

## **.BROKER - CARRIER AGREEMENT**

This Agreement is between \_\_\_\_\_ ("BROKER"), a federally licensed transportation broker operating pursuant to US DOT: \_\_\_\_\_, Docket Number: MC-\_\_\_\_\_, \_\_\_\_\_ ("CARRIER") a federally licensed motor carrier operating pursuant to MC-\_\_\_\_\_ with offices at \_\_\_\_\_. In consideration of the mutual promises herein contained, and with intent to be legally bound hereby, it is agreed that:

1. This Agreement shall be governed by Title 49 of the U.S. Code, CFR and federal common law applicable to interstate transportation of goods. CARRIER's tariffs, circulars or service guides shall not apply unless specifically agreed to and incorporated by reference herein. This Agreement is deemed executed in BROKER's home State and County. The term of this agreement shall be one month from date of signing and shall continue month to month until written fourteen day notice of termination is received. The terms and conditions of this contract may be periodically updated and posted at \_\_\_\_\_, and shall become effective upon Carrier's acceptance of any shipment via rate confirmation referencing and incorporating the updated Agreement terms.

2. CARRIER will issue a Bill of Lading in its own name for property received hereunder and shall be liable to the person entitled to recover under the bill of lading for the actual loss or injury to the property as set forth in 49 U.S.C. §14706. Actual loss shall be shipper's invoice price. Failure to issue a bill of lading does not affect the liability of CARRIER. No shipment shall move subject to released valuation unless such limitation is set forth in a writing signed by the parties. A notation by the carrier or its agent on a bill of lading or other shipping document, or a limitation of liability contained in a tariff, service guide or on a website, shall not constitute the specific agreement required. CARRIER'S liability shall begin at the time cargo is loaded upon CARRIER'S equipment and continue until the cargo is delivered to the designated consignee or to any intermediate stop-off party. CARRIER is responsible for the loading and securing of all shipments and has the duty to inspect each shipment in accord with 49 CFR §393. Cargo claims shall be investigated and settled in accordance with 49 C.F.R. §370. Claims must be filed in writing with CARRIER within nine months after delivery or scheduled delivery. Suit must be instituted against the carrier within two years from the day written notice is given by the CARRIER to the claimant that the CARRIER has disallowed the claim in whole or in part. If CARRIER fails to acknowledge or investigate claims as required under 49 C.F.R. §370, BROKER shall be entitled to offset claims against any and all freight charges owed.

3. CARRIER agrees to maintain all-risk cargo liability insurance in the amount of \$100,000 and CARRIER shall be liable for all deductibles, limitations or exclusions in cargo insurance coverage. CARRIER represents and warrants that it is in full compliance and shall maintain Worker's Compensation insurance as prescribed by the laws of the states in which the transportation services shall be performed; Employer's Liability Insurance in the amount of \$500,000; Auto Insurance covering all owned, non-owned and hired vehicles including blanket contractual coverage in the amount of \$1,000,000 and naming BROKER as an Additional Insured. CARRIER's insurance agent will supply BROKER with a Certificate of Insurance so naming Broker and identifying exclusions, limitations and deductibles including but not limited to geographic, target commodities, theft, unattended vehicles, scheduled vehicles or drivers and requiring the insurance agent to give BROKER thirty (30) days written notice prior to cancellation. Carrier's liability shall not be limited by insurance amounts or coverage.

4. CARRIER warrants that it is an independent contractor and exercises exclusive control over its equipment, personnel and the means and methods of carrying out its contractual obligations. CARRIER further warrants that it operates in compliance with all Federal and State laws, including but not limited to ELD Mandate, CARB and CT-PAT where applicable. CARRIER agrees that the equipment shall be clean, in good working order, properly licensed, identified and insured and suitable for the transportation

requested. CARRIER warrants that such has not been used at any time, to transport compressed household, municipal or commercial waste, or any other waste material. All drivers shall be well trained, properly licensed and insured, tested, and directed to use the utmost care and due diligence for safety to the public and in the protection of shipper's commodities. CARRIER shall maintain a U.S. DOT safety rating of "Satisfactory" or "Continue to Operate" unless CARRIER is unrated. CARRIER agrees to notify BROKER within 24 hours of any change in CARRIER's safety rating. The CARRIER is solely responsible for all expenses for operating as a CARRIER, including but not limited to all business, equipment and employee licenses, permits, inspection, maintenance, testing, insurance, compensation and taxes.

CARRIER warrants and acknowledges that it possesses full and complete understanding and knowledge of the US DOT's safety programs (including, but not limited to, driver violations and ranking criteria). CARRIER, and its drivers shall at all times meet safety standards sufficient to enable CARRIER to (a) operate without US DOT intervention or restriction; (b) obtain and maintain the insurance coverage required by this Agreement; and (c) be and remain competitive with similarly situated carriers. CARRIER further agrees to (i) immediately notify BROKER in writing if CARRIER has been assigned a "Conditional", "unfit" or "marginal" rating in any area of their safety and compliance performance; and (ii) to reject and not otherwise accept the transport of any freight offered by BROKER during such time as CARRIER is so rated. .

**5. INDEMNIFICATION: CARRIER agrees to pay, indemnify, defend and hold BROKER and Broker's Customer harmless against any and all loss, damage or delay claims which are in any way caused, contributed to, or exacerbated by the breach of contract, intentional or negligent acts or omissions or violations of law by CARRIER, its employees, drivers, helpers, contractors, subcontractors or agents, on each shipment tendered to CARRIER pursuant to this Agreement. Carrier further agrees to indemnify, defend and hold BROKER and Broker's Customer harmless from all and any allegations, claims, liability or costs for injury to persons and/or damage to property which are in any way caused, contributed to or exacerbated by the breach of contract, negligent or intentional acts or omissions, or violations of law by CARRIER, its employees, drivers, helpers, subcontractors, independent contractors or agents, or arising out of CARRIER'S operations hereunder, including but not limited to claims for respondeat superior, negligent selection, hiring or supervision of carrier its employees, agents or subcontractors. CARRIER acknowledges that where the loss, injury or damage arises from the underlying breach, acts or omissions of carrier, as opposed to any active or direct breach, act or omission of BROKER or its customers, CARRIER's defense, indemnification and hold harmless obligations are triggered regardless of the form, cause of actions or allegations against BROKER or its customer. Indemnification shall include attorneys' fees and cost, including fees and costs for enforcement of this agreement.**

6. BROKER agrees to pay CARRIER at the agreed rate within 30 days of receipt by BROKER of CARRIER'S invoice, and transportation documents, including the signed original bill of lading, proof of delivery or delivery receipt as set forth in the rate confirmation provided to CARRIER prior to shipment, regardless of payment from shipper. CARRIER authorizes BROKER to invoice shipper, receiver, consignor or consignee for freight charges as agent for and on behalf of CARRIER. Payment of the freight charges to BROKER shall relieve shipper, receiver, consignor, or consignee of any liability to the CARRIER for non-payment of charges. Rates, additional terms and shipper specific requirements for transportation service may be established through the rate confirmation document, and shall act as an appendix to this Agreement. The rates, terms and shipper requirements set forth in the rate confirmation shall be deemed to be the agreement of the parties for the referenced shipment, and the confirmation

deemed part of this agreement unless CARRIER notifies BROKER within 24 hours of any disagreement as to rates and shipment specifications.

7. As per 49 USC 13901( c), Carrier hereby warrants that it is and shall perform the transportation service as a motor carrier under the MC#/DOT# stated above, and that if it violates this warranty, including but not limited to “double brokering” it, and its principals are liable to BROKER for liquidated damages of \$10,000 for each violation plus all valid freight charges, cargo or other claims incurred without regard to amount. BROKER shall also be entitled to its collection and costs of enforcement, interest and attorneys’ fees. The liability for claims under this section for unauthorized or “double brokering” shall apply, jointly and severally to any corporate entity or partnership involved; and to the individual officers, directors, and principals of such entities. CARRIER agrees that it will transport all loads tendered to it under its own authority, on equipment owned or leased by it, and use employees or independent contractors under contract with it. If CARRIER “brokers” a shipment, CARRIER forfeits the right to collect any freight charges, for that or any other shipment and agrees BROKER may pay such charges directly to the underlying carrier. If BROKER pays CARRIER, CARRIER agrees to pay any and all charges relating to the movement of the shipment, and to indemnify and hold harmless BROKER and/or BROKER’s customers from any and all freight charges claimed to be owed to the underlying motor carrier. CARRIER shall settle all cargo claims that arise in connection with shipments under this Agreement as the receiving carrier under 49 U.S.C. §14706 regardless of whether it takes possession of the freight or was the actual carrier.

8. BROKER and CARRIER may agree as to required transit time for each shipment. The parties acknowledge that time is of the essence in the transportation of cargo under this Agreement and that monetary damages may accrue if the goods are not delivered within the time frame(s) specified in the Rate Confirmation, bill of lading or other shipping directives. Nothing in this Agreement shall be construed as requesting or requiring CARRIER to violate the federal safety regulations regarding hours of service set forth at 49 C.F.R. §395 and/or applicable State regulations. Where CARRIER makes pick-up and delivery commitments to BROKER, BROKER reasonably relies on CARRIER’s knowledge and expertise that such transit time is consistent with the safety regulations. Where necessary CARRIER shall employ team drivers and use all other reasonable means to meet its commitments without additional cost to BROKER. Except under Force Majeure circumstances, if CARRIER is unable or unwilling to deliver a shipment at the agreed delivery time, BROKER shall have the option of arranging for alternate transportation at CARRIER’s expense.

9. CARRIER shall not offer rates directly to or perform service directly for any shipper, consignor, consignee or customer of BROKER where (1) the availability of such traffic first became known to CARRIER as a result of BROKER’S efforts, or (2) where the traffic of the shipper, consignor, consignee or customer of BROKER was first tendered to CARRIER by BROKER. If CARRIER breaches this agreement and “back-solicits” BROKER’S customers, and/or obtains traffic from such a customer, BROKER is then entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from CARRIER of 15% of the transportation revenue received on such traffic, as liquidated damages. Termination of this contract shall not affect the enforceability of the foregoing provisions for a period of 15 months after termination.

10. Neither party hereto will be liable for the failure to tender or timely transport freight under this Agreement if such failure, delay or other omission is caused by strikes, acts of God, war, accidents, civil disorder, or through compliance with legally constituted order of civil or military authorities.

11. If a dispute arises out of or relates to this Agreement jurisdiction and venue for suit shall be in the State or Federal court for the State and County in which Broker is located. Any modification to the terms

and conditions of this Agreement must be in writing and signed by authorized representatives of both parties to be enforceable. This writing represents the entire agreement between the parties. All terms and conditions of this Agreement are contained within the “four corners” of this Agreement. Failure by BROKER to invoke or enforce any or all of the provisions of this Contract shall not constitute a waiver of any or all such provisions, nor shall any assertion or showing of “custom” or “usage” be deemed a waiver of the written terms and conditions contained in this Contract. If any part of this AGREEMENT is held unenforceable, the rest of the AGREEMENT will continue in effect. The persons signing below have actual authority to bind the parties upon those whose behalf they sign.

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**CARRIER:** \_\_\_\_\_

**BROKER:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

#### Sanitary Transportation Addendum

The "Sanitary Transportation of Human and Animal Food" codifies the requirements in 21 CFR 551.900 through 1.034 for sanitary transportation practices. BROKER as the “Shipper” hereby specifies to the "Carrier" the necessary sanitary specifications for the carrier's vehicle to achieve this purpose including any design specifications and cleaning procedures. A one-time notification is considered sufficient unless changes to the specifications or procedures are warranted based upon the type of food being transported (21 CFR 5 1.908(b)). This Addendum is a record subject to the records retention requirement of this rule and a copy will be kept by BROKER to satisfy these requirements (21 CFR 5 1.912(a)). BROKER arranges for the transportation of various human and pet foods, and ingredients.

1. Carrier will, upon request, provide evidence of the following:
  - a. documented processes to maintain product food safety, including maintaining the requisite temperature control for food subject to the shipper’s temperature control requirements during transport,
  - b. transportation traceability, including information regarding:
    - (i) previous cargos hauled in bulk or other vehicles offered for transportation of food;
    - (ii) maintenance and intervening cleaning procedures for docks, vehicles and other equipment: and
    - (iii) the appropriate training process for each person under Carrier’s supervision or control, involved in the supply chain, and transporting shipments governed by this Addendum.
  - c. for each shipment, evidence that it has not been adulterated and has been transported under sanitary conditions that will protect the product against any temperature abuse or great temperature fluctuations and any physical, chemical, and microbial contamination of the food or the container.

Carrier agrees to maintain all documentation and records related to the transport of shipments governed by this Addendum, including those documenting the safe and sanitary transport of food, for a period of two (2) years following the tender of each shipment.

2. Carrier's vehicles and equipment are expected to meet the following specifications upon arrival at all consignors' facilities for loading:

- a. Dry and refrigerated vans need to be clean, dry, odor free and no holes.  
Refrigerated loads need to maintain temperature for the time refrigerated or raw ingredient is on the trailer, during transport, and maintained until the material is off loaded by the consignee.
- b. Other transport vessels should be designed and constructed of materials that permit complete inspection and cleaning. Because "live-bottom" or "walking-floor" trailers are difficult to inspect, clean, and verify cleanliness, they will not be permitted for loading animal food ingredients or finished pet food products.
- c. The transport vessel should arrive dry, empty and free of pest infestation, rodent/bird droppings, debris, dirt and prior cargo contents. Tarps (if applicable) should be in good repair, tight-fitting, and free of holes and tears. Consignor or BROKER facilities will require a wash receipt for bulk load transports to certain locations so please confirm with BROKER prior to arrival,
- d. Provide BROKER and consignor with a copy of the BOL for the immediate prior shipment,
- e. Trailers or containers previously loaded with fertilizer must be cleaned prior to loading. If the fertilizer was impregnated with herbicides or pesticides, the vessel will be rejected.
- f. Trailers or containers whose prior cargo contained raw materials intended for rendering will not be permitted to load finished food or ingredients.
- g. Trailers or containers whose immediate previous cargo contained substances found on the FOSFA, 01- 01-2008 list of banned immediate previous cargoes will not be loaded.

Acknowledged and Agreed:

By: \_\_\_\_\_

CARRIER: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_