

BROKER/SHIPPER TRANSPORTATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made and intended to be effective this (the) _____ day of _____, 20__ by and between H & F Logistics, LLC, having offices at 9307 E. 56th Street Indianapolis, IN 46216 (“BROKER”) and _____, having offices at _____ (“SHIPPER”); collectively, the “PARTIES”.

RECITALS

A. BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in MC-848947, 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; (if not attached, BROKER will provide these documents upon SHIPPER’s request); and

B. 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, BROKER and SHIPPER agree as follows:

AGREEMENT

1. **TERM.** Subject to Paragraph 12, the term of this Agreement shall be one (1) year, commencing on the date shown above, and shall automatically renew for successive one year periods; provided that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE.** BROKER agrees to arrange for transportation of SHIPPER’s freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER’s responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER’s freight. SHIPPER acknowledges and agrees that BROKER is independent from those third party service providers actually servicing SHIPPER’s freight and BROKER will bear no liability for the acts and omissions of those third party providers. The Parties may, upon written mutual agreement, include additional service terms to be attached as Appendix C.

3. **VOLUME.**

A. SHIPPER agrees to tender a minimum of one (1) shipment to BROKER, and BROKER agrees to arrange for the transportation of said shipment, as well as any other shipments offered by SHIPPER as accepted by BROKER. SHIPPER is not restricted from tendering freight to other brokers, freight forwarders, third-party logistics providers, or directly to motor carriers. BROKER is not restricted from arranging transportation of freight for other parties.

B. SHIPPER shall be responsible to BROKER for timely and accurate delivery specifications and description of the cargo, including, but not limited to, dimensions, weight, temperature, any special handling or security requirements, which BROKER may accept or reject in its sole discretion, and employing reasonable security protocols to reduce the risk of cargo theft.

4. **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into, bilateral written contracts with each carrier it engages to perform the transportation services required by this Agreement. BROKER further warrants that those contracts comply with all applicable federal, state and local laws and regulations and shall include (but not be limited to) the substance of the following terms:

- A. Carrier is in, and shall maintain compliance, with all applicable federal, state and local laws relating to the provision of its services.
- B. Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including damage to property (except cargo claims), and personal injury or death, provided such damages, claims or losses are not due to the negligence of the BROKER or SHIPPER.
- C. Carrier shall agree that its liability for cargo loss or damage shall be determined by 49 USC §14706 (the Carmack Amendment).
- D. Carrier shall agree to maintain at all times during the term of the contract, insurance policies with limits not less than the following:
 - General Liability - \$1,000,000
 - Auto Liability - \$1,000,000
 - Cargo Liability - \$100,000
 - Worker's Compensation – as required by law.
- E. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage, unless otherwise agreed in writing in an instrument other than a bill of lading, tariff or shipping document.
- F. BROKER and carrier agree that BROKER is the sole party responsible for payment of carrier's charges.
- G. Carrier agrees that at no time during the term of this contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA); if carrier receives an "Unsatisfactory" safety rating, it shall immediately notify BROKER and shall not transport any freight without BROKER's prior written consent.
- H. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any tariff terms published by carrier which are inconsistent with the contract with BROKER shall be ineffective and inapplicable to the shipments tendered under this Agreement.
- I. 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.
- J. Carrier will not broker, re-broker, assign, interline, or subcontract the shipments without prior written consent of BROKER. If Carrier breaches this provision, BROKER shall have, in addition to all the other rights and remedies at law or in equity, the right of paying the monies it owes its contracted Carrier, directly to the delivering carrier in lieu of payments to its contracted Carrier. Regardless of BROKER's payment to delivering carrier, the contracted Carrier shall not be released from any liability to BROKER under its contract with Broker, or from liability under 49 U.S.C. §14916.

K. To the extent that any shipments subject to this Agreement are transported into, out of, through or within the State of California, CARRIER warrants that they are in compliance with all California Air Resources Board regulations.

5. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of shipments in the form of a signed Bill of Lading or Proof of Delivery via US Mail, courier, or electronically by fax or email. SHIPPER's insertion of BROKER's name on the bill of lading shall be for SHIPPER convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement.

6. **PAYMENTS.** BROKER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth in Appendix D attached, and any written supplements or revisions that are mutually agreed to between the PARTIES in writing. If rates are negotiated between the PARTIES but not reflected in Appendix D they shall be confirmed in writing to be binding upon SHIPPER. SHIPPER agrees to pay BROKER's invoice within 30 days of invoice date without deduction or setoff. SHIPPER shall tender payment in US currency, unless agreed to otherwise. In the event SHIPPER objects to all or any portion of an invoice, SHIPPER shall notify BROKER in writing within ten (10) days of the invoice date, give reasons for the objection, and SHIPPER and BROKER's respective representatives shall confer to resolve any disputed invoices. SHIPPER shall also be liable for any expenses, including attorney's fees, BROKER incurs in collecting its rates and charges.

7. **CLAIMS.**

A. **Freight Claims:** SHIPPER must file claims for cargo loss or damage with BROKER within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against BROKER in a Court of Law (or commence arbitration) within two (2) years from the date the carrier or BROKER provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice.

B. Carriers utilized by BROKER shall agree in writing with BROKER to be liable for cargo loss or damage as outlined in paragraph 4.C above. The carrier's cargo liability for any one shipment shall not exceed \$1.25 per pound, unless BROKER is notified by SHIPPER of the increased value at the time of tendering of the shipment with the BROKER and SHIPPER agrees to pay an increased rate to BROKER. It is understood and agreed that the BROKER is not a carrier and that the BROKER shall not be held liable for loss, damage or delay in the transportation of SHIPPER's property, unless caused by BROKER's negligent acts or omissions in the performance of this Agreement. BROKER shall assist SHIPPER in the filing and/or processing of claims with the carrier. If payment of a claim is made by BROKER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to BROKER.

C. In no event shall BROKER or BROKER's contracted Carrier be liable to SHIPPER for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed BROKER in written or electronic form prior to or when tendering a shipment or series of shipments to BROKER of the potential nature, type and approximate amount of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages.

D. SHIPPER shall not be responsible to salvage food shipments that are inspected by a qualified individual as referenced in 21 C.F.R. 1.908(a)(6) and found to be "adulterated" as defined in 21 CFR § 342. BROKER will contractually require its carriers to comply with SHIPPER's written instructions regarding food safety.

E. **All Other Claims**: The Parties shall notify each other of all known material details of claims within sixty (60) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available. Civil actions, or arbitration, if any, shall be commenced within two (2) years from the date either Party provides written notice to the other Party of such a claim.

8. **INSURANCE**. BROKER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

- | | | |
|----|---|-------------|
| A. | Comprehensive general liability insurance covering bodily injury and property damage | \$1,000,000 |
| B. | Contingent Cargo Insurance | \$100,000 |
| C. | Errors and Omissions Insurance | \$50,000 |
| D. | Contingent Auto Liability or Hired and Non-owned Auto Liability Insurance or other insurance providing substantially similar coverage | \$100,000 |

BROKER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder".

9. **SURETY BOND**. BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of at least \$75,000 or as otherwise required by the FMCSA and furnish SHIPPER with proof upon request.

10. **HAZARDOUS MATERIALS**. SHIPPER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and § 397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments constitute hazardous materials. SHIPPER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

11. **HOMELAND SECURITY**. As applicable to each, respectively, BROKER and SHIPPER shall comply with federal, state and local Homeland Security related laws and regulations.

12. **"CURE"/DEFAULT**.

A. Both Parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either Party materially fails to perform its duties under this Agreement, the Party claiming default for a cause other than those listed in Section 12.B_ may terminate this Agreement on 10 (ten) days prior written notice to the other Party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement, including shipments scheduled and in transit on the date of termination, if ultimately delivered and invoiced to SHIPPER in accordance with this Agreement.

B. **Default**: The following actions, in addition to any other material breach described elsewhere in this Agreement, shall each constitute a material breach of this Agreement:

1. Either Party files a voluntary petition under Chapter 7 or 11 of the U.S. Bankruptcy Code, or any equivalent state law; or a petition is filed against the Party, under federal or state law which is not dismissed within 60 days.
2. BROKER's license(s) required for BROKER to perform its obligations under this Agreement is revoked, canceled, suspended, or discontinued for any reason.

In the event of the occurrence of any breach(es) listed in this Section 12.B, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.

13. **INDEMNIFICATION.** Subject to the monetary insurance limits and coverage in Section 8, BROKER and SHIPPER shall defend, indemnify and hold each other harmless from and against any claims, actions or damages (except for claims arising from cargo loss, damage, or delay, which are governed by Section 7 of the Agreement), including, but not limited to payment of rates and/or accessorial charges to carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither Party shall be liable to the other Party for any claims, actions or damages due to such other Party's own negligence or intentional acts. Failure of insurance coverage, for any reason, shall not exonerate either party from its indemnity obligations hereunder which for either party shall not exceed the amounts specified in Section 8. The obligation to defend shall include all costs of defense as they accrue. In the event that such claims, actions, or damages are caused by the joint and concurrent negligence or other fault of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses shall be borne by each Party in proportion to its degree of negligence or other fault.

14. **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.

15. **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 that 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 this Agreement for any reason.

16. **INDEPENDENT CONTRACTOR:** The relationship of the Parties to each other shall at all times be that of independent contractors. None of the terms of this Agreement, or any act or omission of either Party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, or employer/employee relationship between the Parties. Each Party shall provide sole supervisions and shall have exclusive control over the actions and operations of its employees, and agents used to perform its services hereunder. Neither Party has any right to control, discipline or direct the performance of any employees, or agents of the other Party. Neither Party shall represent to any party that it is anything other than an independent contractor in its relationship to the other Party.

17. **NONWAIVER.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions of this Agreement, 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 not 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 as if no forbearance or waiver had occurred.

18. **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 made in writing and shall be delivered via fax with machine imprint on paper acknowledging successful transmission or email with confirmed receipt and shall be effective when so delivered to the addresses as follows:

H & F Logistics, LLC
(BROKER)
Attn: Timothy M. Harris II
Address: 9307 E. 56th Street

(SHIPPER)
Attn: _____
Address: _____

Phone: 317-523-2229
Fax: 317-813-3933
Email: tharris@hflog.com

Phone: _____
Fax: _____
Email: _____

19. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement 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 SHIPPER or BROKER, 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. Performance obligations of the Parties may be extended by the amount of delay caused by Force Majeure events, upon mutual agreement. No liability shall be incurred by BROKER or its third party carriers for damages resulting from such delay.

20. **CHOICE OF LAW AND VENUE.** All questions concerning the 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 Indiana, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. The Parties irrevocably submit to the exclusive jurisdiction of the state or federal court located in or serving Indianapolis, Indiana. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any suit, action, or proceeding relating to this Agreement, and further irrevocably waives any claim that such venue is not a convenient forum for any such suit, action, or proceeding.

21. **DISPUTE RESOLUTION.** In the event of a dispute arising out of this Agreement, the Party's sole recourse shall be litigation which shall be filed in accordance with paragraph 20 above within two years from the date of the alleged loss. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief.

22. **CONFIDENTIALITY.** Other than as required to comply with law or legal process requiring disclosure, the Parties agree to the following:

- A. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.
- B. In the event of violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the non-prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.
- C. Shipper will not solicit any carrier or co-broker first introduced by Broker to the shipper or shipper's customer. If shipper breaches this provision and directly or indirectly solicits services from Broker's carriers or co-broker during the term of this Agreement and for twelve (12) months thereafter, Shipper shall be obligated to pay Broker for a period of fifteen (15) months thereafter, commission in the amount of thirty-five percent (35%) of the transportation revenue resulting from such traffic. SHIPPER shall provide Broker with all documentation requested by Broker to verify such transportation revenue upon ten (10) days written request therefore.

23. **CONSTRUCTION**. This Agreement will not be construed against either Party due to authorship. Each Party represents that it is sophisticated in the commercial matters contemplated by this Agreement and that it has received advice from counsel prior to execution. Nothing in this Agreement gives anyone, other than the Parties and any permitted assignees, any rights or remedies under this Agreement.

24. **ENTIRE AGREEMENT**. This Agreement, including all Appendices and Addenda, constitutes the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof. Except as otherwise specifically stated herein, no modification, amendment or addendum hereto shall be of any force or effect unless reduced to writing and signed by the Parties. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

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 above written.

BROKER

SHIPPER

Signed

Signed

Printed Name

Printed Name

Title

Title

