

TRANSPORTATION BROKER-CARRIER AGREEMENT

This Agreement is entered into this _____ day of _____, 20____, by and between _____ (**hereinafter referred to as "BROKER"**), a property transportation broker registered with and operating under property transportation broker license No. _____ issued by the U.S. Federal Motor Carrier Safety Administration (the "**FMCSA**") or its predecessor agencies within or outside the U.S. Department of Transportation ("**U.S. DOT**"), and _____ (**hereinafter referred to as "CARRIER"**, a for-hire motor carrier) registered with and operating under for-hire motor carrier authority Certificate or Permit No. MC-_____ issued by the FMCSA or its predecessors, and/or (ii) registered with and operating under for-hire motor carrier registration or authority No. _____ issued by a state agency. BROKER AND CARRIER shall be referred to collectively as the "**Parties**" and individually as a "**Party**".

RECITALS

WHEREAS, BROKER is licensed by the Federal Motor Carrier Safety Administration in Docket No. MC _____ to engage in operations, in interstate or foreign commerce, as a broker, arranging for transportation of freight (except household goods), and as a broker arranges transportation services for various consignors, consignees, motor carriers and/or other third parties (hereinafter individually or collectively "Shippers," and each a "Shipper");

WHEREAS, CARRIER holds motor carrier operating authority from the Federal Motor Carrier Safety Administration (FMCSA) in Certificate No. MC-_____ and, or, Permit/Certificate No. DOT _____ to engage in transportation as a common or contract carrier of property (except household goods) under contracts with shippers and receivers and/or brokers of general commodities, and shall transport said property under its own operating authority and subject to the terms of this Agreement, and makes the representations herein for the purpose of inducing BROKER to enter into this Agreement:

WHEREAS, BROKER, to satisfy some of the freight transportation needs of its Shippers, desires to use the services of CARRIER on a non-exclusive basis.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **TERM.** The term of this Agreement shall be one (1) year, commencing on the date first mentioned above. This Agreement shall automatically renew itself for successive one year periods. Notwithstanding the foregoing, either Party may terminate this Agreement on 30 days prior written notice, at any time, to the other Party, with or without cause, or as otherwise provided in this Agreement. In the event that either Party chooses to terminate this Agreement, pursuant to this Paragraph 1, the Parties shall still be obligated to: (a) complete performance of any work in progress, including, without limitation, loads in transit or shipments contracted for and waiting for transport at the time of termination, in accordance with the terms of this Agreement; and (b) pay any outstanding claims for services fully and properly rendered, or for damaged, lost or delayed shipments or claims resulting from services not properly performed under this Agreement or under law, before, on or after the time of termination in accordance with the terms of this Agreement.
2. **CARRIER'S COVENANTS.** In performing transportation services hereunder, CARRIER agrees that it shall, at all times and at its own expense, provide and maintain:
 - A. Certified, registered Electronic Logging Devices ("ELDs") in each vehicle that comply with requirements of the ELD regulations set forth in Section 32301(b) of the Commercial Motor Vehicle Safety Enhancement Act, enacted as part of MAP-21, (Pub. L. 112-141, 126 Stat. 405, 786-788, July 6, 2012), which are registered with the Federal Motor Carrier Safety Administration on or before CARRIER is mandated by law to do so;
 - B. Responsibility to furnish all fuel, oil, tires and other parts, supplies and equipment necessary or required by Shipper(s) for the safe and efficient operation and maintenance of all equipment utilized in transporting a Shipper's freight;

- C. Responsibility for any and all management, governing, discipline, direction and control of its employees, owner/operators, and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of CARRIER's vehicles, drivers and facilities. CARRIER and BROKER agree that safe and legal operation of the CARRIER and its drivers shall completely and without question govern and supersede any service requests, demands, preferences, instructions, or information from BROKER or BROKER's Shippers with respect to any shipment at any time;
- D. Compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations, qualification and licensing and training of drivers, including, but not limited to controlled substances, and hours of service regulations, qualification and licensing and training of drivers, including, but not limited to only utilizing drivers who (i) have been fully trained in the requirements imposed by the Federal Motor Carrier Safety Regulations contained in 49 C.F.R. Parts 390 -397, and (ii) who hold a current commercial driver's license, as mandated by 49 C.F.R. Part 383, reflecting on its face any requisite hazardous materials endorsement and/or tank vehicle endorsement;

3. CARRIER REPRESENTS AND WARRANTS THAT:

- A. It is a motor carrier of property authorized to provide for-hire motor carrier transportation of property under contracts with shippers, consignors, consignees and/or property transportation brokers of general commodities.
- B. It shall (except as otherwise provided in this Agreement) transport the shipments of property tendered to CARRIER by BROKER, under CARRIER'S own operating authority and subject to the terms of this Agreement.
- C. It makes the representations contained herein for the purpose of inducing BROKER to enter into this Agreement.
- D. It agrees that a shipper's or consignor's insertion of BROKER's name as the carrier on a bill of lading shall be for the shipper's or consignor's convenience only, and shall not change BROKER's status as a (the) property transportation broker nor CARRIER's status as a (the) motor carrier.
- E. It shall not re-broker, assign or interline the shipments under this Agreement, without prior written consent of BROKER. If CARRIER breaches this provision, BROKER shall have the right of paying the monies it owes CARRIER directly to the delivering carrier, in lieu of payment to CARRIER. Upon BROKER's payment to the delivering carrier, CARRIER shall not be released from any liability to BROKER under this Agreement or otherwise; and in addition to the indemnity obligation in paragraph E of Section 3 of this Agreement, CARRIER shall be liable for consequential damages for violation of this paragraph E of this Section 3 of this Agreement.
- F. It is in, and shall maintain compliance during the term of this Agreement, with all federal, state and local laws applicable to the provision of its services including, but not limited to: (i) transportation of Hazardous Materials as defined by U.S. DOT (including the licensing and training of drivers), to the extent that any shipments agreed to be transported by CARRIER under this Agreement constitute Hazardous Materials; (ii) owner/operator lease regulations; (iii) loading and securement of freight regulations; (iv) implementation and maintenance of driver safety regulations including but not limited to, hiring, controlled substances and alcohol testing, and hours of service regulations; (v) sanitation, temperature and contamination requirements for transporting foods, drugs, perishables and similar products, as further elaborated in Section 6, paragraph S and in Appendix A of this Agreement; (vi) qualification, licensing and training of drivers; (vii) implementation and maintenance of equipment safety regulations; (viii)

maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; and (ix) all applicable insurance laws and regulations including but not limited to workers' compensation.

- G. It agrees that the control of all of its drivers and owner operators to the extent required by FMCSA, including but not limited to compliance with hours of service and hours of service logging, is the responsibility of CARRIER, and CARRIER agrees to notify BROKER in writing if CARRIER's driver or owner operator cannot complete delivery of a load on account of hours of service laws and regulations, and CARRIER agrees that it is solely responsible for any and all management, governing, discipline, direction and control of its employees, owner/operators, and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of CARRIER's vehicles, drivers and facilities. CARRIER and BROKER agree that safe and legal operation of CARRIER and its drivers shall completely and without question govern and supersede any service requests, demands, preferences, instructions and information from BROKER or BROKER's customer with respect to any shipment at any time.
- H. It shall notify BROKER immediately if CARRIER's federal operating authority is revoked, suspended or rendered inactive for any reason, and/or if CARRIER is sold, or if there is a change in control or ownership of CARRIER and/or if any of its insurance required under this Agreement is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- I. BROKER will only load Carriers with a safety rating of "Satisfactory" or "Unrated." CARRIER represents and warrants that it does not have an "Unsatisfactory", "Unfit" or similar safety rating issued by the FMCSA, and shall notify BROKER in writing immediately if its safety rating is changed to "Unsatisfactory", "Conditional", "Unfit" or similar safety rating issued by the FMCSA or a state agency which regulates motor carrier safety. If CARRIER has or receives a "Conditional" or similar safety rating, CARRIER shall furnish evidence satisfactory to BROKER regarding corrective action taken by CARRIER to fully correct the safety deficiency(ies) which resulted in CARRIER receiving such safety rating.
- J. It authorizes BROKER to include the freight charges agreed to be paid by BROKER to CARRIER as a part of the invoice(s) which BROKER will send to the shipper, consignee, or third parties responsible for payment to BROKER.
- K. It has investigated, monitors, and agrees to conduct business under this Agreement based on the creditworthiness of BROKER and is granting BROKER credit terms accordingly.
- L. It shall not seek any payment of its freight charges from BROKER's shipper customer(s), from any consignor(s) and/or from any consignee(s) under any circumstances.
- M. On behalf of shipper, consignee and broker interests, to the extent that any shipments subject to this Agreement are transported within the State of California on refrigerated equipment, CARRIER warrants that it shall only utilize equipment which is in full compliance with the California Air Resources Board (CARB) Transport Refrigerated Unit (TRU) Airborne Toxic Control Measure (ATCM) in-use regulations. CARRIER shall be liable to BROKER for any penalties, or any other liability, imposed on, or assumed by BROKER due to penalties imposed on BROKER or BROKER's customer because of CARRIER's use of non-compliant equipment.
- N. On behalf of shipper, consignee and broker interests, to the extent that any shipments subject to this Agreement are transported within the State of California, CARRIER warrants that it shall only utilize equipment which is in full compliance with the CARB Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulations and CARB Truck and Bus Regulation or On - Road Heavy-Duty Diesel Vehicles in-use regulations. CARRIER shall be liable to BROKER for any penalties, or any other liability, imposed on, or assumed by BROKER due to penalties

imposed on BROKER or BROKER's customer because of CARRIER's use of non-compliant equipment.

4. BROKER RESPONSIBILITIES:

- A. SHIPMENTS, BILLING AND RATES: BROKER's responsibility is limited to arranging for, but not actually performing transportation of a shipper's freight. BROKER agrees to tender to CARRIER at least one (1) shipment under this Agreement. BROKER shall inform CARRIER of (a) place of origin and destination of all shipments; and (b) if applicable, any special shipping and handling instructions or special equipment requirements, of which BROKER has been timely notified. Any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where CARRIER has billed the agreed rate and BROKER has paid it. Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, released rates or values, or tariff rules or circulars, shall only be valid when specifically agreed to in a signed writing by the Parties.
- B. BILLING TO BROKER'S SHIPPER CUSTOMER; INVOICE FROM CARRIER: BROKER agrees to conduct all billing to BROKER's shipper customer or other party who is responsible for payment to BROKER of BROKER's charges (which will include CARRIER's charges). CARRIER shall invoice BROKER for CARRIER's rates and charges (which may include but are not limited to charges for transportation, stop-offs, detention, loading or unloading, fuel surcharge, or other accessorial charges) in the amount(s) set forth in the specific rate confirmation related to each shipment and incorporated into this Agreement by reference, and as evidenced by the mutually agreed rate confirmation sent by BROKER to CARRIER by fax, email or other electronic means and accepted by CARRIER by fax, email or other electronic means to BROKER, which rate confirmation shall thereupon be deemed incorporated into this Agreement by reference.
- C. PAYMENT TO CARRIER: CARRIER agrees to transport freight for BROKER, under the terms of its carrier authority, at a rate mutually agreed upon in writing, by fax, or by electronic means, contained in BROKER's Load Confirmation or Rate Confirmation forms. Additionally:
- (1) CARRIER agrees to submit invoices, bills of lading and signed loading or delivery receipts, and rate confirmation sheets, each in a form that is clear and legible for all transportation services furnished under this Agreement to BROKER no later than thirty (30) days after load delivery. Failure to provide all necessary paperwork within thirty (30) days may result in delay or forfeiture of payment. The Parties agree that BROKER shall be the sole party responsible for payment of CARRIER's charges. Provided CARRIER is not in default under the terms of this Agreement, and except as otherwise agreed to in writing by BROKER and CARRIER (for example, BROKER's "Quick Pay Option"), BROKER agrees to pay CARRIER's invoice within thirty (30) days of BROKER's receipt of the original bill of lading and proof of delivery showing CARRIER as the CARRIER of record, proof of delivery signature with any exceptions noted, CARRIER's invoice and any applicable receipts for accessorial charges which were agreed upon between BROKER and CARRIER in writing, including any original lump sum receipts. Any exception(s) noted on the bill of lading may delay payment to CARRIER while BROKER awaits information from BROKER's shipper customer(s) and from CARRIER as to the nature of the exception(s), in order to determine the proper action to take. CARRIER hereby waives and releases any and all liens which CARRIER might otherwise have upon any shipment or cargo agreed to be transported by CARRIER under this Agreement. CARRIER shall not withhold any shipment or cargo transported by CARRIER under this Agreement because of any alleged failure of BROKER to pay any charges to CARRIER under this Agreement or because of any dispute as to the charges alleged by CARRIER to be owed it by BROKER under this Agreement. If CARRIER holds any shipment or cargo hostage for payment of, or increase in charges to

be paid to, CARRIER under this Agreement, CARRIER agrees to pay a fine of \$1,000.00 per day to BROKER and agrees to pay BROKER for any attorneys' fees incurred by BROKER, BROKER's shipper customer(s) or the consignee(s) to recover the shipment or cargo. In the event CARRIER files any bankruptcy proceeding or has any bankruptcy proceeding filed against it, BROKER, BROKER's shipper customer(s), the consignor(s) and/or the consignee(s) shall be entitled to immediately enter upon any owned or leased property of CARRIER, including a trailer, where the shipment or cargo belonging to BROKER's shipper customer(s), the consignor(s) or the consignee(s) may be found, and shall be entitled to take possession of such shipment or cargo.

- (2) BROKER and CARRIER shall use their best efforts to verify the accuracy of all freight charge billings tendered by BROKER to Shippers for transportation services performed by CARRIER under this Agreement. BROKER shall have the right to audit, from time to time, any and all freight charge billings by CARRIER, and CARRIER shall cooperate fully with the conduct of such audits.
- (3) CARRIER hereby expressly waives its right to any lien on any cargo or other property of BROKER or BROKER's Shippers. As such, CARRIER shall not withhold any freight due to a dispute with BROKER regarding any freight charges, whether for the current load or for previously as yet unpaid loads, regardless of whether or not such charges are being disputed by BROKER or BROKER's Shipper(s).
- (4) If CARRIER in good faith believes that it undercharged or was underpaid for services provided under this Agreement, and seeks to collect charges in addition to those it originally billed and collected for a particular shipment, CARRIER will issue any additional bills within 180 days of the delivery of the original bill to BROKER. Any civil action brought by CARRIER to recover such charges must be brought within 18 months after such claim arises. To the extent permitted by applicable law, the expiration of the said 18 month period shall be a complete and absolute defense to any such action or proceeding, without regard to any mitigating or extenuating circumstance or excuse whatsoever.
- (5) BROKER has the right to offset any claim, fine or fee, regardless of when or from which load assessed, with pending invoices, and insurance deductibles paid to cover claims for which CARRIER is/was liable.

D. BOND: BROKER shall maintain a surety bond or trust fund on file with the FMCSA in the form and in the amount required by the FMCSA's regulations.

5. CARRIER RESPONSIBILITIES:

- A. EQUIPMENT: CARRIER agrees to provide all necessary clean, sanitary and not contaminated truck and trailer equipment (hereinafter referred to as the "Equipment") in good and safe operating condition and lawfully qualified personnel to provide and complete the transportation services that are required for BROKER and BROKER's shipper customer(s), that are suitable for the particular commodity to be transported, and that will not cause adulteration in whole or part of the commodity as defined in 21 U.S.C. Section 342. CARRIER shall not supply any Equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. § 261.1 *et. seq.* CARRIER agrees to fully inspect (including but not limited to a U.S. DOT pre-trip inspection) the Equipment prior to use by CARRIER of the Equipment. CARRIER agrees that the Equipment shall at all times be road worthy and comply with all applicable safety laws, regulations and rules pertaining to road worthiness and safe operation of the Equipment. CARRIER shall and agrees to operate the Equipment in a safe and lawful manner. CARRIER agrees to pay for all maintenance and repairs required to the Equipment.

- B. TRANSPORT AND DELIVERY: CARRIER agrees that each shipment shall be transported and delivered with reasonable dispatch, so as to meet the shipper's delivery schedules, or as otherwise agreed in writing by BROKER and CARRIER.
- C. BILLS OF LADING: CARRIER shall sign a bill of lading produced by shipper or CARRIER and issued by CARRIER in compliance with 49 C.F.R. Section 373.01 for the property CARRIER receives for transportation under this Agreement. CARRIER agrees that to the extent any provision(s) contained in a CARRIER issued bill of lading conflict with any provision(s) contained in this Agreement, the provision(s) contained in this Agreement shall control and apply. Unless otherwise agreed in writing by BROKER and CARRIER, CARRIER shall become fully responsible/liability for the freight when CARRIER takes/receives possession and/or physical tender thereof and the trailer is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER by BROKER's shipper customer(s), and such responsibility/liability shall continue until delivery of the shipment to the consignee, and the consignee signs the bill(s) of lading or delivery receipt(s). Failure by CARRIER to issue a bill of lading to the shipper or to sign a bill of lading acknowledging CARRIER's receipt of the cargo shall not affect the liability of CARRIER and the applicability of the provision(s) contained in a bill of lading issued by the shipper.
- D. Any costs incurred by BROKER due to CARRIER being late for pick-up or delivery appointments may be charged to CARRIER.
- E. Any product which must be disposed of must have prior written consent from BROKER before being disposed of by any party. If the load is disposed of without prior written consent from BROKER, CARRIER is 100% liable for the value of the load, plus any other damages. CARRIER is also required to remit to BROKER any funds received from salvage or insurance.
- F. Driver must ensure load is properly secured. Any concerns or requests for additional securements must be made PRIOR to leaving shipper. CARRIER will be liable for any damage. If the CARRIER is not permitted on the dock, all bills of lading must be marked "Shipper Load and Count".
- G. Loads that are sealed at the shipping point are to remain sealed until an authorized person at the receiver breaks the seal. Seal numbers must be marked on each bill of lading. If the seal is broken by an unauthorized person, CARRIER shall be 100% liable for the invoice value to customer or cost of the product, whichever is greater, and any other expenses.
- H. CARRIER is required to provide a trailer that is in sound technical and structural condition, and complies with all laws, including, without limitation, all federal, state and local laws pertaining to sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, including without limitation the Food Safety Modernization Act, the Sanitary Food Transportation Act of 2005 and the FDA's Final Rule pertaining to Sanitary Transportation of Human and Animal Food, and the implementation and maintenance of equipment safety regulations, and is suitable in all manner to accept, load, and transport any shipment.
- I. All accessorial charges must be pre-approved by BROKER. Unauthorized charges will not be paid.
- J. In addition to all of the above, with regard to refrigerated loads, CARRIER agrees as follows:
- (1) Prior to loading, CARRIER shall confirm that the reefer unit is working properly and pre-cool trailer to temperature specified on BROKER's rate confirmation sheet. Temperature on BROKER's rate confirmation will be in degrees Fahrenheit unless otherwise specified in writing.

- (2) All refrigerated trailers are required to have an air chute for proper circulation. It is CARRIER's responsibility to make sure the chute is not damaged, obstructed or blocked in any way. It is CARRIER's sole responsibility to make sure space is provided for air circulation in front, rear, top, bottom, and between the load.
- (3) All Transport Refrigeration Units ("TRU") used to haul Shipper's goods are and will continue to operate in compliance with all federal, state and local environmental laws and emissions standards. All federal, state and local fines, fees and charges associated with or resulting from CARRIER's failure to comply with this requirement will be the sole responsibility of CARRIER. Any Carrier transporting TRUs to or through the State of California must sign the CARB Compliance Certification attached to the rate confirmation associated with the shipment.
- (4) CARRIER shall check pulp temperature of the product to ensure that product has been pre-cooled. CARRIER shall not accept any product pulping more than 3 degrees above or below the specified reefer unit temperature noted on BROKER rate confirmation. If the temperature on BROKER's rate confirmation differs from that on the bill of lading, CARRIER shall call BROKER before signing the bills of lading at the shipper. If the load is accepted contrary to the terms on BROKER rate confirmation, CARRIER accepts full responsibility for any loss or damage. CARRIER shall make sure the pulp temperature of the product loaded is confirmed on the original bill of lading.
- (5) By signing the bill of lading, CARRIER is confirming that the correct product and correct count were received at the proper temperature. CARRIER is solely responsible for loss or damage incurred due to inaccurate product information on bill of lading. If a discrepancy or count, condition, or temperature is encountered at the shipper, CARRIER shall notify BROKER immediately, and no change to loading information shall be made until confirmed in writing by BROKER.
- (6) Carrier shall maintain continuous temperature noted on BROKER's rate confirmation in -route, unless otherwise notified in writing by BROKER. Carrier shall not, at any time set reefer on start/stop, cycle, or any other non-continuous temperature mode or setting unless otherwise notified in writing by BROKER. If at any time the reefer is set on start/stop, cycle or any other non-continuous temperature mode or setting, Carrier solely and automatically assumes all risk of loss of or damage to the applicable load. CARRIER must contact BROKER immediately in the event of any problems including, but not limited to, out-of-temperature condition, equipment malfunction, accident, or delay. If a load is rejected because the reefer temperature is not in accordance with the temperature set forth on the BROKER's rate confirmation, CARRIER will immediately download the reefer information for the load and provide such information to BROKER.

K. CARGO LOSS, DAMAGE AND DELIVERY DELAY CLAIMS:

- i. CARRIER shall be fully liable for any and all cargo loss, damage or delivery delay.
- ii. CARRIER shall comply with 49 C.F.R. § 370.1 *et seq.* and any amendments and/or any other applicable regulations adopted by the FMCSA, the U.S. DOT or any applicable state regulatory agency, for processing all loss, damage or delivery delay claims and salvage.
- iii. Except as provided for in Section 3(E) hereinabove, neither Party shall be liable to the other for any indirect or consequential damages (such as, but not limited to loss of profits, loss of market, loss of customer goodwill, shutdown, or punitive or exemplary damages) without prior written notification of the risk of loss and its approximate financial amount, and the written agreement of the Party to assume such responsibility.

- iv. Notwithstanding the terms of 49 C.F.R. § 370.9, CARRIER shall pay, decline or make settlement offer in writing on all cargo loss, damage or delivery delay claims within thirty (30) days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within such thirty (30) day period shall be deemed admission by CARRIER of full liability for the amount claimed and shall constitute a material breach of this Agreement.
 - v. CARRIER's liability for cargo loss, damage or delivery delay from any cause under paragraphs C and K.i of this Section 5 of this Agreement shall not exceed Two Hundred Thousand Dollars (\$200,000) per shipment, unless CARRIER agrees in writing by fax or email to BROKER to a higher liability amount.
 - vi. BROKER reserves the right to offset any claim(s), including amounts for payment or reimbursement of attorneys' fees and insurance deductibles, against outstanding CARRIER invoices.
- L. INDEMNITY: CARRIER shall DEFEND, INDEMNIFY AND HOLD BROKER and BROKER's shipper customer(s) and their employees, officers, directors, managers and agents harmless from and against all claims, actions, demands, liabilities, losses, damages, including cargo loss or damage, theft, delay, damage to property, fines, penalties, payments, injuries, death, costs and expenses (including, without limitation, costs, expenses and reasonable attorney's fees) caused by, resulting from and/or arising out of (i) the negligence or intentional misconduct of CARRIER or its employees, officers, directors, managers or agents, (ii) CARRIER's or its employees', officers', directors', managers' or agents' violation of applicable laws, rules or regulations, (iii) CARRIER's or its employees' officers', directors', managers' or agents' breach of this Agreement, or (iv) CARRIER's or its employees', officers', directors', managers' or agents' performance of this Agreement.
- M. INSURANCE: CARRIER shall furnish BROKER with Certificate(s) of Insurance and insurance policies providing thirty (30) days advance written notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits: general liability \$1,000,000; commercial auto or commercial motor vehicle insurance (including hired and non-owned vehicles) \$1,000,000 (\$5,000,000 if transporting hazardous materials, including environmental damages due to release or discharge of hazardous substances); cargo damage/loss \$200,000; workers' compensation with limits required by law. Except for the higher coverage limits which may be specified above, the insurance policies and financial responsibility shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Nothing in this Agreement shall be construed to avoid CARRIER's liability due to any exclusion or deductible of any insurance policy or to limit CARRIER's liability for contribution and/or indemnification and defense of the BROKER. A MCS-90 endorsement will be part of any insurance policy obtained by CARRIER, and all proper filings will be made with the applicable federal and state agencies. In addition, the insurance policies shall comply with minimum requirements of the FMCSA and any other applicable state regulatory agency. Nothing in this Agreement shall be construed to avoid or limit CARRIER's liability due to any exclusion or deductible in any insurance policy. CARRIER shall take such action as is necessary to have BROKER named as an additional insured in such insurance policies. With regard to cargo coverage, the coverage must be All Risk Broad Form Motor Truck Cargo Legal Liability Coverage in an amount not less than \$200,000 per occurrence. CARRIER agrees and acknowledges that BROKER may, from time to time, tender shipments whose value exceeds \$200,000. BROKER shall notify CARRIER in advance of all shipments whose value exceeds \$200,000 and CARRIER, at its election, may procure additional insurance for such shipments. Nothing contained in this Section shall limit CARRIER's cargo liability, and such liability shall remain consistent with Section 5(K) of this Agreement. CARRIER represents and warrants that the coverage outlined above has no exclusions or restrictions of any type that would foreseeably preclude CARRIER from transporting the cargo for BROKER. Furthermore, if the commodity

being hauled is refrigerated, refrigeration breakdown coverage will be provided and the CARRIER will honor and abide by the servicing requirements set forth in the insurance policy or endorsement. Coverage must be written with an insurance carrier rated A - or better as rated by AM Best Company.

- N. ASSIGNMENT OF RIGHTS: CARRIER automatically hereby assigns to BROKER all of CARRIER's rights, if any, to collect freight charges from BROKER's shipper customer(s), the consignor(s), the consignee(s) or any responsible third party(ies) upon receipt by CARRIER of payment from BROKER of CARRIER's freight charges.
- O. COLLECTION OF CHARGES BY CARRIER: If BROKER's shipper customer or other party delivers to CARRIER (or its driver) any payment for freight charges of BROKER and/or CARRIER, CARRIER agrees to promptly deliver such payment to BROKER.

6. MISCELLANEOUS:

- A. AGREEMENT ENTERED INTO PURSUANT TO 49 U.S. CODE SECTION 14101 (b); WAIVER PURSUANT TO 49 U.S. CODE SECTION 14101(b): To the extent this Agreement is applicable to U.S. DOT regulated interstate or foreign commerce shipments, CARRIER and BROKER agree that this Agreement is entered into pursuant to 49 U.S. Code Section 14101(b) for the purpose of providing and receiving specified services under specified rates and conditions. CARRIER, in connection with any U.S. DOT regulated interstate or foreign commerce transportation services to be provided by CARRIER under this Agreement, expressly waives pursuant to 49 U.S. Code Section 14101(b) any and all rights and remedies under Part B, Subtitle IV, Title 49, U.S. Code which are inconsistent with or conflict with any provision of this Agreement.
- B. CARRIER TO PROVIDE TRANSPORTATION TO BROKER'S CUSTOMER: CARRIER and BROKER understand and agree that under this Agreement: (i) BROKER shall arrange for CARRIER to transport by truck one or more shipments for BROKER's customers, and (ii) CARRIER shall provide such transportation to BROKER's customer(s).
- C. INDEPENDENT CONTRACTOR: It is understood and agreed that the relationship between BROKER and CARRIER is that of independent contractor, and that no employer/employee relationship exists, or is intended. None of the terms of this Agreement, or any act or omission of either Party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, or employer/employee relationship between the Parties. Each Party shall provide sole supervision and shall have exclusive control over the actions and operations of its employees and agents used to perform its services hereunder. Neither Party has any right to control, discipline or direct the performance of any employees or agents of the other Party. Neither Party shall represent to any party that such Party is anything other than an independent contractor in its relationship to the other Party. BROKER has no control of any kind over CARRIER, including but not limited to routing of freight, and nothing contained in this Agreement shall be construed to be inconsistent with this provision. CARRIER and BROKER agree that safe and legal operation of the CARRIER and its drivers shall completely and without question govern and supersede any service requests, demands, preferences, instructions, or information from BROKER or BROKER's Shipper(s) with respect to any shipment at any time. CARRIER agrees that any driving directions to or from a Shipper's location given by BROKER are for informational purposes only. It is CARRIER's sole responsibility to insure the directions are appropriate with regard to equipment, route, and safe operation, and to get the Shipper's goods to the designated destination on time and undamaged. By this Agreement CARRIER and BROKER do not intend to provide for division of profits between CARRIER and BROKER, and do not intend to create any

joint venture between CARRIER and BROKER, or to otherwise create a de facto or de jure joint enterprise or partnership between CARRIER and BROKER and any shipper.

- D. SEAL ON TRAILER; NO ADDITIONAL CARGO WITHOUT PERMISSION: CARRIER agrees that neither it nor its driver, other employee, owner operator or agent shall break any seal on any trailer, add any additional cargo or combine the cargo of BROKER's shipper with the cargo of any other shipper unless written permission has been given by BROKER to CARRIER to do so, regardless of the weight or the volume of the cargo. If the shipper, the consignor or agent of the shipper or the consignor loads and seals a trailer tendered without a representative of CARRIER inspecting and counting the cargo during the loading process, CARRIER shall not be liable for shortage, upon delivery of the trailer with the seal intact. CARRIER shall be similarly not liable for shortage, upon delivery if a seal was broken only at the direction and under the supervision of a governmental authority agent, and CARRIER applies another seal to the trailer under the observation of the governmental authority agent and notes the new seal number on the bill of lading.
- E. NON-EXCLUSIVE AGREEMENT: CARRIER and BROKER acknowledge and agree that this Agreement does not bind the respective Parties to exclusive services to each other. Either Party may enter into similar agreements with other carriers, other property transportation brokers or freight forwarders that do not conflict with the Parties' rights and obligations under this Agreement.
- F. WAIVER OF PROVISIONS: Failure of either Party to enforce a breach of any provision of this Agreement or to otherwise waive a provision of this Agreement shall not be deemed to constitute a waiver of any subsequent breach of any provision of this Agreement, and shall not affect or limit the right of either Party to thereafter enforce a provision.
- G. DISPUTES: Unless preempted by or controlled by federal transportation laws and regulations, this Agreement is entered into in the State of _____ and shall be governed by the laws of the State of _____ without regard to conflicts of law principles. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement, or the business between the Parties, may be brought only in the courts of the State of _____, _____ County, or in the United States District Court for the _____ District of _____ sitting in _____, and each Party consents to the exclusive jurisdiction of such courts (and the appropriate appellate courts) in any such action and waives any objection to personal jurisdiction or venue in such courts. Process in any action referred to in the preceding sentence may be served upon a Party anywhere in the world. CARRIER agrees to pay all reasonable expenses, attorney fees and costs (including court costs) that BROKER incurs in any such actions in which BROKER prevails.
- H. NO BACK SOLICITATION/CO-BROKERING:
- i. CARRIER shall not, directly or indirectly, solicit or accept unless tendered to CARRIER by BROKER, any shipment(s) from any shipper, consignor, consignee or other customer of BROKER, when a shipment of the shipper, consignor, consignee or other customer of BROKER was first tendered to CARRIER by BROKER, or when such shipper, consignor, consignee or other customer of BROKER was first introduced to CARRIER by BROKER.
 - ii. In the event of a breach of paragraph H.i. of this Section 6 of this Agreement, BROKER shall be entitled, for a period of eighteen (18) months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of twenty percent (20%) of the gross transportation revenue including accessorial charges (as evidenced by freight bills) received by CARRIER for the transportation of each such shipment as liquidated damages. Additionally, BROKER may seek injunctive relief and in the event BROKER is successful,

CARRIER shall be liable for all costs and expenses incurred by BROKER, including, but not limited to, costs, expenses and reasonable attorney's fees.

- iii. CARRIER is prohibited from brokering, re-brokering, co-brokering, subcontracting, transferring, trip leasing, assigning or interlining the transportation of shipments hereunder to any other person or entity conducting business under an operating authority different from CARRIER's without the advance written authorization of BROKER. Violation of this policy shall be grounds for immediate termination of this Agreement. If BROKER becomes aware of such prohibited activity by CARRIER prior to payment of any compensation otherwise due CARRIER, BROKER shall withhold payment to CARRIER and shall instead pay appropriate compensation to the carrier who actually transported the shipment. BROKER will deem any acceptance of a shipment by CARRIER as that of a common or contract carrier and subsequent subcontracting of the shipment to any third party as an assignment of the right to be compensated for that shipment to the third party. Upon BROKER's payment to delivering carrier, CARRIER shall not be released from any liability to BROKER under this Agreement. CARRIER will be liable for the full extent of loss or damages (including but not limited to reasonable attorney's fees) for violation of this paragraph.

I. CONFIDENTIALITY:

- i. In addition to confidential information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of BROKER's shipper customer(s), consignor(s) and/or the consignee(s), including but not limited to freight and brokerage rates, amounts received for brokerage or motor carrier services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and BROKER's shipper customer(s), the consignor(s) and/or the consignee(s), shall be treated as confidential, and shall not be disclosed or used by a Party for any reason without the prior written consent of the other Party.
- ii. In the event of violation of paragraph I.i. of this Section 6 of this Agreement, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the violating Party shall be liable to the prevailing Party for all costs and expenses incurred by the prevailing Party, including but not limited to costs, expenses and reasonable attorneys' fees.

J. MODIFICATION OF AGREEMENT: This Agreement may not be amended, except by mutual written agreement of the Parties. The provisions of this Agreement shall be deemed to supersede and shall prevail over any conflicting terms set forth in any rate confirmation, load confirmation, dispatch sheet or other document pertaining to this Agreement.

K. NOTICES:

- i. All notices required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, facsimile, or email, in each case to the following addresses, facsimile numbers or email addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, email address or person as a party may designate by notice to the other Party):

BROKER: ThyssenKrupp Supply

CARRIER: _____

Chain Services NA, Inc

Attention: Matt Finneke

Attention: _____

Address: 303 E Wacker Dr
Suite 2107 Chicago,
IL 60601

Address: _____

Fax No. _____

Fax No. _____

Telephone 630-488-6698

Telephone _____

- ii. The Parties shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of either Party's performance of this Agreement.
- iii. Notices sent as required under paragraphs K.i and K.ii of this Section 6 of this Agreement to the addresses shown in this Agreement shall be deemed sent to the correct address, unless a Party has notified the other Party in writing of any change in address.

L. FORCE MAJEURE; LEGAL RESTRAINT : If either BROKER or CARRIER is prevented from or delayed in performing any of its obligations under this Agreement by reason of statutes, regulations or orders of a governmental entity (including actions taken by a court or by law enforcement officials), or because of war, riot, rebellion, terrorism, act of God, act of lawful authority, labor disturbance, strike, lockout, other labor dispute, civil unrest, or any cause or occurrence beyond the reasonable control of such Party and arising without such Party's fault or negligence, that Party shall not be liable to the other Party for damages by reason of any delay or suspension of performance resulting from such legal restraint or force majeure for the duration of the force majeure. The Party invoking this Section, however, shall furnish the other Party with notice of such legal restraint or force majeure no later than the day after the onset of the condition preventing or delaying performance. Economic hardship including but not limited to an economic recession or depression, shall not constitute a force majeure.

M. FACTORING. CARRIER shall provide BROKER written notice of any assignment, factoring, or other transfer of its right to receive payments arising under this Agreement at least thirty (30) days prior to such assignment, factoring, or other transfer taking legal effect as to BROKER's payment obligation hereunder (BROKER shall not be obligated to honor any factoring, assignment or any other transfer of CARRIER's right to receive any payments hereunder unless such notice is timely received). Such written notice shall include the name and address of factoring company, assignee/transferee, date, date assignment is to begin, and terms of the assignment, and shall be considered delivered upon receipt of such written notice by BROKER. BROKER shall have the right to ask for and CARRIER shall be obligated to furnish any further documentation BROKER requires in order to satisfy itself as to the authenticity and payment requirements of the factoring arrangement(s). BROKER's payment obligations hereunder shall not be subject to more than one factoring/assignment agreement at any one time. No multiple assignments, factoring or other such transfers by the CARRIER shall be binding on BROKER. CARRIER shall indemnify BROKER against and hold BROKER harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney's fees, obligations, liabilities, and liens) arising or imposed on BROKER in connection with the factoring, assignment or transfer of any account or right arising thereunder. If CARRIER wants to terminate factoring, a release from the CARRIER and the factoring company in a form satisfactory to BROKER's counsel must be received by BROKER specifying the terms and date of release. CARRIER also releases and waives any right, claim or

action against BROKER for any amount due and owing under this Agreement where CARRIER has not complied with the notice requirements of this section.

- N. SEVERANCE: In the event any of the provisions of this Agreement are determined to be invalid or unenforceable, no other provisions shall be affected and the unaffected provisions shall remain valid and enforceable as written.
- O. SURVIVAL: If the term of this Agreement expires or if this Agreement is terminated, the representations and the then accrued rights and obligations of the Parties shall survive such expiration or termination.
- P. COUNTERPARTS: This Agreement may be executed in any number of counterparts (including by electronic transmission of a copy of an original, e.g., by fax or email), each of which shall be deemed to be a duplicate original of this Agreement.
- Q. FAX OR EMAIL CONSENT: The Parties to this Agreement hereby authorize each other to send faxes or emails to each other at the fax numbers and email addresses described below, (or otherwise as may be amended in writing from time to time).
- R. ENTIRE AGREEMENT: This Agreement contains the entire understanding and contract of the Parties and supersedes all verbal or written prior agreements, arrangements and understandings of the Parties relating to the subject matter of this Agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of the entire understanding and contract of the Parties, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.
- S. COMPLIANCE BY PARTIES WITH FOOD SAFETY LAWS:
- i. Compliance by CARRIER: When BROKER engages CARRIER for transportation of cargo regulated under the Sanitary Transportation of Food rule at 21 C.F.R. §§ 1.900 through 1.934 (“STF Rule”), as adopted by the U.S. Food & Drug Administration (“FDA”) under the Food Safety Modernization Act, Pub. L. No. 111-353 (“FSMA”), CARRIER hereby warrants that it will comply with all applicable provisions of the STF Rule that have not been allocated to other supply chain participants under Subparagraphs S.(ii) and (iii) of this Agreement. CARRIER’s compliance responsibilities shall include but not be limited to the applicable Equipment maintenance, storage and pre-cleaning requirements set forth at 21 C.F.R. § 1.906 and the applicable training and supervision requirements at 21 C.F.R. § 1.908 with regard to FSMA-regulated cargo.
 - ii. Allocation of Certain Responsibilities among CARRIER, BROKER and its Shipper Customer: Certain required practices and responsibilities under the STF Rule are hereby contractually allocated among the Parties and other supply chain participants as permitted by FDA at 21 C.F.R. § 1.908(a), provided that the applicable recordkeeping requirements under 21 C.F.R. § 1.912(d) are observed. Those delegations are as follows: (a) The duties assigned to BROKER as a “Shipper” under the SFT Rule are delegated to CARRIER to the extent that they relate to assuring that vehicles and Equipment are operated in an appropriate sanitary condition, that adequate temperature controls are maintained during transportation (to the extent required by BROKER’s shipper customer), and that previous cargo movements do not render the Equipment unsafe for FSMA-regulated shipments. (b) BROKER warrants that all other applicable duties assigned to BROKER as a “Shipper” of FSMA -regulated cargo under the STF Rule are delegated to BROKER’s shipper customers pursuant to BROKER’s separate written contracts or its separate published service terms and conditions applicable to such customers. (c) If CARRIER acts as a “loader” of cargo under the SFT Rule, it warrants that it will meet the specifications of BROKER’s shipper customer (if provided to CARRIER in writing) with regard to condition of the Equipment, adequate preparation of the Equipment for loading, and any required precooling of the Equipment.

- iii. Standard Operating Procedures for Food Safety Compliance: Further details on requirements and BROKER's best practices under the STF Rule are set forth in Appendix A attached to and made a part of this Agreement.

IN WITNESS WHEREOF, we have executed this Agreement as of the date and year first shown above.

BROKER:

CARRIER:

By: _____

By: _____

APPENDIX A

FOOD SAFETY MODERNIZATION ACT (FSMA)

In addition to the terms and conditions specified in the Transportation Broker-Carrier Agreement, the parties agree as follows:

1. CARRIER must comply with its legal obligations concerning the safe and secure transportation of food that will ultimately be consumed by humans, including those required by local, state and federal laws and regulations including, but not limited to, the Food Safety Modernization Act (FSMA), the Federal Food, Drug and Cosmetic Act, and the Sanitary Food Transportation Act, collectively ("Food Safety Laws"). CARRIER must also abide by the U.S. Food and Drug Administration ("FDA")'s Rule on the Sanitary Transportation of Food for Human and Animal Food ("Rule") upon its enactment and by its effective date for compliance.
2. CARRIER will, upon BROKER's request, provide evidence of the following:
 - a. documented processes to maintain product food safety, including maintaining the requisite temperature control for food subject to the shipper's temperature control requirements during transport,
 - b. transportation traceability, including information regarding:
 - (i) previous cargos hauled in bulk or other vehicles offered for transportation of food;
 - (ii) maintenance and intervening cleaning procedures for docks, vehicles and other equipment; and
 - (iii) the appropriate training process for each person under CARRIER's supervision or control, involved in the supply chain, and transporting shipments governed by this Appendix.
 - c. for each shipment, evidence that it has not been adulterated and has been transported under sanitary conditions that will protect the product against any temperature abuse or great temperature fluctuations and any physical, chemical, and microbial contamination of the food or the container.

CARRIER agrees to maintain all documentation and records related to the transport of shipments governed by this Appendix, including those documenting the safe and sanitary transport of food, for a period of two (2) years following the tender of each shipment.

3. CARRIER agrees that food that has been transported or offered for transport, pursuant to this Appendix, under conditions that are not in compliance with the shipper's instructions as provided to CARRIER by the shipper, through BROKER or otherwise, shall be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 342(i). CARRIER understands that adulterated shipments may be refused by the consignee or receiver, upon their delivery, at destination.

4. Proving "chain of custody" is incumbent on the CARRIER and as such CARRIER agrees that all loads will be sealed at the point of origin and remain sealed until broken at the point of destination. Pursuant to item 3 above, any load that is not sealed will be also considered "adulterated". Should a load be refused due to a missing seal, CARRIER agrees to liability for full loss, less any salvage value. Refusal of any said claim by CARRIER's insurer, does not relieve CARRIER of liability. The use of key or combination locks in lieu of Seals for transported materials does not constitute a sealed load. Although the locks may appear to provide a greater level of security, the key protocol required to maintain lock access integrity adds another level of risk to raw material and finished product shipments. All loads must have one or more Seal(s) securing the vehicle during transport.

Temperature Procedures for Food Related Materials

The CARRIER shall ensure temperature control and indicator devices are calibrated and in working condition at the specific temperature required for the product shipped. It is the responsibility of the CARRIER to immediately notify BROKER (a written notification must be sent after any communication via phone) when the temperature of the product may have been compromised. Exceptions must be investigated and documented in accordance with the specific procedures presented herein, and must be immediately communicated to BROKER.

5. Product Loading

- a. All trailers or containers shall be inspected before loading to ensure compliance with the food safety requirements communicated by the Shipper to the BROKER or CARRIER, including cleanliness (freedom from any evidence of potential contamination) and freedom from structural defects.
- b. The Reefer should be pre-cooled to the appropriate temperature before opening its doors.
- c. Such doors should only be opened when Shipper is ready to load the Reefer.
- d. Once loaded, the Reefer doors (including side doors) shall be closed and secured with the Shipper's uniquely identified Seal. Each seal number must be recorded on the transport documents along with the vehicle trailer or container number, the date and the CARRIER name by the person applying the Seal(s) on Shipper's behalf (see seal procedures in Part I above).

6. Product Transport

- a. If there is no electronic temperature warning system in place on the Reefer unit, then the Driver must keep a written log checking the temperature of such unit as often as possible, but no less than three (3) times a day.
- b. Unless otherwise stated in a rate confirmation or the bill of lading, if the temperature of the Reefer unit varies from the original setting by more than two (2) degrees plus or minus upon any inspection, the Driver must inspect the Reefer unit to determine the problem. If the temperature of the Reefer unit continues to fail, then the CARRIER must do everything in its power to correct the problem immediately and notify BROKER of the situation.

7. Product Delivery

- a. When arriving at the receiver's (consignee's) facility, a receiving location employee must verify the temperature of the Reefer unit to ensure that the temperature matches the instructions provided regarding temperature-control with respect to the cargo.
- b. Driver will not open the Reefer doors until the receiver/consignee has directed him or her to do so and is ready to offload the product.
- c. If permitted and requested by the receiver, the Driver must be present and witness any product temperature recording upon delivery and must note the measurement on all copies of the delivery document(s).

Additional Obligations

8. CARRIER agrees that BROKER is not responsible for and shall in no way be held liable to CARRIER for CARRIER's or any shipper's, consignee's or receiver's obligations or failure to adhere to their respective obligations under the laws and regulations governing the safe and sanitary transport of food for human consumption, including the Food Safety Laws and Rule referenced, above, in paragraph 1.
9. CARRIER shall defend, indemnify and hold harmless BROKER and BROKER's customers, their respective officers, directors, employees, agents, representatives, vendors and customers against any and all claims, demands, actions, causes of action and/or liabilities (actual, potential, threatened or pending) judgments, fines, penalties, orders, decrees, awards, costs, expenses, including attorneys' fees, settlements and claims on account of CARRIER's failure to adhere to the requirements of the Food Safety laws and Rule as further defined in paragraph 1, above, or tender of adulterated food product to the consignee or receiver.
10. Termination of this Appendix shall not release either party from liability which shall have arisen prior to such termination or under the Agreement. CARRIER shall not, other than by reason of cause or causes beyond its control, including but not limited to the authority of laws, strikes, acts of God, riot or other serious civil disturbance threatening violence or the apprehension of danger to persons or property, fail to provide services within forty-eight (48) hours of request.
11. This Appendix shall continue in effect until terminated at any time, with or without cause, by the giving by either party to the other of no less than thirty (30) days written notice. This Appendix shall automatically terminate upon termination of the Agreement of which it is a part.
12. Other than as specifically stated herein, all other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the terms of this Appendix and the Agreement, the terms of this Appendix shall prevail.
13. This Appendix may be executed in one or more counterparts, each of which is an original but all of which together will constitute one and the same agreement.