



TRANSPORTATION BROKERAGE AGREEMENT



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This Agreement is made and entered into this _____ day of _____, _____ by and between Can Do Logistics LLC ("Broker") and _____ ("Carrier").

RECITALS

Broker is a Federal Motor Carrier Safety Administration ("FMCSA") licensed transportation broker that arranges for the transportation of freight under its contractual arrangements with various consignors and consignees ("Customer" or "Customers").

Broker sells, provides and arranges for transportation performed by others. In this arrangement of transportation for Customers freight pursuant to the terms and conditions of this Agreement, Broker desires to engage the transportation services of Carrier within the limits of its various contract operating authorities.

Carrier is registered with FMCSA as a motor contract carrier in interstate, intrastate, and/or foreign commerce and is in all respects qualified to transport freight as required by Broker.

AGREEMENT

NOW THEREFORE in consideration of the above recitals and the covenants contained herein the parties agree as follows:

1. **TERM.** The Term of this Agreement shall be for one (1) year from the date first above written and shall automatically renew for successive one (1) year periods; provided, however, that this Agreement may be terminated by either party at any time by giving thirty (30) days prior written notice.
2. **CARRIERS OPERATING AUTHORITY AND COMPLIANCE WITH LAW.** Carrier represents and warrants that it is duly and legally qualified to provide, as a contract carrier, the transportation services contemplated herein. Carrier further represents and warrants that it does not have a conditional or unsatisfactory safety rating issued from the U.S. Department of Transportation ("USDOT"), and further agrees to comply with all federal, state and local laws regarding the provision of the transportation services contemplated under this Agreement. In the event that Carrier is requested by Broker to transport any shipment required by the U.S. Department of Transportation to be placarded as a hazardous material, the parties agree that the additional provisions included in Appendix A shall apply for each such shipment.
3. **PERFORMANCE OF SERVICES.** Carrier's services under this Agreement are specifically designed to meet the needs of Broker under the specified rates and conditions set forth herein. Carrier which would be probable or certain to cause delay shall be immediately communicated to Broker by Carrier. This Agreement does not grant Carrier an exclusive right to perform the transportation-related services for Broker or its Customer.

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- 4. RECEIPTS AND BILLS OF LADING.** Each shipment hereunder shall be evidenced by a Uniform (Standard) Bill of Lading naming Carrier as the transporting carrier. Under no circumstances shall Carrier prepare a freight document which lists Broker as "carrier" or "shipper." If Customer tenders to Carrier a freight document showing Broker in any capacity other than Broker or a "Bill To" party, the parties agree that for all purposes, they will treat such document as though it showed Broker as "Broker" and Carrier as "Carrier." Upon delivery of each shipment made hereunder, Carrier shall obtain a receipt showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by Broker or the Customer, and Carrier shall cause such receipt to be signed and dated by the consignee.

Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contract shall be subject and subordinate to the terms, conditions and provisions of this Agreement. Carrier shall notify Broker immediately of any exception made on the bill of lading or delivery receipt. All signed delivery receipts and bills of lading will be sent to Broker via mail, facsimile or other communication method specified by Broker, within twenty-four (24) hours of pickup or delivery.

- 5. CARRIERS OPERATIONS.** Carrier shall be wholly responsible for the performance of all transportation contemplated by this Agreement. Carrier shall, at its sole cost and expense, (a) furnish all equipment necessary or required for the performance of its obligations hereunder (the 'Equipment'); (b) pay all expenses related, in any way, with the use and operation of the Equipment; (c) maintain the Equipment in good repair, safe and sound mechanical condition and appearance; and (d) utilize only competent, able and legally licensed personnel. Carrier shall have full control of such personnel; shall perform the services hereunder as an independent contractor; and shall assume complete responsibility for all state and federal taxes, assessments, insurance (including, but not limited to, workers compensation, unemployment compensation, disability, pension and social security insurance) and any other financial obligations arising out of the transportation performed hereunder.

- 6. INDEMNITY.** Carrier shall defend, indemnify, and hold Broker harmless from and against all loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the performance or breach of this Agreement by Carrier, its employees or independent contractors working for Carrier (collectively, the "Claims"), including, but not limited to, Claims for or related to **cargo loss and damage**, personal injury (including death), property damage and Carrier's possession, use, maintenance, custody or operation of the Equipment; provided.

- 7. NON-SOLICITATION.** Carrier promises and agrees that during the term of this Agreement or any renewal hereof it will not influence or attempt to influence customers or clients of Can Do nor will it contact directly or indirectly any customer or client of Can Do specifically but not limited to those clients and customers of Can Do that the Carrier has either picked up freight for or delivered freight to; nor shall it attempt directly or indirectly to divert Can Do's business to any individual, partnership, firm, corporation or other entity then in competition or planning to be in competition in the future with the business of Can Do or any subsidiary or affiliate of Can Do.

For a period of twenty four (24) months following the Carrier's last contact with any client or customer of Can Do the Carrier agrees it shall not either directly or indirectly influence or attempt to influence

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customers or clients of Can Do (or any of its present or future subsidiaries or affiliates) for whom the Carrier has rendered services pursuant to this Agreement to divert their business to the Carrier or any individual, partnership, firm, corporation or other entity then in competition or planning to be in competition in the future with the business of Can Do or any subsidiary or affiliate of Can Do.

The Carrier acknowledges that violation of this non-solicitation paragraph would cause irreparable harm to Can Do and that in the event of breach of this paragraph Can Do would be entitled to injunctive relief as well as damages in a court of appropriate jurisdiction. Carrier consents and stipulates to the entry of such injunctive relief in such court in the event of a violation of this non-solicitation paragraph.

8. INSURANCE. Carrier shall procure and maintain, at its sole cost and expense, the following insurance coverages:

- A. Commercial Automobile Liability Insurance**, with a combined single limit of not less than **ONE MILLION DOLLARS (\$1,000,000) (U.S. Dollars)** each occurrence with respect to all vehicles owned, non-owned, hired or assigned to transport shipment on behalf of Broker. Such insurance policy shall include coverage for any and all liabilities for personal injury (including death) and property damage arising out of the ownership, maintenance, use or operation, including loading or unloading of the equipment operated by Carrier under this Agreement. If Carrier transports hazardous materials, it must comply with the minimum liability insurance limit for bodily injury and property damage required by 49 C.F.R. Section 387.9, as may be amended from time to time. See Appendix A hereto, incorporated by reference.
- B. All Risk Broad Form Motor Truck Cargo Legal Liability Insurance.**
- C.** Carrier shall procure and maintain, at its sole cost and expense, All Risk Broad Form Motor Truck Cargo Legal Liability insurance in an amount not less than **ONE MILLION DOLLARS (\$1,000,000) (U. S. Dollars)** per occurrence. Such insurance policy shall list Broker as loss payee and provide coverage to Broker, the Customer or the Owner and/or consignee for any loss, damage or delay claim to any property coming into the possession of Carrier under this Agreement. Unless approved in advance by Broker, the coverage provided under the cargo policy shall have no exclusions or restrictions of any type that would foreseeable preclude coverage relating to a cargo loss, damage or delay claim.

One dollar and fifty cents (\$1.50) (U.S. Dollars) per load for truckload shipments.

In the event that a cargo loss, damage, or delay claim, or any portion thereof, is excluded from coverage under Broker's contingent cargo program for any reason, Carrier shall assume complete sole liability and responsibility for all such uninsured loss and shall indemnify, defend and hold Broker harmless for any loss, damage or delay claim asserted against Broker. Carrier recognizes and agrees that Broker is not selling or soliciting insurance, and the contingent cargo coverage provided through Broker is subject to all of the terms, conditions and exclusions of the actual policy issued by the insurance underwriter. Upon written request, Broker shall furnish to Carrier a copy of the insurance policy and/or certificate of insurance.

- D. Proof of Insurance.** Broker, its affiliates and subsidiaries shall be named as an additional insured or, in Broker's sole discretion, a certificate holder, in the insurance coverages to be maintained by Carrier under this Agreement. Carrier shall furnish to Broker, prior to accepting any shipment for transportation under this Agreement, a written certificate obtained from the insurance carriers showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of

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cancellation or modification of the policy shall be given to Broker at least ten (10) days prior to such cancellation or modification.

- 9. FREIGHT LOSS, DAMAGE OR DELAY.** Carrier shall have the sole and exclusive care, custody and control of the Customer's property from the time it is delivered to Carrier for transportation until delivery to the consignee accompanied by the appropriate receipts as specified in Paragraph 4.0. Except as stated below as to Carrier's additional liability to indemnify Broker for consequential damages and economic losses, Carrier assumes the liability of a common carrier (i.e. Carmack Amendment liability) for loss, delay, damage to or destruction of any and all of Customer's goods or property while under Carrier's care, custody or control. Carrier shall be liable for the actual loss, damage or injury to the commodities tendered by Shipper for transportation and accepted by Carrier provided that Carrier shall not be liable for loss or damage caused by an act of God, the public enemy, the fault or neglect of the Shipper, inherent vice or nature of the commodity or public authority. For Truckload Shipments, the measurement of the loss, damage or injury shall be the lesser of the actual replacement cost or the cost of repair to the commodities so lost, damaged or destroyed, subject to a maximum amount not exceeding ONE MILLION DOLLARS \$1,000,000 per truckload shipment. For LTL Shipments (less than truckload shipments), the measurement of the loss, damage or injury shall be the lesser of the actual replacement cost or the cost of repair, \$25.00 per pound per package, released value as provided within the N.M.F.C. (National Motor Freight Classification) (only if the Carrier is a participant of such publication), or \$100,000 per shipment. In addition to the Carmack liability stated above, the Carrier shall be liable to indemnify Broker for all amounts of indirect, special or consequential damages, or other special economic losses that might be awarded against Broker on any Customer's claim therefore. Carrier shall deduct from the amount of the claim the reasonable salvage value of the damaged commodities. LTL shipments under this section will be defined as shipments weighing less than 20,000 pounds and comprising less than 20 lineal feet of trailer space and upon which LTL rates have been assessed. Shipments weighing 20,000 pounds or more or comprising 20 lineal feet or more trailer space or which are rated at truckload rates, shall be considered as a truckload shipment for purposes of this section. Carrier shall pay to Broker, or allow Broker to deduct from the amount Broker owes Carrier, Customer's full actual loss for the kind and quantity of commodities so lost, delayed, damaged or destroyed. and the amount of any indemnity liability Carrier owes Broker as stated above.
- A.** Carrier shall be liable for the full amount of its policy limits to be shown on its most recent certificate of insurance submitted to Broker pursuant to Section 8.B of this Agreement on a per motor vehicle, or trailer, or container basis, regardless of any limitation contained in the insurance policy to which such certificate of insurance applies and regardless of the applicability of any such insurance. In consideration of the payment of fees set forth in Paragraph 8.B. Broker shall itself provide insurance coverage for the balance of the claim amount (up to \$1,000,000) to be calculated as the difference between Carrier's motor truck cargo insurance policy limit, as shown on Carrier's most recent certificate of insurance provided to Broker, and \$1,000,000. Notwithstanding the foregoing, and in addition to Carrier's liability under paragraph 8.B. If a claim arises from or is contributed to by any reckless, dishonest or illegal acts of an employee or agent of Carrier, or if any such loss, damage or delay is a result of Carrier furnishing contaminated equipment, then the entirety of such claim shall be the direct sole liability and responsibility of Carrier.
- B.** Payments by Carrier to Broker or its Customer pursuant to the provisions of this section, shall be made within thirty (30) days following receipt by Carrier of Broker's or Customer's invoice and supporting documentation for the claim.

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- 10. WAIVER OF CARRIER'S LIEN.** Carrier shall not withhold any goods of the Customer on account of any dispute as to rates or any alleged failure of Broker to pay charges incurred under this Agreement. Carrier is relying upon the general credit of Broker and hereby waives and releases all liens which Carrier might otherwise have to any goods of Broker or its Customer in the possession or control of Carrier.
- 11. PAYMENTS.** Carrier will charge and Broker will pay for transportation services performed under this Agreement the rates and charges as shown on separate Rate Confirmation Sheets to be signed, dated and agreed to by Carrier and Broker before each shipment made under this Agreement. Carrier represents and warrants that there are no other applicable rates or charges except those established in this Agreement or in any Rate Confirmation Sheet signed by Broker. Payment by Broker will be made within thirty (30) days of receipt by Broker of Carrier's freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents enabling Broker to ascertain that service has been provided at the agreed upon charge. In the event service is provided and it is subsequently discovered that there was no applicable rate in the existing Schedule of Rates or supplements, the parties agree that the rate paid by Broker and collected by Carrier shall be the agreed upon contract rate. Carrier agrees that Broker has the exclusive right to handle all billing of freight charges to the Customer for the transportation services provided herein, and, as such, Carrier agrees to refrain from all collection efforts against the shipper, receiver, consignor, consignee or the Customer. Carrier further agrees that Broker has the discretionary right to offset any payments owed to Carrier hereunder for liability incurred by Carrier pursuant to Paragraph 8 of this Agreement.
- 12. SUB-CONTRACT PROHIBITION.** Carrier specifically agrees that all freight tendered to it by Broker shall be transported on equipment operated only under the authority of Carrier, and that Carrier shall not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of Broker.
- 13. ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement contains all the terms and conditions between the parties, and it shall not be altered or amended except in writing signed by all parties. This Agreement may not be assigned or transferred in whole or in part, and supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by Carrier. This Agreement shall be binding upon and inure to the benefit of the parties hereto.
- 14. 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 severed and that the remaining provisions of this Agreement shall continue in full force and effect.
- 15. WAIVER.** Carrier and Broker expressly waive any and all rights and remedies allowed under 49 U.S.C. 14101 to the extent that such rights and remedies conflict with this Agreement. Failure of Broker to insist upon Carrier's performance under this Agreement or to exercise any right or privilege shall not be a waiver of any Broker's rights or privileges herein.
- 16. DISPUTE RESOLUTION.** This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the State of Illinois and in the event of any disagreement or dispute, the internal laws of this State shall apply without regard to its conflict of laws rules, and any suit must be brought in Kendall County, State of Illinois.

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- 17. NOTICES.** Any written notice herein provided for shall be sent by registered mail, return receipt requested, to the party to be notified at the address shown below, or to such other addresses as shall have been designated in writing by such party for this purpose.
- 18. BINDING, ETC.** This Agreement shall be binding upon the respective heirs, executors, personal representatives, successors and assigns of the parties hereto.
- 19. ATTORNEYS FEES.** In the event it becomes necessary to enforce any of the terms or conditions of this Agreement, the prevailing party shall be awarded a reasonable attorney's fee in addition to any costs allowed by law.
- 20. MINIMUM VOLUME.** There is no minimum volumes of freight contemplated by this Agreement. Broker is not restricted against tendering its freight to other couriers; Carrier is not restricted against performing transportation for other shippers.

Dated this _____ day of _____

"Broker"

Can Do Logistics LLC

By _____

Printed: _____

Title: _____

Address:
2691 Mclellan Blvd
Yorkville IL 60560

"Carrier"

Company _____

By _____

Printed: _____

Title: _____

Address:

Initials _____