

BROKER-SHIPPER AGREEMENT

THIS AGREEMENT is made and entered on _____, 20____, by and between _____ ("Shipper") located at _____ and _____ ("Broker"), with its principal place of business at _____.

WITNESSETH

WHEREAS Broker is in the business of arranging the transportation of loads by motor carriers; and

WHEREAS Shipper desires to utilize the services of Broker to satisfy some of its transportation needs;

NOW THEREFORE, intending to be legally bound, Broker and Shipper agree as follows:

1. **Services.** Broker shall make reasonable efforts to place Shipper's loads with responsible carriers for the purposes of transporting the loads with reasonable dispatch according to Shipper's specifications.

2. **Payment and Charges.** Shipper shall tender certain shipments, from time to time, to Broker. The charges and rates for each shipment shall be provided in Appendix A, attached hereto and incorporated herein, although from time to time rates may be agreed upon by email. Appendix A can be supplemented or revised by written agreement signed by both parties, or, prior to transportation, by facsimile by Broker to Shipper if not objected to by Shipper, in writing, within one business day from the date and time faxed. In the event that Broker accepts and provides Services to Shipper before reaching an agreement with Shipper on pricing, Shipper agrees to pay Broker the last pricing quoted by Broker to Shipper for that same or similar load or, in the event that no pricing has been provided by Broker, Shipper agrees to pay for Broker's Services based on Broker's standard pricing model. Shipper agrees to pay Broker, without deduction or setoff, within fifteen (___) days of receiving the invoice, with interest for late payments accruing monthly at a rate of one percent (___%). Shipper shall also be liable for any expenses, including attorney fees, Broker incurs in collecting its rates and charges. All references to dollars, currency, and money shall mean US Dollars (\$US).

3. **Broker's Responsibilities.**
 - a. ***Compliance.*** Broker represents and warrants that it is duly and legally qualified to operate as a property Broker and to provide the transportation services contemplated herein. Broker agrees to comply with applicable laws regarding the provision of such Brokerage services. The parties understand and agree that Broker functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation.
 - b. ***Refused Goods.*** Broker shall notify Shipper of any refused freight at Shipper and/or third party locations and request additional instructions regarding delivery or storage of the refused goods. Such notice by Broker shall, as soon as reasonably practical.
 - c. ***Delay; Accidents.*** Broker shall notify Shipper if the Broker becomes aware of any accidents, spills, theft, hijacking or other events which impair the safe and prompt delivery of Shipper's goods.

- d. *Delivery Receipt.* Broker shall obtain an acknowledgement of delivery for all shipments by notation on the bill of lading. At the request of Shipper, Broker agrees to provide copies of same to Shipper in sufficient detail to substantiate billing for the services provided.
- e. *Carrier Insurance.* Broker shall only broker Shipper loads to those Carriers that maintain policies of insurance as follows:
 - Cargo Liability: \$_____;
 - Automobile Liability: \$_____;
 - General Liability/Property Damage: \$_____;
 - Worker's compensation insurance with minimum limits as required by law;
 - Any other insurance required by an appropriate authority.
- f. *Broker Insurance.* Broker agrees to maintain at its own expense during the term of this Agreement the following insurance coverage amounts:
 - General Liability: \$_____;
 - Cargo Insurance: \$_____.

4. **Lien.** It is expressly agreed, as a condition of Broker's provision of freight services to Shipper, that Broker shall have a lien on all of Shipper freight in Broker's possession for the total amount owed to Broker for all freight charges, storage and charges for related services, including charges related to freight previously delivered upon the promise of Shipper to pay such charges. No further notice of this lien shall be provided to Shipper.

5. **Cargo Loss, Damage, or Shortage.** In the event of a cargo loss, damage or shortage claim, Shipper agrees to notify Broker immediately by phone and to subsequently submit to Broker a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage within twenty (___) days following the date of delivery. No claims or allowances for shortages, damage or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery. Broker agrees to submit, negotiate and settle all cargo claims with the responsible carrier and to keep Shipper advised of the status of all such claims. Upon request by Shipper, Broker shall assign its rights against the carrier to Shipper. Nothing herein shall be construed to restrict any right or cause of action Shipper may have against any carrier involved with the transportation of Shipper's shipment.

6. **Liability.**

- a. *Broker's Limited Liability.* Broker shall not be liable, under any circumstances, to Shipper for the loss or damage to Shipper's goods. Liability, if any, for such losses and damages to Shipper shall be borne solely by the carriers. Broker's liability to Shipper, if any, for any breach of representation, warranty or covenant under this Agreement shall be limited to the total compensation for services paid to Broker under this Agreement in connection with such services.
- b. *Shipper Liability.* Shipper shall be directly liable to Broker and its carriers for costs and accessorial charges incurred by either as the result of an order being canceled by Shipper or as required to perform pick-up or delivery of Shipper orders.

- c. *No Special Damages.* In no event will either party be liable to the other for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.
7. **No Exclusivity.** It is understood and agreed between the parties hereto that Broker shall be free to accept freight for transportation from shippers other than Shipper and that Shipper shall be free to tender freight for transportation to Brokers other than Broker.
8. **Shipping Documents.** Unless otherwise agreed in writing, all shipments tendered shall be accepted on a bill of lading acceptable to Shipper as the shipping document. The parties agree that bills of lading and delivery receipts shall be used solely as receipts for shipment and to identify the kind and quantity of goods, place of pickup and delivery, shipper and consignee and other information as required by Shipper. In the event of a conflict between the bill of lading terms and this Agreement, this Agreement shall prevail. Upon request of Shipper, Broker shall require all carriers to obtain a delivery receipt from the consignee, showing the products delivered, condition of the shipment and the date and time of such delivery.
9. **Term.** The term of this Agreement shall be for one () year(s) and shall automatically be renewed for successive one () year(s) periods; provided, however, that this Agreement may be terminated at any time by giving fourteen () days prior written notice to the other party.
10. **Indemnification.** Broker shall defend, indemnify and hold harmless Shipper from any loss or damage, including loss, damage or injury to persons or property, that Shipper may incur as a direct result of Broker's negligent acts or omissions. However, it is understood and agreed that Broker assumes no liability for bodily injury, property damage or public liability arising out of the involved transportation. Shipper shall defend, indemnify and hold harmless Broker from any and all loss or damage, including loss, damage or injury to persons or property, that Broker may incur as a direct result of Shipper's negligent acts or omissions.
11. **Relationship of the Parties.** Broker represents and warrants that it is an independent contractor under this Agreement and that its agents and/or employees are under Broker's exclusive management and control, and that Shipper neither exercises nor retains any control over Broker, its operations, agents or employees in any manner whatsoever.
12. **Assignment.** No party may assign this Agreement without the prior written consent of the other party. However, Broker may subcontract and co-broker any shipments made on behalf of Shipper under this Agreement.
13. **Force Majeure.** Except with respect to payment obligations pursuant to this Agreement, neither party is liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, strikes, failure of utilities, war (declared or undeclared), action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, or epidemics.

14. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both parties. This Agreement shall be construed in accordance with the laws of _____, without regard to its conflict of law principles that would result in application of any other law. All civil actions filed as a result of disputes arising out of this Agreement shall be filed in the court of proper jurisdiction located in _____, _____. Each party must bring a civil action to recover damages or amounts claimed under this Agreement within two (2) years from the date of shipment. Any matters not filed within the above limitations period shall be barred.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

BROKER

SHIPPER

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Appendix A

Schedule of Shipment Charges and Rates