

BROKER/SHIPPER AGREEMENT

THIS BROKERAGE AGREEMENT (“Agreement”) is made and entered on _____, 20____, by and between _____ (“SHIPPER”) and **Coast Transportation & Warehousing, Inc.** (“BROKER”) (collectively, the “Parties”).

I.

Recitals

A. **WHEREAS** BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (“FMCSA”), or by appropriate State agencies, and as a licensed broker, arranges for freight transportation; and

B. **WHEREAS** SHIPPER seeks to utilize the services of BROKER to facilitate the transportation of goods on behalf of SHIPPER; and

NOW THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:

II.

Agreement

1. **TERM.**

- a. The term of this Agreement shall be for one (1) year and shall automatically be renewed for successive one (1) year periods; provided, however, that either Party may terminate this Agreement with or without cause at any time by giving the other Party thirty (30) days prior written notice.
- b. Either Party may additionally terminate this Agreement immediately upon written notice to the other of the following events:
 - i. Breach of any covenant, obligation, condition or requirements imposed by this Agreement if such breach continues for a period of ten (10) days after written notice thereof; or
 - ii. A Party becomes insolvent, unable to pay its debts in a timely manner, seeks protection under bankruptcy or receivership laws, or is forced into bankruptcy or receivership.
- c. Shipper may additionally terminate this Agreement immediately upon written notice if:
 - i. Broker loses its operating authority;
 - ii. Fails to procure or maintain insurance coverages required by this Agreement; or
 - iii. Utilizes the services of Servicing Motor Carriers (as defined below) that do not hold the requisite authority to provide services required by SHIPPER.

2. **BROKER’S COMPLIANCE WITH LAW.** BROKER represents and warrants that it is duly and legally qualified to operate as a property BROKER and to provide the transportation services contemplated herein. BROKER agrees to comply with all federal, state and local laws regarding the provision of such brokerage services. The Parties understand and agree that BROKER functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation, and that the actual transportation of shipments tendered to BROKER shall be performed by third-party motor carriers (“Servicing Motor Carriers”).

3. **PAYMENT AND CHARGES.**

- a. SHIPPER shall tender certain shipments, from time to time, to BROKER which may be accepted or rejected by BROKER in BROKER's sole discretion. With respect to loads with respect to which BROKER has agreed to provide services, unless otherwise stated in a separate Rate Confirmation Agreement, BROKER will charge and SHIPPER will pay the rates and charges set forth in Appendix A, for transportation services performed under this Agreement.
- b. The Rate Confirmation Agreement shall be in the form specified in Appendix B. The Rate Confirmation Agreement shall be signed and agreed to by BROKER and SHIPPER before each shipment to which such Rate Confirmation Agreement applies.
- c. In the event brokerage services are provided and it is subsequently discovered that there was no applicable or understood rate in Appendix A, the Parties agree that the charges invoiced by BROKER shall be the agreed upon contract rate of the Parties for the services provided, unless such payment is objected to by SHIPPER within ten (10) days of the invoice date.
- d. SHIPPER agrees to pay BROKER without offset within thirty (30) days of receiving the invoice, with interest accruing monthly at a rate of one percent (1%). SHIPPER shall also be liable for any expenses, including attorney fees, BROKER incurs in collecting its rates and charges.

4. **INDEMNIFICATION**. The provisions of this section shall not apply to claims for cargo loss, damage or delay.

- a. BROKER shall indemnify, defend, and save SHIPPER, its employees, and agents harmless from and against, and shall pay and reimburse, any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney's fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage (other than loss or damage to cargo, which is addressed elsewhere in this Agreement), or any combination thereof, suffered or claimed to have been suffered by any person or persons, arising out of BROKER's services provided in connection with this Agreement to the extent such claim is directly and proximately caused by (i) the negligence or intentional misconduct of BROKER; (ii) BROKER's or its employees' violation of applicable laws or regulations; or (iii) BROKER's or its employees' or agents' breach of this Agreement. The foregoing obligations shall not apply to the extent such liabilities or obligations arise from the negligence or other wrongful conduct of SHIPPER.
- b. SHIPPER shall indemnify, defend, and save BROKER, its employees, and agents harmless from and against, and shall pay and reimburse, any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney's fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof, suffered or claimed to have been suffered by any person or persons, arising out of SHIPPER's performance under this Agreement to the extent such claim is directly and proximately caused by (i) the negligence or intentional misconduct of SHIPPER; (ii) SHIPPER's or its employees' or agents' violation of applicable laws or regulations; or (iii) SHIPPER's or its employees' or agents' breach of this Agreement; or (iv) SHIPPER's failure to provide complete and accurate instructions regarding safe handling of food, or BROKER's reliance on SHIPPER's instructions for safe handling of food. The foregoing obligations shall not apply to the extent such liability, claims or loss are the result of the negligence or other wrongful conduct of BROKER.
- c. In the event that such claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including without limitation, reasonable attorney fees) are caused by the joint and concurrent negligence or other fault of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments,

costs, and expenses shall be borne by each Party in proportion to its degree of negligence or other fault.

- d. BROKER shall also indemnify, defend, and save SHIPPER harmless from and against any and all claims of payment made by Servicing Motor Carriers as long as SHIPPER has made timely payment in accordance with the provisions of this Agreement to BROKER of the full amount owing to BROKER for the services underlying the Servicing Motor Carrier's claim.
- e. Any indemnified Party shall promptly tender the defense of any claim to the indemnifying Party.
- f. In no event shall either Party be responsible for any special or consequential damages with respect to any matter arising from or related to this Agreement or any operations hereunder regardless of whether such Party had notice of the possibility of such damages.

5. **INDEPENDENT CONTRACTOR.** BROKER represents and warrants that it is an independent contractor under this Agreement and that its employees are under BROKER's exclusive management and control, and that SHIPPER neither exercises nor retains any control over BROKER, its operations or employees in any manner whatsoever.

6. **CONTRACT CARRIERS.** BROKER shall make reasonable efforts to place SHIPPER's loads with responsible Servicing Motor Carriers authorized to perform the services required by SHIPPER for the purposes of transporting the loads with reasonable dispatch under the direction of SHIPPER. BROKER also agrees to utilize only Servicing Motor Carriers that possess all insurance coverages required by applicable law. However, the Parties understand and agree that BROKER, by signing this Agreement, makes no express or implied warranties or guarantees concerning delivery time or the locating of a Servicing Motor Carrier to provide the transportation services requested by SHIPPER. Moreover, SHIPPER acknowledges and agrees that such Servicing Motor Carriers might limit SHIPPER's recovery for claims for cargo loss, damage or delay.

7. **BROKER INSURANCE.** BROKER shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain a surety bond to benefit the SHIPPER.

8. **CARGO LOSS, DAMAGE, OR SHORTAGE.** In the event of a cargo loss or damage claim, including loss or damage due to unreasonable delay in delivery, BROKER may facilitate claims filing and processing with the Servicing Motor Carrier if SHIPPER submits to BROKER, within six (6) months of the date of delivery, a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage. SHIPPER understands and agrees that the underlying Servicing Motor Carrier may have a limitation of liability in place that limits SHIPPER's recovery with respect to such claims. BROKER may, in its sole discretion and without liability to SHIPPER, discontinue pursuit of claims with the Servicing Motor Carrier if such claim is not resolved within sixty (60) days of receipt by BROKER. BROKER shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused directly and proximately by BROKER's negligent or intentionally wrongful acts or omissions, in which event, BROKER's liability shall be limited to the amount owed to BROKER by SHIPPER with respect to the services provided by BROKER that relate to the commodities at issue. BROKER shall have no liability for delay in delivery of cargo except to the extent that BROKER's negligence or intentional misconduct directly and proximately causes an unreasonable delay, which delay results in loss or damage to the cargo. In no event will BROKER or the Servicing Motor Carrier be responsible for any chargebacks or other penalties or assessments imposed by the consignor or consignee with respect to late deliveries. SHIPPER acknowledges and agrees that its sole recourse, and that BROKER's sole liability, with respect to cargo loss, damage or delay shall be pursuant to this provision. SHIPPER further acknowledges and agrees that if SHIPPER is not the owner of such cargo, then SHIPPER is authorized to bind the owner to the provisions set forth herein regarding loss, damage or shortage.

9. **SHIPPING DOCUMENTS.** Unless otherwise agreed in writing, all shipments tendered shall be accepted on a bill of lading which shall function as a receipt of the goods only; the terms and conditions of such bill of lading will not apply to transportation provided pursuant to this Agreement. Except as set forth below with respect to a Food Handling Notice, SHIPPER, and not BROKER, shall be solely responsible for including any

special handling instructions applicable to the Servicing Motor Carrier on the bill of lading. Upon request of SHIPPER, BROKER shall instruct Servicing Motor Carriers to obtain a delivery receipt from the consignee, showing the products delivered, condition of the shipment and the date and time of such delivery. SHIPPER is solely responsible for properly identifying and describing the goods to be transported on any shipping documentation, as well as for complying with all laws, rules and regulations regarding tender of goods for transportation including, but not limited to, those applicable to shipping papers required with respect to shipments of hazardous materials. SHIPPER acknowledges and agrees that BROKER is under no obligation to arrange for any special handling or other services unless expressly requested in writing by SHIPPER receipt of which is acknowledged in writing by BROKER.

10. **SHIPMENTS CONTAINING FOOD.** When requesting service with respect to any shipment containing food that is subject to regulations of the Food and Drug Administration (“FDA”) promulgated under the Sanitary Food Transportation Act (hereinafter, “Food”), SHIPPER shall, at the time of the initial request for services with respect to the individual shipment, provide written notice (each a “Food Handling Notice”) to BROKER that the consignment contains Food which Food Handling Notice must also include any special instructions or handling requirements, if any, to be imposed on the Servicing Motor Carrier, including, but not limited to, any requirements related to condition, design, maintenance or type of transportation equipment; sealing of trailers; cross-contaminant restrictions; segregation/isolation of Food consignments; records relating to equipment (such as prior use or cleaning); temperature range requirements; temperature records (including method of measuring, monitoring and documenting temperature); pre-cooling requirements; required transit-times, etc., (any such instructions, hereinafter the “Specialized Instructions”). Any such Food Handling Notice shall specifically identify the consignment to which it relates and in no event shall any Food Handling Notice purporting to apply to multiple consignments (including any Food Handling Notice purporting to apply to any specifically enumerated commodities, any category of commodities, or commodities moving to or from specified locations) be binding on BROKER or otherwise apply to services provided by BROKER, regardless of whether receipt of such general Food Handling Notice has been confirmed by BROKER. BROKER’s sole responsibility with respect to such Specialized Instructions is limited to providing such Specialized Instruction to the Servicing Motor Carrier.

11. **SHIPMENTS BY RAIL.** Notwithstanding provisions of this Agreement to the contrary, in the event, whether upon request of SHIPPER or in BROKER’s discretion, any portion of the underlying transportation is performed by a rail carrier (“Rail Carrier”), SHIPPER acknowledges and agrees that the Rail Carrier services, including, but not limited to, charges, liability (including limitations) for loss or damage to cargo, and terms and conditions of services are governed by tariffs, circulars or similar documents maintained by the Rail Carrier or other third party logistics provider arranging such Rail Carrier services (the “Rail Conditions”). SHIPPER acknowledges and agrees that BROKER shall not be deemed as a shipper or beneficial cargo owner for purposes of application of the Rail Conditions. SHIPPER shall be solely responsible for proper packing of any and all shipments. Furthermore, with respect to cargo to be tendered to a Rail Carrier, SHIPPER will be solely responsible for blocking and bracing all such cargo in accordance with the Rail Conditions, as well as in accordance with industry standards (including, but not limited to, those imposed by the American Association of Railroads via Circular 43, Rules Governing the Loading, Blocking and Bracing of Freight in Closed Trailers and Containers for TOFC/COFC Service), and shall further be responsible for compliance with any and all obligations or charges imposed by the Rail Carrier with respect to tender of cargo for rail and/or intermodal transportation, including but not limited to any and all charges for accessorial services imposed by Rail Carriers whether or not included in the initial rates agreed upon by the parties.

12. **NOTIFICATION OF ACCIDENTS OR DELAYS.** BROKER agrees to notify SHIPPER of any accident or other event of which BROKER is apprised and which prevents the motor carrier from making a timely or safe delivery.

13. **LEGAL RESTRAINT OR FORCE MAJEURE.** In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the performance of all obligations required herein shall, with the exception of payment of invoices, be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such

interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. No liability shall be incurred by either Party for damages resulting from such suspensions.

14. **COMMUNICATIONS.** To the extent practicable, communications between BROKER and SHIPPER, including, but not limited to, invoicing, payment, Rate Confirmation Agreements, and proofs of delivery, will be electronic in a format mutually agreeable to the Parties. The Parties hereby waive any objection to the authenticity of such electronic communications as long as such communications comply with the Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act, or related legislation as applicable.

15. **BROKER'S RECORDS.** To the extent allowable under Applicable Law, SHIPPER hereby waives its right to obtain copies of BROKER's records as provided for under 49 C.F.R. Part 371. Notwithstanding the foregoing, to the extent that SHIPPER obtains records set forth in 49 C.F.R. § 371.3 by any means whatsoever, SHIPPER agrees to refrain from utilizing such records in negotiating for the provision of services with any third party, including Servicing Motor Carriers. SHIPPER further agrees and understands that all such records comprise BROKER's confidential information and trade-secrets.

16. **CONFIDENTIALITY.** Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (i) as required by law or regulation; (ii) disclosure is made to its accountants, tax advisors, attorneys, or any parent, subsidiary or affiliate company; or (3) as is reasonably necessary to the performance of operations hereunder.

17. **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part. This Agreement shall be binding upon and inure to the benefit of the Parties hereto.

18. **SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, the Parties agree that such portion shall be severable and that the remaining provisions of this agreement shall continue in full force and effect.

19. **NOTICE.** With the exception of Rate Confirmation Agreements and Food Handling Notices, which may be exchanged via email, all notices or other communications required or permitted by this Agreement shall be effective upon receipt; shall be in writing; and shall be personally delivered, or mailed by registered or certified mail, return receipt requested, or sent by an overnight delivery service which provides proof of delivery, or sent by telecopy with a duplicate copy sent by first class mail, postage prepaid, as follows:

If to Shipper: _____

If to Broker: _____

20. **DISPUTE RESOLUTION AND LIMITATION.** This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the state of California and in the event of any disagreement or dispute, the laws of California shall apply and suit must be brought in California as each party specifically submits to the exclusive personal jurisdiction of such courts for disputes involving this Agreement. IN NO EVENT WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DAMAGES ARISING FROM BUSINESS INTERRUPTION, WITH RESPECT TO ANY MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT REGARDLESS OF WHETHER THE PARTY TO BE CHARGED HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

21. **COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

**BROKER: Coast Transportation & Warehousing, SHIPPER
Inc.**

Printed: _____

Address: _____

Phone: _____

Fax: _____

Printed: _____

Address: _____

Phone: _____

Fax: _____

FID No: _____

APPENDIX A
RATE SCHEDULE

Issued: _____

Effective: _____
[effective date]

BROKER: Coast Transportation & Warehousing, Inc. SHIPPER

By: _____
Printed: _____

Printed: _____

APPENDIX B

Coast Transportation & Warehousing, Inc.
("Broker")
Address _____
Telephone _____
Fax _____

Rate Confirmation

Date: _____ SHIPPER: _____ Contact: _____
_____ Phone: _____
Pro #: _____ _____ Fax: _____

Load Information

Origin: _____ **Destination:** _____ **Date:** _____
_____ **Time:** _____
_____ **Pickup/Release #:** _____
Contact: _____ **Contact:** _____

Qty: _____ **Qty. Type:** _____ **Commodity:** _____

Rate of Item: _____ **Total:** _____ **Weight:** _____

Special Load Requirements:

BROKER enters into this Rate Confirmation as a property broker and Shipper acknowledges and agrees that carriage of goods will be performed by third party motor carriers. Shipper understands and agrees that this rate may be based on a limitation of liability maintained by the underlying carrier.

We understand that this contract has been approved by a person authorized to do so. If any information is incorrect, please contact us by fax or telephone before executing the above contract.

* Confirmation must be signed and faxed to BROKER before tendering load to BROKER.

SIGNATURE AND FAX BACK TO _____

Booked by: _____

BROKER: Coast Transportation & Warehousing, Inc.
Date

SHIPPER _____ Date
Authorized Representative

*Your signature constitutes a contractual agreement
between your company and BROKER*