

## FREIGHT BROKER AGREEMENT TERMS AND CONDITIONS

The Customer ("**Customer**") and Highways & Skyways, Inc. a Kentucky Corporation ("**Highways & Skyways**"), hereby agrees as follows:

**1. Parties.** Customer is a Shipper and/or Consignee of certain goods it wishes to have transported. Highways & Skyways is a Freight Forwarder (2). Highways & Skyways is not acting as a Motor Carrier. Highways & Skyways contracts with various freight carriers ("**Carriers**") on behalf of the Customer for the purpose of obtaining discounted rates for transportation. Highways & Skyways reserves the right, in its sole discretion, to refuse any shipment at any time. Highways & Skyways and the Customer may be collectively referred to as the "**Parties**" or individually either may be referred to as "**Party**" in this Agreement.

**2. Tariffs.** In the event of a conflict in the terms of this Agreement and an applicable Tariff ("**Tariff**") then in effect with a selected carrier, in every instance the Tariff shall take precedence and control in the interpretation of the rights and obligations of the Parties. If no conflict exists with respect to the Carrier's Tariff, this Agreement shall control.

**3. Bills of Lading.** The Customer shall use Highways & Skyways' system-generated Bill of Lading ("**BOL**"). The Customer shall cause to be completed all the appropriate documents required for carriage, in light of the services being sought, and the pick up or destination requested. In the event the Customer fails to timely and properly complete the appropriate documents, the Customer hereby instructs Highways & Skyways, where permitted by law and Highways & Skyways may at its option, but without obligation, complete, correct or replace the documents for them at the expense of the Customer. If a substitute form of BOL is needed to complete delivery of this shipment and Highways & Skyways completes that document, the terms of the completed BOL will govern and Highways & Skyways will be exonerated from all liability for undertaking such actions on behalf of the Customer. All Bills of Lading are non-negotiable and have been prepared by the Customer or by Highways & Skyways on behalf of the Customer in accordance with the Customer's instructions and approved by the Customer, and shall be deemed, conclusively, to have been prepared by the Customer. The Customer is required to provide the BOL to the Carrier designated by Highways & Skyways. Any failure to provide the proper BOL to the designated Carrier shall be void *ab initio*. Highways & Skyways shall have no obligation to make any payments or honor any rate quotes in any of the following instances: (i) the unauthorized alteration or use of bill of lading, or (ii) tendering of shipments to any carrier other than that designated by Highways & Skyways, or (iii) the use of any bill of lading not authorized or issued by Highways & Skyways.

**4. Customer Representations and Warranties to Highways & Skyways.** The Customer represents and warrants that at all times during the term of this Agreement, it will be in compliance with all applicable laws, rules, and regulations ("**Laws**") including applicable Laws relating to customs, import and export required by country to, from, through or over which the shipment may be carried. The Customer agrees to furnish such information and complete and attach to the BOL such documents as are necessary to comply with such Laws. Any individual or entity acting on behalf of the Customer in scheduling shipments or undertaking any other performance hereunder warrants and represents that it has the right to act on behalf of and legally bind the Customer. Highways & Skyways assumes no liability for any loss or expense due to the failure of the Customer to comply with this paragraph and Customer shall indemnify and hold Highways & Skyways harmless for any claims or damages resulting from violation of this paragraph.

**5. Payment.** All charges are payable in US Dollars and are due and payable fifteen (15) days from the date of billing (net/15). Past due payments shall be subject to an additional charge at the rate of 1-1/2% per month of the average outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less. All funds received by Highways & Skyways will be applied to the oldest (based on pick-up date) invoiced BOL that is outstanding. Overpayments do not accrue interest. In the event this Agreement is placed by Highways & Skyways in the hands of an attorney or collection agency for collection, Customer agrees to pay, in addition to the account balance, all collection costs including reasonable attorney's fees, (including such fees and costs incurred in the successful defense of any crossclaim or counterclaim brought against Highways & Skyways).

**6. Credit Approval.** Payment terms and credit limits are subject to credit approval, which shall be determined from time to time, in the sole and absolute discretion of Highways & Skyways. The Customer grants Highways & Skyways the right to perform such credit and background searches as Highways & Skyways deems necessary. When paying by credit card or electronic funds, the Customer agrees it will be responsible for all charges due and owing, including any adjustments, on account of such Customer's shipment. The Customer authorizes Highways & Skyways to charge the Customer's credit card or bank account for any charges.

7. Determination of Charges. The Customer shall be liable for all charges payable on account of such Customer's shipment. Such charges may include transportation, fuel and other applicable accessorial charges, all adjustments issued by the carrier(s) after the shipment, and all duties, customs assessments, governmental penalties, fines and taxes. Highways & Skyways reserves the right to amend or adjust charges and to re-invoice the Customer in the following events: (i) if the original quoted amount was based upon incorrect information provided by the Customer, or (ii) if additional services by the carrier were required, or (iii) if the Customer authorized the carrier to perform the pickup, transportation and delivery functions other than contemplated by the BOL. Any disputes by customer of any invoice issued by Highways & Skyways shall be made in writing, specifically indicating the nature of the dispute and received by Highways & Skyways at their offices within 30 days from the date of the invoice. In the event Highways & Skyways does not receive timely written notice of the dispute, the charges will be conclusively presumed to be valid.

8. Lien. Highways & Skyways shall have a lien on the shipment for all sums due it relating to this shipment or any other amounts owed by Customer.

9. Claims and Limitations of Liability. Highways & Skyways is not liable for any loss, damage, mis-delivery or non-delivery caused by: (i) the act, default or omission of a Carrier, the Customer or any other party who claims interest in the shipment, or (ii) the nature of the shipment or any defect therein, or (iii) a violation by the Customer of any provision of this Agreement, the BOL, the carrier's Tariff, including, improper or insufficient packing, securing, marking or addressing, or (iv) failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions, or (v) acts of God, perils of the air, public enemies, public authorities, acts or omissions of Customs or quarantine officials, war, riots, strikes, labor disputes, shortages, weather conditions or mechanical delay or failure of vehicles, aircraft or other equipment, or (vi) the acts or omissions of any person other than employees of Highways & Skyways and then only for its own gross negligence. Customer acknowledges that in order to provide competitive rates for the services, that the parties have agreed as a material term of this Agreement that the burden of any loss or damage incurred as a result of Highways & Skyways liability has been shifted to the Customer, and that the maximum amount of Highways & Skyways' liability is limited to the fees that Highways & Skyways has earned with respect to the subject shipment.

10. Insurance. The Customer will look solely to insurance provided by the carrier for damage to goods in transit. Each carrier's governing Tariff will determine the standard liability cargo insurance coverage offered on any shipment, subject to any exception value. If the shipment contains freight with a predetermined exception value, as determined by the selected carrier, the maximum exception liability will override the liability coverage otherwise provided by the Tariff. The Customer acknowledges a claim for damages does not relieve it for payment under the terms of this Agreement. Timely payment is a condition precedent to the processing of a damage or insurance claim. All freight cargo claims should be submitted immediately to Highways & Skyways to help ensure timely resolution. Highways & Skyways will attempt to assist in the resolution of freight claims, but has no responsibility or liability therefore. Where a damage claim is submitted with carrier on behalf of Customer, Highways & Skyways has a lien on any amounts recovered to the extent of open past due invoices on the Customer's account. Highways & Skyways may have optional Shippers Interest Contingent Cargo Liability Insurance ("Third Party Insurance") available for purchase by the Customer. Highways & Skyways has no responsibility or liability with respect to the issuance or denial of Third Party Insurance, or in the payment or denial of claims.

11. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, HIGHWAYS & SKYWAYS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO SHIPMENTS, WAREHOUSED GOODS, ITEMS IN TRANSIT OR DELIVERIES OR WITH REGARD TO THE INFORMATION PROVIDED ON THIS WEBSITE OR SERVICES RELATED TO TRANSACTIONS CONDUCTED ON THIS WEBSITE. HIGHWAYS & SKYWAYS CANNOT GUARANTEE DELIVERY BY ANY SPECIFIC TIME OR DATE. IN NO EVENT, SHALL HIGHWAYS & SKYWAYS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFITS OR INCOME, WHETHER OR NOT SUCH DAMAGES WERE REASONABLY FORESEEABLE.

12. Rates. "Less than Load" Rates ("**LTL**") rates are based on the freight class as determined by the National Motor Freight Classification ("**NMFC**") are weight based. All displayed transit times are estimates only and do not include day of pickup. LTL pickup dates are not guaranteed. Truckload rates ("**TL**") rates are based on Dock Door Pickup/Dock Door Delivery and Shipper Load/Consignee Unload and are state to state and mileage based. Additional fees may apply for charges including, Tractor Detention, Trailer Detention, and Driver Assistance. Customer must tender this load to carrier at the agreed upon rate, or pay a \$ 150.00 "truck ordered, not used" penalty. Air Freight rates are based on the greater of actual or dimensional weight. If an Air Freight shipment contains oversize freight, additional charges and transit days may apply. Van Line rates are driven by state to state/mileage, weight (actual or density) and commodity/product type. Flatbed rates are based on equipment type, state to state/mileage and weight. If a flatbed shipment contains oversize freight, additional charges and transit days may apply. All displayed transit times are estimates only and do not include day of pickup. Pickup dates are not guaranteed.

13 Guaranteed Services. Highways & Skyways will provide LTL Guaranteed Services for additional charge, if requested by the Customer. LTL delivery times generally do not begin to run until the day after the pickup of the shipment, except as otherwise noted by the carrier selected. Guaranteed Service transit times do not include holiday and/or no service" days as defined by the individual carrier. The Customer is liable for all charges related to the shipment. In the event of a carrier's failure to comply with the guaranteed service requested, the Customer shall have fourteen (14) days from the actual delivery date of shipment to deliver a written claim request to Highways & Skyways. If Highways & Skyways does not timely receive a claim request with said fourteen (14) days, the service provided by the LTL carrier will be deemed to have met all guaranteed service standards and the claim request will automatically be considered invalid and denied. In the event of the carrier's failure to comply with the guaranteed service requested and after the carrier has agreed to liability, Highways & Skyways will credit the account of the said Customer with such amount awarded by the carrier. In no event shall Highways & Skyways be liable nor will any account be credited if the Customer does not use Highways & Skyways' BOL.

14. Attorneys' Fees. Should any proceeding or litigation be commenced between the Parties hereto concerning the terms of this Agreement, or the rights and duties of the Parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees.

15. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

16. Binding Nature of Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns, except that no party may assign, delegate or transfer any of its obligations under this Agreement without the prior written consent of the other parties hereto.

17. Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

18. Execution. This Agreement shall become binding upon written acceptance by Highways & Skyways of Customer's acknowledgement of its intent to be bound thereby, as evidenced by its designation of acceptance on Highways & Skyways' web page or by its execution of the BOL.

19. No Other Parties to Benefit. This Agreement is made for the sole benefit of the Parties hereto and their successors and permitted assigns. Except as expressly provided herein, no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiaries or otherwise.

20. Remedies. In the event of a breach of this Agreement or any term hereof by any party, the other Party, shall have all rights and remedies available at law, in equity, or under the terms of this Agreement, except as otherwise limited herein.

21. Construction. This Agreement is intended to express the mutual intent of the Parties hereto, and irrespective of the identity of the Party or counsel who prepared this document, no rule of strict construction shall be applied against any Party.

22. Governing Law; Forum; Venue. This Agreement is deemed executed, delivered and performed in the State of Kentucky, and the substantive laws of the State of Kentucky and Federal law as applied in Kentucky (without reference to choice of law principles) and specifically excluding the United Nations Convention on Contracts for the International Sales of Goods, shall govern its interpretation and enforcement. Any action brought to interpret or enforce any provisions of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in the Superior Court or Federal District Court located in the County of Kenton in the State of Kentucky and each of the Parties consents to jurisdiction and venue in such court for such purposes.

23. Modification and Waiver. No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the Parties hereto.

24. Materiality. All covenants, agreements, representations and warranties made herein shall be deemed to be material and to have been relied on by the Parties in entering into this Agreement and shall survive the execution and delivery of this Agreement.

25. Severability; Integration; Time of the Essence. The inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement and the documents incorporated into this Agreement by reference, constitutes and embodies the full *and* complete understanding and agreement of the Parties hereto and supersedes all prior understandings, whether oral or written. Time is of the essence in all matters associated with this Agreement. No representation, promise, inducement or statement of intention has been made by

any Party hereto which is not contemplated by or embodied in this Agreement, and no Party hereto shall be bound by or liable for any alleged misrepresentation, promise, inducement or statement of intention not so set forth.

26. Indulgence Not Waiver. Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence.

27. Additional Instruments and Acts. The Parties to this Agreement shall execute (with acknowledgment or in affidavit form, if required) any further or additional instruments, and shall perform any acts, which are or may become reasonably necessary to effectuate and carry out the purposes of this Agreement, without the necessity of incurring any additional expense.

28. Interpretation. In this Agreement the singular includes the plural, and the plural the singular; words importing any gender include the other genders; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "Includes" and "include" shall be deemed to be followed by the words "Without limitation."

29. Authority. By execution of this Agreement, the signatories hereto represent and warrant their authority to act in the capacity stated. By execution of this Agreement each Party represents and warrants its right, power and authority to enter into and perform its obligation under this Agreement.

