

BROKER-CARRIER Agreement

This agreement is entered into this ____ day of _____, 20____, by and between EJ Waldron Transport Inc a Registered Property BROKER Lic No MC 1002965 office located at 21434 7 Mile Rd Franksville WI 53126 (Hereinafter "BROKER"), and _____ a registered Motor Carrier, Permit/Certificate No MC _____ with offices located at _____ (Hereinafter "CARRIER"); collectively, the "Parties". ("Registered" means operated under authority issued by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation.)

Agreement

- 1 Is a registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities
- 2 Shall transport the property, subject to the terms of this Agreement
- 3 Makes the representations herein for the purpose of including BROKER to enter into this Agreement
- 4 Has and will maintain cargo, personal injury and public liability insurance as described below, which covers the risks referred to in Pars. A10, A11 and C4, as well as any cargo transported under this agreement, without exclusions;
 - A Cargo Insurance-Minimum \$100,000 coverage per incident
 - B Auto Liability- Minimum \$1,000,000
- 5 Will not insert, nor authorize a SHIPPER, Carrier or Driver to insert BROKER's name on a bill of lading as SHIPPER without BROKER'S express written consent
- 6 Has authorized the person signing this Agreement to do so
- 7 Will not assign or co-broker, or interline the shipments hereunder, without prior written consent of BROKER. If CARRIER breaches this provision, Broker shall have the right to the paying monies it owes CARRIER, directly to the delivering carrier, in lieu of payment to the CARRIER. Upon Broker's payment to delivering carrier, CARRIER shall not be released from any liability to the Broker under this agreement. In addition to the indemnity obligation reflected in this agreement, the carrier will be liable for consequential damages for violation of this clause in the agreement
- 8 Is in compliance with all applicable federal, state and local laws relating to the provision of its service and the performance of this Agreement
- 9 Will defend, indemnify, and hold BROKER and its customers harmless from any claims, losses, damages, or liability of any kind (including reasonable attorney's fees) arising out of CARRIER's performance or violation of any of the terms of this Agreement. BROKER reserves the right to control the defense of any such matters, including the right to designate counsel
- 10 Shall comply with all applicable laws and regulations relating to the transportation of Hazardous Materials defined in 49 C.F.R. § 173 et seq to the extent that any shipments hereunder constitute Hazardous Materials. In such instance(s), carriers shall be solely responsible for any violation of the applicable laws and regulations and shall defend, indemnify and hold BROKER and its customer harmless from any liability incurred, but not limited to reasonable attorney's fees arising from any non-compliance
- 11 CARRIER Moving Perishable: CARRIER warrants that the carrier will inspect or hire a service representative to inspect a vehicle's refrigeration or heating unit at least once a month. CARRIER warrants that they shall maintain a record of each inspection of refrigeration or heating unit and retain the records of inspection for at least one year. Copies of these records must be provided upon request to the CARRIER's insurance company and the BROKER. CARRIER warrants that in accepting a load that requires a trailer with refrigerated unit, they have and will maintain reefer breakdown insurance and ensure that such a policy is in force and in good standing at the time in which the order is in their care, custody and control
- 12 CARRIER shall not have U.S. Dot safety rating of Unsatisfactory; otherwise they are not authorized to provide the proposed services.
- 13 Will notify BROKER immediately if CARRIER's federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if CARRIER is sold, or if there is a change in control of CARRIER

BROKER REPOSNDSDIBILITIES:

1. BROKER agrees to conduct all billing services to shippers. CARRIER shall invoice BROKER for its (CARRIER) charges, as mutually agreed by writing, fax or email, contained in CARRIER'S schedules of rates and charges, which are attached and incorporated herein after by reference (Exhibit A). Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, BROKER requirements, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by fax, mail or email) by both Parties. Any such changes in rates shall automatically be incorporated herein after by reference as part of Exhibit A, Amendment 1, et seq. CARRIER'S schedule of rates and charges (exhibit A) shall be provided by CARRIER to BROKER in writing (fax, mail or email) and shall include all rates, classifications, rules and practices upon which any rate applicable to the shipments transported is based, and no part thereof shall be amended, modified or changed without mutual written consent of the Parties.
2. Additionally, any rates which may be verbally agreed upon shall be deemed confirmed in writing where CARRIER has billed the agreed rate and BROKER has paid it. All written confirmation of rates, including confirmation by billing and payment, shall be incorporated herein by reference as part of Exhibit A, Amendment 1, et seq. Unless specifically agreed to in writing, no rates or charges, including, but not limited to, accessorial charges, "released rates", or "limited liability" rates or values, other than those mutually agreed upon by the Parties herein shall be valid.
3. PAYMENT: BROKER agrees to pay CARRIER for its services rendered hereinunder, upon written receipt of proof of delivery and bill of lading, in accordance with the rates set forth above, or as otherwise agreed, within 30 days of receipt of CARRIER's invoice and required documents. The Parties agree that BROKER shall be solely responsible for payment of CARRIER's charges and under no circumstance shall CARRIER seek payment from BROKER's, customer, the shipper or the consignee of any shipment tendered to CARRIER under this Agreement. Upon receipt of payment, CARRIER automatically assigns all of its rights to payment from shippers, consignees, or third parties to BROKER.

CARRIER REPOSNDSDIBILITY

1. Equipment: All shipments tendered by a shipper or customer to CARRIER, procured by BROKER under the terms of this Agreement, shall be accepted by CARRIER for transportation, provided such shipment does not exceed capacity (weight or cubic volume) of CARRIER'S equipment. CARRIER agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for BROKER and/or its customers. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed.
2. Bills of Lading: CARRIER shall issue a bill of lading in compliance with 49 U.S.C. § 80101 et seq., 49 C.F.R. § 1035 (and any admendments thereto), for the property it recieves for tranportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become fully

responsibile/liable for freight when it takes/receives possession thereof, and the trailer(s) is loaded regardless of weather a bill of lading has been issued, and/or delivered to CARRIER. Any terms of the bill of lading, inconsistent with the terms of this Agreement shall be controlled by the terms of this Agreement. Failure to issue a bill of lading, or sign a bill of lading acknowledging receipt of the cargo, by CARRIER, shall not affect the liability of CARRIER.

3. LOSS & DAMAGE CLAIMS:

a) CARRIER shall comply with 49 C.F.R. § 370.1 et seq. and any amendments and/or any other applicable regulations issued or adopted by Federal Motor Carrier Safety Administration, U.S. Department of Transportation, for processing all loss and damaging claims and salvage, which arise out of the discharge of CARRIER's duties and responsibilities hereunder; and

b) The burden of proof for CARRIER's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. § 14706; and

c) Special Damages: Any liability of CARRIER under Pars. A10 and A11 above shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability under Subp. (b) above.

d) If the CARRIER fails to cover their liability of loss, EJ Waldron Transport Inc reserves the right to take the CARRIER to court for the amount owed, with interest, incurred costs and attorney fees.

4. **INSURANCE:** CARRIER shall furnish BROKER with Certificate (s) of Insurance, or insurance policies, protecting BROKER from the risks referred to in Pars. A10, A11, C3, and this Par. 4, providing thirty (30) days advance notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits:

a) Workers Compensation-Statutory limits in each state law

b) Commercial General Liability-in a combined single limit of One Million Dollars (\$1,000,000)

c) Commercial Auto Liability-including Bodily Injury and Property Damage in the amount of, a Combined Single Limit of One Million Dollars (\$1,000,000) each occurrence (primary). Coverage includes owned vehicles, leased vehicles, hired vehicles, and non-owned vehicles

d) Cargo Liability Insurance-with minimum limits based on the value of the cargo being hauled, but in no case less than \$100,000

e) Other Insurance-All other insurance required by any applicable law

Except for the higher coverage limits specified above, the insurance policies shall comply with the minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Cargo insurance provided by Contract Carriers shall contain the same language as was present in the past BMC 32 endorsement applicable to common carriers. Nothing in this Agreement shall be construed to limit liability to the insurance limits set forth, nor shall any exclusion in any insurance policy exonerate CARRIER from liability.

MISCELLANEOUS:

1. **INDEPENDENT CONTRACTOR:** It is understood and agreed that the relationship between BROKER and CARRIER is that of independent contractor and that no employer/employee relationship exists, or is intended. BROKER has no control of any kind over CARRIER, including but not limited to routing of freight, and nothing contained herein shall be construed to be inconsistent with this provision. It is also understood that if the CARRIER is found in breach of this contract, EJ Waldron Transport Inc reserves the right to take the CARRIER to court for any amount owed, with interest, incurred costs and attorney fees.

2. **NON-EXCLUSIVE AGREEMENT:** CARRIER and BROKER acknowledge and agree that this contract does not bind the respective Parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.

3. WAVIER OF PROVISIONS:

a. Failure of either party to enforce a breach or waiver of any provisions or terms of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either party to therefore enforce such a term or provision.

b. This Agreement is for specified services pursuant to 49 U.S.C. § 14101 (b). To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, or Title 49 U.S.C. (ICC Termination Act of 1995), the parties expressly waive any or all rights and remedies they may have under the Act.

4. **DEFAULT:** In the event of a material breach by CARRIER of any provisions of this Agreement, BROKER shall have the right to withhold and/or set off any payments owing to CARRIER and/or received from shippers which BROKER is obligated to pay CARRIER. The right of withholding and/or setoff is not an exclusive remedy and the BROKER shall have and may exercise, subject to Paragraph 5 below, all other remedies it may have at law or in equity against CARRIER.

5. **DISPUTES:** In the event of a dispute arising out of this Agreement, the party's sole recourse (except as provided below) shall be to arbitration under the rules of the American Arbitration Association. The decision for the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. Arbitration proceedings shall be conducted at the office of the American Arbitration Association closest to the BROKER's office or such other places as mutually agreed upon in writing. Provided, however, it is agreed that prior to the formation of the arbitral panel, either party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted by Federal Bankruptcy Law, federal common law, or otherwise controlled by the Federal Motor Carrier Safety Administration/U.S. Department of Transportation laws and regulations, the laws of the state of Wisconsin shall be controlling. This paragraph shall not apply to enforcement of the award arbitration.

6. **NO BACK SOLICITATION:** CARRIER shall not solicit or accept freight shipments from any shipper, consignor, or consignee, or other customer of BROKER, when: (a) the availability of such shipments first became known to CARRIER as a result of BROKER's efforts; or (b) where such shipments of the shipper, consignor, or consignee or BROKER customer was first tendered to the CARRIER by the BROKER. In the event of breach of this provision, BROKER shall be entitled, for a period of 12 months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of fifteen (15%) of the transportation revenue (as evidenced by freight bills) received by CARRIER for the transportation of said freight as liquidated damages. Additionally, BROKER may seek injunctive relief and in the event it is successful in obtaining such injunctive relief, CARRIER shall be liable for all costs and expenses incurred by BROKER related thereto, including, but not limited to, reasonable attorney's fees.

7. **MODIFICATION OF AGREEMENT:** This Agreement and the rate schedules attached may not be amended, except by mutual written agreement, or the procedures set forth (Paragraphs B2 and B3)

8. **RATE CONFIRMATION:** BROKER may use a Rate Confirmation document pertaining to specific routes, shipments and/or customers. Rate Confirmation will contain a summary of the terms, conditions and obligations contained in this Agreement. This summary is intended for reference and as a reminder only and shall not be construed as amending, modifying or supplementing this Agreement. Any ambiguities or inconsistencies in the Rate Confirmation shall be controlled by the terms of this Agreement.

9. NOTICES:

a) All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax.

b) BROKER shall notify CARRIER of any claims that is asserted against CARRIER of which BROKER has knowledge.

10. CONTRACT TERM: The term of this Agreement shall be one year from the date hereof and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon (30) day's prior written notice, with or without cause, by either party at any time.

11. SERVANCE: In the event any of these terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written.

12. ENTIRE AGREEMENT: Except for Exhibit A (and its amendments) billing, invoices and receipt of payment documents referred to above, and unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. 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, we have signed this agreement the date and year shown.

For BROKER:

EJ Waldron Transport Inc
 21434 7 Mile Rd
 Franksville WI 53126
 Ph: 262-995-4674
 Fax: 414-296-8314
 By: Julie Waldron
 Printed name: Julie Waldron
 Title: Owner

For CARRIER:

Name: _____
 Address: _____
 City: _____ St: _____
 Phone: _____ Fax: _____
 Fed ID# _____
 By: _____
 Print Name: _____
 Factor Company: Yes _____ No _____
 Factor Company Name: _____
 Equipment Types (please enter number)
 48'Flat _____ 53'Flat _____ 48'Step _____
 53'Step _____ RGN _____ Van _____
 Other _____