



00010ACT CARRIER – BROKER CONTRACT

I. IDENTIFICATION OF PARTIES

AGREEMENT

Made this day of 2011 by and between . hereinafter referred to as a CARRIER, and USA LOGISTICS, INC. with address at: P.O. Box 666, Pittstown, New Jersey, 08867 hereinafter referred to as a 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. (a copy of which permit is attached hereto and made apart 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-480189, (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 1362 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 Part 49 of the Code of Federal Regulations.

This AGREEMENT is to become effective on , and shall remain in effect for a period of one (1) 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 that thirty (30) days written notice of one party to the other representatives, and/or any other party or parties holding forth a legitimate claim of interest in the terms of this AGREEMENT.

III. SPECIFIC OBLIGATION OF THE CARRIER

(a) The CARRIER shall issue a uniform standard bill of lading in accord with 49 U.S.C. Sec. 81 and 49 C.F.R. Part 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 the CARRIER. The 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 \$100,000.00 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. Part 1043).

(c) CARRIER's liability shall begin at the time cargo is loaded upon CARRIER's equipment at 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 any and all 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. COMMITMENT OF THE SHIPPER TO TENDER AND THE CARRIER TO TRANSPORT A SERIES OF SHIPMENTS

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 the CARRIER agrees to transport not less than one (1) shipment tendered during that period of time.

V. SPECIFIC OBLIGATIONS OF BROKER

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 thirty (30) days of the receipt by BROKER and CARRIER's invoice covering such transportation.

VI. RATES AND CHARGES (Optional)

(a) The basic transportation rates negotiated between the 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 5,000 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 an accepted amendment to this AGREEMENT, and on the upper right hand 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 twenty-four (24) hours of receipt of it notify the other party, and a disputed rate shall not become an amended fixed rate until the parties agree to it.

(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.

VII. 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 shipper, and the name of the consignee shall be inserted in the blank for the consignee.

VIII. SERVICE DESIGNED TO MEET THE DISTINCT NEEDS OF THE BROKER

The BROKER needs the CARRIER to assume full liability for the actual loss of or injury to the property tendered to the CARRIER to negate a possibility of the CARRIER moving these goods on released rates with a limitation of liability, and Paragraph III.(b) specifically imposes this obligation upon the CARRIER. Paragraph IX.(a) (below) imposes a further obligation on the 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 the BROKER. Further, the BROKER needs a single forum for the settlement of disputes, and paragraph IX.(b) (below) meets this distinct need of the BROKER. The BROKER further needs protection against back solicitation of its clients by the 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.

IX. PROVISIONS AS TO THE SETTLEMENT OF CARGO CLAIMS AND OTHER DISPUTES

(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 recover, 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 (1) year after delivery of the property; or, in the case of failure

to make delivery, then within one (1) year after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier within two (2) years, three (3) months and one (1) 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.

(b) If any dispute arises about any matter covered by the terms of the Motor Contract Carrier Agreement, the dispute must be submitted, by the party who alleges a violation filing a complaint with the Surface Transportation Board. The complaint shall contain specific references to pertinent statutory provisions and regulations of the Board, and the terms of this contract that the complainant believes have been violated. Such a complaint shall be submitted in accordance with all the provisions of 49 C.F.R. 1111. No court action can be taken by either party prior to the decision of the Board, and the decision of the Board shall be binding, final and non-appealable. If for any reason the Board refuses to accept the complaint, or refuses to make a ruling on the subject matter of the complaint, then the parties' recourse shall be to the judicial system, either state or federal, in the federal district or state county in which the BROKER is located.

X. TRANSIT TIME

The BROKER and the 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 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.)

XI. INDEPENDENT CONTRACTOR STATUS

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

XII. NO BACK-SOLICITATION BY THE 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 the CARRIER as a result of BROKER's efforts, or (2) where the traffic of the shipper, consignor, consignee or customer of the BROKER was first tendered to the CARRIER by the BROKER. If CARRIER breaches the agreement and "back-solicits" the Broker's customers, and/or obtains traffic from such a customer, the BROKER then is entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission for the CARRIER of fifteen percent (15%) of the transportation revenue received on the movement of the traffic, as liquidated damages.

XIII. CO-BROKERING PROHIBITED

CARRIER agrees that it shall transport all loads tendered to it under its own authority, on equipment owned or leased by it, and use employees or independent contractors under contract with it. Should a violation of the preceding sentence occur, CARRIER agrees to pay any and all charges relating to the movement of the shipment, and to indemnify and hold harmless BROKER and/or Broker's customer from

any and all freight charges claimed to be owing directly to the underlying motor carrier. CARRIER also agrees to settle any cargo claims that may arise in connection with a violation of this paragraph pursuant to 49 U.S.C. 14706.

XIV. 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.

IN WITNESS WHEREOF,

The parties have set their hands on

CARRIER:

BROKER: 

BY:

BY: Blaese A. Romano

TITLE:

TITLE: President