

A. CARRIER'S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS.

For the purpose of inducing BROKER to enter into this Agreement, CARRIER hereby represents and warrants to BROKER the following:

1. CARRIER 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.
2. CARRIER shall transport the property, under its own operating authority and subject to the terms of this Agreement.
3. CARRIER hereby 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.
4. CARRIER will not re-broker, co-broker, subcontract, assign, interline, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority, or in substituted service by rail or by other modes of transportation, without prior written consent of BROKER. If CARRIER breaches this provision, in addition to any other remedies available at law or in equity, 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 or otherwise, including any claims under MAP-21 (49 U.S.C. §13901 et seq.). In addition to the indemnity obligation in Section A.7., CARRIER shall be liable for consequential damages for violation of this provision.
5.
 - i. CARRIER is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials (including the licensing and training of Haz Mat qualified drivers), as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances and alcohol testing, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, including without limitation the Food Safety Modernization Act, the Sanitary Food Transportation Act of 2005, the FDA's Final Rule pertaining to Sanitary Transportation Of Human and Animal Food, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; all applicable insurance laws and regulations including but not limited to workers' compensation. CARRIER agrees to provide proof of compliance upon request.
 - ii. CARRIER is solely responsible for any and all management, governing, discipline, direction and control of its employees, owner/operators, and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of CARRIERS' vehicles, drivers and facilities. CARRIER and BROKER agree that safe and legal operation of the CARRIER and its drivers 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.

6. 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.
7. 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.
8. CARRIER 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". CARRIER authorizes BROKER to invoice CARRIER's freight charges to shipper, consignee, or third parties responsible for payment.
9. CARRIER has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of BROKER and is granting BROKER credit terms accordingly.
10. CARRIER, on behalf of shipper, consignee and broker interests, to the extent that any shipments subject to this Agreement are transported within the State of California on refrigerated equipment, CARRIER warrants that it shall only utilize equipment which is in full compliance with the California Air Resources Board (ARB) TRU ACTM in-use regulations. 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.

A. BROKER'S RESPONSIBILITIES:

1. SHIPMENTS, BILLING & RATES: BROKER shall inform CARRIER of:
 - i. place of origin and destination of all shipments; and
 - ii. if applicable, any special shipping and handling instructions, special equipment requirements, or value of shipments in excess of the amount specified in Section C.5.vii below, of which BROKER has been timely notified.
2. 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.

3. 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 a writing signed by both Parties.
4. 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 agrees to pay CARRIER's invoice within 30 days of receipt of the CARRIER's invoice, the bill of lading, proof of delivery, and/or payment from the BROKER's customer, provided CARRIER is not in default under the terms of this Agreement.
5. BOND: BROKER shall maintain a surety bond /trust fund as agreed to in the amount of \$75,000 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.
6. 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.
7. BROKER's responsibility is limited to arranging for, but not actually performing, transportation of a shipper's freight.

B. CARRIER'S ADDITIONAL RESPONSIBILITIES:

1. EQUIPMENT: Subject to its representations and warranties in Section A 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 will furnish equipment for transporting cargo which is sanitary and free of any contamination, suitable for the particular commodity being transported and which will not cause in whole or in part adulteration of the commodity as defined under 21 U.S.C. §342. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.
2. WAIVER OF LIEN: CARRIER will not withhold any Goods transported under this Agreement on account of any dispute. CARRIER waives and releases all liens, which CARRIER might otherwise have to any Goods of BROKER or its customer in the possession or control of CARRIER.
3. PERFORMANCE OF SERVICE BY CARRIER: CARRIER agrees to safely, promptly, and efficiently transport all cargo ("Goods") tendered to it by BROKER or other parties on behalf of BROKER as listed on the rate confirmation. CARRIER must immediately notify BROKER of any discrepancies

of part number, piece count, dimensions, and delivery address prior to leaving the shipper and wait for the BROKER to approve of the changes.

4. **BILLS OF LADING:** CARRIER shall sign a bill of lading, produced by shipper or CARRIER 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.

5. **LOSS/ DAMAGE CLAIMS AND DELAYS:**
 - i. Except as otherwise provided herein, CARRIER is liable for loss of, damage to, or delay of Goods according to the provisions of 49 U.S.C. §14706.
 - ii. 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. CARRIER agrees that food has been transported or offered for transport under conditions that are not in compliance with shipper's or BROKER's instructions shall be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §342(i). CARRIER understands and agrees that adulterated shipments may be refused by the consignee or receiver, at destination without diminishing or affecting CARRIER's liability in the event of a cargo claim. CARRIER shall not sell, salvage, or attempt to sell or salvage any goods without the BROKER's express written consent.
 - iii. CARRIER's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. §14706 if applicable; however, liability for exempt commodities and processing cargo loss and damage claims shall be determined by: DRC Trading Practices, or Blue Book Transportation Guidelines or NAPTWG Best Practices to be determined by agreement of the Parties and if no agreement then by one of the above associations' guidelines named above at the selection of the BROKER. CARRIER further agrees that in the event of a claim dispute that it will indemnify BROKER by direct payment or by reduction in payment due to CARRIER for freight claims determined to be valid by BROKER's claim department. CARRIER agrees further that pending settlements in the amount equal to the claim are to be held in escrow until BROKER's claims department resolves claim to the cargo owner's satisfaction.
 - iv. **Special Damages:** CARRIER's indemnification liability under Section A.7. for freight loss and damage claims under Section C.5.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 Section C.5.ii. above.
 - v. Except as provided in Section A.4. above and Section C.8. below, 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.

- vi. 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 45 days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this 45-day period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement.
 - vii. CARRIER's liability for cargo damage, loss, or theft from any cause for any one shipment, under Section C.5.ii above shall not exceed \$100,000 unless CARRIER is notified by BROKER or Shipper of the increased value 2 days prior to shipment pick up.
6. **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 agreed, subject to the following minimum limits: general liability \$1,000,000.00; motor vehicle (including hired and non-owned vehicles) \$1,000,000.00, (\$5,000,000 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances); primary cargo damage/loss, \$100,000.00 per shipment; workers' compensation with limits 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, the U.S. Department of Transportation and any other applicable regulatory state agency and shall be in form required by 49 U.S.C. § 13906(a). Nothing in this Agreement shall be construed to avoid or limit CARRIER's liability due to any exclusion or deductible in any insurance policy.
7. **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.
8. CARRIER agrees to indemnify and hold harmless BROKER against any and all costs and losses arising from late, damaged, or missing freight, including but not limited to, rate reductions, charter costs, and plant shutdown costs.
9. 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.
- C. **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/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. Neither party has any right to discipline or direct the performance of any driver and/or employees, contractors, subcontractors, or agents of the other Party. Neither Party shall represent and agree that it is anything other than an independent contractor in its relationship to the other Party.

2. FEES AND PAYMENTS: CARRIER will invoice BROKER within 15 days of delivery of each shipment at the rates and charges as set forth in a separate rate confirmation agreement ("Fee Agreement"). Each invoice must include proof of delivery. BROKER has the exclusive right to handle all billing of freight charges to BROKER'S customer. BROKER may withhold compensation to CARRIER to:
 - i. satisfy claims for loss, damage, or delay;
 - ii. satisfy advances made to or on behalf of CARRIER; or
 - iii. satisfy any other debt owed by CARRIER to BROKER. CARRIER agrees that it will not, under any circumstances, pursue payment from receiver, shipper, customer or any other third party and waives all claims it may have against any such parties. CARRIER will waive its right for payment of any freight bills not submitted for payment within 90 days of delivery. CARRIER must provide written notice of any undercharge claim within 180 days of BROKER'S receipt of the applicable original invoice. Assuming CARRIER has complied with the foregoing invoicing obligations, CARRIER must bring suit related to unpaid freight charges or undercharges within 18 months of the date of delivery or its right to sue or otherwise seek payment will be waived.
3. 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.
4. TERM AND TERMINATION: The term of this Agreement is one year ("Term"), with automatic renewals at the end of the initial and each subsequent Term unless earlier terminated. Either party may, with or without cause, terminate this Agreement without penalty at any time by giving the other party at least 30 days written notice of termination. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any service/work in progress in accordance with the terms of this Agreement.
5. 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.
6. 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 one of the following: Transportation Arbitration and Mediation PLLC (TAM), American Arbitration Association (AAA), Transportation ADR Council, Inc. (ADR), DRC (Fruit and Vegetable Dispute Resolution Corp) for

fresh produce related claims, 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, AAA, ADR, or DRC. 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 AAA, ADR, DRC or TAM nearest New York or such other place as mutually agreed upon in writing, or by conference call or video conferencing upon agreement of the Parties, or as 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 New York 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.

7. NO BACK SOLICITATION:

- i. Unless otherwise agreed in writing, CARRIER shall not knowingly solicit freight shipments (or accept shipments) for a period of 12 month(s) 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.
- ii. In the event of breach of this provision, BROKER shall be entitled, for a period of 12 months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of fifteen percent (15%) 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, that it is successful, CARRIER shall be liable for all costs and expenses incurred by BROKER, including, but not limited to, reasonable attorney's fees.

8. 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 prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

9. 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.
10. MODIFICATION OF AGREEMENT: This Agreement may not be amended, except by mutual written agreement, or the procedures set forth herein.
 - i. Should CARRIER modify any provision of this Agreement, whether in handwritten form, modified text or otherwise, such amendment shall not be effective, unless BROKER has initialed such change in close proximity thereto evidencing BROKER's specific acceptance of such modification.
 - ii. Additionally, the provisions of this Agreement shall be deemed to supersede and shall prevail over any conflicting terms set forth in any load confirmation, rate confirmation, dispatch sheet or other document pertaining to this Agreement, whether any such document was signed prior to, contemporaneously with or subsequent to execution of this Agreement.
11. NOTICES:
 - i. 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; 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.
12. 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.
13. COUNTERPARTS: This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.
14. FAX CONSENT: The Parties to this Agreement are authorized to fax to each other at the numbers shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate promotions, or any advertisements of new services.
15. FORCE MAJEURE. In the event that either Party is prevented from performing its obligations under this Agreement because of an occurrence beyond its control and arising without its fault or negligence, including without limitation, war, riots, rebellion, acts of God, acts of lawful authorities, fire, strikes, lockouts or other labor disputes, such failures to perform (except for any payments due hereunder) shall be excused for the duration of such occurrence. Economic hardships, including, but not limited to, recession and depression, shall not constitute Force Majeure events.

16. 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.