

SF ADVANCE TRANSPORTATION SERVICES, INC.

100 Bridge Point Way, Suite # 180

South St. Paul, MN 55075

BROKER CARRIER AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____,

201__ by and between SF ADVANCE TRANSPORTATION SERVICES, INC. ("BROKER"), a Registered Property Broker, Lic. No. MC-177032, and

, a Registered Motor Carrier, D.O.T. Permit/Certificate No. ("CARRIER"); collectively the "Parties". ("Registered" means operated under authority issued by the Federal Motor Carrier Safety Administration or its predecessor agencies, within the U.S. Department of Transportation.)

A. CARRIER REPRESENTS AND WARRANTS THAT IT:

- 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 inducing BROKER to enter into this Agreement;
- 4) Has and will maintain cargo, personal injury, public liability, motor vehicle liability (including but not limited to hired and non-owned motor vehicles), insurance as described below, which covers the risks referred to in Pars. A11, 12 and C3 and 4;
- 5) Will not insert, nor authorize a SHIPPER to insert BROKER'S name on a bill of lading as the SHIPPER or CARRIER without BROKER's express written consent;
- 6) Has authorized the person signing this Agreement to do so;
- 7) Will not assign, re-broker, subcontract, interline with any other motor carrier, or by substituted service with any railroad or other modes of transportation, or warehouse the shipments hereunder, without prior written consent of BROKER;
- 8) Is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: owner/operator lease regulations; loading and securement of freight regulations; implementation, maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations; sanitation and temperature requirements for transporting food and other perishable products, qualification, licensing and training of drivers for any hazardous materials shipments; implementation, and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers;
- 9) Does not have an "Unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, and will notify BROKER in writing immediately of any changes in the rating; has not been, is not being investigated for, nor is it currently subject(ed) to any fines or disciplinary action by any governmental agency (state or federal) related to the enforcement of any safety laws and regulations;
- 10) Will notify BROKER immediately if: CARRIER's federal Operating Authority is threatened to be or 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; and/or any of its insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason;

- 11) Will defend, indemnify, and hold BROKER and its customers harmless and pay BROKER on demand from any claims, losses, damages, fines, or liability of any kind for damage to freight, personal injury, death, and/or property damage (including, but not limited to, reasonable attorney's fees) arising out of CARRIER's performance of, or violation of, any of the terms of this Agreement;
- 12) Shall comply with all applicable laws and regulations relating to the transportation of Hazardous Materials as defined in 49 C.F.R. § 172.800, § 173, and § 397, et seq. (including any amendments) to the extent that any shipments hereunder constitute Hazardous Materials. CARRIER shall be solely responsible for any violation of the applicable laws and regulations, and shall defend, indemnify, and hold BROKER and its customers harmless and pay BROKER on demand from any claims, losses, damages or liability incurred, including, but not limited to reasonable attorneys fees arising from any non-compliance;
- 13) Expressly authorizes BROKER to accept payment from shippers (or others obligated to pay) for CARRIER's services, and waives all rights to collection from shippers (or others obligated to pay) for those services.

B. BROKER RESPONSIBILITIES:

1. **SHIPMENTS, BILLING & RATES:** BROKER agrees to solicit and obtain freight transportation business for CARRIER to the mutual benefit of CARRIER and BROKER, and shall offer CARRIER at least three (3) loads/shipments annually. BROKER shall inform CARRIER of (a) place of origin and destination of all shipments; and (b) if applicable, any time- or temperature-sensitivity instructions or special equipment requirements provided BROKER has timely received such information from SHIPPER.
2. BROKER agrees to conduct all billing services to shippers. CARRIER shall invoice BROKER for its (CARRIER) charges, as mutually agreed in writing or by fax, contained in BROKER's Rate Confirmation Sheet(s) Exhibit A attached and incorporated herein by reference. 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) by both Parties. Any such changes in rates shall automatically be incorporated herein by reference as part of Exhibit A, Amendment 1, et seq. CARRIER's schedule of rates and charges shall be provided by CARRIER to BROKER in writing (fax or mail) upon BROKER'S request, and shall include all rates, classifications, rules and practices upon which any rate applicable to the shipments transported under this Agreement, is based, and no part thereof shall be amended, modified or changed to affect agreed upon rates (Exhibit A) without mutual written consent of the Parties.

3. 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 confirmations of rates, including confirmations 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, detention charges, "released rates", or "limited liability" rates or values, other than those mutually agreed upon by the Parties herein shall be valid.

4. **PAYMENT:** (a) BROKER agrees to pay CARRIER for its services rendered hereunder, upon written receipt of proof of delivery (bill of lading or delivery receipt) and freight bill, in accordance with the rates set forth above, or as otherwise agreed in writing, within thirty (30) days of receipt of CARRIER's invoice, provided invoice and other required documentation is received not later than 60 days after date of delivery, or scheduled date of delivery of the freight whichever is earlier. CARRIER expressly waives its right to collection for failure to deliver timely invoicing and other required documentation within the 60 day period. Arbitration action for alleged nonpayment for CARRIER services hereunder must be commenced within one year of date of delivery or scheduled date of delivery whichever is earlier in order to avoid being permanently barred. Upon receipt of payment of any amounts by CARRIER arising out of this Agreement, CARRIER automatically assigns all of its rights to payment from shippers, consignees, or third parties to BROKER.

(b) Except when delivery of freight is rejected by consignee(s), and stored/warehoused at direction or approval of BROKER or shipper, CARRIER shall neither have nor claim any lien rights against freight transported under this Agreement. Liens for storage/warehousing shall be limited to the freight subject of the lien. CARRIER's lien rights shall be released and are automatically assigned to BROKER, upon receipt of payment by CARRIER or warehouse for any such storage/warehousing.

C.CARRIER RESPONSIBILITIES:

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 the capacity (weight or cubic volume) of CARRIER's equipment. Subject to its representations and warranties in Paragraph A above, 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 for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become fully responsible/liable for the freight when it takes/receives possession

thereof, and the trailer(s) is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER, and which responsibility/liability continues until delivery to consignee at destination, and consignee signs bill of lading or delivery receipt, and delivers it to CARRIER. All signed delivery receipts and/or bills of lading shall be sent to BROKER within 24 hours of pick-up or delivery. 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 the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, for processing all loss and damage claims and salvage, which arise out of the discharge of CARRIER's duties and responsibilities hereunder; and

b) CARRIER's liability for any freight damage, loss, or theft from any cause (regardless of the type of operating authority it has) shall be determined under the Carmack Amendment, 49 U.S.C. §14706; and

c) Special Damages: Any liability of CARRIER under Pars. A11 and 12 which may exceed damages under Par (b) 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; and

d) CARRIER assumes all risk of loss and shall indemnify and hold BROKER harmless from any liability arising out of violation of Par.

A (7), including consequential damages, costs, expenses and reasonable attorney fees. At BROKER's sole option and not in limitation of any other remedy hereunder, BROKER may pay directly the delivering carrier in lieu of payment to CARRIER; and

e) In order to avoid being permanently barred, claims for freight loss or damage must be delivered in writing to CARRIER within 120 days of date of loss.

4. **INSURANCE:** CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies, protecting BROKER from the risks referred to in Pars. A11, 12, 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: Public liability, \$1,000,000; motor vehicle (including hired and non-owned vehicles) property damage and personal injury liability \$1,000,000; (\$5,000,000 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances); cargo damage/loss, \$100,000; workers' compensation with limits required by applicable state law. Except for the higher coverage limits specified above, the insurance policies shall comply with minimum requirements of the

Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Nothing in this Agreement shall be construed to limit liability to the insurance limits set forth above,

nor shall any exclusion or deductible amount in any insurance policy exonerate CARRIER from liability.

D. 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 or agency relationship exists, or is intended. CARRIER is solely responsible for operating the equipment necessary to transport the freight under this Agreement. BROKER has no control over CARRIER, except to insist on strict compliance with the terms of this Agreement.

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. WAIVER OF PROVISIONS:

a) Failure of either party to enforce a breach or waiver of any provision or term 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 thereafter 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, of 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. BROKER's set-off rights include (but are not limited to) the amount of any freight damage, loss or theft claims arising out of the transportation of freight under this Agreement by CARRIER, and which are asserted against BROKER by shippers, consignees and/or their assignees and/or subrogees. The right of withholding and/or setoff is not an exclusive remedy and 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. Proceedings shall be conducted under the rules of the American Arbitration Association (AAA), Transportation ADR Council, Inc. (ADR) or Transportation Arbitration and Mediation PLLC (TAM) at BROKER's sole discretion. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the AAA, ADR, or TAM. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The prevailing party shall be

entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at the office of the AAA, ADR, or TAM nearest St Paul, Minnesota, or such other place as mutually agreed upon in writing or directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted or controlled by federal law and regulations, the laws of the State of Minnesota shall be controlling. This paragraph shall not apply to enforcement of the award of arbitration.

6. **BROKER-CUSTOMER PROTECTION:** CARRIER shall not directly or indirectly solicit, divert, back-solicit or perform any freight transportation (with or without compensation) for any customer of BROKER, when such customer(s) was serviced as a result of this Agreement. Transportation of freight hereunder by CARRIER, shall be deemed conclusive evidence of CARRIER's transportation service to BROKER's customers. In the event of breach of this provision, BROKER shall be entitled, for a period of eighteen (18) months following delivery of the last shipment transported by CARRIER under this Agreement to a BROKER customer, to a commission of twenty percent (20%) 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 in which case, CARRIER shall be liable for all costs and expenses incurred by BROKER related thereto, including, but not limited to, reasonable attorney's fees.

7. CONFIDENTIALITY:

a) During the term of this Agreement and for two (2) years after termination for any reason, the Parties shall not directly or indirectly disclose to anyone, or use for its own, or anyone else's benefit, Confidential Information as defined herein. For purposes of this Agreement, "Confidential Information" shall mean information of the BROKER which includes but is not limited to business and/or marketing and sales plans, trade secrets, customer names, customer contacts, personal customer information, customer shipping or other logistics requirements, and all pricing information related to BROKER and BROKER'S customers. "Customer", for purposes of this Agreement, shall mean any person or entity with whom BROKER is or has conducted business during 18 months immediately preceding violation of this Agreement. Confidential Information may be disclosed either orally, visually or in tangible form (whether by document, electronic media, or other form). The failure of either Party to mark, label or identify any of the above-described information as Confidential shall not affect its status as part of the Confidential Information protected by this Agreement.

b) In the event of violation of this clause, CARRIER acknowledges and agrees that the remedy at law, including monetary damages, may be inadequate and that BROKER shall be entitled, in addition to any other remedy it may have, to an injunction restraining CARRIER from violation of this Agreement in which case CARRIER shall be liable for all costs and expenses incurred by

BROKER related thereto, including, but not limited to, reasonable attorney's fees.

c) In addition to the remedy set forth in Subparagraph (b) above, BROKER shall have the right in its sole discretion to immediately terminate this Agreement (with or without prior notice) and recover and/or withhold 20% of the transportation revenue paid (during the eighteen (18) months immediately preceding termination) and/or owing to CARRIER under this Agreement (as evidenced by CARRIER's freight bills) as liquidated damages (and not as a penalty) for breach hereof.

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

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 or by courier with signed delivery receipt.
- b) The PARTIES shall notify each other, in writing of any claim that is asserted against either of them, by anyone, arising out of this Agreement immediately.

10. CONTRACT TERM: The term of this Agreement shall be for one (1) year from the date shown above and thereafter it shall automatically be renewed for successive one year periods, unless terminated upon 30 days prior written notice with or without cause, by either party at any time, including the initial term. In the event of such termination the Parties shall be obligated to complete their performance obligations to each other for unfinished work in process and related payments.

11. SEVERANCE: SURVIVAL: In the event any of the 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. The representations, rights and obligations of the Parties hereunder shall survive termination of this Agreement for any reason.

12. ENTIRE AGREEMENT: Except for Rate Confirmation Sheet(s) Exhibit A (and its amendments) 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.

IN WITNESS WHEREOF, we have signed this Agreement the date and year first shown above.

(BROKER) SF ADVANCE TRANSPORTATION SERVICES, INC.



By: *Steven J. Ferraro*
Its: *President*

(CARRIER)

By: _____ (Printed)
(Authorized Signature) Its: _____

Address: _____

Phone: _____

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May 6, 2005