

# BROKER – CONTRACT CARRIER AGREEMENT

This agreement dated \_\_\_\_\_, between **Churchill Freight Services, Inc.**, of **2455 24<sup>th</sup> Street, Detroit, MI 48216**, hereinafter referred to as **Broker**, and \_\_\_\_\_, hereinafter referred to as **Carrier**.

In consideration of the mutual promises of the parties, it is agreed:

1. **Broker** is a freight broker, duly authorized by the Surface Transportation Board (STB), as successor to the Interstate Commerce Commission, under license MC 274553 to arrange for the transportation of property by motor carrier on behalf of a motor carrier, consignor or consignee, and sufficiently controls the transportation of the commodities to be tendered to carrier under this agreement.
2. **Contract Carrier** is a motor carrier of property duly authorized by the STB under Permit No. MC\_\_\_\_\_ to provide compensated contract transportation of property for shippers (Consignors) and receivers (Consignees) of General Commodities, and holds itself out to the public as such.
3. **Broker**, as an independent contractor, serves many shipper customers on a continuing basis which have individually and/or collectively varying and distinct transportation needs for shipments between and among various geographic points throughout the United States, and between the United States, Canada, and/or Mexico which from time to time require dedication of equipment, refrigerated, containerized, bulk or other specialized equipment, short notice driver/equipment availability, driver loading/unloading requirements, loading/delivery scheduling, detention, overnight and weekend layover, LTL/TL or LCL/CL service, variable traffic/shipment levels, protective service, stops in transit, direct dispatch, drop shipments, internal deliveries, weekend/holiday shipments and deliveries, pooling or spotting trailers, priority traffic and expedited service, special credit and payment terms, as well as electronic data interchange (EDI), and for those reasons **Broker**, both derivatively and for itself, has unique, distinct and continuing transportation service needs throughout the United States, and must necessarily also enter into similar pattern motor contract carriage agreements with more than one motor contract carrier in order to serve the varied, special, distinct and continuing transportation needs of itself and of its several shippers from origins to destinations throughout the United States, Canada and/or Mexico which form an integral part of the **Broker's** customer base.
4. **Carrier** recognizes the special, distinct, varying and continuing transportation needs of the **Broker** and its customer base of shippers, and in order to serve a portion, if not all, of those transportation needs, **Carrier** desires to provide motor contract carriage to **Broker** under a continuing agreement designed to meet various and special transportation needs of **Broker** and its shipper customers as part of a larger integrated scheme of transportation services arranged by **Broker** between many shipper and carrier customers.
5. **Carrier** acknowledges that as a single motor contract carrier it may not be able to reliably and continually serve the broad range of **Broker's** shipper customers' transportation service needs and demands throughout the United States, and in the aggregated multiple motor contract carriage agreements can and do serve all of **Broker's** customer base of shippers, and this **Agreement** may be one of a number of such continuing agreements.

6. **Broker and Carrier** understand this **Agreement** does not bind the respective parties to mutually exclusive services to each other, and that **Broker** may enter into similar agreements with other carriers, and **Carrier** may enter into similar contract carriage agreement with other brokers and/or shippers.
7. **Broker** shall diligently solicit, obtain and maintain shipping customers having freight traffic shipments in need of transportation, and shall tender freight traffic shipments to **Carrier** for transportation, and **Carrier** shall transport by motor vehicle from and to such points between which service may be required, such as quantities of authorized commodities as **Broker** may require without delay, subject to the availability of suitable equipment for the traffic tendered and the specific shipment instructions, all in accordance with the terms and conditions of this **Agreement**.

#### **BROKER'S OBLIGATIONS**

8. **Broker** shall tender a series of at least three (3) shipments of freight per year to **Carrier** for transport on a continuing basis during each year this **Agreement** remains in effect.
9. **Broker** shall pay **Carrier** for the transportation of freight under this **Agreement**, in accordance with contract rates, not later than thirty (30) days from the receipt by **Broker** of **Carrier's** invoice covering such transportation, subject to the provisions contained in Paragraphs (23) and (24).
10. **Carrier** shall provide transportation for the tendered freight and shall bill all charges for transportation services directly to **Broker**. **Carrier** shall provide **Broker** with copies of signed bills of lading and delivery receipts as evidence of such services.
11. **Carrier** shall furnish, when capabilities are developed, via electronic data interchange (EDI), periodic transmissions of data elements on each shipment and receipt in format specified by the U.S. Electronic Data Interchange Standards published by the Transportation Data Coordinating Committee, or its successors, as well as similar data elements for automated payment of freight bills.
12. **Carrier** shall issue a Uniform Straight Bill of Lading in its own name, and shall assume full and complete responsibility and liability, regardless of the fault of any person, for any and all loss and damage to, or delay of, any shipment while in possession or control of **Carrier** under its terms, provided however, where the terms and conditions specified in this **Agreement** conflict with those in the Uniform Straight Bill of Lading, the terms and conditions specified in this **Agreement** shall prevail. All claims for loss, damage, delay and salvage shall be processed and adjusted in accordance with the regulations of the ICC as published in 49 C.F.R. Part 1005. The liability under this **Agreement** shall be for the full value of the property lost or damaged. Full value of lost or damaged items shall mean replacement cost established by trade sale or other invoice documentation, plus any additional transportation costs.
13. **Carrier** shall comply with the financial responsibility requirements of the appropriate federal and state laws and regulatory agencies through which it is authorized to operate. **Carrier** shall maintain primary cargo insurance in the amount equal to the full value of the maximum quantity of goods expected to be transported at any one time under this **Agreement**, but in no event in an amount less than \$100,000.00 per shipment, to compensate **Broker**, consignor or consignee for any and all loss or damage to property which was placed in possession or control of **Carrier** in connection with transportation services under this **Agreement**. **Carrier** shall also maintain primary public liability insurance in an amount sufficient to cover any and all liability risks associated with its activities and operations in connection with transportation

services under this **Agreement**, but in no event in amounts less than those prescribed by applicable statutes and regulations of the STB and Department of Transportation (DOT). **Carrier** shall maintain workers' compensation coverage for all personnel employed by **Carrier** in connection with its transportation operations and services under this **Agreement**. **Carrier's** cargo and liability insurance shall comply with STB and DOT requirements in all respects, and shall be in form required by 49 C.F.R. Part 13906(a), with no exclusions or restrictions which would not be accepted by the STB for a filing under the statutory or regulatory requirements, but shall be, in all respects, identical to insurance filed in accordance with the cited regulation. **Carrier** agrees that its cargo and liability insurance policies shall require the insurance carrier(s) to give **Broker** upon request, copies of insurance policies and Standard Certificate(s) of insurance for both the cargo and the liability risks and **Carrier** shall instruct its insurance carrier to give **Broker** twenty (20) days written notice of any modification or termination of such insurance policies.

14. **Carrier** shall defend and hold **Broker** harmless from, and indemnify **Broker** for any and all liability or claims for loss or damage to any freight in the possession and/or control of **Carrier** in connection with transportation under this **Agreement**, and any and all liability or claims for personal injury or death or property loss or damage arising out of the acts or omissions of **Carrier** its employees, independent contractors or agents in providing transportation under this **Agreement**. **Carrier's** obligation under this **Agreement** shall include liability for payment of any and all costs and/or fees incurred by **Broker** in the adjustment or defense of any claim for cargo loss or damage and/or claim for personal injury or death or property loss or damage arising out of transportation operations and services under this **Agreement**. **Carrier** agrees that its obligation to defend, indemnify and hold harmless the **Broker** from and against any and all claims and liabilities resulting from or arising out of transportation operations and services under this **Agreement** shall survive any termination of this **Agreement**.
15. **Carrier**, at its sole cost and expense, shall furnish all equipment required for services hereunder and shall maintain all equipment in clean condition, good repair and working order. **Carrier**, at its sole cost and expense, shall employ for its services hereunder only competent and properly licensed personnel who shall be well trained in the care, safety and response procedures applicable to shipments being handled and transported. Without the prior written consent of **Broker**, **Carrier** shall not cause or permit any shipment tendered hereunder to be brokered to or transported by any other motor carrier, or in substituted service by railroad or other modes of transportation.
16. **Carrier** shall comply with all applicable STB and DOT regulations as well as all other federal and state laws, regulations and ordinances applicable to the operations of a motor carrier.

#### **FREIGHT RATES/CONFIRMATION IN WRITING**

17. For all freight tendered by **Broker** and accepted by **Carrier** subject to the terms, provisions and conditions of this **Agreement**, the rates and charges for the transportation of such freight shall be reasonable, and shall reflect and be approximately equivalent to the contemporaneously prevailing rates and charges for the same or substantially similar services then being provided by **Carrier** and other common or contract motor carriers. The total amount due and any other specified details for each shipment shall be confirmed in writing at the time of loading **Carrier's** truck. Such written "load confirmation" shall be sent and/or exchanged the same day by **Broker** and **Carrier** via computer generated facsimile transmission (FAX), but

if FAX confirmation cannot be sent, then **Broker** shall send written “load confirmation” of charges to **Carrier**, within five (5) days, by first-class U.S. Mail.

#### **LIENS NOT ALLOWED/SET-OFF PERMITTED**

18. **Carrier** shall neither have nor claim any lien rights on or against any property transported under this **Agreement**. However, should a consignor or consignee notify **Broker** of a claim for loss or damage to property transported by **Carrier** under this **Agreement**, **Broker shall promptly give Carrier written notice of such claim and Carrier shall have thirty (30) days to attempt to resolve the claim with Broker’s customer. In the event Carrier cannot resolve such claim within such time, Carrier agrees that Broker and consignor/consignee shall have the right to set-off that claim amount from any freight charge payments due Carrier.**

#### **AGREEMENT FULFILLS REQUIREMENTS FOR CONTRACT CARRIAGE**

19. **Carrier** and **Broker** agree that transportation services under this **Agreement** are to be performed as contract carriage in compliance with 49 U.S.C. Parts 13902(d)(B) and 14101(b) by providing specialized services or equipment designated to meet the distinctive needs of **Broker** or of the consignor and consignees which form **Broker’s** shipper customer base. Such services shall include, when applicable, but shall not be limited to those services described in Paragraph (3) above.
20. Both parties intend and recognize that this **Agreement** fulfills any and all applicable legal requirements for contracts for contract carriage, and enter into it for such purpose. Whether or not **Carrier** is also authorized to operate, or does operate, as a common carrier, each and every shipment tendered to **Carrier** by **Broker** shall be deemed to be a tender to **Carrier** as a motor contract carrier and shall be subject only to the terms of this **Agreement** and the provisions of law applicable to motor contract carriage.

#### **FORCE MAJEURE**

21. 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 or military authorities or other circumstances beyond its control.

#### **DISPUTE RESOLUTION AND JURISDICTION**

22. The parties agree and understand that this Agreement shall be governed by the Surface Transportation Act (49 USC 13101 et. seq.) where applicable and otherwise by the laws of the State of Michigan, both as to interpretation and performance and any and all actions for any and every breach of this contract shall be instituted and maintained in any court of competent jurisdiction sitting in the County of Wayne, State of Michigan.

#### **INDEPENDENT CONTRACTOR**

23. The relationship of the **Broker** to the **Carrier** shall, at all times, be that of an independent contractor, provided however, that **Broker** shall be the agent of the **Carrier** for receipt and collection of freight charges and fees, and **Carrier** hereby authorizes and appoints **Broker** as its agent for such purposes.
24. In the event that after movement and delivery of freight, the ultimate obligor for payment of freight charges and fees becomes bankrupt, or for any reason defaults on its obligation to pay freight charges and fees

which **Broker** had already paid to **Carrier**, **Carrier** agrees that all its right, title and interest in such charges and fees shall be, and hereby are, transferred, subrogated and assigned to **Broker** for the purposes of collection and recovery from the responsible party(s).

#### **EFFECTIVE DATE AND TERMINATION**

25. This **Agreement** is to become effective on the date first written above, or to the extent applicable, upon the date which **Carrier** and **Broker** commenced doing business together, whichever is earlier, and shall remain in effect for a period of one (1) year from such date, and shall automatically renew from year to year thereafter, subject to the right of either party to cancel or terminate the **Agreement** at any time upon thirty (30) days advance written notice from one party to the other.

#### **COMPETITION**

26. **Carrier** and **Broker** agree that **Broker**, at great expense, has developed a broad customer and vendor base that is essential to the successful operation of the **Broker**. **Carrier** and **Broker** agree that disclosure of the identity of **Broker** customers to **Carrier** constitutes valuable consideration. During the term of this **Agreement** and for a period of one (1) year from the time of the termination of this **Agreement**, **Carrier** shall not, directly or indirectly, solicit or do business of a transportation nature with any of **Broker's** customers who are serviced by **Carrier** as a result of this **Agreement** unless otherwise agreed by the parties in writing.
27. Solicitations prohibited under this **Agreement** including those set forth in Paragraph 26 above, means participation in any conduct, whether direct or indirect, the purpose of which involves transportation of shipper traffic by the **Carrier** for which the **Carrier** does, or did in the past, provide transportation services for that shipper traffic under arrangements first made or procured by **Broker**. Solicitation includes conduct initiated or induced by **Carrier**, or accepted from or through others in any way related to or affiliated with the **Carrier**.
28. If **Carrier** should perform services of a transportation nature for compensation for any **Broker** customer as defined in Paragraph 29 below without prior authorization from **Broker** during the time period set forth in Paragraph 26 in violation of this **Agreement**, **Carrier** shall pay **Broker** within ten (10) days of each such violation an amount equal to ten (10%) of all revenues invoiced **Broker** customers by **Carrier**.
29. **Broker** shall identify its customers to **Carrier** as each first load from each customer is tendered to **Carrier**. **Carrier's** acceptance of the load and movement of the freight will acknowledge that this new customer is a **Broker** customer. **Carrier** has ten (10) days after such "first load" moves to challenge, in writing, why the customer should not be considered a **Broker** customer. In any case of challenge, **Broker** and **Carrier** will agree in writing exactly how this customer will be handled.

#### **SEVERABILITY**

30. If any part of this **Agreement** is determined by competent public authority or court to be contrary to the laws or regulations of any application jurisdiction, then such invalid or unenforceable provision shall be severed from this **Agreement**; however, such determination shall not in any way affect the validity of any other provisions of this **Agreement**.

**COMPLETENESS AND AMENDMENTS**

31. The provisions contained in this **Agreement** properly express the complete **Agreement** and understanding between the parties, including those contained in all prior agreements or understanding whatsoever, expressed or implied. This **Agreement** may not be changed, waived or modified except by written agreement signed by **Carrier** and **Broker** stating that such writing in an amendment to this **Agreement**. However, the signatures of the parties shall not be required on the FAX transmitted "load confirmations" described in Paragraph (17).

**ASSIGNABILITY AND OBLIGATIONS OF SUCCESSORS**

32. Neither party to this **Agreement** may assign its rights or obligations under this Agreement without the express written consent of the other party.

33. This **Agreement** shall be binding upon the parties hereto, their legal representatives, successors, heirs and authorized assigns.

**IN WITNESS WHEREOF**, authorized representatives of the parties have executed this 6 page **Agreement** in two counterpart originals on the date stated at the top of Page 1.

**BROKER**

**Churchill Freight Services, Inc.**  
**2455 24<sup>TH</sup> Street**  
**Detroit, Mi 48216**

**CARRIER**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address of Principal Office

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Corporation, Partnership, Sole Proprietorship or Other

\_\_\_\_\_  
Tax I.D. Number

\_\_\_\_\_  
Tax I.D. Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

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Printed Name & Title