



Express Transport America, Inc.

(dba) **Express Transport America Logistics**

8023 S. Howell Avenue * Milwaukee, WI 53207 * Phone: (414) 431-8143 * Fax (866) 362-1703

Broker – Carrier/Vendor Agreement

AGREEMENT made this day ____/____/____, by and between Express Transport America Logistics (here in referred to as "BROKER"), and _____ an I.C.C. licensed motor (here in referred to as "CARRIER")
US DOT# _____, and/or MC# _____.

1. BROKER agrees to offer for shipment and CARRIER agrees to transport in its own equipment at least one (1) shipment annually and such quantities of freight as BROKER may tender subject to the availability of suitable equipment. CARRIER may not assign any portion of this contract, without the BROKER'S written Consent.
2. CARRIER has authority from the I.C.C. to operate as a motor CARRIER and will maintain this authority and insurance for the protection of cargo in the amount of \$100,000.00. Minimum requirements for liability insurance are: General Aggregate \$2,000,000; each occurrence \$1,000,000. The amount of cargo insurance required may be increased by notification to meet the added valuation of specific shipments. Cargo insurance shall be in the form required by 49C.F.R. 1043.2(b) and shall have no exclusions or restrictions that would not be accepted by the I.C.C. filing under statutory requirements.
3. CARRIER will comply with all applicable D.O.T. rules and regulations as well as all other federal or state regulations pertaining in any fashion to the operations of a motor CARRIER. CARRIER agrees to keep in full force and effect, public liability insurance as required by the I.C.C. and Worker's Compensation Insurance respecting its employees, or those contractors deemed such under applicable state law. CARRIER will at all times maintain certificates/declarations evidencing such insurance coverage on file with BROKER. CARRIER agrees to hold BROKER harmless from and indemnify BROKER from any liability damages, costs, etc. accruing to BROKER whatsoever as a result of CARRIER'S breach of these provisions.
4. CARRIER will maintain a DOT "satisfactory" rating. If this should change, CARRIER will send BROKER written notice of the change by certified mail, in five (5) working days, and BROKER has the option of canceling this Agreement immediately and without notice.
5. BROKER agrees to pay CARRIER for the transportation of freight moved under this agreement in accordance with the rates, and other terms and conditions set forth in Appendix "I" attached hereto and made a part hereof. Modifications or additions to such may be agreed to in writing or may be made verbally to meet specific shipping schedules. Confirmation of verbally agreed rates must be made by a signed recap faxed to BROKER or CARRIER. All modifications and additions to the rates made either in writing or verbally and confirmed in writing, shall be deemed addenda to, and considered an integral part of this agreement.
6. BROKER and CARRIER agree that transportation services hereunder are to be in compliance with the Code of Federal Regulations (49 CFR) by assigning motor vehicles for a continuing period of time for the exclusive use of BROKER or by providing specialized services or equipment designated to meet the expedited shipments, consisting of mandatory, time sensitive delivery schedules.
7. CARRIER shall notify BROKER immediately after having knowledge of overages, shortages, or damaged freight CARRIER handled for BROKER. CARRIER shall return overages. Disposition of damaged goods will be returned by BROKER. CARRIER agrees that for purposes of claims, BROKER shall be deemed to be the "shipper" and BROKER may properly present claims on behalf of its "Shipper" customers unless BROKER'S customer elects to present claims on its own behalf, in which instance BROKER'S customer shall be recognized as the "Shipper" for Claim purposes.

EXPRESS TRANSPORT AMERICA LOGISTICS BROKER/CARRIER AGREEMENT (continued, page 2)

8. In the event of delay in the carriage of BROKER'S freight, CARRIER shall at its expense, forthwith advise BROKER, giving an estimate of the anticipated delay in delivery, and shall as necessary, promptly take steps to reload the freight in replacement equipment or take other necessary steps to minimize delay, at CARRIER'S sole expense.
9. CARRIER warrants that, at its cost and expense, it shall furnish for use in BROKER'S service sufficient vehicles suitable for the lawful carriage of cargo tendered by BROKER. CARRIER shall operate and maintain the motor and allied equipment necessary in good working condition and in compliance with all applicable laws and regulations. CARRIER, at its cost and expense, also shall provide adequately trained drivers, and provide the proper performance of transportation functions hereunder shall at all times be under the exclusive control of CARRIER and shall meet the requirements of Appendix II attached hereto and made a part hereof.
10. CARRIER shall be liable for the full actual loss resulting from loss, damage, injury or delay, CARRIER shall not be held responsible for shortages in the absence of evidence of tampering, breakage or lack of due care by CARRIER. In the event of loss, damage, overage or shortage, CARRIER agrees to notify BROKER of such incidents immediately, but in no case more than 24 hours after discovery, in writing or via facsimile. Unless there is a written agreement with either the BROKER or the BROKER'S customer in the bill of lading specifying released value rates or limitations of recovering damages, BROKER shall be entitled to recover all lawfully provable damages for freight loss, damage or delay caused by CARRIER without limitation. Any agreed to limitation shall be in writing and shall be specific as to commodity and service and general incorporation or references to published sales or tariffs shall be null and void.
11. Any claims will be handled in the following manner:
 - i. A claim for loss, damage, injury or delay to cargo will be filed in writing as provided below with CARRIER, within 180 days of the date CARRIER notifies that the shipment is lost, damaged or delayed.
 - ii. CARRIER will, upon receipt in writing of a proper claim in the manner and form described herein above, acknowledge receipt of such claim in writing within 30 days after the date of its receipt by CARRIER, unless CARRIER will have paid or declined such claims in writing within 30 days thereof. CARRIER will indicate in its acknowledgement what, if any, additional documentary evidence or other pertinent information may be required by it to process the claim, based on CARRIER'S preliminary examination of the claim as filed. CARRIER agrees that in any case where it does not decline, pay or acknowledge receipt of claims within 30 days that it has agreed to the validity of the claim and the amount stated therein and will thereafter pay said claim within 30 days.
 - iii. CARRIER, when it has received written claim for loss, damage, injury or delay to property transported, will pay, decline or make a firm compromise settlement offer in writing within 60 days after receipt of the claim by CARRIER. If CARRIER and BROKER (or its customer) do not come to final settlement within 60 days, BROKER may cancel this Agreement and/or seek to recover the damages, including attorney fees and all other expenses, through any legal, administrative or equitable remedy available. CARRIER shall not be responsible for loss, damage, injury or delay resulting from acts of god, public enemy, revolution, civil disorder or war.
 - iv. CARRIER shall be liable for the "full actual loss" resulting from loss, damage, injury or delay. "Full actual loss" means the invoice price of freight tendered to CARRIER for transportation as well as consequential damages if the CARRIER is put on notice of the possibility thereof.
12. BROKER (and/or its customers) shall issue a bill of lading in their own name(s) and shall be ultimately liable to the owner of the freight for full actual loss and damage to the freight transported under this agreement while in the care of custody of the CARRIER. All claims for loss, damage and salvage shall be handled and processed in accordance with the code of Federal Regulations (49 C.F.R.).
13. The bill of lading shall be noted by the CARRIER that the shipments were transported by CARRIER, acting as a CARRIER, and that the shipment was arranged by BROKER, acting as a BROKER.

14. The provisions of paragraph 12 above notwithstanding, CARRIER shall defend and hold BROKER harmless, and indemnify BROKER for any and all liability or claims resulting 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 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, death or property loss or damage arising out of transportation operations and services under this agreement. CARRIER agrees that it's obligation to defend, indemnify, and hold harmless 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 the termination of this agreement.
15. CARRIER will bill all charges for transportation services directly to BROKER and CARRIER shall provide BROKER with a copy of the signed bill of lading and delivery receipts, all in conformity with the procedures set forth at Appendix "I". No billing for any run will be accepted after ninety (90) days from the date of the shipment. All billing received after ninety (90) days from the date of the shipment will not be processed for payment.
16. The relationship of CARRIER and BROKER shall, at all times and for all purposes, be that of an independent contractor; the relationship of partners, joint venture, general agent, and employer/ee being hereby expressly disclaimed. CARRIER agrees that it will look only to the BROKER for payment. BROKER shall remain liable to CARRIER for payment of all legitimate freight charges hereunder that are submitted within ninety (90) days from the date of the shipment; payment by it's customers notwithstanding.
17. CARRIER agrees to support and protect BROKER'S efforts in performance of this agreement by refraining from any direct contact or solicitation of BROKER'S customers. During the term of the agreement and for a period of two (2) years from the time of the termination of this agreement. CARRIER shall not, directly or indirectly solicit or do business of transportation or warehousing nature with any of BROKER'S customers who are serviced by CARRIER as a result of this agreement, unless otherwise agreed to in writing. If CARRIER breaches this Agreement and "back-solicits" BROKER'S customers, or obtains traffic from such a customer, BROKER then is entitled, for a period of fifteen (15) months after the involved traffic first begins to move, a commission from CARRIER of thirty percent (30%) of the transportation revenue invoiced on the movements of the traffic in addition to payment of all costs and attorney's fees expended to secure the thirty percent (30%). This is in addition to any other compensatory and punitive damages, the right to temporary or permanent injunction and all other legal remedies. For purposes of paragraph "5", CARRIER shall include all related companies, whether CARRIER, BROKER, freight forwarder, holding company or otherwise, and also includes all principles of CARRIER, including officers, directors and shareholders acting directly 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. Solicitations include conduct initiated or induced by CARRIER, or accepting from or through offers in any way related to or affiliated with the CARRIER.
18. Obligations of this agreement are separate and divisible and in the event that clause is deemed unenforceable, the balance of the agreement shall continue in full force and effect.
19. CARRIER agrees that BROKER'S compensation for its services hereunder is confidential, and will not be disclosed. CARRIER further agrees that it will not reveal to anyone the terms of this agreement, the pricing of transportation service, or any other details of the business conducted between CARRIER and BROKER. CARRIER agrees that billing for all transportation services hereunder will be billed only to the BROKER. All billing generated directly to a customer, and not to the BROKER as identified in this agreement will subject the CARRIER to a monetary penalty, paid to the BROKER, will be ten percent (10%) of the CARRIER'S charges. The penalty will be paid to the BROKER as soon as the billing error is discovered. There will be no time limit for this monetary penalty and penalties may be withheld from future settlements to the CARRIER.

20. This contract is binding upon the parties hereto, their successors and assigns, shall be construed at all times under the laws of the state of Wisconsin (Paragraph 6 shall constitute an exception thereto, as that state law which may apply to CARRIER for those limited purposes will be on the basis of CARRIER'S principle office address, domicile, and/or scope of operations), and shall be deemed executed in Milwaukee, Wisconsin.
21. Unless otherwise stated, all notices which may be given in connection with this Agreement or required by law or regulations shall be sent postpaid by the party desiring to give such notice to the other party by first class mail, addressed to such party at its address shown herein, and shall be deemed to have been given when so sent.
22. The provisions contained herein properly express and memorialize the complete understanding of the parties as contained in all prior agreements, both verbally and/or in writing. This agreement shall be effective continuously, subject to the right of either party hereto to cancel the agreement at any time upon not less than five (5) days written notice of one party to the other.
23. Nothing in this Agreement shall be interpreted or shall have the effect of guaranteeing to CARRIER any particular volume of business or the loads of any particular CARRIER.
24. The parties further agree that in those cases where the BROKER determines that a CARRIER'S performance, as regards to guaranteed arrival times, is not in conformity with this contract, and no good justification is shown therefore, the following adjustments will be made to the rate and charges;
 - v. Failure to arrive at destination on time, as agreed to with the BROKER up to and including one (1) hour and fifty-nine (59) minutes late; reduction in the total charges by twenty-five percent (25%).
 - vi. Failure to arrive at the destination on time, as agreed to with BROKER, between two (2) hours and three (3) hours and fifty-nine (59) minutes late; reduction in total charges by fifty percent (50%).
 - vii. Failure to arrive at destination on time, as agreed to with BROKER, over four (4) hours; reduction in total reduction in charges by one hundred percent (100%).
 - viii. In all cases where the customer refuses to pay the BROKER due to a late delivery by the CARRIER which is over (2) hours late, the CARRIER'S pay will be reduced by one hundred percent (100%).
 - ix. If, as a result of CARRIER'S failure, a "critical" situation is created which would cause a potential shut down, alternative transportation may be arranged by BROKER and charged back to CARRIER. Additional costs charged by the customer relating to a late shipment may also be charged back to the CARRIER.
25. 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 loss or damage to property transported by CARRIER under this agreement, CARRIER agrees that BROKER and consignor/consignee shall have the right to set-off an amount from any freight charge payments due CARRIER.
26. If any dispute arises about any matter covered by the terms of this agreement, the dispute shall be submitted to American Association for arbitration under the Association's rules and procedures. Said arbitration shall be conducted in Milwaukee, Wisconsin. No court action can be taken to either party prior to arbitration, and the arbitrator's decision shall be final and binding.
27. In the event that after movement and delivery of freight, the ultimate obligator for payment of freight charges and fees becomes bankrupt or for any reason defaults on its obligation to pay freight charges and fees which the 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 and assigned to BROKER for the purposes of collection and recovery from the responsible party(s).
28. CARRIER may not assign its rights or obligations under this agreement without the express consent of BROKER.

EXPRESS TRANSPORT AMERICA LOGISTICS BROKER/CARRIER AGREEMENT (continued, page 5)

29. The above reductions in pay will not be applicable for delays which are beyond the control of the CARRIER (i.e. Traffic, Natural Disasters, Severe Weather, etc), the CARRIER must communicate this delay to the BROKER immediately upon knowledge of the delay. If the uncontrollable delay is not communicated by the CARRIER to the BROKER within 1/2 hour of the actual delay, the reduction in pay will continue to be in effect.

BROKER

(dba) Express Transport America Logistics

(Broker Name)

Broker MC# 838690-B

(Broker MC#)

By: _____
(Broker Representative's Signature)

Title: _____

Date: _____

CARRIER/VENDOR

(Carrier Name)

(Carrier MC#)

By: _____
(Carrier Representative's Signature)

Title: _____

Date: _____