

BROKER-CARRIER AGREEMENT

This agreement is entered into on _____ by and between **METRO FREIGHT BROKERS, LLC** located at **5965 Wall, Sterling Heights, MI 48312**, (hereinafter referred to as "BROKER") and _____ (herein referred to as "CARRIER"), located at _____.

WITNESSETH:

WHEREAS, the CARRIER is a motor contract carrier of property authorized to transport freight for-hire in interstate commerce under Federal Motor Carrier Safety Administration permit no. **MC-_____** (a copy of which permit is attached hereto and made a part hereof);

WHEREAS, BROKER is a broker, duly licensed to arrange for the transportation of property pursuant to **License No. MC 513830**, a copy of which license is attached hereto and made a part hereof), and shall have "practical working control" of the involved freight as that term is defined by the Interstate Commerce Commission in Dixie Midwest Express, Inc. Extension-General Commodities, 132 MCC 794 (1982) and as such is responsible for routing traffic from origin to destination;

WHEREAS, BROKER desires to enter into a continuing bilateral contract with the CARRIER for services within CARRIER'S authority; and

NOW, THEREFORE, in consideration of the covenants and undertakings in this Contract, the parties mutually agree as follows:

1. **Services.** BROKER agrees to tender to CARRIER the transportation of a series of shipments with a minimum of **THREE** shipments moving to, from or between facilities maintained by customers of BROKER in such quantities as BROKER shall, from time to time, determine. CARRIER agrees to transport by motor vehicle from and to such points between which service may be required, such quantities of authorized commodities as customer may require, subject to the availability of suitable equipment and in the same quantity as received and at the prescribed pick up and delivery times following BROKER'S call in procedures. CARRIER may not assign any portion of this contract without BROKER'S written consent.

2. **Compensation.** BROKER and CARRIER shall establish mutually-acceptable contract rates before rendering specific freight services and CARRIER shall be paid for its services on the basis of such rates between the origin and destination points of specified line haul transportation services performed by CARRIER. All such rates will be confirmed in writing on a Schedule-A or by facsimile transmission prior to performance of transportation services. Modifications or additions to such rates may be agreed to in writing. All modifications and additions to the rates made either in writing or verbally and confirmed in writing, shall be deemed addenda to, and considered an integral part of this agreement. In addition, BROKER and CARRIER will adhere to the terms and conditions as set forth in Appendix "I" attached hereto and made a part hereof.

BROKER shall be responsible to pay CARRIER for all transportation services rendered hereunder. Moreover, BROKER agrees to make settlement within forty (40) days of submission by CARRIER to BROKER of those documents showing full and proper performance of said

transportation services as may be required by BROKER, including a copy of the aforementioned Confirmation fully executed by CARRIER and the original bill of lading. BROKER shall be entitled to deduct any sums advanced CARRIER from said settlement. Furthermore, the parties mutually agree that any payment due CARRIER is subject to revision if the amount is based on an error, including but not limited to, an error in calculating mileage or an adjustment for a claim.

3. Liability Standards. The parties agree that all liability standards and burdens of proof are herein governed by the Interstate Commerce Act, 49 U.S.C. Section 14706 (the Carmack Amendment). Accordingly, BROKER assumes no responsibility for delivery by the CARRIER of the involved commodities incurring loss, damage, injury or unreasonable delay from point of origin to point of destination. CARRIER shall be responsible for all claims for loss, damage, injury or delay due to its negligence. CARRIER'S liability shall begin when it signs the bill of lading and has received any such goods and shall continue until such time as CARRIER receives a signed bill of lading or delivery receipt from the proper named consignee and nothing remains to be done by CARRIER to deliver the shipment to consignee. When a shipment is refused by the consignee or CARRIER is unable to deliver it for any reason, CARRIER must contact BROKER immediately. CARRIER'S liability as a warehouseman shall not begin until CARRIER has placed the shipment in a public warehouse or storage facility under reasonable security.

4. Claims Handling. Any claims will be handled in the following manner:

i. A claim for loss, damage, injury or delay to cargo will be filed in writing, as provided below, with CARRIER, within 180 days of the date CARRIER notifies that the shipment is lost, damaged or delayed.

ii. CARRIER will, upon receipt in writing of a proper claim in the manner and form described herein above, acknowledge receipt of such claim in writing within 30 days after the date of its receipt by CARRIER, unless CARRIER will have paid or declined such claims in writing within 30 days thereof. CARRIER will indicate in its acknowledgement what, if any, additional documentary evidence or other pertinent information may be required by it to process the claim, based on CARRIER'S preliminary examination of the claim as filed. CARRIER agrees that in any case where it does not decline, pay or acknowledge receipt of claims within said 30 days that it has agreed to the validity of the claim and the amount stated therein and will thereafter pay said claim within 30 days.

iii. CARRIER, when it has received written claim for loss or damage, injury, or delay to property transported, will pay, decline, or make a firm compromise settlement offer in writing within 60 days after receipt of the claim by CARRIER. If CARRIER and BROKER (or its customer) do not come to final settlement within 60 days, BROKER may cancel this Agreement and/or seek to recover the damages, including attorney fees and all other expenses, through any legal, administrative or equitable remedy available. CARRIER shall not be responsible for loss damage, injury or delay resulting from acts of God, public enemy, revolution, civil disorder, or war.

iv. CARRIER shall be liable for the "full actual loss" resulting from loss, damage, injury or delay. "Full actual loss" means the invoice price of freight tendered to CARRIER for transportation as well as consequential damages if the CARRIER is put

on notice of the possibility thereof. CARRIER agrees that for purposes of claims, BROKER shall be deemed to be the "SHIPPER" and BROKER may properly present claims on its own behalf, in which instance BROKER's customer shall be recognized as the "SHIPPER" for claim purposes.

5. Insurance. CARRIER has authority from the U.S.D.O.T. to operate as a motor CARRIER and will maintain this authority and insurance for the protection of cargo in the amount of \$100,000.00. CARRIER shall also maintain as minimum requirements for public liability and property damage (including auto liability) insurance: General Aggregate \$2,000,000; each occurrence \$1,000,000, or the minimum U.S.D.O.T. requirements, whichever are greater. The amount of cargo insurance required may be increased by notification to meet the added valuation of specific shipments. Cargo insurance shall be in the form required by 49 C.F.R. 1043.2(b), and shall have no exclusions or restrictions that would not be accepted by the U.S.D.O.T. filing under statutory requirements. CARRIER shall furnish BROKER with a Certificate of Named Insured showing BROKER as certificate holder and shall require its insurance CARRIER to give BROKER written notice thirty (30) days prior to the cancellation of said insurance.

6. Workers' Compensation and Employers Liability. CARRIER shall maintain Workman's' Compensation, Employer's Liability Insurance, and any insurance required by any statutes applicable where the work is to be performed. All such Insurance shall be in amounts sufficient, and as required by statute, to protect CARRIER and its subcontractors for work performed under this Contract from any liability for bodily injury, sickness, or disease (including death resulting at any time therefrom) for any of their employees, including any liability or damage which may arise by virtue of any statute or law in force or which may hereafter be enacted. CARRIER may, at its option, provide certificates of authority to self-insure its Workman's' Compensation coverage in lieu of actual certificates of insurance for only those jurisdictions in which it is qualified to self-insure. CARRIER will at all times maintain certificates/declarations, evidencing such insurance coverage on file with BROKER and notify its insurance agent or CARRIER to give 30 days written notice of any changes, modifications or cancellation of such coverage.

7. Force Majeure. In the event that either party to this agreement shall be prevented from or delayed in performing any of its obligations hereunder on account of any law or legally binding order, regulation, or act of any government or department or agency thereof, or on account of war, acts of God, labor disturbances, or any cause beyond the control of such party, such party shall be excused from performing its obligations hereunder to a like extent and neither party shall be liable to the other for damages by reason of any delay or suspension of performance resulting from the disabilities listed herein.

8. Relationship of the Parties. In the performance of transportation services hereunder, CARRIER shall be an independent contractor and not an agent or employee of BROKER. CARRIER shall have exclusive control and direction of the persons operating vehicles or otherwise engaged in such transportation services. CARRIER agrees at its own expense to furnish suitable trucks, tractors, and semi-trailers to comply with the Contract, and to assume all costs, expenses and liabilities incident to or arising out of the maintenance, repair or operation of the equipment. CARRIER further assumes full responsibility for the payment of local, state and federal taxes and contribution or taxes for unemployment insurance, old age pensions, workmen's' compensation, or other social security and related protection with respect to the persons engaged in the performance of said transportation service

CARRIER further acknowledges and agrees that BROKER is an independent contractor as to its customer, and is not the agent of any customer. Accordingly, CARRIER agrees that it shall not look to the customers of BROKER under any circumstances for payment of freight charges and hereby waives any such claims. On all shipments arranged to be shipped by CARRIER pursuant to this Agreement, CARRIER shall bill all freight charges to BROKER. Any violation of this billing condition shall result in the forfeiture of fifty percent (50%) of the freight charges on the shipment incorrectly billed.

9. Hold Harmless. CARRIER shall defend and hold BROKER harmless, and indemnify BROKER for any and all liability or claims resulting for loss or damage to any freight in the possession and/or control of CARRIER in connection with transportation under this Agreement, and any and all liability or claims for personal injury or death or property loss or damage arising out of the acts or omissions of CARRIER in providing transportation under this agreement. CARRIER'S obligation under this agreement shall include liability for payment of any and all costs including reasonable attorney fees, and/or fees incurred by BROKER in the adjustment or defense of any claim for cargo loss or damage and/or claim for personal injury, death or property loss or damage arising out of transportation operations and services under this agreement. CARRIER agrees that its obligation to defend, indemnify, and hold harmless BROKER from and against any and all claims and liabilities resulting from or arising out of transportation operations and services under this agreement shall survive any termination of this agreement.

Moreover, CARRIER, at no time, shall bring a cause of action against BROKER excepting only for shipping charges for any loss, damage, expense, action and/or claim for injury to persons and damage to property arising out of or in connection with CARRIER'S performance under this Contract.

10. Account Protection. CARRIER agrees to support and protect BROKER'S efforts in performance of this agreement by refraining from any direct contact or solicitation of BROKER'S customers. During the term of the agreement and for a period of two (2) years from the time of the termination of this agreement, CARRIER shall not, directly or indirectly solicit or do business of a transportation or warehousing nature with any of BROKER'S customers who are serviced by CARRIER as a result of this agreement, unless otherwise agreed to in writing. If CARRIER breaches this Agreement and "back-solicits" BROKER'S customers, or obtains traffic from such a customer, BROKER then is entitled, for a period of fifteen (15) months after the involved traffic first begins to move, a commission from CARRIER of twenty-five percent (25%) of the transportation revenue invoiced on the movements of the traffic in addition to payment of all costs and attorney's fees expended to secure the twenty-five percent (25%). This is in addition to any other compensatory and punitive damages, the right to temporary or permanent injunction and all other legal remedies, including BROKER'S reasonable attorney fees to pursue enforcement of this Section. For purposes of this paragraph, CARRIER shall include all related companies, whether CARRIER, freight forwarder, holding company or otherwise, and also includes all principals of CARRIER, including officers, directors and shareholders acting directly or indirectly. Solicitations prohibited under this Agreement means participation in any conduct, whether direct or indirect, the purpose of which involves transportation of shipper traffic by the CARRIER for which the CARRIER does, or did in the past, provide transportation services for that shipper traffic under arrangements first made or procured by BROKER. Solicitation includes conduct initiated or induced by CARRIER,

or accepted from or through others in any way related to, affiliated with, or acting for the CARRIER.

11. **Compliance.** Both parties agree to abide by all applicable laws, regulations, ordinances and other rules of local, state and/or federal governments or other public authorities relating to the operation of commercial vehicles and transportation of goods.

12. **Non Exclusivity.** It is understood and agreed between the parties that this is a non-exclusive agreement and that the CARRIER shall be free to accept freight for transportation from parties other than BROKER and that BROKER shall be free to tender freight for transportation to carriers other than CARRIER.

13. **Term.** The term of the Agreement shall commence on the date first set forth above and shall be effective for a period of one year from such date, and shall continue thereafter from year to year, unless terminated by either party upon thirty (30) days written notice by certified mail.

14. **DOT Rating.** CARRIER will maintain a DOT "satisfactory" safety rating. If this should change, CARRIER will send BROKER written notice of the change by certified mail, in five (5) working days, and BROKER has the option of canceling this Agreement immediately and without notice. In addition, CARRIER represents and warrants that their drivers are in compliance with all Federal Motor Carrier Safety Driver Qualification Regulations and have received all necessary U.S. Department of Transportation CDL Safety Training

15. **Delay in Shipments.** In the event of delay in the carriage of BROKER'S freight, CARRIER shall at its expense, immediately advise BROKER, giving an estimate of the anticipated delay in delivery, and shall, as necessary, promptly take steps to reload the freight in replacement equipment or take other necessary steps to minimize delay, at CARRIER'S sole expense.

16. **Equipment Furnished.** CARRIER warrants that, at its cost and expense, it shall furnish for use in BROKER'S service sufficient vehicles suitable for the lawful carriage of cargo tendered by BROKER. CARRIER shall operate and maintain the motor and allied equipment necessary in good working condition and in compliance with all applicable laws and regulations. CARRIER, at its cost and expense, also shall provide adequately trained drivers, and all other facilities necessary for the proper performance of the transportation services herein provided. All equipment used by CARRIER in the performance of transportation functions hereunder shall at all times be under the exclusive control of CARRIER and shall meet the requirements of Appendix II attached hereto and made a part hereof.

17. **Issuance of Bill of Lading.** BROKER (and/or its customers) shall issue a bill of lading in their own name(s) and shall be ultimately liable to the owner of the freight for full actual loss and damage to the freight transported under this agreement while in the care of custody of the CARRIER. All claims for loss, damage and salvage shall be handled and processed in accordance with the Code of Federal Regulations (49 C.F.R.) as set forth in Section 11 hereof. The bill of lading shall be noted by the CARRIER that the shipments were transported by CARRIER, acting as a CARRIER, and that the shipment was arranged by BROKER, acting as a freight broker.

18. **Billing of Freight Charges.** CARRIER will bill all charges for transportation services directly to BROKER and CARRIER shall provide BROKER with a copy of the signed bill of lading and delivery receipts, all in conformity with the procedures set forth at Appendix "I". No billing for any run will be accepted after ninety (90) days from the date of the shipment. All billings received after ninety (90) days from the date of the shipment will not be processed for payment.

19. **Severability.** Obligations of this agreement are separate and divisible and in the event that any clause is deemed unenforceable, the balance of the agreement shall continue in full force and effect.

20. **Confidentiality.** CARRIER agrees that BROKER'S compensation for CARRIER'S services hereunder is confidential, and will not be disclosed. CARRIER further agrees that it will not reveal to anyone the terms of this agreement, the pricing of transportation service, or any other details of the business conducted between CARRIER and BROKER. CARRIER agrees that billing for all transportation services hereunder will be billed only to the BROKER. All billing generated directly to a customer, and not to the BROKER as identified in this agreement, will subject the CARRIER to a monetary penalty. This monetary penalty, paid to the BROKER, will be ten (10) percent of the CARRIER'S CHARGES. The penalty will be paid to the BROKER as soon as the billing error is discovered. There will be no time limit for this monetary penalty and penalties may be withheld from future settlements to the CARRIER.

21. **Binding Effect.** This contract is binding upon the parties hereto, their successors and assigns, shall be construed at all times under the laws of the state of Michigan and shall be deemed executed in Birmingham, Michigan.

22. **Notice.** Unless otherwise stated, all notices which may be given in connection with this Agreement or required by law or regulation shall be in writing, shall be sent postpaid by the party desiring to give such notice to the other party by first class mail, addressed to such party at its address shown herein, and shall be deemed to have been given when so sent.

23. **Complete Understanding.** The provisions contained herein properly express and memorialize the complete understanding of the parties as contained in all prior agreements, both verbal or in writing. This agreement shall be effective continuously subject to the right of either party hereto to cancel the agreement at any time upon not less than five (5) days' written notice of one party to the other.

24. **Performance Compensation Adjustments.** The parties further agree that in those cases where CARRIER'S performance, as regards to guaranteed arrival times, is not in conformity with this contract, and no good justification is shown therefore, the following adjustments will be made to the rates and charges:

i. Failure to arrive at destination on time, as agreed to with the BROKER, up to and including one (1) hour and fifty-nine (59) minutes late; reduction in the total charges by twenty-five percent (25%).

ii. Failure to arrive at the destination on time, as agreed to with BROKER, between two (2) hours and three (3) hours and fifty-nine (59) minutes late; reduction in the total charges by fifty percent (50%).

iii. Failure to arrive at destination on time, as agreed to with BROKER, over four (4) hours; reduction in total charges by one hundred percent (100%).

iv. In all cases where the customer refuses to pay the BROKER due to a late delivery by the CARRIER which is over two (2) hours late, the CARRIER'S pay will be reduced by one hundred percent (100%).

v. If, as a result of CARRIERS failure a "critical" situation is created which would cause a potential shut down, alternative transportation may be arranged by BROKER and charged back to CARRIER. Additional costs charged by the customer relating to a late shipment may also be charged back to the CARRIER.

vi. The above reductions in pay will not be applicable for delays which are beyond the control of the CARRIER (i.e. traffic, natural disasters, severe weather, etc.) The CARRIER must communicate this delay to the BROKER immediately upon knowledge of the delay. If the uncontrollable delay is not communicated by the CARRIER to the BROKER within ½ hour of the actual delay, the reduction in pay will continue to be in effect.

25. No Lien Rights. CARRIER shall neither have nor claim any lien rights on or against any property transported under this agreement. However, should a consignor or consignee notify BROKER of a claim for loss or damage to the property transported by CARRIER under this agreement, CARRIER agrees that BROKER and consignor/consignee shall have the right to set-off an amount from any freight charge payments due CARRIER.

26. Arbitration. If any dispute arises about any matter covered by the terms of this Agreement, the dispute shall be submitted to the American Arbitration Association for arbitration under the Association's rules and procedures. Said arbitration shall be conducted in Southfield, Michigan. No court action can be taken to either party prior to arbitration, and the arbitrator's decision shall be final and binding. If BROKER prevails in its claim against CARRIER, then BROKER shall be entitled to its reasonable attorney fees and costs.

27. Assignment of Claims for Payment. In the event that after movement and delivery of freight, the ultimate obligor for payment of freight charges and fees becomes bankrupt or for any reason defaults on its obligation to pay freight charges and fees which BROKER had already paid to CARRIER, CARRIER agrees that all its right, title, and interest in such charges and fees shall be, and hereby are, transferred and assigned to BROKER for the purposes of collection and recovery from the responsible party(s).

28. No Assignment. CARRIER may not assign its rights or obligations under this Agreement without the express consent of BROKER.

29. Right to Set Off. BROKER shall have the right to withhold any and all monies owed to CARRIER under this Agreement if CARRIER owes BROKER monies pursuant to any agreement. BROKER shall have the right to apply said withheld monies to satisfy the amount owed by CARRIER. Surplus withheld monies shall be delivered to CARRIER upon full satisfaction of the debt owed to BROKER.

30. Subrogation Waiver. All parties to this Agreement waive their right against each other for any damages covered by any insurance. This waiver of subrogation shall be

effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Broker: METRO FREIGHT BROKERS, LLC

Carrier:

For: _____

For: _____

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Broker Carrier Agreement

Appendix I

1. BROKER will contact the CARRIER with pickup location and response time needed. The CARRIER will acknowledge availability of the equipment and approve the response time needed within fifteen (15) MINUTES.
2. CARRIER will call BROKER with load information; this will include arrival time, departure time, and pieces and weight of shipment and any and all part numbers if required. The CARRIER will also furnish BROKER with unit numbers and expected delivery time to consignee.
3. CARRIER will update BROKER as to location of unit every three (3) hours on any runs with a running time of over six (6) hours. CARRIER will insure use of satellites, nationwide pagers and/or cellular telephones on any and all runs contracted to BROKER. The CARRIER must have real-time communication access to its vehicle at any time during the run.
4. CARRIER will have twenty-four (24) hour dispatch operations or will furnish BROKER with home numbers and/or pager numbers for contact after-hours and weekends.
5. CARRIER will report to BROKER with the delivery information including time arrived; time unloaded and the receiving person's name who signed for the shipment within one (1) hour of the delivery.
6. CARRIER will bill BROKER for the run; this billing will include the _____ pro number. This billing will be done as soon as possible. No billing for the run will be paid after ninety (90) days from the date of shipment.
7. Normal operating procedures for expedited freight will apply; these include, but are not limited to, notification of any and all en route delays and or problems, delays in loading or unloading and damage to the freight.
8. CARRIER will furnish to and update as necessary the following information to BROKER: Operating Authorities, Certificate of Insurance, W-9 form, and Surety Bond.
9. All mileage for billing will be computed using PC Miler Practical National Miles zip-to-zip miles. All mileage will be paid one way only.
10. No billings will be accepted for any load offered and accepted and then cancelled within thirty (30) minutes of acceptance.
11. The TRAILER SAFETY REQUIREMENTS (Appendix II attached) must be adhered to and followed at all times for any and all shipments handled under this agreement.

BROKER: METRO FREIGHT BROKERS, LLC

CARRIER:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Broker Carrier Agreement
Appendix II**

**Trailer Safety Requirements
All Carriers**

This is to advise that the following safety-related actions must be implemented. These actions are to provide the utmost injury-free environment to all personnel involved in the transporting, loading and unloading of CARRIER equipment involved with the freight. Safety of all of our personnel is our highest mandate and your immediate and cooperative assistance is necessary.

1. Trailers at the end of the tenth (10th) year from date of manufacture can no longer be used in service. Trailers with an original date over ten (10) years listed on the manufacture's ID plate located on the left hand side of the trailer, lower front, or missing plates will be rejected for loading or unloading.
2. Repairs must comply to the truck maintenance council standards of the American Trucking Association.
3. Inspections must comply to the Federal Motor Carrier Safety Regulations (49 C.F.R.).
4. Driver safety training must comply with the Federal Motor Carrier Safety Regulations.
5. Trailers will display the most current FHWA inspection sticker which is no older than 12 months.
6. All freight must be properly secured to eliminate any movement during transit.

BROKER: METRO FREIGHT BROKERS, LLC

CARRIER:

By: _____

By:

Title: _____

Title:

Date: _____

Date: