

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 hereunder, 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. 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. 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 and not an agent or employee of Broker or its customers. Specifically, Carrier shall operate its own independent motor carrier business, exercising exclusive control, supervision and direction over the manner in which its services are provided, the persons engaged in providing the services and the equipment used in providing such services.

4. CARRIER’S LICENSES, SAFETY RATING AND OTHER OPERATING REQUIREMENTS: At all times during the term of this Agreement, Carrier shall maintain such licenses and permits as are required by state and/or federal authorities with respect to transportation services performed by a motor carrier; and maintain such insurance coverage as is required hereunder (pursuant to section 9 below). It shall be the sole responsibility of Carrier, at its expense, to (a) 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; (b) 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; (c) employ or utilize in the operation of such vehicles and equipment fully qualified personnel or contractors; (d) pay, all applicable payroll taxes and costs for unemployment insurance, pensions, workers’ compensation, Social Security and related employment costs with respect to the

persons engaged in the performance of such transportation service; and (e) 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. At all times during the term of this Agreement, Carrier shall 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 shall provide Broker with written notification within five days of receipt of any "Unsatisfactory" or "Unfit" (or similar) safety rating. Upon Carrier's receipt of an "Unsatisfactory" or "Unfit" (or similar) safety rating, Broker may immediately terminate this Agreement.

5. CARRIER'S SERVICES NON-DELEGABLE: 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 under this Agreement is transported in whole or in part by any carrier not named in this Agreement. In the event Carrier delegates, brokers, assigns, interlines, interchanges, transfers or subcontracts any shipment referred by Broker under this Agreement 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 unreasonable delay or for any indemnity or other obligation of Carrier included herein; (b) will pay all transportation charges for any service(s) of the other carrier(s); and (c) will indemnify and defend Broker 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 carrier(s) or any other party in connection with its provision of services. In no event shall Broker be liable for the payment of any rates or charges related to such services unless expressly included in the written per-shipment confirmation issued and accepted for the particular shipment.

6. 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. 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.

7. 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 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 resulting from Carrier's performance of or failure to properly perform the transportation services provided for herein, provided that claims for loss, damage or delay are submitted to Carrier in writing within nine months after delivery or, in case of failure to make delivery, within nine months after a reasonable time for delivery has elapsed. 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. Carrier shall promptly handle and endeavor to resolve in good faith any claims which are submitted either by Broker on behalf of the shipper or consignee or directly by the shipper or consignee for loss, damage or delay to any commodities transported pursuant to this Agreement. 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. If Broker is compelled by court order, arbitration award or business judgment to pay a claim for loss of, damage to or delay in delivery of a shipment handled by Carrier under this Agreement, Carrier shall reimburse Broker for the amount so paid by Broker and, if Carrier fails to reimburse Broker for such claim payment upon demand, Broker may withhold the amount of its claim payment from sums otherwise due Carrier and pursue Carrier for the balance thereof.

8. INDEMNITY: Carrier shall at all times (both during and after the term hereof) 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), asserted against Broker by any agent or employee of Carrier or by any other person arising out of services performed by Carrier or at Carrier's request under this Agreement. Carrier shall also defend, indemnify and hold harmless Broker from and against any and all claims for collection of charges by another transportation entity to which Carrier delegates, brokers, assigns, interlines, interchanges, transfers or subcontracts its obligations under this Agreement, whether with or without Broker's consent. Broker shall defend, indemnify, and hold harmless Carrier and its partners, officers, agents and 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. Any indemnified party under this section shall promptly tender the defense of any claim to the indemnifying party.

9. 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. 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.

10. COLLECTION OF CHARGES, UNDERCHARGES AND OVERCHARGES: Any 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. Provided that such 180-day claim-submission requirement has been timely satisfied, and that Broker has failed to make payment on such claim, Carrier may initiate an action or proceeding against Broker to recover such charges not more than 18 months after delivery or tender of delivery of the applicable shipment or shipments. Expiration of the 18-month suit-filing period without the commencement of any action or proceeding constitutes a complete and absolute defense to any such action or proceeding 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.

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 when such delay or failure results from causes beyond the reasonable control of, and without fault or negligence of, the party whose performance is so affected. Such causes, collectively referred to as "Force Majeure," include acts of God; floods or unusually severe weather that could not reasonably have been anticipated; changes in law; acts of the public enemy; war, rebellion or civil disturbance; and fires, explosions and other such catastrophic events. 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 and mitigate its effects.

12. AGREEMENT NON-EXCLUSIVE: 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.

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 or via e-mail.

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. Furthermore, Broker shall have the

right to terminate this Agreement forthwith upon written notice to Carrier in the event that (a) all or any portion of Carrier's operating authority required by 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.

15. ASSIGNMENT: Neither Broker nor Carrier may assign its 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.

16. ENTIRE CONTRACT: 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: The terms of this Agreement may be modified only through written agreement, mutually agreed to and signed by authorized representatives of both of the 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 shall be brought exclusively in San Diego County, California; and the parties 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives upon approval by the Carrier of the online application submitted by the Broker to the Carrier.

AMERICAN FREIGHTWAYS