



## **BROKER/CARRIER TRANSPORTATION AGREEMENT**

THIS AGREEMENT is made and entered by and between you ("Carrier") and American Freightways ("Broker") on the date the Broker submitted the Broker/Carrier Transportation online application to the Carrier.

WHEREAS, Broker is a property broker, arranging the transportation of general commodities by authorized carriers in interstate commerce for its shipper customers; and is duly qualified to operate as such, licensed by the Federal Motor Carrier Safety Administration, as evidenced by license number MC- 456030.

WHEREAS, Carrier is a motor carrier of property in intrastate and/or interstate commerce, providing transportation of general commodities; and is duly qualified to operate as such, licensed by the Federal Motor Carrier Safety Administration and/or the applicable state agency, as evidenced by license number(s) provided by the Broker on the online application.

WHEREAS, Broker desires to engage the services of Carrier for transportation of the general commodities of Broker's shipper customers and Carrier desires to perform such transportation services at Broker's request.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

### **1. RATES AND CHARGES:**

As full and complete compensation for the services to be provided BY Carrier under this Agreement, Broker shall pay Carrier at the rates and charges negotiated by Broker and Carrier on a per-shipment basis. All rates so negotiated shall be confirmed in writing; and each such rate confirmation will be considered an addendum to this Agreement.

### **2. PAYMENT OF RATES AND CHARGES:**

Carrier shall tender invoices to Broker for the services provided under this Agreement and Broker shall make payment on such invoices within 30 days after receipt thereof.

Carrier shall seek payment for the services performed hereunder solely and exclusively from Broker; and shall not, under any circumstances, present an invoice, bill, demand or other claim for payment to Broker's customers or any consignor or consignee of a shipment handled under this Agreement. If Carrier, in breach of this provision, seeks payment for services performed hereunder from someone other than Broker, Broker shall be entitled to recover from Carrier, either directly or through offset, the amount of any damages suffered by Broker in the form of lost business or other detriment to its customer relationships by virtue of Carrier's breaching conduct.

Carrier waives any and all lien rights that it may otherwise have pursuant to any state or federal law for non- or late payment of the charges assessed for the services provided pursuant this Agreement.

### **3. COLLECTION OF CHARGES, UNDERCHARGES AND OVERCHARGES:**

Any invoice or claim by Carrier to recover charges or undercharges alleged to be due for services performed under this Agreement shall be submitted in writing to Broker within 180 days of delivery or tender of delivery of the shipment or shipments with respect to which such charges or undercharges are claimed, or within the time prescribed by any applicable state or federal law, whichever is shorter. Submission of a claim for charges or undercharges within the stated 180-day period constitutes an essential prerequisite to the filing of an action or proceeding to recover such charges if not paid by Broker. The expiration of the 180-day claim-submission period without timely submission of a

claim constitutes a complete and absolute defense to any such claim unless Broker has expressly agreed in writing to waive such defense in whole or in part.

Any lawsuit or other legal proceeding by Carrier to recover charges or undercharges alleged to be due for services performed hereunder may be initiated only if an invoice or claim is timely submitted in accordance with the foregoing paragraph and only if the lawsuit or other legal proceeding is commenced not more than 18 months after delivery or tender of delivery of the shipment or shipments with respect to which such charges or undercharges are claimed. To the extent permitted by applicable law, the expiration of said 18-month period without the commencement of any lawsuit or other legal proceeding shall be a complete and absolute defense to any such lawsuit or other legal proceeding by Carrier, unless Broker has expressly agreed in writing to waive such defense in whole or in part.

Any claim by Broker to recover overcharges or duplicate payments shall be submitted to Carrier within 180 days of Broker's payment of Carrier's invoice for such charges; and any action or proceeding by Broker against Carrier to recover such charges shall be commenced not more than 18 months after Broker's receipt of Carrier's applicable invoice.

#### **4. INDEPENDENT CONTRACTOR:**

In the performance of the transportation services provided hereunder, Carrier shall at all times be considered an independent contractor in relation to Broker, exercising exclusive control, supervision and direction over the manner in which the services are provided, the persons engaged in providing the services and the equipment used in providing such services; and not an agent or employee of Broker or its customers.

#### **5. CARRIER'S LICENSES, SAFETY RATING AND OTHER OPERATING REQUIREMENTS:**

At all times during the term of this Agreement, Carrier shall, at its expense:

- (a) Maintain such licenses and permits as are required by state and/or federal authorities with respect to transportation services performed by a motor carrier;
- (b) Maintain such insurance coverage as is required pursuant to section 10 below;
- (c) Provide motor vehicles and equipment for use in the performance of its services which are in good and efficient condition, both as to operation and appearance;
- (d) Furnish all fuel, oil, tires, supplies, parts and any other equipment required for the safe, timely and efficient operation and maintenance of such vehicles and equipment;
- (e) Maintain all motor vehicles and equipment used in the performance of the transportation services provided hereunder in compliance with all applicable laws, including, without limitation, those regarding over-dimension and overweight loads and air quality and environmental standards;
- (f) Employ or utilize in the operation of such vehicles and equipment fully qualified employees or independent contractors;
- (g) Pay, all applicable payroll and Social Security taxes and fees and costs for unemployment and workers' compensation insurance, pensions, benefits and related obligations with respect to the persons engaged in the performance of such transportation services;
- (h) Comply with applicable rules and regulations, including, without limitation, those of the United States Department of Transportation, the Federal Motor Carrier Safety Administration and/or any applicable state agency and

(i) Maintain a rating **other than** “Unsatisfactory” or “Unfit” under the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (or other rating equivalent to the “Unsatisfactory” or “Unfit” ratings, as such System may change); and provide Broker with written notification within five days of receipt of any “Unsatisfactory” or “Unfit” (or similar) safety rating.

**6. CARRIER’S SERVICES NON-DELEGABLE WITHOUT EXPRESS WRITTEN CONSENT OF BROKER:**

Carrier shall perform all services to be provided hereunder and, unless Carrier receives Broker’s express written consent, shall not delegate, broker, assign, interline, interchange, transfer, subcontract or make any other arrangement whereby a shipment handled under this Agreement is transported in whole or in part by any carrier other than Carrier. If Carrier delegates, brokers, assigns, interlines, interchanges, transfers or subcontracts any shipment referred by Broker under this Agreement, with or without the express written consent of Broker, Carrier (a) shall nevertheless remain responsible to Broker under the terms of this Agreement as if Carrier had performed the services itself for any loss, damage or delay or for any indemnity or other obligation of Carrier included in this Agreement; (b) shall pay all transportation charges assessed for any service(s) of the other carrier(s) unless Broker has expressly agreed to pay for such charges; (c) shall indemnify and defend Broker and its customer for whom the services are performed from and against any and all claims for collection of charges by such other carrier; and (d) shall indemnify and defend Broker and its customer for whom the services are performed from and against any act or omission of such carrier(s) or any claims or causes of action of any kind made by any such other carrier(s) or any other person or entity for damages caused or otherwise resulting from the other carrier(s)’s provision of services.

**7. BILLS OF LADING:**

The terms, conditions and provisions of such bills of lading used for the transportation of any shipments handled by Carrier at Broker’s request shall be subject and subordinate to the terms, conditions and provisions of this Agreement. To the extent that any of the terms, conditions and/or provisions of any such bill of lading conflict with any terms, conditions or provisions of this Agreement, the terms, conditions and provisions of this Agreement shall govern.

Each bill of lading or similar shipping document shall identify Broker as the bill-to party for freight charges and Carrier as the carrier. Broker shall **not** be identified as the shipper, carrier or consignee on any bill of lading.

In addition, any provisions in any such bill of lading purporting to make the underlying transportation subject to the terms of any of Carrier’s tariffs, schedules, service guides or other similar documents are specifically made inapplicable to shipments handled hereunder.

**8. LIABILITY FOR LOSS OF, DAMAGE TO OR DELAY IN DELIVERY OF FREIGHT:**

Broker shall not be liable to its customers for loss of, damage to or delay in delivering (“delay,” as used in this Agreement, is defined as delivery other than with reasonable dispatch or, if a date-certain delivery commitment is made by Carrier at Broker’s request, delivery after such date [unless extended by Broker]) any shipments transported pursuant to this Agreement. Such liability shall lie exclusively with Carrier.

Carrier’s liability for loss of, damage to or delay in delivery of any of Broker’s customers’ freight transported pursuant to this Agreement shall be governed by the provisions of 49 U.S.C. § 14706, that is, Carrier shall be liable to such shipper or consignee for any actual loss of, damage to or delay in delivering any shipments occurring from any cause whatsoever while in the possession or under the control of Carrier or in the possession or under the control of another transportation entity to which Carrier, whether with or without Broker’s express consent, delegates, brokers, assigns or subcontracts its obligations under this Agreement or resulting from Carrier’s performance of or failure to properly perform the transportation services provided for herein.

If, from any cause whatsoever (unless excused pursuant to the Force Majeure section below) all or any portion of a shipment is lost or damaged, and Carrier is liable for such loss or damage pursuant to the preceding paragraph, Carrier shall pay to (i) Broker (when the claim has been paid by Broker and is submitted to Carrier for reimbursement) all amounts incurred by Broker in connection with such loss or damage, including those amounts Broker is required by invoice, judgment, tariff, contract and/or other documentation to pay to its customer or the consignor or consignee of the goods so lost or damaged plus all taxes, freight charges, towing, clean-up, storage and disposal costs, and other fees and charges of any kind or nature which Broker is required to pay, collect or forego with respect to said claim, less any salvage allowance as may be agreed upon by Broker and Carrier; or (ii) the claimant (when the claim is submitted to Carrier directly by Broker's customer or the consignor or consignee of the goods) the invoice value of the goods at the intended destination plus all taxes, freight charges, and towing, clean-up, storage and disposal costs incurred by the claimant with respect to said claim less any salvage allowance as may be agreed upon by the claimant and Carrier.

No released value or other limitation of liability shall apply to Carrier's liability hereunder unless expressly agreed to by Broker prior to the transportation of the shipment in a signed writing separate from any bill of lading or delivery receipt issued by Carrier. Moreover, the amount of Carrier's cargo insurance shall not serve to limit Carrier's liability for any freight claims submitted by Broker's customers.

If delivery of a shipment is delayed (as defined above) and Carrier is liable for such delay pursuant to this section, Carrier shall be liable to the claimant, whether Broker, Broker's customer or the consignor or consignee of the goods, for delay damages, measured by the amount of any penalties or other losses incurred by the claimant for late delivery, pursuant to applicable contractual provisions.

In no event shall Carrier sell or attempt to sell for salvage any goods tendered by Broker without written consent from Broker. Where Broker desires lost, damaged or delayed goods to be returned to it or its customer, Carrier shall provide such transportation at no cost to Broker or its customer.

Written claims for loss, damage or delay must be submitted to Carrier within nine months from the date of delivery, or, in case of failure to make delivery, within nine months after a reasonable time for delivery has elapsed. Carrier shall acknowledge in writing to the claimant receipt of each claim submitted to Carrier within 15 days of Carrier's receipt of the claim; and shall pay or provide written explanation for declining to pay each such claim within 60 days of its receipt by Carrier.

Upon notification to Broker that a shipment handled by Carrier has been delivered damaged, short or late or that such a shipment has not been delivered at all and/or upon receipt by Broker of a claim for such loss, damage or delay, Broker may withhold from Carrier all sums otherwise due to Carrier for that shipment and all prior and subsequent services until the claim is fully resolved or Carrier or its insurer has confirmed in writing assumption of liability for such claim with no recourse against Broker.

## **9. INDEMNITY:**

Carrier shall at all times (both during and after the term hereof), at Carrier's expense, defend, indemnify and hold harmless Broker and its partners, officers, agents and employees from and against any and all claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including, without limitation, reasonable legal fees) or actions of every nature or character (including, but without limitation, claims or actions for loss of, damage to or delay in delivery of freight, personal injury, death, workers' compensation and/or damage to equipment and property [provided, however, that Carrier's obligations with respect to damage to goods transported hereunder is governed by Section 8 above]), asserted against Broker, its partners, officers, agents and/or employees by any agent or employee of Carrier or by any other person or entity resulting from the negligence of, intentional misconduct of or violation of applicable laws or regulations by Carrier or its employees or agents in the performance of services performed by Carrier or at Carrier's request under this Agreement.

Broker shall at all times (both during and after the term hereof), at Broker's expense, defend, indemnify, and hold harmless Carrier and its partners, officers, agents and/or employees from and against any and all claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including, without limitation, reasonable legal fees) caused by and resulting from the negligence or intentional misconduct of or violation of applicable laws or regulations by Broker or its partners, officers, agents or employees in the performance of services performed by Broker under this Agreement.

Any party seeking indemnity under this section shall promptly tender the defense of any claim to the other party.

#### **10. REQUIRED INSURANCE:**

Carrier shall, at all times during the term of this Agreement, carry commercial auto liability insurance in the minimum amount of **\$1,000,000.00** or in an amount required by law, whichever is greater, and general liability insurance with limits of not less than **\$1,000,000.00** per occurrence or in an amount required by law, whichever is greater.

In addition, Carrier shall, at all times during the term of this Agreement, carry cargo insurance in the minimum amount of **\$100,000.00** per occurrence for loss of or damage to property carried on any one motor vehicle, or in an amount required by law or an amount requested by Broker on a per-shipment basis, whichever is greater.

Carrier's commercial auto liability and cargo insurance coverage shall not exclude any claim or liability related to the transportation of specific classes or kinds of goods, loading or unloading operations, unattended vehicle, vehicle or trailer theft, or unscheduled vehicles; and Carrier shall not invoke any such exclusion in order to avoid any liability arising hereunder.

Carrier shall name Broker a certificate holder on the cargo policy and an additional insured on the commercial auto liability policy.

Carrier shall also maintain workers' compensation coverage for all personnel employed by Carrier in connection with its transportation operations and services performed under this Agreement in the minimum amount required by applicable laws.

All premiums for the insurance described in this section shall be paid by Carrier at its own expense.

Carrier shall furnish Broker with proof of all such required insurance coverages in the form of current Certificates of Insurance and/or other forms prescribed by applicable state or federal regulations and, upon request by Broker, copies of the underlying policies. Broker reserves the right to review, approve and/or reject Carrier's insurance policies at any time during the term of this Agreement. The policies shall not be subject to cancellation or modification without 30 days' prior notice to Broker; and Carrier shall promptly notify Broker of any such cancellation or modification.

#### **11. FORCE MAJEURE:**

No delay or failure in performance by either party shall constitute default under this Agreement or give rise to any claim for damages if such delay or failure (a) results from one or more of the following causes (collectively referred to as "Force Majeure") and (b) is beyond the reasonable control of, could not reasonably have been anticipated by and occurs without fault or negligence of the party whose performance is so affected: acts of God, hurricanes, tidal waves, floods, tornadoes, cyclone, wind storms, earthquakes, acts of a public enemy, civil commotion, strikes, labor disputes, work stoppages or other difficulties within the workforce, failure by the utility provider to provide power, intentional or malicious acts of third persons or any other organized opposition, cyber-attacks, viruses, corruption, depredation, accidents, explosions, fire, seizure under legal process, embargo, prohibition of import or export of goods, closure of public highways, railways, airways or shipping lanes, governmental interference, order, regulation, or other actions(s) by governmental authority, national, regional, or local emergency(ies), plague, epidemic, pandemic, outbreaks for

infectious disease or any public health crisis, including but not limited to compliance with related practices required or recommended by governmental or health organizations (such as quarantine or other employee restrictions). If either party considers that its performance is affected by Force Majeure, it shall promptly give written notice to the other party stating pertinent details; and shall do all things reasonably possible to remove the cause, mitigate its effects, and, if possible, resume performance.

**12. AGREEMENT NON-EXCLUSIVE WITH NON-SOLICITATION EXCEPTION:**

It is understood and agreed between the parties hereto that this is a non-exclusive agreement, that is, that Broker is free to arrange transportation services for its customers other than with Carrier and that Carrier is free to provide transportation services to freight forwarders, brokers or shippers other than Broker; *provided, however*, that Carrier shall not, directly or indirectly, solicit or do business of a transportation nature with any of Broker's customers that are served by Carrier solely as a result of requests by Broker for Carrier's services under this Agreement, that is, customers for whom Carrier did not provide service prior to execution of this Agreement. If Carrier breaches such non-solicitation provision during the term of this Agreement, Carrier shall pay to Broker upon demand 20 percent of all net revenues received by Carrier during such term from the improperly-solicited customers.

**13. NOTICE:**

Any written notice which either party hereto may be required or desire to give or serve upon the other party shall be delivered in person or sent by first class mail, facsimile, e-mail or a nationally recognized overnight courier, addressed as follows:

**BROKER**

American Freightways  
Attn. Mark Goodacre  
10845 Rancho Bernardo Rd Suite 100  
San Diego, CA 92127  
mgoodacre@afwy.net

**CARRIER**

Address and contact information as specified on the online application

**14. EFFECTIVE DATE, TERM AND TERMINATION:**

This Agreement shall become effective on the date set forth on the first page and shall continue in effect until terminated by either party, with or without cause, upon 30 days' written notice to the other party. If such written notice is given, this Agreement shall remain in effect until the 30th day after such notice is given or until any later date set forth in such notice or otherwise agreed upon by both parties.

Furthermore, Broker shall have the right to terminate this Agreement forthwith upon written notice to Carrier if (a) all or any portion of Carrier's operating authority required to perform services under this Agreement is revoked, canceled, suspended or discontinued by operation of law or otherwise; (b) voluntary or involuntary bankruptcy proceedings are initiated with respect to Carrier or Broker becomes aware of evidence indicating the insolvency of Carrier; (c) Carrier fails to obtain or maintain insurance policies in compliance with the requirements herein; or (d) Carrier fails to maintain a safety rating in compliance with the requirements herein.

Upon termination of this Agreement for any reason, the parties shall, unless otherwise agreed in writing by both parties, be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.

**15. ASSIGNMENT:**

Neither Broker nor Carrier may assign this Agreement or any rights under this Agreement without the other party's express written consent. Upon assignment with written consent, this Agreement shall be binding upon and inure to the benefit of the assigning party's successor or assignee. Any assignment that is not in compliance with this section shall be deemed null and void.

**16. ENTIRE CONTRACT:**

This Agreement, including the rate confirmations that, through execution, constitute part of this Agreement, sets forth the entire contract between the parties and supersedes all prior or contemporaneous written or oral negotiations between the parties.

**17. MODIFICATIONS:**

No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by authorized representatives of both parties.

**18. APPLICABLE LAW AND VENUE:**

To the extent not governed by the Interstate Commerce Act or other applicable federal statute, the laws of the State of California shall govern the validity, construction and performance of this Agreement and all controversies and claims arising hereunder.

Any lawsuits, arbitrations or other legal proceedings brought to enforce or interpret the terms of this Agreement or to resolve any claims or disputes arising hereunder shall be brought exclusively in San Diego County, California; and the parties hereby consent to personal jurisdiction in such County.

**19. SEVERABILITY:**

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining portions of this Agreement shall continue to be operative and in full force and effect.

**20. ATTORNEYS' FEES:**

If either party initiates legal action against the other party to interpret or enforce the terms of this Agreement or to resolve any claims or disputes arising hereunder, the party prevailing in such action shall be entitled to recover from the non-prevailing party such sum as the arbitrator or court determines to be reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

**Through execution by an authorized representative, upon approval (or on the date of the approval) by the Carrier of the online application submitted by the Broker to the Carrier, each of the Parties affirms its acceptance of and agrees to be bound by the terms of this Agreement.**

AMERICAN FREIGHTWAYS