



### **BROKER-CARRIER AGREEMENT**

**THIS AGREEMENT** is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by and between Fog Logistics LLC. (“Broker”) and \_\_\_\_\_ (“Carrier”).

- **TERM.** The Term of this Agreement shall be for one (1) year and shall automatically renew for a successive one (1) year period; provided, however, that this Agreement may be terminated at any time by giving thirty (30) days prior written notice.
- **CARRIER’S OPERATING AUTHORITY AND COMPLIANCE WITH LAW.** CARRIER represents and warrants that it is duly and legally qualified to provide the transportation services contemplated herein, and CARRIER agrees to comply with all federal, state and local laws regarding the provision of such services.
- **SPECIFIED SERVICES.** CARRIER’S services under this Agreement are specifically designed to meet the distinct needs of BROKER under the specified rates and conditions set forth herein.
- **RECEIPTS AND BILLS OF LADING.** Each shipment hereunder shall be evidenced by a receipt in such form as specified by BROKER or, alternatively, by BROKER’S customer signed by CARRIER showing the kind and quantity of product received by CARRIER at origin. The absence or loss of any such receipt shall not relieve CARRIER of its obligations and responsibilities with respect to any shipment made hereunder. Such receipt shall be prima facia evidence of receipt of such shipment in good order and condition unless otherwise noted on the face of such receipt by CARRIER. Upon delivery of each shipment made hereunder, CARRIER shall obtain a receipt showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by BROKER, and CARRIER shall cause such receipt to be signed by the consignee. Any terms, conditions and provisions of the bill of lading manifest or other form of receipt or contract shall be subject and subordinate to the terms, conditions and provisions of this Agreement. CARRIER shall notify BROKER immediately of my exception made on the bill of lading, manifest or other receipt.
- **CARRIER’S OPERATIONS AND EMPLOYEES.** CARRIER shall, at its sole cost and expense: (a) furnish all equipment necessary or required for the performance of its obligations hereunder (the “Equipment”); (b) pay all expenses related, in any way, with the use and operation of the Equipment; (c) maintain the Equipment in good repair, mechanical condition and appearance and (d) utilize only competent able and legally licensed personnel. CARRIER shall have full control of such personnel and shall perform the services hereunder as an independent contractor.

- **INDEMNITY.** CARRIER shall defend indemnify, and hold harmless BROKER from and against all loss, damage, expense, cost, including reasonable attorney fees, fines, actions and claims for injury to persons (including death) and for damage to property arising out of or in connection with CARRIER'S failure to comply with the terms of this Agreement or CARRIER'S loading, handling, transportation, unloading or delivery of any shipments made hereunder.
- **INSURANCE.** CARRIER shall procure and maintain, at its sole cost and expense, liability insurance with a reputable and financially responsible insurance carrier insuring CARRIER against liability for personal injury (including death) and property damage in an amount of less than \$1,000,000.00 per occurrence and claims, damage or loss of freight in an amount not less than \$100,000.00 per occurrence and any additional insurance that may be required by applicable law. The cargo coverage will also insure the container or trailer being pulled, which in most instances will be the cargo. Should CARRIER'S cargo insurance not provide coverage for a pulled container or trailer, CARRIER shall procure trailer interchange or similar coverage insuring the container or trailer. Carrier will cause BROKER to be named as an additional insured on such insurance, and shall furnish to BROKER written certificates obtained from the insurance carrier showing that such insurance has procured, is being properly maintained the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to BROKER at least thirty (30) days prior to such cancellation or modification. Upon request, CARRIER shall provide BROKER with copies of the applicable insurance policies.
- **FREIGHT LOSS, DAMAGE OR DELAY.** Broker shall submit to CARRIER written notice of any cargo claim, including loss or expenses resulting from CARRIER'S delay in providing service, within twelve (12) months of the delivery date of this shipment, or, if no delivery, the date of the occurrence resulting in the claim. The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. § 370 *et seq.* The parties agree that federal common carrier laws of liability (i.e. Carmack Amendment liability) shall apply to all shipments being transported by Carrier under this Agreement. In addition, however, CARRIER shall be liable to BROKER for all economic loss, including consequential damages that are incurred by BROKER or BROKER'S customers for any freight loss, damage or delay claim.
- **HAULING OF CONTAINER OF TRAILER.** In addition to the terms of Paragraphs 7 and 8 above, CARRIER agrees to return any container, chassis or trailer ("Container") hauled and/or pulled in the same good condition as received by CARRIER, reasonable wear and tear accepted, along with any tires and all other related equipment, immediately upon BROKER'S request. In the event the trailer is not in as good as condition as it was when tendered, CARRIER hereby authorizes BROKER to restore the trailer to proper condition and to deduct from CARRIER'S transportation charges the cost for such repairs or reconditioning. In the event CARRIER for any reason fails to comply with this provision, CARRIER agrees to reimburse BROKER for all reasonable expense and costs incurred by BROKER in recovery or repair of the trailer and/or property from CARRIER or its drivers. CARRIER agrees that in the event it is necessary for BROKER to enter upon private property and/or remove private property in order to recover the trailer and/or property, CARRIER does hereby irrevocably grant BROKER or its duly authorized agents, permission to do so and further agrees to save and hold harmless BROKER, or its duly authorized agents, from any form of liability whatsoever in connection with such repossession. CARRIER shall be liable for, and pay, the entire amount for each incident involving direct, indirect and consequential damage, including but not limited to, personal injury and property damage claims, towing charges, replacement costs for a total loss, and reasonable attorney's fees, arising out of, or in connection with CARRIER'S use of trailers tendered by BROKER.
- **WAIVER OF CARRIER'S LIEN.** CARRIER shall not withhold any goods of BROKER'S customer on account of any dispute as to prices or any alleged failure of BROKER to pay charges incurred under

this Agreement. CARRIER is relying upon the general credit of BROKER and hereby waives and releases all liens, which CARRIER might otherwise have to any goods of BROKER'S customers in the possession or control of CARRIER.

- **PAYMENTS.** CARRIER will charge and BROKER will pay for transportation services performed under this Agreement the rates and charges as shown on the Schedule of Rates attached as Appendix A and any written supplements or revisions thereto signed and agreed to by CARRIER and BROKER. Payment by BROKER will be made within thirty (30) days of receipt by BROKER or CARRIER'S freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents enabling BROKER to ascertain that service has been provided at the agreed upon charge. In the event service is provided and it is subsequently discovered that there was no applicable rate in the existing Schedule of Rates or supplements, the parties agree that the rate paid by BROKER and collected by CARRIER shall be the agreed upon contract rate. In no event shall BROKER be liable for any transportation charges for which BROKER did not have primary responsibility for payment under the circumstances surrounding the involved shipment. CARRIER agrees that BROKER is solely liable for all freight charges related to the transportation services provided herein, and, as such, CARRIER agrees to refrain from all collection efforts against the shipper, receiver, consignor, consignee or BROKER'S customers. BROKER may deduct from any payment any amount CARRIER is indebted to BROKER, including freight loss, damage and delay claims.
- **CARRIER WILL NOT SOLICIT BROKER'S CUSTOMERS.** CARRIER will not solicit traffic from 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) the traffic of the shipper, consignor, consignee or customer of BROKER was first tendered to CARRIER by BROKER. If CARRIER breaches this Agreement and directly or indirectly solicits traffic from customers of BROKER and obtains traffic from such customer during the term of this Agreement or for twelve (12) months thereafter, CARRIER shall be obligated to pay BROKER, for a period of fifteen (15) months thereafter, commission in the amount of twenty percent (20%) of the transportation revenue resulting from traffic transported for such customer, and CARRIER shall provide BROKER with all documentation requested by BROKER to verify such transportation revenue.
- **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part, and supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by CARRIER. This Agreement shall be binding upon and ensure to the benefit of the parties hereto.
- **SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, the parties agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.
- **WAIVER.** CARRIER and BROKER expressly waiver any and all rights and remedies allowed under 49 U.S.C. § 14101 to the extent that such rights and remedies conflict with this Agreement. Failure of BROKER to insist upon CARRIER'S performance under the Agreement or to exercise any right or privilege, shall not be a waiver to andy BROKER'S rights or privileges herein.
- **DISPUTE RESOLUTION.** All civil actions filed as a result of disputes arising out of this Agreement shall be filed in the court of proper jurisdiction in Cook County, Illinois and the laws of the State of Illinois or applicable federal law shall apply.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

“BROKER”

“CARRIER”

**FOG LOGISTICS LLC**

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PO BOX 669

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BIRMINGHAM, MI 48009

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Telephone 248-792-2170

Telephone \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_