

CARRIER/BROKER AGREEMENT

This contract is made this day ____ of _____, 201__, between **Taylor Logistics Inc.**, 2875 E. Sharon Road, Cincinnati, OH 45241-1976 (hereinafter referred to as BROKER) having Broker Authority under MC# 448473 and Federal ID# of 04-3720335 and _____ (hereinafter referred to CARRIER) under MC# _____ whose principal office is located at _____.

Now:

RECITALS

WHEREAS, BROKER is licensed by the Federal Motor Carrier Safety Administration in Docket No. MC-448473 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 services for various consignors, consignees, motor carriers and/or other third parties (hereinafter individually or collectively "SHIPPER"); WHEREAS, CARRIER holds motor carrier operating authority from the Federal Highway Administration in Certificate Mo. MC-_____ and, or, Permit/Certificate No. DOT-_____ to engage in transportation as a common or contract carrier of property (except household goods, and class A and B explosives) 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 SHIPPER, 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. **BROKER RESPONSIBILITIES**

- A. BOND: BROKER shall maintain a surety bond/trust fund as agreed to in the amount of \$75,000.00 and on file with the Federal Motor Carrier Safety Administration (FMSCA) in the form and amount not less than that required by that agency's regulations.
- B. BROKER will notify CARRIER immediately if its Federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- C. It is intention of the parties that BROKER shall be an independent contractor for all parties involved in the transportation, including the CARRIER and the SHIPPER.
- D. CARRIER shall be paid the freight charges for the transportation services to be rendered pursuant to the Rate Confirmation. BROKER shall send Rate Confirmation Agreement to CARRIER via or email before shipment of freight. CARRIER must sign or e-sign and send back or email to confirm Rate Confirmation. All signatures, written or electronic, and transactions rendered via email are deemed legal and binding.

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2. CARRIER RESPONSIBILITIES

- A. CARRIER agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for BROKER and/or SHIPPER. CARRIER will not supply 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. on food grade loads. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.
- B. **BILLS OF LADING:** CARRIER shall issue a bill of lading in compliance with 49 U.S.C. §80101 et seq., 49 C.F.R. §373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become fully responsible for the freight when it receives possession thereof, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER, and which responsibility/liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or delivery receipt. Any terms of this Agreement shall be controlled by the terms of this Agreement. Any terms in a tariff that are referenced in a carrier contract which are inconsistent with this Contract shall be subordinate to the terms of this Contract. Failure to issue a bill of lading, or sign a bill of lading acknowledging receipt of the cargo by CARRIER, shall not affect the liability of CARRIER.
- C. Under no circumstance, shall CARRIER execute a bill of lading, or any other document, which represents or holds out BROKER as being responsible for the delivery of freight.
- D. CARRIER agrees that SHIPPER's insertion of BROKER's name as the carrier on a bill of lading shall be for the SHIPPER's convenience only and shall not change BROKER's status as a property broker nor CARRIER's status as a motor carrier.
- E. **INDEMNIFICATION:** CARRIER agrees to indemnify, hold harmless and defend BROKER and SHIPPER and SHIPPER's Customer from and against any and all claims for loss, damage or injury (including but not limited to reasonable attorney's fees), from and against any lawsuits, actions, and administrative or legal proceedings brought against BROKER, SHIPPER or other persons, or for or on account of any injury received or sustained by any person, including but not limited to employees of CARRIER or its prior written approved carriers, employees and agents of SHIPPER, caused by or arising out of the performance of CARRIER, its employees or approved carriers. BROKER and CARRIER shall not be liable to the other for any claims, actions or damages due to the negligence of the other Party.
- F. CARRIER shall transport property under its own operating authority and maintain, at its sole cost and expense, Commercial Auto Liability Insurance using the ISO motor carrier policy form or equivalent against liability for injuries to or death of persons and damage to property in an amount of not less than \$1,000,000 Combined Single Limit per occurrence; Full Cargo Liability for loss of or damage to freight in an amount not less than \$100,000 with no exclusions for locked vehicle or unattended vehicles, refrigeration breakdown coverage if warranted.
- G. CARRIER is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials (including the licensing and training of Haz-Mat qualified drivers), as defined in 49 C.F.R. §172.800, §173 and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances and alcohol testing, and hours of service regulations; 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, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance

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- of its drivers; all applicable insurance laws and regulations including but not limited to workers' compensation. CARRIER agrees to provide proof of compliance upon request.
- H. CARRIER shall be liable for loss, damage, or delay of any shipment, and may face possible monetary charges for shipments not delivering as scheduled, while in the possession or control of CARRIER. CARRIER hereby assumes the liability of no less than that of a common carrier as provided in Section 14706 of Title 49 of the United States Code (the Carmack Amendment) as in effect on the effective date of this agreement. Exclusions in CARRIER insurance coverage shall not exonerate CARRIER from liability. Claims will be filed and resolved in accordance with federal regulations codified at 49 C.F.R. Part 370.
 - I. CARRIER shall assume full responsibility for all State and Federal taxes and assessment arising out of the transportation herein required of contract motor carrier.
 - J. CARRIER will notify BROKER immediately if its Federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
 - K. CARRIER does not have an "Unsatisfactory" or "Conditional" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify BROKER immediately if its safety rating is changed to "Unsatisfactory" or "Conditional".
 - L. CARRIER has investigated, monitors, and agrees to conduct business hereunder based on the credit worthiness of BROKER and is granting BROKER credit terms accordingly.
 - M. CARRIER shall expressly waive all rights and remedies under Title 49 USC, Sub Title IV, Part B to the extent that they conflict with this contract.
 - N. CARRIER must advise all Over Short and Damage (OS&D) information to BROKER within 24 hours of delivery. Failure to do so could result in a cargo claim to CARRIER even if the load shows trailer seal was delivered intact.

3. MISCELLANEOUS

- A. NON-EXCLUSIVE AGREEMENT: CARRIER and BROKER acknowledge and agree that this contract does not bind the respective parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.
- B. NO BACK SOLICITATION: Unless otherwise agreed in writing, CARRIER shall not solicit freight shipments for a period of 12 months following termination of this agreement for any reason, from any SHIPPER, consignor, consignee or customer of BROKER, when such shipments of SHIPPER were first tendered to CARRIER by BROKER. In the event of breach of this provision, BROKER shall be entitled, for a period of 12 months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of Ten percent (10%) of the gross transportation revenue (as evidenced by freight bills) received by CARRIER for the transportation of said freight as liquidated damages. Additionally, BROKER may seek injunctive relief and in the event it is successful, CARRIER shall be liable for all costs and expenses incurred, but not limited to, reasonable attorney's fees.
- C. INDEPENDENT CONTRACTORS. The relationship between BROKER and CARRIER shall, at all times, be that of independent contractors. CARRIER and any of its approved carriers or agents shall employ, pay, supervise, direct, discipline, discharge and assume full responsibility for all persons required for the performance of Carrier's duties under this Agreement. Under no circumstances shall CARRIER or any of its approved carriers, agents or employees deemed to be or hold themselves out as employees of BROKER or any SHIPPER. BROKER has no right to discipline or direct the performance of any driver and or employee, contractor, subcontractor or agents of the CARRIER. CARRIER and not the BROKER is responsible for the actual movement of the freight.
- D. DOUBLE-BROKERING. CARRIER agrees not to re-broker or co-broker, assign, interline, or provide substituted service for the shipments hereunder tendered to CARRIER by BROKER without the advance express written authorization of BROKER. If authorization is granted, CARRIER agrees not to use an "Unsatisfactory" or "Conditional" rated carrier. Violation of this

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policy may be grounds for immediate termination of this Agreement. If BROKER becomes aware of such unauthorized re-brokering activity by CARRIER prior to payment of any compensation otherwise due CARRIER, BROKER may withhold payment to CARRIER and may instead pay appropriate compensation to the carrier who actually transported the shipment. BROKER will deem any acceptance of a shipment by CARRIER as 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.

- E. PAYMENT. The Parties agree that BROKER is the sole party responsible for payment of CARRIER's charges. Failure of BROKER to collect payment from SHIPPER shall not exonerate BROKER of its obligation to pay CARRIER. BROKER agrees to pay CARRIER's invoice within 28 days of receipt of the bill of lading or proof of delivery and other documents deemed necessary for reimbursement, provided CARRIER is not in default under the terms of this Agreement. As CARRIER agrees BROKER is not an Agent of the SHIPPER nor the CARRIER, CARRIER shall not seek payment from SHIPPER if SHIPPER can prove payment to BROKER.
- F. WAIVER AND DISCHARGE. The failure of either Party to enforce any provision of this Agreement shall in no way be construed as a waiver of such provision or the right of either Party to enforce such provision in the future or in any way to affect the validity of this Agreement or a party hereof.
- G. GOVERNING LAW. Unless preempted by or controlled by Federal Transportation Laws and Regulations this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- H. INVALIDITY OF PROVISIONS. If a court of competent jurisdiction declares any provision of this agreement invalid, such decision shall not affect the validity of any remaining provisions, and all remaining provisions of this Agreement shall remain in full force and effect.
- I. This contract is binding upon the parties hereto, their successor and assigns, and shall be construed under the law; signatory has authority to bind the corporation or company.
- J. This written agreement shall continue in full force and effect until either party gives the other thirty (30) days prior to written (or in electronic form) notice of termination.
- K. On behalf of the 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:
 - i) All 53 foot trailers, including both dry-van and refrigerated equipment it operates and the heavy-duty tractors that haul them within California under this agreement is in compliance with the California Air Resources Board (CARB) Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations.
 - ii) All refrigerated equipment it operates within California under this Agreement 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 BROKERS customer because of CARRIER's use of non-compliant equipment.

CARRIER: _____

BROKER: Taylor Logistics Inc.

BY: _____
Duly Authorized Signature

BY: 

PRINTED NAME _____

Keith Swensen

TITLE: _____

General Manager

DATE: _____

December 07 2018

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