



BROKER - CARRIER AGREEMENT

This agreement is entered into this _____ day of _____, 20____, by RJW Logistics, Inc. ("BROKER"), a Registered Property Broker, Lic. No. MC 131069, and _____, a Registered Motor Carrier, Permit/Certificate No. DOT _____ ("CARRIER"); collectively, the "Parties". ("Registered" means operated under authority issued by the Federal Motor Safety Administration (or its predecessors) within the U.S. Department of Transportation.

1. CARRIER REPRESENTS AND WARRANTS THAT IT:

- A. Is a Registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities.
- B. Shall transport the property, under its own operating authority and subject to the terms of this Agreement;
- C. Makes the representations herein for the purpose of inducing BROKER to enter into this Agreement;
- D. 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 a property broker nor CARRIER's status as a motor carrier.
- E. Will not rebroker, co-broker, subcontract, assign, interline, pass off, or hand off the transportation of shipments hereunder to any persons or entity without prior written consent of BROKER. If CARRIER breaches this provision, BROKER shall have the right of paying the monies it owes CARRIER directly to the delivering carrier, in lieu of payment to CARRIER. Upon BROKER's payment to delivering carrier, CARRIER shall not be released from any liability to BROKER under this Agreement. In addition to the indemnity obligation in Par 1.H, CARRIER will be liable for consequential damages for violation of this provision.
- F. i.) Is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials (including the licensing and training of HazMat qualified drivers), as defined in 49 C.F.R. ~172.800, ~173, and ~ 397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances and alcohol testing, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; all applicable insurance laws and regulations including but not limited to workers' compensation.
 - (ii) All CARRIER's drivers shall be and are subject to the exclusive direction, control and supervision of CARRIER and not BROKER. In order to satisfy shipping requirements of BROKER's customer and/or the contractual service obligations of BROKER, any information furnished by BROKER to CARRIER verbally or in writing, including, but not limited to, routes, pick-up and delivery dates, and times, special handling requirements, bracing and blocking requirements, dimensions and weights are provided for informational purposes only and CARRIER assumes full responsibility for the performance of its drivers hereunder.
 - (iii) Any communications or reporting requirements regarding the location of freight (tracing) are made in order to satisfy BROKER's customer's requirement or BROKER's contractual service obligations to its customers. The method and manner of performance of the requirements under this Agreement are the sole responsibility and control of CARRIER.
 - (iv) **ADDITIONAL DRIVER QUALIFICATIONS:** During the pendency of this Agreement,

CARRIER will not assign drivers to transport freight:

- (a) who have more than three moving violations (other than speeding) in the last three years (from date of conviction or plea);
 - (b) who have any speeding violations (of more than ten MPH over posted speed limits) in the last three years (from date of conviction or plea);
 - (c) who have any DWI or DUI violations in the past five years (from date of conviction or plea) or a current charge pending); and
 - (d) who have any careless or reckless driving violations in the past five years (from date of conviction or plea).
- G. CARRIER will notify BROKER immediately If its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- H (i.) To the extent permissible under applicable federal and state law, CARRIER shall defend, indemnify and hold BROKER and its shipper customer harmless from any claims, actions or damages, arising out of its performance under this Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence or intentional act of the other Party, or the shipper. The obligation to defend shall include all costs of defense as they accrue.
- (ii.) Except for CARRIER's liability under Par 1.E, unless otherwise agreed in writing, the Parties' indemnity obligations shall be subject to the insurance coverage and monetary insurance limits referred to in Subp.i.
- I. Does not have an "Unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify BROKER in writing immediately if its safety rating is changed to "Unsatisfactory" or "Conditional", Upon implementation by FMCSA of CSA 2010, CARRIER will notify BROKER immediately if its safety rating is changed to "unfit" or marginal".
- J. Authorizes BROKER to invoice CARRIER's freight charges to shipper, consignee, or third parties responsible for payment
- K. Has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of BROKER and is granting BROKER credit terms accordingly.

2. BROKER RESPONSIBILITIES:

- A. SHIPMENTS, BILLING & RATES: BROKER shall offer CARRIER at least three (3) loads/shipments annually. BROKER shall inform CARRIER of (a) place of origin and destination of all shipments; and (b) if applicable, any special shipping and handling instructions, or special equipment requirements, of which BROKER has been timely notified.
- B. BROKER agrees to conduct all billing services to shippers, consignees, or other party responsible for payment. CARRIER shall invoice BROKER for its (CARRIER's) charges, as mutually agreed in writing by, fax, or by electronic means, contained in BROKER's Load Confirmation Sheet(s)/dispatch sheets incorporated herein 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, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by fax or email) by both Parties. Any such additional, modified, or amended rates, changes in rates shall automatically be incorporated herein by this reference. Carrier will bill its invoice directly to the broker and shall provide the Broker with a copy of the signed shippers bill of lading and signed delivery receipt.
- C. RATES: 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. Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, tariff rates, released rates or values, or tariff rules or circulars, shall only be valid when their terms are specifically agreed to in writing signed by both Parties.
- D. PAYMENT: The Parties agree that BROKER is the sole party responsible for payment of CARRIER's charges. Failure of BROKER to collect payment from its customer shall not exonerate BROKER of its obligation to pay CARRIER. BROKER shall endeavor to pay CARRIER's invoice within 30 days of receipt of the invoice, bill of lading and proof of delivery, provided CARRIER is not in default under the terms of this Agreement.
- E. BOND: BROKER shall maintain a surety bond/trust fund as agreed to and on file with

the Federal Motor Carrier Safety Administration (FMCSA) in the form and amount not less than that required by that agency's regulations.

- F. BROKER will notify CARRIER immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- G. BROKER's responsibility is limited to arranging for, but not actually performing, transportation of a shipper's freight, and as such, is an independent contractor in its relationship to the carrier or any of broker's customers.

3. CARRIER RESPONSIBILITIES

- A. EQUIPMENT: Subject to its representations and warranties in Paragraph 1 above, CARRIER agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for BROKER and/or its customers. CARRIER will not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. -261.1 et. Seq. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.
- B. BILLS OF LADING: CARRIER shall issue a bill of lading in compliance with 49 C.F.R - 373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become fully responsible/liable for the freight when it takes/receives possession thereof, and the trailer (s) is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER, and which responsibility/liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or delivery receipt. Any terms of the bill of lading (including but not limited to payment and credit terms, released rates or released value) inconsistent with the terms of this Agreement shall be ineffective. Failure to issue a bill of lading, or sign a bill of lading acknowledging receipt of the cargo, by CARRIER, shall not affect the liability of CARRIER.
- C. LOSS & DAMAGE CLAIMS:
 - i. CARRIER shall comply with 49 C.F.R. - 370.1 et seq. and any amendments and/or any other applicable regulations adopted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvage and
 - ii. CARRIER's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. - 17406; and
 - iii. Special Damages: CARRIER's indemnification liability (Par 1.H) for freight loss and damage claims under this sub par C(ii) shall include legal fees which shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability of CARRIER under Subp. (ii) above.
 - iv. Except as provided in Par 1.E above, neither Party shall be liable to the other for consequential damages without prior written notification of the risk of loss and its approximate financial amount, and agreement to assume such responsibility in writing.
 - v. Notwithstanding the terms of 49 CFR 370.9, CARRIER shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within 30 days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this 30-day period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement.
 - vi. CARRIER's liability for cargo damage, loss, or theft from any cause for any one shipment, under Subp. ii above, shall not exceed \$100,000 unless CARRIER is notified by BROKER or Shipper of the increased value prior to shipment pick up. In the event carrier maintains cargo insurance in excess of \$100,000, such higher coverage shall apply.
- D. INSURANCE: CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance written notice of cancellation or termination, and unless otherwise agree, subject to the following minimum limits: General liability \$750,000; motor vehicle (including hired and non-owned vehicles, as required by law; (\$5,000,000 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances) cargo damage/loss, \$100,000; workers' compensation with limit's required by law. Except for the higher coverage limits which may be specified above, the insurance policies shall comply with minimum requirements of the

Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Nothing in this Agreement shall be construed to avoid or limit CARRIER's liability due to any exclusion or deductible in any insurance policy. Coverage provided by Carrier's insurance policies shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to loss and damage claims. CARRIER grants permission to BROKER, and shall require its insurance underwriters and agents, to provide BROKER upon BROKER's request a copy of all insurance policies including copies of all exclusions on any cargo policy. The cargo insurance policy shall not exclude coverage for infidelity, fraud, dishonesty, or criminal acts of CARRIER, its employees, officers and directors, contractors, subcontractors, owner-operators, or agents of CARRIER. If any such policy contains those exclusions, CARRIER shall obtain and furnish endorsements in the policy providing coverage to the satisfaction of BROKER.

- E. ASSIGNMENT OF RIGHTS; CARRIER automatically assigns to BROKER all its rights to collect freight charges from Shipper or any responsible third party on receipt of payment of its freight charges from BROKER.
- F. CARRIER assumes full responsibility and liability for payment of the following items: All applicable federal, state, and local payroll taxes, taxes for unemployment insurance, old age pensions, workers' compensation, social security, with respect to persons engaged in the performance of its transportation services hereunder. BROKER shall not be liable for any of the payroll-related tax obligations specified above and CARRIER shall indemnify, defend, and hold BROKER harmless from any claim or liability imposed or asserted against BROKER for any such obligations.
- G. CARRIER shall be held responsible for deductions due to service failures in the following areas:
 - a. \$25.00 for missed-pick up
 - b. \$50.00 for missed delivery
 - c. \$25.00 for failure to check call per occurrence (before and after pick-up and delivery)
- H. CARRIER agrees and promises not to solicit Company's employees either for the purposes of offering employment or of securing their services as independent contractors during the term of Agreement and for a period of two (2) years after Agreement's termination;
- I. The relationship of CARRIER to BROKER shall, at all times, be that of an independent contractor, except that BROKER shall be the agent for CARRIER for the collection and payment of charges to CARRIER, CARRIER agrees that it will look only to BROKER for payment if the billed party has paid BROKER. CARRIER shall have no lien on shipments.

4. MISCELLANEOUS:

- A. 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/employee relationship between the Parties. CARRIER shall provide the sole supervision and shall have exclusive control over the operations of its 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.
- B. NON-EXCLUSIVE AGREEMENT: CARRIER and BROKER acknowledge and agree that this contract does not bind the respective Parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.
- C. WAIVER OF PROVISIONS:
 - i. 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.
 - ii. This Agreement is for specified services pursuant to 49 U.S.C. - 14101 (b). To the extent that terms and conditions herein are inconsistent with part (b) Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the Parties expressly waive any or all rights and remedies they may have under the Act.
- D. DISPUTES: In the event of a dispute arising out of this Agreement, including but not limited to Federal or State statutory claims, the Party's sole recourse (except as provided below) shall be to arbitration. Proceedings shall be conducted under the rules of the Transportation Arbitration and Mediation PLLC (TAM). Upon mutual agreement of the Parties, or if no agreement, then at BROKER's sole discretion. Arbitration proceedings shall be started within eighteen (18) months from the date of delivery or scheduled date of delivery of the freight, whichever is later. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the TAM. 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 rationale and reasoning of the decision of arbitrator(s) shall be fully explained in a written opinion. 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 office of the TAM nearest Woodridge Illinois or such other place as mutually agreed upon in writing or directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted or controlled by federal transportation law and regulations, the laws of the State of Illinois shall be controlling notwithstanding applicable conflicts of laws rules. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

- i. Subject to the time limitation set forth in Subp. A above, for disputes where the amount in controversy exceeds \$10,000.00 BROKER shall have the right, but not the obligation, to select litigation in order to resolve any disputes arising hereunder. In the event of litigation the prevailing Party shall be entitled to recover costs, expenses and reasonable attorney fees, including but not limited to any incurred on appeals.
- ii. Subject to the time limitation set forth in Subp. A above, for disputes where the amount in controversy does not exceed \$10,000.00 BROKER shall have the right, but not the obligation, to select litigation in small claims court in order to resolve any disputes arising hereunder. The prevailing Party shall be entitled to recover costs, expenses and reasonable attorney fees, including but not limited to any incurred on appeals.
- iii. Venue, controlling law, and jurisdiction in any legal proceedings under Subps. i or ii above shall be in the State of Illinois.

E. NO BACK SOLICITATION:

- i. Due to BROKER'S substantial costs in marketing as well as employing sales representatives to obtain business, unless otherwise agreed in writing, CARRIER shall not knowingly, directly or indirectly, solicit freight shipments or accept shipments for a period of 24 months following termination of this agreement for any reason, from any shipper, consignor, consignee, or other customer of BROKER, when such shipments of shipper customers were first tendered to CARRIER by BROKER. This provision applies whether CARRIER solicits "customer," or "customer" solicits CARRIER.
- ii. In the event of breach of this provision, BROKER shall be entitled, for a period of 24 months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of 20 percent of the gross transportation revenue (as evidenced by freight bills) received by CARRIER for the transportation of said freight as liquidated damages. Additionally, BROKER may seek injunctive relief and in the event it is successful, CARRIER shall be liable for all costs and expenses incurred by BROKER, including, but not limited to, reasonable attorney's fees.

F. CONFIDENTIALITY:

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

G. The limitations of liability for cargo loss and damage as well as other liabilities arising out of the transportation of shipments, which originate outside the United States of America, may be subject to the laws of the country of origination.

H. MODIFICATION OF AGREEMENT: This Agreement and Exhibit A et. seq. attached may not be amended, except by mutual written agreement, or the procedures set forth (Pars 2.B and 2.C).

I. NOTICES:

- i. All notices provided or required by this Agreement, shall be made in writing and delivered, to the addresses shown herein: or by confirmed (electronically acknowledged on paper) fax, or by email with electronic receipt.
- ii. The Parties shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this Agreement.
- iii. Notices sent as required hereunder, to the addresses shown in this Agreement shall be deemed sent to the correct address, unless the Parties are notified in writing of any changes in address.

J. CONTRACT TERM: The term of this Agreement shall be TWO YEARS from the date hereof and thereafter

7

it shall automatically be renewed for successive TWO YEAR periods, unless terminated, upon thirty (30) day's prior written notice, with or without cause, by either Party at any time, including the initial term. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.

K. SEVERANCE: 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.

L. CONTERPARTS: This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.

M.

FAX AND E-MAIL CONSENT: The Parties to this Agreement are authorized to fax or e-mail to each other at the numbers or letters shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate specifications, or any advertisements of new services.

N. ENTIRE AGREEMENT: Unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. 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 involving this Agreement.

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

BROKER NAME: RJW LOGISTICS, INC

CARRIER NAME:

(Authorized Signature)

(Authorized Signature) X X

Printed Signature

Printed Signature X X

Title

Title/Position X X X

Company Address:
RJW LOGISTICS, INC.

Company Address:
X X X

P.O. BOX 1309

----- X X X

BOLINGBROOK, IL 60440

----- X X X

Phone 630-424-2400

Phone X X X

Fax 630-424-7251

Fax X X X

EMAIL

7