

## **BROKER / MOTOR CARRIER AGREEMENT**

This Broker / Motor Carrier Agreement ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between Sunteck Transport Company, Inc. ("BROKER"), a Registered Property Broker, License Number MC-329363 B, and \_\_\_\_\_, a Registered Motor Carrier, Permit/Certificate Number DOT-\_\_\_\_\_ / MC-\_\_\_\_\_ ("CARRIER"); collectively, the "Parties".

For the purpose of this Agreement, "Registered" means operated under authority issued under Title 49 of the United States Code, and regulations promulgated by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation.

### 1. CARRIER REPRESENTS AND WARRANTS TO BROKER THAT IT:

- a) 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 and hazardous materials (initial here \_\_\_ NO HAZ MAT);
- b) Shall transport the property tendered to it by Broker under its own operating authority and subject to the terms of this Agreement;
- c) Makes the representations herein for the purpose of inducing BROKER to enter into this Agreement;
- d) Agrees that a Shipper's insertion of BROKER'S name as the carrier on a bill of lading shall be for the Shipper's convenience only and shall not change BROKER'S status as a property broker nor CARRIER'S status as a motor carrier.
- e) Will not re-broker, assign or interline the shipments transported hereunder, without prior written consent of BROKER. If CARRIER breaches this provision, BROKER shall have the right to pay the monies it owes CARRIER directly to the delivering carrier, in lieu of payment to CARRIER. In such a case, CARRIER shall not be released from liability to BROKER under this Agreement. In addition to the indemnity obligation in Paragraph 1.i, CARRIER will be liable for the direct, actual, and consequential damages arising from a violation of this Paragraph 1.e.
- f) Is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to its operations including, but not limited to:
  - i. Transportation of Hazardous Materials,(including the licensing and training of drivers), unless disclaimed in Paragraph 1.a., as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials;
  - ii. Department of Homeland Security regulations;
  - iii. Independent Contractor / Equipment Lease regulations;
  - iv. Loading and securement of freight standards and regulations;
  - v. Implementation and maintenance of driver safety regulations including, but not limited to, qualification and hiring, controlled substances, and hours of service regulations;
  - vi. Sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers;

- vii. Implementation and maintenance of equipment safety regulations;
  - viii. Maintenance and control of the means and method of transportation including, but not limited to, performance of its services.
- g) Will notify BROKER immediately if its federal Operating Authority ("Registered" status) is revoked, suspended, or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
  - h) Shall inform and advise BROKER of any information obtained by CARRIER in performance of this Agreement which is contrary to the information communicated by BROKER to CARRIER under Paragraph 2.a., and any other material aspect of CARRIER'S service hereunder which conflicts with the specific requirements of each shipment transported hereunder.
  - i) Does not have an "Unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify BROKER in writing immediately if its safety rating is changed to "Unsatisfactory" or "Conditional".
  - j) Authorizes BROKER to render an invoice to the party contractually liable to BROKER for transportation service charges, which shall include CARRIER'S freight charges and BROKER'S fees and charges.
  - k) Has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of BROKER and is granting BROKER credit terms accordingly.

CARRIER shall defend, indemnify and hold BROKER, its shipper customer, and the bill of lading parties harmless from any claims, actions or damages, arising out of its performance under this Agreement or breach of CARRIER'S representations under this Paragraph 1, including damages of any kind asserted against BROKER for negligent hiring of CARRIER, cargo loss and damage, theft, delay, damage to property, and personal injury or death, PROVIDED that, likewise, BROKER shall defend, indemnify, and hold CARRIER harmless from any claims, actions, or damages, including cargo loss and damage, theft, delay, damage to property, personal injury or death, arising out of BROKER'S performance hereunder, except that BROKER shall have no liability to defend, hold harmless, and indemnify CARRIER for the negligent hiring of CARRIER. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence of the other Party, or the shipper. The obligation to defend and indemnify shall include all costs and legal fees of defense as they accrue.

## 2. CARRIER'S RESPONSIBILITIES:

- a) In addition to the representations and warranties made in Paragraph 1, CARRIER agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required by BROKER and BROKER'S customers. Unless CARRIER holds Registered status as a hazardous materials hauler and BROKER has notified CARRIER in writing on the Carrier Rate Confirmation that a shipment contains hazardous materials, CARRIER will not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. §261.1 et. seq. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.
- b) CARRIER shall issue (or execute) a bill of lading in compliance with 49 U.S.C. §80101 et seq., 49 C.F.R. §373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become liable for the full actual value of the freight when it takes and 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 and liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or

delivery receipt. Any terms of the bill of lading (including but not limited to payment terms) inconsistent with the terms of this Agreement shall be null and the terms of this Agreement shall apply. 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 if it is established that CARRIER received the lading.

- c) CARRIER shall serve the best interests of BROKER and the bill of lading parties regarding the processing and settlement of cargo claims, overages, shortages, and damages. In doing so,
- i. CARRIER shall comply with 49 C.F.R. §370.1 et seq. and any amendments and/or any other applicable regulations adopted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvage.
  - ii. CARRIER'S liability for any cargo damage, loss, or theft from any cause shall be determined under the provisions and principles of the Carmack Amendment, 49 U.S.C. §14706. Notwithstanding, CARRIER's liability shall be for the full actual value of the damaged, lost, stolen, or delayed freight.
  - iii. CARRIER'S obligation to indemnify BROKER and the parties entitled to recover under the bill of lading for freight loss and damage claims shall include legal fees, which shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability of CARRIER under this Agreement.
  - iv. Except as provided in Paragraph 1.e above, neither Party shall be liable to the other for consequential damages arising out of cargo loss or damages without prior written notification of the risk of loss by type and amount, and agreement to assume such responsibility is stated in writing.
  - v. Notwithstanding the terms of 49 CFR 370.9, CARRIER shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within THIRTY (30) days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this time period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement.
  - vi. CARRIER'S liability for cargo damage, loss, or theft from any cause for any one shipment, shall not exceed the full invoice value of the shipment plus taxing costs.
  - vii. CARRIER shall recognize and process cargo claims submitted by BROKER on behalf of BROKER'S shipping customer(s) as though the claim were submitted directly by the same.
- d) CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance written notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits:
- i. Public liability \$1,000,000;
  - ii. 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);
  - iii. Cargo damage/loss, \$100,000;
  - iv. Workers' compensation with limits required by law.

Except for the higher coverage limits which may be 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 avoid CARRIER'S liability due to any exclusion or deductible in any insurance policy.

CARRIER shall submit its Certificate of Insurance to: Registry Monitoring Insurance Service 28001 Dorothy Drive, 2d Floor, Agoura Hills, California 91301-2609. Telephone: 800-400-4924 / Facsimile 818-933-6352. Registry Monitoring Insurance Service MUST be listed as the Certificate Holder.

- e) CARRIER irrevocably assigns to BROKER all its rights to collect freight charges from Shipper or any responsible third party on receipt of payment from BROKER. As such, CARRIER shall provide BROKER with an invoice, a signed copy of the Carrier Rate Confirmation, signed bill of lading or proof of delivery, and all documentation in support of accessorial charges in a timely manner, and in no event later than 21 days from date of delivery.

CARRIER shall defend, indemnify and hold BROKER, its shipper customer, and the bill of lading parties harmless from any claims, actions or damages, arising out of its performance under this Agreement or breach of CARRIER'S representations under this Paragraph 2, including damages of any kind asserted against BROKER for negligent hiring of CARRIER, cargo loss and damage, theft, delay, damage to property, and personal injury or death, PROVIDED that, likewise, BROKER shall defend, indemnify, and hold CARRIER harmless from any claims, actions, or damages, including cargo loss and damage, theft, delay, damage to property, personal injury or death, arising out of BROKER'S performance hereunder, except that BROKER shall have no liability to defend, hold harmless, and indemnify CARRIER for the negligent hiring of CARRIER. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence of the other Party, or the shipper. The obligation to defend and indemnify shall include all costs and legal fees of defense as they accrue.

### 3. BROKER RESPONSIBILITIES:

- a) BROKER shall solicit and obtain freight transportation business for CARRIER to the mutual benefit of CARRIER and BROKER, and shall offer CARRIER at least two (2) loads each year of this Agreement. BROKER shall inform CARRIER of (a) the place of origin and destination of each shipment tendered under this Agreement; and (b) if applicable, any special shipping instructions or special equipment requirements, of which BROKER has been timely notified.
- b) BROKER shall invoice the services of BROKER and CARRIER to the party which is contractually responsible for payment to BROKER. CARRIER shall invoice BROKER for CARRIER'S charges, as mutually agreed in writing, by fax, or by electronic means, contained in BROKER'S written Carrier Rate Confirmation, each of which shall be incorporated herewith upon execution by BROKER and delivery to CARRIER by facsimile or electronic transmission. CARRIER shall execute the Carrier Rate Confirmation and any subsequent confirmation(s) and return the same to BROKER prior to loading (except in the following cases of modification). Additional rates, modifications, or amendments of the original rate(s) 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) in a subsequent Carrier Rate Confirmation by BROKER and CARRIER. Any such additional, modified, or amended rates, changes in rates shall automatically be incorporated herewith upon execution by BROKER and delivery to CARRIER by facsimile or electronic transmission. CARRIER SHALL SUBMIT TO BROKER WITH ITS INVOICE A COPY OF THE SIGNED (BY BROKER) CARRIER RATE CONFIRMATION WHICH REFLECTS THE FINAL CHARGES DUE CARRIER.
- c) Rates which are verbally agreed upon shall be deemed confirmed in writing where CARRIER has billed the agreed rate and BROKER has paid it. All written Carrier Rate Confirmations, including confirmations by billing and payment, shall be incorporated herewith.

Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, released rates or values, or tariff rules or circulars, shall only be valid when specifically agreed to in a signed writing by the Parties.

**NOTE: CARRIER should insist that all accessorial charges be confirmed in writing by BROKER, as the absence of such written confirmation will delay or excuse payment to CARRIER. \_\_\_\_ Carrier initials.**

- d) The Parties agree that BROKER shall be responsible for the billing and collection of freight charges as follows:
  - i. BROKER is the sole party responsible for payment of CARRIER'S charges. Failure of BROKER to collect payment from its customer shall not release BROKER of its obligation to pay CARRIER, provided, however, that BROKER shall have the right, duty and privilege to assert against CARRIER all customer defense(s) to payment. Notwithstanding, BROKER shall pay CARRIER'S invoice(s) within THIRTY (30) days of receipt of the bill of lading or proof of delivery, and all additional supporting documents in connection with CARRIER's invoiced charges, provided CARRIER is not in default under the terms of this Agreement. CARRIER shall and may not seek payment from any bill of lading party which can prove payment to BROKER.
  - ii. Payment and other disputes are subject to the terms of Paragraph 4.d, which provides in part that prevailing parties are entitled to recovery of costs, expenses and reasonable attorney fees.
- e) BROKER shall maintain a surety bond / trust fund in the amount of TEN THOUSAND DOLLARS (\$10,000) and file evidence of the same with the Federal Motor Carrier Safety Administration (FMCSA).
- f) BROKER will notify CARRIER immediately if BROKER'S federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

#### 4. MISCELLANEOUS:

- a) The relationship between BROKER and CARRIER is that of independent contractor and not that of employer/employee. BROKER has insufficient control of CARRIER, including but not limited to CARRIER'S discretion to route freight, assign equipment and drivers, and otherwise the means or methods of CARRIER'S service and nothing contained herein shall be construed to be inconsistent with this provision.
- b) 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.
- c) CARRIER and BROKER acknowledge and agree that certain procedures shall apply in the event of breach or dispute.
  - i. 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.
  - ii. 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 such laws.

- d) In the event of a dispute arising out of this Agreement, including but not limited to Federal or State statutory claims, Venue for any such action shall be in Florida, Palm Beach County. Unless preempted or controlled by federal transportation law and regulations, the laws of the State of Florida shall be controlling.
- e) CARRIER shall not knowingly solicit freight shipments so long as this Agreement is in effect and for a period of SIX (6) months following termination of this Agreement for any reason, from any shipper, consignor, consignee, or other customer of BROKER, when such shipments of shipper customers were first tendered to CARRIER by BROKER. In the event of breach of this provision, BROKER shall be entitled, for a period of TWELVE (12) months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of FIFTEEN percent (15%) of the gross 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 and in the event it is successful, CARRIER shall be liable for all costs and expenses incurred by BROKER, including, but not limited to, reasonable attorney's fees.
- f) In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent. In the event of violation of this Paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.
- g) This Agreement may not be amended, except by mutual written agreement, or the procedures set forth above (Paragraphs 3.b and 3.c).
- h) 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. Notices sent as required hereunder, to the addresses shown in this Agreement, shall be deemed sent to the correct address, unless the Parties are notified in writing of any changes in address.
- i) The term of this Agreement shall be one year from the date hereof and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon thirty (30) day's prior written notice, with or without cause, by either Party at any time, including the initial term. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.
- j) 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.
- k) This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.
- l) The Parties to this Agreement are authorized to fax and email to each other at the numbers and addresses shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate promotions, or any advertisements of new services.

m) 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 involving this Agreement.

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

**Sunteck Transport Co., Inc.**

**CARRIER**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Company Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_