

SPI LOGISTICS

Suite 603, 9850 King George Blvd.
Surrey, British Columbia, V3T 0P9, Canada
Phone: 866-744-7774; Fax: 866-383-0393

BROKER / MOTOR CARRIER AGREEMENT

By accepting a shipment arranged by SPI Logistics ("BROKER"), CARRIER agrees to be bound by these terms and conditions.

RECITALS

1.

BROKER is a property broker or freight forwarder that is at all times acting as agent on behalf of its customer.

2.

This Agreement is entered into between CARRIER and BROKER with BROKER acting strictly as agent on behalf of its customer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

RECITALS

A. BROKER is a property broker or freight forwarder that is at all times acting as agent on behalf of its customer.

B. This Agreement is entered into between CARRIER and BROKER with BROKER acting strictly as agent on behalf of its customer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

A. CARRIER REPRESENTATIONS AND WARRANTIES:

CARRIER represents and warrants that:

1. CARRIER is a Registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers or for customers of BROKER ("Registered" means operated under authority issued by the Federal Motor Carrier Safety Administration ("FMCSA") or its predecessor agencies, within the U.S. Department of Transportation, or under a National Safety Code Number and Safety Rating issued by the applicable Provincial Authority in a province or territory in Canada, or pursuant to any other required authority).
2. CARRIER shall transport property pursuant to BROKER's load confirmation sheet and subject to the terms of this Agreement.
3. CARRIER makes the representations herein for the purpose of inducing BROKER to enter into this Agreement.
4. CARRIER has and will maintain cargo, personal injury, public liability, motor vehicle liability (including but not limited to hired and non- owned motor vehicles) insurance as described below.
5. CARRIER agrees that a 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 agent-only freight forwarder or CARRIER's status as the motor carrier for all shipments tendered by a Shipper arranged for by BROKER.
6. CARRIER has authorized the person signing this Agreement to do so.
7. CARRIER will not re-broker (double broker), co-broker, subcontract, assign, interline, warehouse, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority without prior written consent of BROKER. If the CARRIER breaches this provision, the BROKER shall have the right to pay the money it owes CARRIER directly to the Delivering Carrier in lieu of payment to CARRIER. "Delivering Carrier" means the carrier that physically transported the freight. Upon BROKER's payment to Delivering Carrier, CARRIER shall not be released from any liability to BROKER. In addition to the indemnity obligations in Section A.11, CARRIER shall be liable for: (a) any additional cost arising out of its failure to directly perform the services or that are otherwise incurred by the Delivering Carrier; and (b) consequential damages for violation of this provision. By violating this provision, CARRIER waives the right to pursue legal action in the collection of payment from BROKER, BROKER's customer, shipper, or consignee.
8. (a) CARRIER is in compliance with, and shall maintain compliance with during the term of this Agreement, all applicable federal,

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state, provincial, and local laws and regulations relating to and governing the provision of its services including, but not limited to: maintaining valid motor carrier operating authority; owner/operator lease regulations; loading and securement of freight regulations; implementation, maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations; sanitation, and temperature requirements for transporting food, foodstuffs, and other perishable products including, without limitation, the Food Safety Modernization Act (21 USC 2201, et seq.), the Federal Food, Drug and Cosmetic Act (21 USC 341, et seq.) ("FD&C Act"), the Sanitary Food Transportation Act (49 USC 5701, et seq.), the U.S. Food and Drug Administration's Final Rule on the Sanitary Transportation of Human and Animal Food (21 CFR 1.900, et seq.), all applicable U.S. Department of Agriculture and Food Safety and Inspection Service regulations, and to the extent that CARRIER performs Services hereunder within, or to or from Canada, the Food and Drugs Act and any applicable statutes and regulations, including, but not limited to the Ontario Food Safety and Quality Act, 2001, or any other jurisdiction's equivalent (collectively, the "Food Safety Laws"); qualification, licensing and training of drivers for any hazardous materials; implementation, and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; all applicable insurance laws including, "but not limited to", workers' compensation laws and regulations.

- (b) CARRIER is solely responsible for any and all management, governing, selection, discipline, direction and control of its employees, owner/operators, and equipment with respect to operating within all applicable federal, provincial, and state legal and regulatory requirements to ensure the safe operation of CARRIER's vehicles, drivers and facilities. CARRIER and BROKER agree that safe, legal, and compliant operation of the CARRIER and its drivers and equipment 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.
9. CARRIER agrees that at no time during the term of its contract with BROKER shall it have an "Unsatisfactory" or "Conditional" safety rating as determined by the FMCSA, nor be subject to any investigation or disciplinary action by any state agency related to enforcement of safety laws and regulations. If CARRIER receives an "Unsatisfactory" or "Conditional" safety rating it shall immediately notify BROKER and shall not transport any shipment hereunder without BROKER's prior written consent. If a safety rating is changed from "Satisfactory" to "Conditional," CARRIER shall immediately notify BROKER. The provisions of this Section are intended to include safety rating designations which may replace those above. IN ADDITION, A CANADIAN CARRIER will have and maintain a "Carrier Safety Rating" ("CSR") issued by the applicable Ministry of Transportation that is "Satisfactory-Unaudited" or better, or a "Satisfactory" Safety Rating ("SR") issued by the provincial regulatory authority in the province in which the CARRIER has base-plated its vehicles if the CARRIER is an extra-provincial motor carrier as defined under the Motor Vehicle Transport Act (Canada). Either may be subject to change at any time.
10. CARRIER will notify BROKER immediately if: (a) CARRIER's federal U.S. Operating Authority, intrastate operating authority, or corporate charter, or CARRIER'S CSR or SR issued by a Provincial authority, or corporate charter in Canada is threatened to be, or has been revoked, suspended or rendered inactive for any reason; and (b) will stop all transport if an event in Section 10(a) occurs until receipt of written instructions from BROKER; or (c) if CARRIER is sold, or if there is a change in control of CARRIER; (d) any of its insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason; or (e) CARRIER experiences any fraud, problem, breach, threat, failure, outage, or other issue that may affect CARRIER's technology or information security ("Information Security Issues") that may impact BROKER or the cargo. To the extent that any term under this Section is triggered requiring CARRIER to give notice to BROKER, BROKER shall have sole discretion to terminate this Agreement immediately.
- 11. INDEMNIFICATION: CARRIER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BROKER AND BROKER'S CUSTOMERS, SHIPPERS, CONSIGNEES (AS THIRD-PARTY BENEFICIARIES), THEIR SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL ACTUAL, POTENTIAL, THREATENED, OR PENDING LOSSES, CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, LIABILITIES, JUDGMENTS, FINES, PENALTIES, LIENS, ORDERS, DECREES, AWARDS, COSTS, EXPENSES, INCLUDING LEGAL FEES, SETTLEMENTS, AND CLAIMS (COLLECTIVELY, "CLAIMS") ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH CARRIER'S ACTS, OMISSIONS, WHERE SUCH CLAIM IS CAUSED BY:**
- (a) **LOSS OR DAMAGE TO PROPERTY OR PERSONAL INJURY, INCLUDING DEATH TO PERSON(S) OR THIRD PARTIES.**
- (b) **THE NEGLIGENCE, INTENTIONAL MISCONDUCT, BREACH OF THIS AGREEMENT, OR VIOLATION OF ANY APPLICABLE LAW OR REGULATION INCLUDING BUT NOT LIMITED TO HOURS OF SERVICE AND CALIFORNIA AIR RESOURCE BOARD REGULATIONS, BY CARRIER IT'S PERSONNEL, AGENTS, OR CONTRACTORS.**

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(c) EMPLOYMENT-RELATED CLAIMS ASSERTED BY CARRIER'S PERSONNEL INCLUDING FOR CLAIMS OF JOINT OR CO-EMPLOYMENT, EMPLOYEE BENEFITS, OR WORKER'S COMPENSATION.

(d) INFORMATION SECURITY ISSUES.

BROKER DOES NOT REQUIRE INDEMNIFICATION FROM CARRIER AS A CONDITION TO THE TRANSPORTATION OF PROPERTY FOR COMPENSATION OR HIRE. THE INDEMNITY OBLIGATIONS IN THIS PROVISION SHALL NOT APPLY TO THE EXTENT A CLAIM IS CAUSED BY BROKER'S WILLFUL MISCONDUCT, NEGLIGENCE, OR VIOLATION OF APPLICABLE LAWS OR REGULATIONS. THE RIGHTS IN THIS SECTION SHALL BE IN ADDITION TO ANY OTHER RIGHTS AND REMEDIES BROKER MAY HAVE UNDER THIS AGREEMENT OR APPLICABLE LAWS AND SHALL NOT BE CONSTRUED TO NEGATE OR ABRIDGE OR OTHERWISE REDUCE ANY OTHER RIGHT, OR OBLIGATION, WHICH WOULD EXIST AS TO BROKER. THE OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

12. (a) CARRIER shall comply with all applicable laws and regulations relating to the transportation of Hazardous Materials as defined in 49 CFR 173, et seq. (including any amendments) to the extent that any shipments hereunder constitute Hazardous Materials. In such instance(s), CARRIER shall be solely responsible for any violation of the applicable laws and regulations and shall defend, indemnify, and hold BROKER and its customers harmless from any liability incurred, including, but not limited to, reasonable attorney's fees arising from any non-compliance.
- (b) CARRIER shall comply with all applicable federal/provincial laws and regulations pertaining to transportation of "Dangerous Goods" for shipments originating in Canada and delivered in Canada or the U.S.
13. CARRIER expressly authorizes BROKER to accept payment from shippers for CARRIER's services and waives all rights to collection from shippers for those services.
14. **State of California Operations:** To the extent any goods are transported within the State of California, CARRIER warrants: (a) 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 comply with the California Air Resources Board ("ARB") Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations; (b) all refrigerated equipment it operates within California under this Agreement is in full compliance with the California ARB TRU ACTM in-use regulations; (c) All TRU's it operates within California are registered in ARB's Equipment Registration ("ARBER") system; a copy of either the ARBER certification for each TRU or evidence of CARRIER's inclusion on ARBER's 100 Percent Compliance list are maintained by CARRIER and will be provided to BROKER upon request; and (d) CARRIER shall be liable to BROKER for any penalties, or any other liability, imposed on BROKER because of CARRIER's use of non-compliant equipment.
15. In the case of shipments that are to be transported in bond, CARRIER shall hold and provide proof on request, that it has bonded carrier status. For any cross-border shipments between U.S. and Canada, CARRIER shall be duly licensed and qualified under relevant customs and border security laws and be knowledgeable with respect to customs clearance procedures including but not limited to identification of manifests, commercial invoices, and other required customs documents.
16. For Intra-Canadian (between provinces) or intra-provincial shipments, CARRIER's equipment will be owned and controlled by CARRIER and registered, licensed, maintained and operated pursuant to applicable Canadian federal and provincial laws and regulations.
17. **Government Contracts:** CARRIER must be in compliance with and continue to comply with all laws and regulations (Federal Acquisition Regulations) governing contractors and subcontractors providing goods and services to government agencies when performing services under this Agreement when the shipper has a U.S. or Canadian Government contract.
18. CARRIER will not contact BROKER's customers directly and CARRIER will also ensure that none of CARRIER's affiliates, representatives, directors, officers, employees, agents, consultants, insurance companies, insurance representatives or adjusters contact BROKER's customer directly without the express written consent of BROKER. CARRIER may only contact BROKER's customer directly without BROKER's express written consent in the event that CARRIER requires immediate instruction respecting a time-sensitive issue, including salvage or loads of comprised of perishables, and CARRIER is, for whatever reason, unable to obtain immediate instruction from BROKER. In all cases, CARRIER must first attempt to obtain instruction from BROKER prior to contacting BROKER's customer.

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19. CARRIER is in compliance with and shall maintain compliance with all applicable laws and regulations related to information security throughout the term of this Agreement. CARRIER will implement and maintain reasonable information security policies and procedures. These information security policies and procedures shall apply to all dealings involving BROKER or cargo.

B. BROKER RESPONSIBILITIES:

1. **No Broker Control.** The Parties agree that BROKER will not assert any control nor have any right to exercise control over a BROKER's shipper's cargo, including, but not limited to, taking possession of that cargo, and BROKER shall not direct or control the routes taken by CARRIER in the transportation of cargo under this Agreement.
2. **Shipments, Billing, and Rates:** BROKER shall offer CARRIER at least one (1) loads or shipments per year. BROKER shall inform CARRIER of (a) place of origin and destination of all shipments; and (b) if applicable, any time-sensitivity or temperature-sensitivity instructions or special equipment requirements, provided BROKER has received such information from Shipper.
3. (a) CARRIER authorizes BROKER to invoice shipper, receiver, consignor, consignee or any other party responsible for payment of freight charges on behalf of CARRIER. Payment of the freight charges to BROKER shall relieve shipper, receiver, consignor or consignee of any liability to the CARRIER for non-payment of charges.

(b) BROKER agrees to conduct all billing services to its customers or other parties responsible for payment. CARRIER shall invoice BROKER for its (CARRIER) charges, as mutually agreed in writing or by fax or email, electronically confirmed, contained in BROKER's Load/ Rate Confirmation sheet(s), or the Parties' mutually agreed Rates, which are incorporated by this reference. Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, BROKER requirements, or specific shipping schedules as mutually agreed upon, and shall be confirmed by fax or email, electronically confirmed writing by both Parties. Any such changes in rates shall automatically be incorporated herein by this reference. The agreed Rate, by definition, shall include CARRIER's tariffs, and all rates, classifications, rules and practices upon which any rate applicable to the shipments transported herein is based, and no part thereof shall be amended, modified, or changed without mutual written consent of the Parties. For the avoidance of doubt, any legal terms and conditions on or incorporated in a BOL or shipping document, including any tariff, shall be void and without legal effect. In event of conflict between the BROKER's Load or Rate Confirmation and the agreed Rates, the BROKER's Load or Rate Confirmation shall control, which is incorporated herein by this reference.

(c) Additionally, 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. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference. Unless specifically agreed to in writing, no rates or charges, including, but not limited to, accessorial charges, "released rates," or "limited liability" rates or values, other than those mutually agreed upon by the Parties herein shall be valid.
4. **Payment:**

(a) BROKER agrees to pay CARRIER for its services rendered hereunder, upon written receipt of signed proof of delivery or bill of lading, in accordance with the rates set forth above, or as otherwise agreed, within thirty (30) days of receipt of CARRIER's invoice which must indicate BROKER's SPT number, provided invoice is received not later than one-hundred and eighty days (180) days after date of delivery, or scheduled date of delivery, whichever is earlier. CARRIER expressly waives its right to collection after the one hundred and eighty day period. Arbitration or litigation action for alleged non-payment for CARRIER services hereunder must be commenced within one (1) year (two (2) years for Canadian carriers) of date of delivery or scheduled delivery whichever is earlier in order to avoid being permanently barred. Upon receipt of payment, CARRIER automatically assigns all of its rights to payment from shippers, consignees, or third parties to BROKER.

(b) Carrier agrees to transport cargo for BROKER, under the terms of its own motor carrier authority, at the rate mutually agreed upon in writing, by fax, or by electronic or other means, contained in BROKER's Load Confirmation Sheet(s) even if such confirmation sheet is not returned signed. CARRIER agrees that BROKER is the sole party responsible for payment of CARRIER invoices and that, under no circumstances, will CARRIER seek payment from the shipper, consignee or any party responsible for payment. BROKER and CARRIER shall use their best efforts to ensure the accuracy of all freight charge billings tendered by BROKER to customers for transportation services performed by CARRIER. 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.

C. CARRIER RESPONSIBILITIES:

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- 1. Lawful Operation and Operating Responsibilities:** CARRIER warrants that at all times while performing Services during this Agreement it will act as a “motor carrier,” as that term is defined under 49 USC 13102 and any applicable federal or state regulations, provincial regulations, statutes, decisional law or administrative law. CARRIER will be responsible for the procurement and operation of the vehicles and equipment that it uses, and the training (including food safety training), supervision, and control of the drivers and any helpers used to provide the services. CARRIER will be responsible for the safe and lawful operation of the vehicles used in the performance of the services and will assume all costs, expenses, and liabilities incident to or arising out of furnishing, maintaining, repairing, or operating motor vehicles and other equipment, labor, fuel, supplies, and insurance. CARRIER warrants that each driver who it assigns to transport goods will have sufficient time under the hours-of-service regulations to complete the assigned transportation. CARRIER and its drivers shall abide by any and all signage, notices, warnings, or any other posted requirements at the premises of both the Shipper and the consignee or place of delivery.
- 2. Suitability of Equipment:** Subject to its representations and warranties in Section A above, CARRIER agrees to provide the necessary equipment and qualified personnel for performance of the transportation services required for BROKER or its customers. CARRIER’s equipment shall be clean, odor-free, dry, leak proof, and free of contamination and infestation, and no trailer or other vehicle that is used to provide transportation services under this Agreement shall have been used to transport refuse, garbage, trash, or any municipal, residual, industrial solid or liquid waste of any kind whatsoever, whether hazardous or non-hazardous, or any toxic or noxious substances (including pesticides, rodenticides, or insecticides). CARRIER’s equipment inspection records will be provided to BROKER within ten (10) business days on written request. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed. Where applicable, CARRIER’s trailers and equipment must also comply with the temperature-controlled refrigerated trailer requirements set forth herein or in the applicable Load or Rate Confirmation. At no cost to BROKER, CARRIER’s trailers, equipment, or motor vehicles may be rejected at BROKER’s or Shipper’s sole discretion if they do not pass the Shipper’s inspection standards. CARRIER may cure or otherwise provide a replacement of the nonconforming equipment at its own cost within four (4) hours of the original pickup time, but under no circumstance is BROKER’s Shipper obligated to tender a shipment to CARRIER where the Shipper previously rejected CARRIER’s equipment. Failure by BROKER’s Shipper to reject any equipment shall not relieve CARRIER of any liability hereunder and the acceptance and loading of the goods by the Shipper shall not constitute a waiver of any claims, including cargo loss or damage, that be asserted against CARRIER.
- 3. Driver Qualifications.** CARRIER warrants that all of its drivers in the performance of the services are qualified and licensed in accordance with any and all applicable federal, state, local, and provincial laws and regulations, and CARRIER’s drivers shall be trained in proper Hazard Analysis and Critical Control Points (“HACCP”) guidelines. CARRIER shall ensure that its personnel have experience handling commodities of a type similar to those tendered under this Agreement. In the event that claims for loss or damage are prevalent with personnel utilized by CARRIER for services provided hereunder, BROKER may request in writing that such personnel not handle freight tendered by BROKER’s shipper and CARRIER shall remove any such personnel from handling freight tendered by that shipper. BROKER shall not be responsible for any act or any failure to act of the personnel utilized by CARRIER in the performance of the Services. CARRIER warrants that each driver who it assigns to transport goods will have sufficient time under the hours-of-service regulations to complete the assigned transportation. CARRIER shall promptly notify BROKER if an employee has been convicted of a felony in accordance with the state law in which duties are performed, and the notice to BROKER must include a general description of the conduct resulting in the conviction of a felony.
- 4. On-Time Pickup and Delivery:** CARRIER agrees that each of the shipments tendered will be accomplished on the day and time as specified in BROKER’s customer’s instructions and accepted at the time of tender, which may be achieved with reasonable dispatch in compliance with hours of service and all other applicable safety regulations. CARRIER will notify BROKER in advance of accepting any shipment if the scheduled pickup or delivery may not be achieved by operating lawfully. CARRIER shall immediately notify BROKER in the event that it anticipates a late pickup or delivery, or an inability to make proper pickup or delivery for any reason including, without limitation, a motor vehicle accident. CARRIER acknowledges that BROKER’s customers have specific requirements for pickup and delivery due to the nature of their businesses, and that if pickup or delivery is not made at an appointed time or within a designated window then BROKER may incur chargebacks from its shipper customer. In such event, CARRIER shall be liable to BROKER for any chargebacks imposed on BROKER by its customer, up to USD\$250 per occurrence, except to the extent such delay resulted from BROKER’s sole negligence
- 5. Electronic Messaging:** CARRIER or its driver(s) (“you” or “your”) agree that they may legally receive SMS or electronic messages (“Message(s)”) originating from BROKER or its contracted entity. Responding to or reading any Message while driving a truck or motor vehicle can cause injury, death or property damage to you or others. You agree that you will not read or reply to a message unless your vehicle is stationary and parked. CARRIER and any employee or agent of CARRIER assume all responsibility for abiding by these instructions and agree that you will comply with all applicable federal, state, provincial and local laws including, but not limited to receiving, reading or sending Messages, phone calls or any other information to or from BROKER or its contracted entities. CARRIER agrees to release, indemnify, defend, and hold BROKER or its contracted entities harmless to the fullest extent permitted by law for any and claims of any nature arising out of or relating to the Messages, the hauling of the load, any violation of the terms

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of this Agreement or the rate confirmation. The safe, legal, and proper operation of the CARRIER supersedes any request, demand, preference, instruction, or information provided by BROKER or its contracted entities or its customers to CARRIER with respect to any shipment inclusive of the securement of the cargo. If any employee or contracted entity of BROKER or its customer requests, demands, or instructs CARRIER to take any action that violates any laws, CARRIER shall refuse to transport a load and immediately contact BROKER before taking any further action. CARRIER agrees that when it chooses to transport a load it does so on its own volition, exercising its own discretion and decision-making without coercion or undue influence by any individual or entity.

6. Bills of Lading:

- (a) For all shipments regardless of point of origin, CARRIER shall issue a bill of lading bearing CARRIER's name and information for each shipment moved by CARRIER under this Agreement. The bill of lading must be stamped or otherwise signed by a person authorized to do so on behalf of the shipper and then signed by person authorized to do so on behalf of the consignee. It is CARRIER's responsibility to retain a copy of the bill of lading and to submit it for payment of its services. CARRIER shall notify BROKER immediately of any exception made on the bill of lading, manifest or other receipt. Failure to advise BROKER of such exception on a bill of lading may result in termination of this Agreement.
- (b) For all shipments regardless of point of origin, any bills of lading signed by CARRIER will not form part of any contract of carriage entered into between CARRIER and the BROKER's shipper or customer. All bills of lading signed by CARRIER will be used solely as evidence of the condition of the cargo at the time the bill of lading is signed.
- (c) All signed delivery receipts or bills of lading shall be sent to BROKER within twenty-four (24) hours of pick-up or delivery. Any terms of the bill of lading inconsistent with the terms of this Agreement shall be controlled by the terms of this Agreement. 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.
- (d) If consignee refuses a shipment, or CARRIER is unable to deliver it for any reason, CARRIER must immediately provide BROKER with written notification of request for directions from BROKER or BROKER's customer.

7. LOSS OR DAMAGE:

- (a) **REGARDLESS OF JURISDICTION, CARRIER SHALL BECOME FULLY LIABLE FOR THE FULL VALUE OF THE CARGO UNDER THE CARMACK AMENDMENT WHEN IT TAKES OR RECEIVES POSSESSION THEREOF, AND THE TRAILER(S) IS LOADED, REGARDLESS OF WHETHER A BILL OF LADING HAS BEEN ISSUED, OR SIGNED, OR DELIVERED TO CARRIER, AND WHICH RESPONSIBILITY OR LIABILITY CONTINUES UNTIL DELIVERY TO CONSIGNEE AT DESTINATION, AND CONSIGNEE SIGNS BILL OF LADING OR DELIVERY RECEIPT AND DELIVERS IT TO CARRIER.**
- (b) **CARRIER SHALL BE LIABLE FOR CARGO LOSS AND DAMAGE AND DELAY CLAIMS FOR THE ACTUAL VALUE OF THE CARGO AND NO "RELEASED RATES," "LIMITED LIABILITY" RATES, OR ANY OTHER ATTEMPT TO LIMIT SUCH DAMAGES SHALL BE VALID.**
- (c) **IN THE EVENT OF LOSS OF OR DAMAGE TO CARGO, CARRIER SHALL PAY THE FULL, OR A MUTUALLY ACCEPTABLE COMPROMISED AMOUNT, OR SHALL DENY THE CARGO LOSS AND DAMAGE CLAIM WITHIN NINETY (90) DAYS FROM DATE OF RECEIPT OF CLAIM FROM BROKER AND SHALL BE CONCLUSIVELY PRESUMED LIABLE FOR SUCH CLAIMS IF NO PAYMENT, COMPROMISE OR DENIAL IS RECEIVED WITHIN THE NINETY (90) DAY PERIOD. BROKER IS ENTITLED TO SET-OFF THE AMOUNT OF ANY SUCH CLAIMS THAT REMAIN UNPAID OR UNRESOLVED AFTER SUCH NINETY (90) DAY PERIOD AGAINST AMOUNTS OWING FROM BROKER TO CARRIER.**
- (d) **CARRIER ASSUMES ALL RISK OF LOSS OR DAMAGE TO CARGO, INCLUDING AS ARISE FROM OR RELATE TO INFORMATION SECURITY ISSUES AND SHALL INDEMNIFY AND HOLD BROKER HARMLESS FROM ANY LIABILITY ARISING OUT OF VIOLATION OF SECTION A.9, INCLUDING CONSEQUENTIAL DAMAGES, COSTS, EXPENSES AND REASONABLE LEGAL FEES. AT BROKER'S SOLE OPTION AND NOT IN LIMITATION OF ANY OTHER REMEDY HEREUNDER, BROKER MAY DIRECTLY PAY THE DELIVERING CARRIER IN LIEU OF PAYMENT TO CARRIER.**

8. Salvage Claims:

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- (a) CARRIER waives any rights to salvage (sell) damaged goods that are tendered to CARRIER under this Agreement, and shall, at BROKER's or BROKER's customer's direction, promptly store or return the damaged goods to a location designated by BROKER or BROKER's customer;
- (b) CARRIER shall not under any circumstance allow shipper's goods to be sold or made available for sale or otherwise disposed of in any salvage markets; and
- (c) where damage was caused by CARRIER, the cost of return to shipper or a location designated by BROKER or BROKER's customer or cost storage of goods shall be paid for by CARRIER.

9. Additional Responsibilities for Canadian Carriers: CARRIER shall be responsible and liable for all of its employees and independent contractors providing services to BROKER hereunder. CARRIER shall pay and accept full and exclusive liability for the assessments or contributions imposed on CARRIER by the Unemployment Insurance Act, Canada Pension Act, Income Tax Act, and any provincial workplace safety, insurance, or similar laws or regulations. CARRIER, its employees, or independent contractors, or subcontractors shall not be entitled to receive from BROKER, any regular pay, vacation pay, overtime pay, severance pay or any workers' compensation, unemployment benefits, or any other benefits of any kind. CARRIER shall furnish to BROKER immediately upon request, proof of compliance with any workers' compensation, unemployment or other employee related laws or regulations required under Canadian federal or provincial laws or regulations. Canadian drivers shall be trained, licensed, and qualified to operate motor vehicles under applicable Canadian federal and provincial laws and regulations.

Except when delivery of cargo is rejected by consignee(s) and stored or warehoused at direction or approval of BROKER or its customer, CARRIER operating in the U.S. or in Canada under a through bill of lading or otherwise, regardless of point of origin, shall neither have nor claim any lien rights against cargo transported under this Agreement. Liens for storage or warehousing shall be limited to the cargo subject of the lien rights (if any) shall be released and are automatically assigned (or subrogated) to BROKER, upon receipt of payment by warehouseman for any such storage or warehousing.

10. Insurance:

- (a) All insurance required by this Agreement must be written and issued by an insurance company having a Best rating of "B+" or better. CARRIER shall have its insurance agent furnish BROKER or its Agent with Certificate(s) of Insurance, or insurance policies, protecting BROKER from the risks referred herein, providing thirty (30) days advance notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits as: auto liability, USD \$1,000,000 (USD\$5,000,000 if transporting hazardous materials including environmental damage due to release or discharge of hazardous substances) and cargo damage or loss, USD\$100,000. Except for the higher coverage limits specified above, the insurance policies shall comply with minimum requirements of the FMCSA and any other applicable regulatory state agency. Unless otherwise agreed, "Scheduled Auto" insurance certificates or policies ARE NOT acceptable under this Agreement.
- (b) For transportation service furnished in Canada, CARRIER shall:
 - (1) Comply with the insurance laws of Canada, and any applicable provincial laws and regulations;
 - (2) Furnish proof of general liability with limits not less than CAD\$2,000,000;
 - (3) Furnish proof of cargo loss and damage insurance with limits not less than CAD\$100,000 and a deductible of no greater than CAD\$5,000 per shipment; and
 - (4) Furnish proof of auto (or truckers) liability (including hired and non-owned vehicles) with limits not less than CAD\$2,000,000.
- (c) Nothing in this Agreement shall be construed to limit liability of CARRIER to the insurance limits set forth above, nor shall any exclusion in any insurance policy exonerate CARRIER from liability. CARRIER's insurance shall: (a) be primary and required to respond and pay prior to any other available coverage; (b) provide a waiver of subrogation against BROKER and its customers.

11. Carrier Specifications for Temperature-Controlled Loads, Sealed Loads, FDA and CFIA Regulations:

- (a) Temperature-Controlled Loads:
 - (1) Prior to loading, confirm that the reefer unit is working properly and the trailer is pre-cooled to the required temperature.
 - (2) Trailers must have air chute or vents clear and in good condition for proper circulation, without exceptions! The chute or

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vents must not be damaged, obstructed or blocked.

- (3) Space must be provided for proper air circulation in front, rear, top, bottom and between the loads.
- (4) Temperature testing must ensure required pre-cooling. Driver must not accept products which are above or below the required temperature ranges stated on the bill of lading and BROKER Rate or Load Confirmation.
- (5) If the temperature on the BROKER Rate or Load Confirmation differs from that on the Bill of Lading, contact BROKER before signing the bills of lading. If the shipment is accepted with a temperature discrepancy between the terms of the Bill of Lading and the BROKER Rate or Load Confirmation, CARRIER accepts all resulting risk of loss.
- (6) Temperature of the product loaded must appear on the original Bill of Lading. **(NOTE: Temperature should be listed on bill of lading as acceptable RANGE of temperatures. Reefer equipment rarely can maintain an exact temperature for any significant period of time.)**
- (7) When driver signs the Bill of Lading, driver is confirming receipt of the correct product, at the correct count and at the proper temperature.
- (8) Maintain continuous temperature stated on BROKER Rate or Load Confirmation enroute, unless otherwise instructed in writing by BROKER.
- (9) Notify BROKER immediately (before leaving receiver or consignee) if the shipment is damaged or rejected for any reason, in whole or in part.
- (10) No disposition of any rejected product shall be made without written instructions from BROKER as directed by shipper.
- (11) CARRIER represents that reefer equipment is and has been properly maintained and that it has written record proof of compliance with manufacturer's maintenance requirements for at least the twelve (12) months prior to accepting loads hereunder.
- (12) CARRIER assumes all risk of loss arising out of any failure to comply with these specifications.

(b) Carrier Specifications for Sealed Loads:

- (1) Unless otherwise agreed in writing, CARRIER shall have sole responsibility for compliance with all sealed load requirements and shall indemnify and hold BROKER harmless from any alleged or imposed liability by any shipper or customer on BROKER. Seals may be broken only on order of law enforcement authorities, FMCSA safety inspectors, Ministry of Transportation and Infrastructure ("MOTT") safety inspectors, or on written instruction and approval of BROKER or Shipper.
 - (2) CARRIER shall: (a) obtain written proof, on site, of seals broken on order of law enforcement authorities, FMCSA or MOTI safety inspectors which includes name, address, phone, badge or ID # of officer, and date, time and place, of seal breaking; and (b) a written statement of whether the original seal was re-attached or new one was applied and its number; and (c) call BROKER immediately on being stopped and instructed to break the seal, or if the seal is being broken by law enforcement or FMCSA inspector.
- (c) Food Safety Protocols: **CARRIER acknowledges that transportation of food grade products is subject to CFIA regulations and FDA regulations including but not limited to 21 USC 342(a)(4) which in relevant part, defines "adulteration" of food to mean foods which "may have become contaminated" and that shippers and receivers may have the right to reject any such shipments and require destruction of the foods without actual proof of physical damage, and that CARRIER may be held legally responsible for any such losses. NO FOOD GRADE PRODUCTS MAY BE DESTROYED OR DISPOSED WITHOUT RECEIPT OF PRIOR WRITTEN APPROVAL OR INSTRUCTIONS FROM BROKER. CARRIER ASSUMES ALL RISK OF LOSS FOR ANY VIOLATION OF THIS TERM.**
- (1) During the term of this Agreement CARRIER will comply with the laws and regulations governing the safe and secure transportation of food shipments, including those required by local, provincial, state and federal laws, regulations, ordinances and rules including, but not limited to, the Food Safety Laws. Carrier further agrees that no food shipment will be transported

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with non-food items and, to the extent applicable, CARRIER will use temperature-controlled trailers to regulate both ambient air temperature or refrigerated temperature.

- (2) Due to the specific characteristics and possibility of contamination of foodstuff and general merchandise tendered to CARRIER for transportation under this Agreement, CARRIER certifies that no vehicles or equipment which it shall furnish to transport freight under this Agreement shall have ever been used for transportation of either: (a) toxic chemicals (including pesticides, rodenticides and insecticides) or hazardous materials that were not properly packaged and lawfully transported; or (b) refuse, garbage, trash or any municipal, residual, industrial solid or liquid waste of any kind whatsoever, whether hazardous or non-hazardous, including poisons, pesticides, herbicides, or any other commodity that might adulterate or contaminate food, food products, or cosmetics.
 - (3) At no cost to BROKER or BROKER's customers, CARRIER's trailers, equipment, or motor vehicles may be rejected at BROKER's customers' sole discretion if they do not pass their inspection standards. CARRIER may cure or otherwise provide a replacement of the nonconforming equipment at its own cost within four (4) hours of the original pickup time, but under no circumstance are BROKER or BROKER's customers obligated to tender a shipment to CARRIER where BROKER's customer previously rejected CARRIER's equipment. Failure by BROKER's customer to reject any equipment shall not relieve CARRIER of any liability hereunder and the acceptance and loading of the goods by BROKER's customer shall not constitute a waiver of any claims, including cargo loss or damage, that BROKER or BROKER's customer may have or assert against CARRIER.
 - (4) Where a seal is placed on a trailer by consignor, shipper, CARRIER or other party, CARRIER is responsible to maintain the seal intact until removed by an authorized employee of consignee upon delivery. CARRIER is liable for any and all claims, losses, or liabilities arising from or as a result of any unauthorized removal of seal, broken seal, missing seal, tampered seal, or mismatched seal number. CARRIER is solely responsible for ensuring that cargo is maintained according to any requirements stated on the bill of lading or load confirmation
 - (5) CARRIER must ensure that all personnel transporting or handling cargo subject to the Food Safety Modernization Act and its implementing regulations or the Safe Food For Canadians Act and its regulations (collectively, the "Acts"), receive training required by the Acts. BROKER will transmit to CARRIER, on the Load Confirmation or separately by email, the shipper's or consignee's protocols and requirements for transporting food shipments subject to the Act. CARRIER must strictly comply with all such protocols and requirements. CARRIER's failure to comply with such protocols and requirements will permit the consignor, consignee, or BROKER to declare any freight transported on a shipment on which noncompliance occurred to be rejected and a total loss
12. CARRIER warrants that it will NOT place cargo (including perishables) in storage or warehouse without the express prior written instructions and approval from BROKER.

D. MISCELLANEOUS:

1. **Independent Contractor:** It is understood and agreed that the relationship between BROKER and CARRIER is that of independent contractor. 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, employer or employee relationship between the Parties. CARRIER shall provide the sole supervision and shall have exclusive control over the operations of its employees, contractors, subcontractors, agents, as well as all vehicles and equipment used to perform its transportation services hereunder. BROKER has no right to discipline or direct the performance of any driver or employees, contractors, subcontractors, or agents of CARRIER. CARRIER represents and agrees that at no time and for no purpose shall it represent to any party that it is anything other than an independent contractor in its relationship to BROKER.
2. **Non-Exclusivity:** 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.
3. **Waiver:**
 - (a) Failure of either party to enforce a breach or waiver of any provision or term of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either party to thereafter enforce such a term or provision.
 - (b) CARRIER expressly waives any or all rights and remedies they may have under any legislation.

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4. **Default:** In the event of a material breach by CARRIER of any provisions of this Agreement, BROKER shall have the right to withhold or set-off any payments owing to CARRIER or received from shippers which BROKER is obligated to pay CARRIER. The right of withholding or set-off is not an exclusive remedy and BROKER shall have and may exercise, subject to Section D.5, all other remedies it may have at law or in equity against CARRIER.

5. **Dispute Resolution:**

- (a) In the event of a dispute, either Party may declare a “negotiation period” by giving fifteen (15) days’ prior written notice to the other Party. Upon the issuance of such notice, each Party shall appoint a representative to negotiate a resolution of the issue(s). If the appointed representatives cannot reach resolution within the fifteen (15) days negotiation period, the Parties recourse shall be to arbitration or litigation (including action for injunctive relief) at the discretion of the BROKER. Arbitration proceedings shall be conducted under the rules of the American Arbitration Association (AAA), the Canadian Arbitration Association (CAA), or Transportation ADR Council, Inc. (ADR), as selected by BROKER. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the AAA, CAA, or ADR. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees, as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at the offices of the AAA, CAA or ADR, as directed by the association, or such other place as mutually agreed upon in writing, or by teleconference, video conference, or as or directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief.
- (b) For shipments originating in the U.S. and delivering in the U.S. under a U.S. bill of lading or originating in U.S. and being transported under a “through bill of lading” for delivery in Canada, U.S. federal laws shall be controlling of the above arbitration and litigation provisions. If not preempted by federal law, the laws of the state in which the action is brought shall be controlling.
- (c) Litigation proceedings shall be conducted in state or federal court in the state in which the action is brought, and CARRIER waives any objections to venue or jurisdiction in that state.
- (d) For shipments originating in Canada and delivering in Canada under a Canadian bill of lading, or originating in Canada and being transported under a “through bill of lading” for delivery in U.S., Canadian federal or provincial laws shall be controlling of the above arbitration and litigation provisions. If not preempted by Canadian federal law, the law of the province in which the action is brought shall be controlling.
- (e) Litigation proceedings shall be conducted in the court in the province in which the action is brought, and CARRIER waives any objections to venue or jurisdiction in that province. Unless otherwise agreed, or unless legally prohibited, the law of British Columbia shall be applied in any arbitration actions before the Canadian Arbitration Association.
- (f) The arbitration provisions of this Section shall not apply to enforcement of the award of arbitration in U.S. or Canadian courts.
6. **No Back Solicitation:** CARRIER shall not solicit or accept freight shipments from any customer of BROKER, when: (a) the availability of such shipments first became known to CARRIER as a result of BROKER’s efforts; or (b) where the shipments of BROKER’s customer were tendered to the CARRIER by the BROKER at any time prior to CARRIER’s delivery of any freight for said customer. In the event of breach of this provision, BROKER shall be entitled, for a period of twelve (12) months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of ten percent (10%) of the 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 by BROKER related thereto, including, but not limited to, reasonable attorney’s fees.

7. **Confidentiality:**

- (a) During the term of this Agreement and for eighteen (18) months after termination for any reason, the CARRIER shall not directly or indirectly disclose to anyone, or use for its own, or anyone else’s benefit, Confidential Information as defined herein. For purposes of this Agreement, “Confidential Information” shall mean information of the BROKER which includes but is not limited to business or marketing and sales plans, trade secrets, customer names, customer contacts, personal customer information, customer shipping or other logistics requirements, and all pricing information. “Customer”, for purposes of this Agreement, shall mean any person or entity with which BROKER is or has conducted business during eighteen (18) months immediately preceding violation of this Agreement. Confidential Information may be disclosed orally, visually or in tangible form (whether by document, electronic media, or other form). The failure of either Party to mark, label or identify any of the above-described information as Confidential shall not affect its status as part of the Confidential Information protected by this Agreement.

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Carrier’s Initials _____

- (b) In the event of violation of this clause, CARRIER acknowledges and agrees that the remedy at law, including monetary damages, may be inadequate and that BROKER shall be entitled, in addition to any other remedy it may have, to an injunction restraining CARRIER from violation of this Agreement.
- (c) In addition to the remedy set forth in Section D.7(b) above, BROKER shall have the right in its sole discretion to immediately terminate this Agreement (with or without prior notice) and recover or withhold twenty percent (20%) of the transportation revenue paid or owing to CARRIER under this Agreement (as evidenced by CARRIER's freight bills) as liquidated damages (and not as a penalty) for breach hereof.
8. **Modification of Agreement:** This Agreement may not be amended, except by mutual written agreement. Any amendment will be accomplished through written addendum with agreement confirmed in the addendum itself, dated and signed off on by both the Carrier and the Broker.
9. **Notices:** All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid and shall be deemed sent to the correct address unless the Parties are notified in writing of any change of address; or by confirmed (electronically acknowledged on paper) fax or electronically by email with receipt.
10. Unless otherwise agreed in writing, neither party shall be responsible to the other for shipper's compliance with applicable U.S. or Canadian customs laws and regulations.
11. **Electronic Communications:** During the term of this Agreement, the parties will be exchanging materials and information in electronic form (collectively "Electronic Materials"), either through the web sites, e-mail, or other electronic means (collectively "Electronic Connections") and via fax. By providing their fax numbers to each other and signing this Agreement, each party consents to receiving communications via fax regarding all aspects of their relationship.
12. **Term:** The term of this Agreement shall be for one (1) year from the date shown above. That term may be extended for another year by mutual agreement at or prior to the expiration of the first year, or if no further agreement is executed by that date, this Agreement shall remain in effect until superseded by a further agreement or cancelled upon thirty (30) days written notice of cancellation by either party.
13. **Severance and Survival:** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the Parties hereunder shall survive termination of this Agreement for any reason.
14. **English Language:** The controlling versions of this Agreement and any exhibits or transactional documents shall be the English language versions agreed upon by the Parties, and all notices or other communications or deliveries required or permitted under this Agreement shall be in the English language.
15. **Assignment:** This Agreement will be binding upon and inure to the benefit of both CARRIER and BROKER and their respective heirs, successors and assigns, but is not assignable by the CARRIER without prior written consent of BROKER. BROKER has the right, without consent or written notice to CARRIER, to assign this Agreement.
16. **Entire Agreement:** Unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties with respect to the subject matters addressed herein, and there are no agreements, understandings, conditions, warranties, or representations, oral or written, expressed or implied, with reference to the subject matter hereof that are not merged herein. Either Party may use its standard business forms, including, but not limited, to purchase order forms, clickwrap agreements, or other communications to administer transactions under this Agreement, but use of such forms or other communications is for the Parties' convenience only and does not alter, amend, modify, or supplement any of the provisions of this Agreement. This Agreement shall entirely supersede any oral or written contracts or agreements that deal with the same subject matter as referenced herein. Except as otherwise specifically stated, no modification, amendment, or addendum hereto shall be of any force or effect unless reduced to writing and signed by the Parties and expressly referred to as being modifications of this Agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same.

