

CONTRACT CARRIER – BROKER CONTRACT

I. IDENTIFICATION OF PARTIES

AGREEMENT

made this day of 19 , by and between _____

hereinafter referred to as CARRIER, and _____

hereinafter referred to as BROKER.

WITNESSETH:

- (1) CARRIER is a motor contract carrier of property authorized by the Federal Highway Administration or the former Interstate Commerce Commission by Permit No. MC-_____ (a copy of which permit is attached hereto and made a part hereof as Appendix "A") to provide transportation of property under contract with shippers and receivers of general commodities, and
- (2) BROKER is a motor carrier broker, licensed by the Federal Highway Administration or the former Interstate Commerce Commission to arrange for the transportation of property by License No. MC-_____, (a copy of which license is attached hereto and made a part hereof), and controls the transportation of the commodities to be tendered to CARRIER, in accord with the criteria established in Dixie Midwest Express 132 M.C.C. 794 (1982), and thus is a shipper under those criteria.

NOW THEREFORE, in consideration of the representation made herein, the parties agree as follows:

II. TERMS AND JURISDICTION OF THIS AGREEMENT

This AGREEMENT shall be governed by Title 49 of the United States Code and the Code of Federal Regulations.

This AGREEMENT is to become effective _____, and shall remain in effect for a period of one year from such date, and from year to year thereafter, subject to the right of either party hereto to cancel or terminate the AGREEMENT at any time upon not less than thirty (30) days written notice of one party to the other. BROKER has placed on file a signed copy of this agreement with the Law Office of M. Shields, Gallagher & Gallagher, P.C., at 132 Main Street, Haydenville, MA 01039-0387, where it is available for inspection and verification by the signatories, their designated agents, their designated legal representatives, an/or any other party or parties holding forth a legitimate claim of interest in the terms of this agreement.

III. SPECIFIC OBLIGATIONS OF CARRIER

- (a) CARRIER shall issue a uniform standard bill of lading in accord with 49 U.S.C. § 81 and 49 C.F.R. § 1035 for property it receives for transportation under this contract and shall be liable to the person entitled to recover under the bill of lading. The liability imposed by this paragraph is for the actual loss or injury to the property. Failure to issue a bill of lading does not affect the liability of CARRIER. CARRIER'S liability shall be the same as a common carrier's liability under 49 U.S.C. §14706. The parties expressly agree that no shipment shall move subject to released rates unless such limitation of liability shall have been specifically agreed to in writing between the parties. A notation on a bill of lading or other similar document shall not constitute the specific agreement required by this provision.
- (b) CARRIER agrees to maintain cargo insurance in the amount of \$_____ to compensate those parties entitled to recover under the preceding paragraph. CARRIER shall cause its insurance

carrier to forward forthwith to BROKER a standard Certificate of Insurance, which Certificate shall require the insurance carrier to give BROKER written notice thirty (30) days prior to the cancellation of such cargo insurance. The cargo insurance shall be in the form required by 49 C.F.R. § 1043.2(c) ("Motor common carriers: Cargo liability"), and shall have no exclusions or restrictions that would not be accepted by the Federal Highway Administration for a filing under the statutory requirements of the above-cited section, but shall, in all respects, be identical to the cargo insurance filed in accord with the said part (i.e. 49 C.F.R. § 1043).

- (c) CARRIER'S liability shall begin at the time cargo is loaded upon CARRIER'S equipment at the point of origin, and continue until said cargo is delivered to the designated consignee at destination, or to any intermediate stop-off party.
- (d) CARRIER agrees to defend and hold harmless BROKER against any and all loss or damage claims on each shipment transported by CARRIER pursuant to this Agreement. Carrier further agrees to defend and hold harmless BROKER from all and any liability, costs and damages to persons and/or property arising out of CARRIER'S operations hereunder, including but not limited to all road, fuel, and other taxes, fees or permits related to the shipments transported by CARRIER as arranged by BROKER.

IV. SPECIFIC OBLIGATIONS OF BROKER

- (a) BROKER shall offer to CARRIER for shipment a minimum quantity of not less than one (1) shipment for each year this agreement remains in effect, and CARRIER agrees to transport not less than one (1) shipment tendered during that period of time.
- (b) BROKER agrees to pay CARRIER for the transportation of the commodities moved under this agreement in accordance with the rate set forth herein or Addenda thereto, within 30 days of the receipt by BROKER or CARRIER'S invoice covering such transportation.

V. SPECIFIED RATES AND CHARGES

- (a) The basic transportation rates negotiated between parties are:
 - (1) Freight, all kinds: truckload shipment \$_____/mile, between all points in the United States.
 - (2) Freight, all kinds: less than truckload shipment, (less than 10,000 pounds) \$_____/mile, between all points in the United States.
- (b) The parties agree that the fixed rate may be amended, based on the market conditions then prevailing. The methodology for amending the fixed rate will be as follows. After a rate is agreed to by the parties, one party shall fax to the other party a rate confirmation sheet, which document will identify the shipment by: DATE OF TENDER, ORIGIN, DESTINATION, COMMODITY, ESTIMATED WEIGHT, AGREED RATE. These rate confirmation sheets shall be on an accepted amendment to this agreement, and on the upper right corner of the sheet there shall be a reference to the agreement for identification. Because of storage difficulties, the rate confirmation sheet need not be attached to the original agreement, but it may be kept with the shipping papers that are retained as to the individual shipment. The same requirements of retention and availability to inspection that apply to the written agreement shall apply to the Rate Confirmation Sheet. If either party disputes the accuracy of the amended fixed rate, that party shall within 24 hours of receipt of it notify the other party, and a disputed rate shall not become an amended fixed rate until agreed to by both parties.
- (c) 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.

VI. BILLS OF LADING

The bill of lading shall note that the shipments were transported by CARRIER, acting as a carrier and that the shipment was arranged by BROKER, acting as a broker. The name of the underlying shipper shall be inserted in the blank for the consignor/shipper.

VII. SERVICE DESIGNED TO MEET THE DISTINCT NEEDS OF BROKER

BROKER needs CARRIER to assume full liability for the actual loss of, or injury to, the property tendered to CARRIER to negate a possibility of CARRIER moving these goods on released rates with a limitation of liability, and Paragraph III. (a) specifically imposes with obligation upon CARRIER. Paragraph VIII. (a) (below) imposes a further obligation on CARRIER that claims shall be settled in accordance with 49 C.F.R. §1005, and extends the time for filing of claims and subsequent suits, and this is also designed to meet the distinct needs of BROKER. Further, BROKER needs a forum for the settlement of disputes, and paragraphs VIII and IX. (b)(below) meets this distinct need of BROKER. BROKER further needs protection against back solicitation of its clients by CARRIER, and Paragraph XII. (below) is designed to meet this distinct need. BROKER needs guarantees as to transit time, and Paragraph X. (below) fulfills this need.

VIII. PROVISIONS AS TO THE SETTLEMENT OF CARGO CLAIMS

- (a) Cargo claims shall be investigated and settled in accordance with the regulations codified at 49 C.F.R. §1005 as in effect on December 30, 1995. As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, or carrier in possession of the property when the loss, damage, injury or delay occurred, within one year after delivery has elapsed. Suits shall be instituted against the carrier within two years, three months and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims shall not be paid. Suits on cargo claims must be instituted in the federal or state court where the broker is located.
- (b) If any dispute arises about a cargo claim, the party who alleges a violation may file suit in the federal district or the state and county in which BROKER is located.

IX. MEDIATION AS TO ALL DISPUTES OTHER THAN CARGO CLAIMS

If a dispute arises out of or relates to this Agreement, other than a dispute about cargo claims, and the parties have not been successful in resolving such dispute through negotiation, the parties agree to attempt to resolve the dispute through mediation by the American Arbitration Association ("AAA"). Each party shall bear its own expenses and an equal share of the expenses of the mediator and the fees of the AAA. The parties, their representatives, other participants and the mediator shall hold the existence, content and result of the mediation in confidence. If such dispute is not resolved by mediation, the parties shall have the right to resort to any remedies permitted by law. All defenses based on passage of time shall be tolled pending the termination of the mediation. Nothing in this clause shall be construed to preclude any party from seeking an injunctive relief order to protect its rights pending mediation. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate.

X. TRANSIT TIME

BROKER and CARRIER may make agreements on each shipment as to required transit time. Such agreements may make the transit time obligation less or more than "reasonable dispatch". In the absence of an agreement between the parties, the following transit time schedule shall apply. (1) On shipments moving less than 500 miles, next day delivery. (2) On shipments moving more than 500 miles, one day more for every increase of 500 miles, or part thereof. (To illustrate: on a shipment moving 2900 miles, delivery shall be made in six (6) days.) Safety on the highways is of major concern to both parties, and these transit times are compatible with the Federal Highway Administration's Safety Rules.

XI. INDEPENDENT CONTRACTOR STATUS

The relationship of CARRIER to BROKER shall, at all times, be that of an independent contractor, except that BROKER shall be the agent for the carrier for the collection of charges, when the shipper pays BROKER, as per Paragraph V.

XII. NO BACK SOLICITATION BY CARRIER

CARRIER shall 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) 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 the movement of the traffic, as liquidated damages. Termination of this contract shall not affect the enforceability and applicability of the foregoing provisions of this clause for a period of 15 months after termination.

XIII. FORCE MAJEURE EXEMPTIONS

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.

XIV. SEVERABILITY

If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect.

IN WITNESS WHEREOF,

The parties have set their hands and seals this _____ day of _____, 199__.

CARRIER _____

BROKER _____

BY _____

BY _____

TITLE _____

TITLE _____