAPAN

Kyowa Shipping Co., Ltd.  
12-7, Shiba Daimon.2-Chome, Minato-Ku,  
Tokyo 105-0012  
JAPAN

B. Notices provided under paragraph A of this Article shall be effective as of the date of the notice.



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ARTICLE 14: GOVERNING LAW AND ARBITRATION.

Any and all difference and disputes of whatever nature arising out of this Agreement shall be arbitrated in Tokyo. This Agreement shall be governed by the laws of Japan. The parties expressly choose the above-described laws to the exclusion of all other laws or choice-of-law rules which might otherwise be applicable. The parties agree that any such arbitration shall be before a board of three persons, consisting of one arbitrator to be appointed by each party and one by the two so chosen. Either party may call for arbitration by service upon the other of a written notice specifying the name and address of the arbitrator chosen by the first party and description of the disputes or differences which that party desires to put to arbitration. If the other party shall not, by notice served within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the disputes or differences specified, then the first party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator had been appointed by the other party. The selection of all arbitrators under this Article shall be accomplished within 90 days following the original notice calling for arbitration. Any award of the arbitrators under this Article shall be binding upon the parties and enforceable as a rule of court in any court of competent jurisdiction. Nothing provided in this Article shall be construed to relieve the parties from any duties or obligations under the laws of the United States, including but not limited to, the Shipping Act of 1984, as amended.

ARTICLE 15: ASSIGNMENTS.

Neither party to this Agreement may assign its rights or delegate its obligations under this Agreement to any person firm or corporation without the prior written consent of the other party, subject to any requisite filings with the U.S. Federal Maritime Commission.



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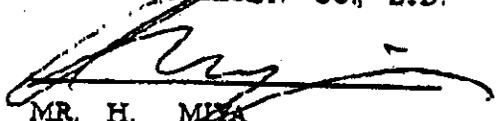
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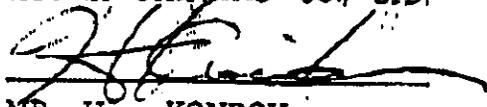
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Dated this 20<sup>th</sup> day of November, 1998

For and on behalf of  
KAMBARA KISEN CO., LTD.

  
MR. H. MIYA  
GENERAL MANAGER  
LINES DEPT.

For and on behalf of  
KYOWA SHIPPING CO., LTD.

  
MR. H. KONDOH  
DIRECTOR

