

## EXERTS OF GENERAL TERMS OF AGREEMENT BETWEEN BROKER AND CARRIER

**THIS AGREEMENT BETWEEN BROKER AND CARRIER**, (this "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between REDHOT EXPRESS, INC. (d/b/a REDHOT LOGISTICS) with a business address of 6004 West 145<sup>th</sup> Terrace, Overland Park, KS 66223 ("Broker") and \_\_\_\_\_, a \_\_\_\_\_, with a business address of \_\_\_\_\_ ("Carrier").

### RECITALS

**A. WHEREAS**, Broker is actively engaged in arranging for the transportation of general commodities (except household goods) in interstate commerce by authorized motor carriers and Broker is authorized to perform such brokerage services by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, US Docket No. MC-535999.

**B. WHEREAS**, Shipper desires that Broker arrange for the transportation of certain general commodities (except household goods) by authorized motor carriers on various shipments during the terms of this Agreement;

**C. WHEREAS**, Broker is an independent contractor which serves the varying and continuing needs of many shipper and receiver customers ("Shippers") on a continuing basis and Carrier desires to provide transportation and related services to Broker under a continuing agreement designed to meet the needs of Broker's customers as arranged by Broker; and

**D. WHEREAS**, Broker and Carrier mutually desire to enter in a continuing agreement in accordance with the terms hereof for the transportation of property.

### TRANSPORT AND DELIVERY

1.1 This Agreement shall govern any and all shipments tendered to Carrier by Broker ("Shipments") as evidenced by a signed Load Confirmation Agreement. Any schedules, tariffs, rates, charges, classifications and/or rules adopted, maintained, filed or published by Carrier shall not apply to any such shipment under this Agreement unless the same are specifically identified and incorporated herein. As permitted by 49 USC 14101(b), the parties expressly waive any and all rights or remedies they may have in connection with claiming a rate, charge or fee which is different from the rate, charge or fee established in this Agreement.

1.2 Carrier agrees to properly and efficiently transport and deliver specified shipments of commodities tendered to it by Broker in accordance with the shipping instructions issued to it by Broker, and to have its drivers be responsible for the loading and/or unloading of all such shipments, under the terms and conditions hereinafter set forth. In all instances where Carrier does not actually load or unload said Shipments, Carrier shall have the duty to determine and ensure that each shipment is properly loaded. Carrier shall indemnify, defend and hold harmless Broker and the Shipper against any and all loss, damage, injury, costs, expenses and/or liabilities of any kind or nature arising from or related to the improper or unsafe loading or unloading of all shipments transported by Carrier. Carrier's acceptance of any Shipment, or signature on the bill of lading, shall signify that the goods (in the number of pieces shown on the bill of lading) have been received by the Carrier in apparent good condition and order, free from visible defects or damages.

1.3 Carrier agrees to strictly comply with all federal, state and local laws, statutes, ordinances, regulations, rules and conditions (collectively "Laws") in the performance of its obligations hereunder including, but not limited to Federal Motor Carrier Safety Administration ("FMCSA") rules and regulations, the Occupational Safety and Health Act and all Laws concerning the transport of hazardous materials.

1.4 Immediately upon receipt of any property for Shipment, Carrier will issue to the applicable Shipper a receipt or bill of lading in accordance with 49 C.F.R. 373.101. A standard bill of lading prepared by Shipper in accordance with 49 C.F.R. 373.101 will fulfill Carrier's duty to issue a bill of lading. Such receipt or bill of lading will be prima facie evidence of receipt of the property in apparent good order and condition, unless otherwise noted on the face of the receipt.

1.5 Shipments shall be picked up at point of origin and be delivered to point of destination at the time specified by Broker, and delivery shall be made by Carrier as specified in the Load Confirmation Agreement. Carrier shall, within ten (10) working days of the delivery of each Shipment, provide a complete bill of lading to Broker with accompanying freight bill, signed delivery receipt and signed loading and unloading documentation indicating if any loading or unloading services were provided by Carrier's driver. Each bill of lading and freight bill shall contain Broker's release number assigned to each Shipment by Broker upon completion of unloading. The motor vehicles utilized by Carrier to perform its obligations hereunder shall be suitable for the transportation of the commodities involved. If receiver refuses to sign the bill of lading or any other delivery document at time of delivery, then Carrier's driver should immediately contact Broker for direction. Any terms, conditions, and provisions of a bill of lading or other receipt will be subject and subordinate to the terms, conditions, and provision of this Agreement. Documents for Shipments under this Agreement will name Broker as "Broker", Carrier as "Carrier" and shipper or customer as "Shipper". In the event there is a wrongly worded document, the parties will consider it as if it showed Broker as "Broker", Carrier as "Carrier" and shipper or customer as "Shipper". Under no circumstances will Broker be considered to be "Carrier" or "Shipper". If there is a conflict between this Agreement and any transportation document related to a Shipment arranged under this Agreement, this Agreement will govern.

1.6 Carrier shall be liable to Broker and Shippers for any and all loss or damage to any property transported under this Agreement which occurs while such property is in the possession or under the control of Carrier or its agents, from the time the cargo is loaded upon Carrier's equipment at the point of origin through the time such cargo is delivered to the designated consignee at the point of destination and received without exception. The liability shall be for the full value of the property, which shall be understood to mean the replacement cost of the lost or damaged property.

1.7 When a Shipment is partially or wholly refused or rejected by the receiver, or Carrier is unable to deliver it for any reason, Carrier shall notify Broker and the Shipper in order to receive disposition instructions. Until such disposition instructions are received, Carrier must place the Shipment in a public warehouse under Broker's name or in its terminal or storage facility under reasonable security and provide written notice of such act to Broker. Carrier shall have no right to sell, auction or otherwise dispose of any property tendered to it but which is undeliverable. Carrier shall have no right to assert any lien on or against any property transported under this Agreement. However, should a consignor or consignee notify Broker of a claim for loss or damage to property transported hereunder, Carrier agrees that Broker and consignor/consignee shall have the right to set-off an amount sufficient to cover such claim and to deduct and withhold such amount from any payments due to Carrier.

1.8 Once rated by the FMCSA, Carrier must at all times maintain a "Satisfactory" safety rating. Broker is not in a position to evaluate Carrier's safety programs or performances beyond FMCSA safety rating within "Safer Safety and Fitness Electronic Records System" published at [www.saferys.org](http://www.saferys.org). If Carrier's rating changes at any time throughout the course of this Agreement, Carrier shall notify Broker in writing immediately. Prior to the execution of this Agreement, Carrier shall provide Broker with any names, persons or entities, under which Carrier or any of Carrier's principals, partners, directors, shareholders, members, owners or any other person or entity having any sort of ownership or management interest in Carrier, conducted business as a motor carrier, broker or freight forwarder in the last ten (10) years.

#### INSURANCE

1.9 Carrier shall, at all times during the term of this Agreement, at its sole cost and expense, carry and cause any of its independent contractors to carry the following insurance coverage written by reputable insurance companies admitted and authorized to conduct business in all states where the transportation service will take place under this Agreement.

- (a) Worker's Compensation Insurance with a broad form all states endorsement covering all employees and independent contractors for statutory limits in accordance with the laws of the states in which the Carrier will be providing transportation service.
- (b) Commercial Automobile Liability Insurance (covering any auto including owned, hired and non-owned vehicles and trailers), including contractual liability coverage, covering claims for bodily injury (including death) and property damage, arising out of Carrier's performance of the transportation service with a combined single limit of One Million Dollars (\$1,000,000.00) for each occurrence.
- (c) Commercial General Liability Insurance, written on an occurrence basis, including contractual liability coverage, covering claims for bodily injury and property damage (other than to the cargo) that arise out of Carrier's (including independent contractors') performance of the transportation service regardless of when such claims are filed, with a combined single limit of One Million Dollars (\$1,000,000.00) per occurrence.
- (d) Cargo Insurance of One Hundred Thousand Dollars (\$100,000.00) or in an amount adequate to cover liability under this Agreement for the material in Carrier's custody and control covering the Shipments hereunder on a replacement cost basis (including freight and duties, if applicable), plus lost sales, if any, for all risk of physical loss or damage while being transported under this Agreement. Such cargo insurance will name Shipper as the loss payee.

1.10 Carrier waives any and all rights against Broker and Shipper and their agents, officers, directors, representatives and employees for the recovery of damages to the extent those damages are covered by the insurance policies required by Paragraph 1.9 of this Agreement.

1.11 The Carrier shall furnish the Broker with certificates, policies or binders which indicate the Carrier, Broker and Shipper are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Broker upon execution of this Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Broker." Carrier shall provide certified copies of all insurance policies required above within ten (10) days of Broker's written request for said copies.

1.12 Failure of Broker to demand certificates, policies and binders evidencing insurance coverages required by this Agreement, acceptance by Broker of such certificates, policies and binders or failure of Broker to identify a deficiency from evidence that is provided by Carrier shall not be construed as a waiver of Carrier's obligations to maintain the insurance required by this Agreement.

1.13 The Broker shall have the right to terminate this Agreement if Carrier fails to maintain the insurance required by this Agreement.

1.14 By requiring the insurance set forth herein and in this Agreement, Broker does not represent or warrant that coverage and limits will necessarily be adequate to protect Carrier, and such coverages and limits shall not be deemed as a limitation on Carrier's liability under the indemnities granted to Broker in this Agreement.

#### **TIME OF PERFORMANCE**

1.15 Carrier will transport the Shipment with reasonable dispatch and deliver the Shipment to consignee on or before the date set forth in the Load Confirmation Agreement. Time is of the essence with respect to the performance of Carrier's obligations hereunder.

1.16 If Carrier is delayed in the performance of its obligations and responsibilities for a Shipment, by acts of God, civil disobedience, civil unrest, riots, wars, acts of terrorism, flooding, labor disputes, fires, accidents not the fault of Carrier, or other causes beyond Carrier's reasonable control, the delivery dates shall be extended by the period caused by such delay.

1.17 In the event that Carrier fails to timely deliver any Shipment, Carrier shall defend, indemnify and hold Broker harmless from and against claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from the failure of Carrier to timely deliver any Shipment.

#### **DAMAGE OR LOSS CLAIMS**

1.18 Carrier will process all claims for loss, damage or injury of any Shipment in accordance with 49 C.F.R. § 370. Broker may assist Shipper in the processing of claims against Carrier. Carrier shall defend, indemnify and hold Broker harmless from and against claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting from any damage, loss or injury to Shipment while in the possession or control of Carrier.

#### **TERM OF AGREEMENT**

1.19 This Agreement shall become effective on the date of this Agreement and shall continue in full force and effect for a period of one (1) year. Thereafter, this Agreement may be terminated by either party upon thirty (30) days advance written notice. In the event that this Agreement is not extended or is terminated, both parties shall be obligated to diligently fulfill their obligations under this Agreement for all Shipments which have been initiated under this Agreement but not yet complete.

#### **NON-SOLICITATION COVENANTS**

1.20 Carrier and Broker agree that Broker, at great expense, has developed a broad customer base of shippers, receivers and vendors that is essential to the successful operation of Broker's business. Carrier and Broker agree that disclosure of the identity of one or more of Broker's customers to Carrier constitutes valuable consideration. During the term of this Agreement and for a period of one (1) year from its termination, Carrier shall not, directly or indirectly, solicit or do business of a transportation or warehousing nature with any of Broker's customers who are serviced by Carrier under this Agreement unless otherwise agreed by the parties in writing. Solicitation prohibited under this Agreement means participation in any conduct, whether direct or indirect, the purpose of which involves transportation and/or handling of property by Carrier for which Carrier does, or did in the past, provide such services for that Shipper under arrangements first made or procured by Broker. Solicitation includes conduct initiated or induced by Carrier, or accepted by Carrier upon inducement by Broker's customer. Broker and Carrier agree that the solicitation of any of Broker's customers shall cause irreparable harm to Broker. If Carrier performs services of transportation or warehousing nature for compensation for any customer of Broker without prior authorization from Broker, Carrier shall immediately pay to Broker an amount equal to fifteen percent (15%) of all revenues invoiced by Carrier to Shipper.