



CARGO MOTIONS, LLP

BROKER-SHIPPER AGREEMENT TERMS AND CONDITIONS OF SHIPMENTS

This agreement made and intended to be effective this _____ day of _____, 20____ by and between Cargo Motions, LLP whose address is P.O. Box 937 Milford, PA 18337(BROKER),

And

_____ located at _____

_____ (SHIPPER), collectively, the PARTIES.

RECITALS

- A. Whereas BROKER is licensed as a property broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC 641605, or by appropriate state agencies, and as a licensed broker, arranges for freight transportation. A copy of BROKER’s authority is attached as Appendix A, and a copy of BROKER’s surety bond or trust fund agreement is attached as Appendix B; and
- B. Whereas SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER’s freight.

Now therefore, intending to be legally bound, the PARTIES agree as follows:

AGREEMENT

I. TERM OF AGREEMENT

Subject to section IX of this agreement, the term of this agreement shall be one (1) year, commencing on the date first listed above, and shall automatically renew itself for consecutive one year periods; provided, however, that either of the PARTIES may terminate this agreement on thirty (30) days prior written notice to the other party, with or without cause, or as otherwise provided in this agreement.

II. OBLIGATION OF PARTIES

- a. BROKER agrees to arrange for transportation of SHIPPER’s property/freight pursuant to the terms and conditions of this agreement and any accompanying Order Confirmation, which is attached as Appendix C, and in compliance in all material respects with all Federal, State and Local laws and regulations relating to the brokerage of freight covered by this agreement and any accompanying Order Confirmation. BROKER’s responsibility under this agreement shall be limited to arranging for, but not actually performing transportation of SHIPPER’s freight. The PARTIES may, upon written mutual agreement, include additional service terms to be included in any accompanying Order Confirmation attached as Appendix C.
- b. BROKER agrees to arrange for transportation of SHIPPER’s property/freight as set forth in an Order Confirmation through the selection of a duly authorized motor contract carrier. BROKER agrees to enter into agreement with motor carriers pursuant to 49 U.S.C. §10702©. Only the BROKER shall invoice and collect freight charges from SHIPPER.
- c. SHIPPER agrees to tender its property/freight to motor contract carriers through BORKER as an intermediary. SHIPPER also agrees to delegate to BROKER complete working control over each shipment of the property/freight and to pay BROKER in accordance with the rates and charges set forth in the Order Confirmation.



CARGO MOTIONS, LLP

BROKER-SHIPPER AGREEMENT TERMS AND CONDITIONS OF SHIPMENTS

- d. For each shipment tendered to BROKER under an Order Confirmation, SHIPPER agrees to obtain a standard, non-negotiable straight bill of lading or freight bill from the carrier which has been properly completed and executed by the carrier. The shipment shall move under these terms and conditions, the Order Confirmation and such bill of lading and any transportation agreement entered into between the BROKER and a motor contract carrier pursuant to 49 U.S.C. §10702. All shipments tendered under this agreement shall be subject to the terms and conditions in a uniform bill of lading. Failure of the carrier to issue a bill of lading shall not affect its liability. To the extent that any terms or conditions of the bill of lading conflict in any way with any terms and conditions set forth in this agreement, this agreement shall take precedence and control the resolution of disputes.

III. PAYMENT

- a. SHIPPER shall pay BROKER in accordance with the rates and charges set forth in the Order Confirmation if not otherwise specified, SHIPPER agrees to make full payment to BROKER upon receipt of invoice presentation. In the event SHIPPER cancels an order before movement, SHIPPER will be subject to pay BROKER a cancellation fee as set forth in the Order Confirmation. If the order is for an entire route or prearranged schedule of moves, payment for the last movement shall be made prior to the last movement taking place.
- b. SHIPPER agrees to pay a finance charge at a monthly rate of 10% of the total amount outstanding on any invoice after 15 days of receipt of invoice, bill of lading or delivery receipt. In the event of a lawsuit for collections, SHIPPER agrees to pay BROKER any and all reasonable attorney's fees and court costs.
- c. SHIPPER also agrees it shall not have any right to set off compensation due BROKER under any Order Confirmation against any amounts in dispute with carriers or BROKER concerning claims of any kind.

IV. OTHER CHARGES

- a. If SHIPPER orders a tow-away shipment involving power units and drivers only, SHIPPER shall be solely responsible for maintenance of its trailers and equipment transported by the carrier(s) selected by BROKER. SHIPPER warrants to BROKER that its trailer and equipment meet applicable legal safety standards, is road worthy and will be ready for transportation upon the dates and time specified in an Order Confirmation. If SHIPPER's trailer or other equipment is not suitable for transportation, the carrier may refuse to transport said trailers and/or equipment and SHIPPER will be liable for charges due for "Equipment Ordered but Not Used" as set forth in the Order Confirmation. Any expenses or repairs related to SHIPPER's trailers or equipment incurred by carrier(s) while under dispatch, over which carrier(s) has not reasonable control, (including but not limited to flat tire repair, air hose replacement, brake repairs, electrical repairs, etc.) shall be paid by SHIPPER. SHIPPER hereby delegates to carrier(s) the authority to make such repairs necessary to ensure deliveries per the schedule. Carrier(s) shall provide to SHIPPER receipts for repairs to SHIPPER's trailers or equipment upon delivery at destination.
- b. SHIPPER warrants the BROKER that any trailers or equipment tendered for transportation are not over dimension or over weight, unless specified in the Order Confirmation. SHIPPER shall be liable for any damages or permit expenses which a carrier may sustain attempting to haul trailers or equipment in excess of prearranged specifications and shall be liable for any and all additional charges incurred by BROKER as a result. Carrier(s) shall not be required to make pick up or delivery if access to the trailer or equipment, as well as ingress or egress, is not possible by a tractor's own motor power and SHIPPER will be liable for charges due for "Equipment Ordered but Not Used." If a tractor is detained in route, at origin or destination by any action of the SHIPPER or their designated agent(s), the SHIPPER shall be subject to applicable detention rates set forth in the Order Confirmation.



CARGO MOTIONS, LLP

BROKER-SHIPPER AGREEMENT TERMS AND CONDITIONS OF SHIPMENTS

V. CARRIER QUALIFICATION

BROKER warrants that it has entered into, or will enter into, bilateral contracts with each pre-screened and authorized carrier it utilizes in the performance of this agreement and any accompanying Order Confirmations. BROKER also warrants that all power units provided in connection with this agreement will meet applicable legal safety standards, that all drivers will be trained and licensed in accordance with applicable laws, and that all drivers comply with such laws. BROKER further warrants that those contracts comply with all federal and state regulations and shall include the following provisions:

- a. Carrier shall agree to defend, indemnify and hold the PARTIES harmless from all damages, claims or losses arising out of its performance of the agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death.
- b. Carrier shall agree that its liability for cargo loss or damage shall be no less than that of a common carrier as provided for in 49 U.S.C. §14706(c). Exclusions in carrier's insurance coverage shall not exonerate carrier from this liability.
- c. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:
 - i. General Liability/Property Damage \$1,000,000.00
 - ii. Auto Liability \$1,000,000.00
 - iii. Cargo Liability \$100,000.00
 - iv. Worker's Compensation As required by law

BROKER shall verify that each carrier it utilizes in the performance of this agreement and any accompanying Order Confirmations has insurance coverage as defined above.

- d. Carrier shall agree that the provisions contained in 49 C.F.R. §370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay of property and the processing of salvage.
- e. Carrier shall authorize BROKER to invoice SHIPPER for services provided by the carrier. Carrier shall agree that BROKER is the sole party responsible for payment of its invoices and that, under no circumstances, will carrier seek payment from the SHIPPER, consignee or BROKER's customer.
- f. Carrier shall agree that, at no time during the terms of its contracts with BROKER, shall it have an "unsatisfactory" safety rating as determined by the FMCSA. If carrier receives an "unsatisfactory" safety rating it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an "unsatisfactory" safety rating in the performance of this agreement and any accompanying Order Confirmations.
- g. Carrier shall also agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract.
- h. Carrier shall expressly waive all rights and remedies under title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.
- i. BROKER warrants it will require proof of insurance and operating authority from each carrier and should BROKER utilize the services of any carrier or other broker on SHIPPER's behalf, which carrier and/or broker does not have proof of insurance and/or operating authority, BROKER agrees to indemnify and hold harmless SHIPPER from all legitimate claims not paid by carrier, but not limited to cargo loss and damage claims.

VI. INSURANCE

Standard carrier cargo insurance in the minimum amount specified in section V., c. of this agreement shall apply on all shipments unless otherwise specified in the Order Confirmation or as stated as released value on the uniform straight bill of lading and agreed upon by the SHIPPER and the motor carrier. BROKER shall be advised of any other cargo insurance requirements at least seventy-two (72) hours in advance of each scheduled movement.



CARGO MOTIONS, LLP

BROKER-SHIPPER AGREEMENT TERMS AND CONDITIONS OF SHIPMENTS

VII. CLAIMS

- a. BROKER shall not be liable to SHIPPER for claims including but not limited to: Cargo loss, damage or delay claims, bodily injury or property damage claims asserted by third parties against the carrier and/or SHIPPER. In addition, the PARTIES shall not be liable to each other for failure to perform pursuant to the terms and conditions of this agreement or its accompany Order Confirmations in the event such failure is caused by strike, riot, fire, act of nature, or other causes beyond the reasonable control of the failing party.
- b. SHIPPER agrees to indemnify and hold harmless BROKER, its agents or employees, from and against all claims, administrative proceedings, settlements, costs, expenses or attorney's fees, arising out of the or relating to each order if such claims are caused in whole or in any part by the negligent act or omission of the SHIPPER, its agents, employees, subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not it is caused in part by such persons indemnified hereunder.
- c. BROKER's liability to SHIPPER under each order or any claim arising from or relating to it shall be limited to the lesser of the amount of SHIPPER's actual damage or the revenue derived by BROKER from the single bill of lading accompanying the shipment giving rise to the claim.

VIII. INDEMNIFICATION

SHIPPER shall defend with competent counsel, indemnify and hold BROKER, its partners, members, employees and agents harmless from and against any liabilities, causes of action, claims, suits, damages, losses, judgments, penalties, contributions, fines and fees, including without limitation all attorney's fees and costs, brought by or on behalf of any person, firm, corporation, government authority, or other entity based upon or arising out of or in connection with, in whole or in part, the acts or omissions, with or without negligence, of SHIPPER, its employees, agents, or contractors, excluding BROKER.

IX. DEFAULT

PARTIES will discuss any perceived deficiency in performance and will promptly endeavor to resolve any and all disputes in good faith. However, if either party materially fails to perform its obligations under this agreement and any accompanying Order Confirmations, the party claiming default may terminate this agreement on ten (10) days written notice to the other party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this agreement and for shipments not yet completed and/or not yet invoice to SHIPPER.

X. SEVERABILITY/SURVIVABILITY

In the event that the operation of any portion of this agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the PARTIES agree that such portion or provision shall be severable and the remaining provisions of the agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of the agreement for any reason.

XI. INDEPENDENT CONTRACTOR

BROKER will conduct its affairs and perform services under these terms and conditions and each order as an independent contractor. It is understood between the PARTIES that BROKER is not an agent for the carrier or the SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over BROKER, its operations, employees or carriers.

XII. SURETY BOND

BROKER shall hold, carry, and maintain at all times a Surety Bond or Trust Fund Agreement as required by the FMCSA in the amount of \$10,000.00 and furnish SHIPPER with proof upon request.

XIII. HAZARDOUS MATERIALS

PARTIES shall comply with all applicable laws and regulations regarding and relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and § 173 et seq. to the extent that any shipment constitute hazardous materials. SHIPPER also agrees to defend, indemnify, and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney's fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations. It is understood by SHIPPER that BROKER is NOT authorized by law to engage in any transportation of hazardous materials.



CARGO MOTIONS, LLP

BROKER-SHIPPER AGREEMENT TERMS AND CONDITIONS OF SHIPMENTS

XIV. BACK SOLICITATION

SHIPPER understands that BROKER enters into agreements with motor contract carriers which prohibit back solicitation of the SHIPPER by the carrier. SHIPPER agrees to notify the BROKER within ten (10) days in any event where a carrier has solicited SHIPPER when that carrier has been utilized by the BROKER for shipments on behalf of SHIPPER within a period of two (2) years prior to the event of solicitation. Nothing in this paragraph shall be construed to prevent SHIPPER from using any other motor carrier at any time, with or without the participation of BROKER in the shipment.

XV. ASSIGNMENT/MODIFICATIONS OF AGREEMENT

Neither party may assign or transfer this agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this agreement shall be binding unless in writing and signed by the PARTIES.

XVI. NON-WAIVER

Failure of either party to insist upon performance of any of the terms, conditions or provisions of this agreement and/or any accompanying Order Confirmations, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this agreement, shall be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect if no forbearance or waiver had occurred.

XVII. NOTICES

Unless the PARTIES notify each other in writing of a change of address, any and all notices required or permitted to be given under this agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as follows:

BROKER

Cargo Motions, LLP

P. O. Box 937

Milford, PA 18337

Phone: (570) 409-6637

Fax: (570) 409-6638

SHIPPER

Name: _____

Address: _____

City, State, Zip Code: _____

Phone: (_____) _____ - _____

Fax: (_____) _____ - _____

XVIII. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform any of its obligations under this agreement and any accompanying Order Confirmations during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the PARTIES, provided that the party so prevented uses its best efforts to perform under this agreement and provided further, that such party provide reasonable notice to the other party of such inability to perform.

XIX. CHOICE OF LAW AND VENUE

All questions concerning construction, interpretation, validity and enforceability of this agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.



CARGO MOTIONS, LLP

BROKER-SHIPPER AGREEMENT TERMS AND CONDITIONS OF SHIPMENTS

XX. ARBITRATION

In the event of a dispute arising out of this agreement or any accompanying Order Confirmations, the PARTIES sole recourse shall be to arbitration. Proceedings shall be conducted under the rules of the American Arbitration Association (AAA). Upon agreement of the PARTIES the decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses, and reasonable attorney’s 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. The arbitration provision of this paragraph shall not apply to the enforcement of the award of arbitration.

XXI. CONFIDENTIALITY

BROKER shall not utilize SHIPPER’s name or identity in any advertising or promotional communications without written confirmation of SHIPPER’s consent and the PARTIES shall not publish, use or disclose the content or existence of this agreement and any accompanying Order Confirmations except as necessary to conduct their operations pursuant to this agreement and any accompanying Order Confirmations. BROKER will require all carriers and/or other brokers to comply with this confidentiality clause.

XXII. ENTIRE AGREEMENT

This agreement shall bind the PARTIES, their representatives and assigns. The terms and conditions shall not be modified except in writing signed by both PARTIES. No officer, employee, representative or agent of the PARTIES has the right or authority to waive any of the provisions of this agreement, nor shall any custom with or without the knowledge of such party have the effect of changing, modifying, waiving or foregoing any conditions or provisions. This agreement and accompanying Order Confirmations set forth the entire agreement between the PARTIES. There are no other representations, warranties, agreements, or contracts, oral or written, which are expressly set forth or provided herein.

IN WITNESS WHEREOF, the PARTIES hereto have caused this agreement to be executed in their respective names by their fully authorized representatives as of the dates first written above.

BROKER

SHIPPER

X _____
Darryl A. Hopper

X _____
Authorized Representative

Cargo Motions, LLP

Printed Name & Title