

## SHIPPER-BROKER TRANSPORTATION SERVICES AGREEMENT TERMS AND CONDITIONS

**A.** AFI is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-417538 and, as a licensed broker, arranges for freight transportation.

**B.** SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of AFI to arrange for transportation of SHIPPER's freight.

**1. TERM.** Subject to Section 11, the term of this Agreement shall be one (1) year, commencing on the date that you've accepted these Terms and Conditions, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

**2. SERVICE.** AFI agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. SHIPPER is not restricted from tendering freight to other brokers, or directly to motor carriers. AFI is not restricted from arranging transportation for other parties. SHIPPER shall be responsible to AFI for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment. AFI's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight.

**3. FREIGHT CARRIAGE.** AFI warrants that it has entered into, or will enter into, bilateral contracts with each carrier it utilizes in the performance of this Agreement. AFI further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

**a.** Carrier shall be at all times a motor carrier under 49 USC 13102(14) and be duly registered with the Department of Transportation pursuant to 49 USC 13902 and 13905.

**b.** Carrier shall agree to defend, indemnify and hold AFI and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death to the extent allowed by law.

**c.** Carrier shall agree that its liability for cargo loss or damage shall be no less than that of a Common Carrier as provided for in 49 USC 14706 (the Carmack Amendment). Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability.

**d.** Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:

General Liability / Property Damage \$1,000,000

Auto Liability \$1,000,000

Cargo Liability \$100,000

Worker's Comp. as req. by law.

AFI shall verify that each carrier it utilizes in the performance of this Agreement has insurance coverage as defined above.

**e.** Carrier shall agree that the provisions contained in 49 CFR Part 370 shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.

**f.** Carrier shall authorize AFI to invoice SHIPPER for services provided by the Carrier. Carrier shall further agree that AFI is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the SHIPPER, consignee or AFI's customer.

**g.** Carrier shall agree that, at no time during the term of its contract with AFI, shall it have an "Unsatisfactory" safety rating or otherwise be placed "out of service" or prohibited by the FMCSA or USDOT from legally transporting the shipment. If Carrier receives an "Unsatisfactory" safety rating or is otherwise placed "out of service" or is prohibited by the FMCSA or USDOT from legally transporting the shipment, it shall immediately notify AFI. AFI shall not knowingly utilize any carrier with an "Unsatisfactory" safety rating or that is otherwise placed "out of service" or prohibited by the FMCSA or USDOT from legally transporting the shipment in the performance of this Agreement.

**h.** Carrier shall agree that the terms and conditions of its contract with AFI shall apply on all shipments it handles for AFI. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract.

i. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.

j. AFI further warrants it will require proof of insurance and operating authority from each Carrier and, should AFI utilize the services of any Carrier on SHIPPER's behalf, which Carrier does not have proof of insurance and/or operating authority, AFI agrees to indemnify and hold harmless SHIPPER from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims.

**4. RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, AFI agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertion of AFI's name on the bill of lading shall be for SHIPPER convenience only and shall not change AFI's status as a property broker. The terms and conditions of any freight documentation used by AFI or carrier selected by AFI may not supplement, alter, or modify the terms of this Agreement.

**5. PAYMENTS.** AFI shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth in the rate agreement and any written supplements or revisions that are mutually agreed to between the Parties. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon AFI's invoice to SHIPPER and SHIPPER's payment to AFI. SHIPPER agrees to pay AFI's invoice within 30 days.

#### **6. CLAIMS.**

**a. Freight Claims:** SHIPPER must file claims for cargo loss or damage with AFI within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against AFI in a Court of Law within two (2) years from the date the carrier or AFI provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by AFI shall agree in writing with AFI to be liable for cargo loss or damage as outlined in Section 3.c. above. The carriers' cargo liability for any one shipment shall not exceed any amount over (\$100,000 ) unless AFI is notified by SHIPPER in writing of the increased value prior to shipment pickup, with reasonable advance notice to allow AFI and/or the carrier to procure additional insurance coverage, and AFI accepts in writing the shipment and increased liability. **It is understood and agreed that AFI is not a Carrier and that AFI shall not be held liable for loss, damage or delay in the transportation of SHIPPER's property unless caused by AFI's negligent acts or omissions in the performance of this Agreement.** AFI shall assist SHIPPER in the filing and/or processing of claims with the Carrier. If payment of claim is made by AFI to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to AFI so as to allow AFI to subrogate its loss. In no event shall AFI or AFI's Carrier be liable to SHIPPER or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed AFI in written or electronic form, prior to or when tendering a shipment or series of shipments to AFI, of the potential nature, type and approximate value of such damages, and AFI specifically agrees in written or electronic form to accept responsibility for such damages.

**b. All Other Claims:** The Parties shall notify each other within sixty (60) days of learning of any claims other than cargo loss or damage claims, and shall file any such claims with the other Party within one hundred eighty (180) days from the date of notice. Civil action, if any, shall be commenced in a Court of Law within two (2) years from the date either Party provides written notice to the other Party of such a claim.

**7. CONTINGENT CARGO INSURANCE.** AFI shall maintain contingent cargo insurance in the minimum amount of (\$100,000 ) per shipment to compensate SHIPPER, SHIPPER's customer, or the beneficial owner of the freight for cargo loss. The contingent cargo insurance, except for being contingent, shall meet the requirements specified by 49 USC §13906 and 49 C.F.R. Part 387, as amended or recodified from time to time, and shall have no exclusions or restrictions that would not be accepted by the FMCSA for a cargo insurance filing under the requirements of those sections. AFI shall cause its contingent cargo insurance carrier (i) to name SHIPPER as an additional insured and (ii) to issue to SHIPPER a certificate of insurance certifying that the required contingent cargo insurance is in force and requiring the contingent cargo insurance carrier to endeavor to provide SHIPPER written notice at least thirty (30) days prior to cancellation of the contingent cargo insurance.

**8. SURETY BOND.** AFI shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$10,000 and furnish SHIPPER with proof upon request.

**9. HAZARDOUS MATERIALS.** SHIPPER and AFI shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and §173 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform AFI immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold AFI harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

**10. TEMPERATURE CONTROLLED FREIGHT.** AFI understands and acknowledges that a portion of SHIPPER's freight may need to be temperature controlled (generally, but not always, refrigerated) and that the temperature maintenance requirements specified by SHIPPER for a shipment are mandatory and will be strictly enforced by SHIPPER, its customers, and the consignees receiving the shipment. The specific temperature requirements for a shipment must be set forth on the Service Order and SHIPPER prepared bill of lading for that shipment. AFI will require the carrier to maintain the freight at the temperature specified in the Service Order and SHIPPER prepared bill of lading at all times while the freight is in the carrier's possession or control.

**11. DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on ten (10) days written notice to the other Party. SHIPPER shall be responsible to pay AFI for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.

**12. INDEMNIFICATION.** Subject to the insurance limits in Section 7, AFI and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party. Although Section 7 only imposes insurance requirements upon AFI, for purpose of this Section 12, those amounts also shall limit the scope of SHIPPER's indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.

**13. ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.

**14. SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of this Agreement for any reason.

**15. INDEPENDENT CONTRACTOR.** It is understood between AFI and SHIPPER, that AFI is not an agent for the Carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over AFI, its operations, employees, or carriers.

**16. NO AUTHORITY TO BIND SHIPPER.** AFI is not and at no time shall be an agent or employee of SHIPPER, and at no time shall AFI represent itself to be an agent or employee of SHIPPER. AFI has no authority whatsoever to act for or on behalf of SHIPPER or to bind SHIPPER in any regard.

**17. NONWAIVER.** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions,

provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

**18. NOTICES.** Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing.

**19. FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or AFI, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.

**20. CHOICE OF LAW.** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Oregon, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

**21. VENUE.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against any of the parties in Jackson County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, Medford Division, and each of the parties consents to the exclusive jurisdiction of such courts (and the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

**22. ATTORNEY FEES.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

**23. CONFIDENTIALITY.** AFI shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the Parties shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. AFI will require its carriers and/or other brokers to comply with this confidentiality clause.

**24. ENTIRE AGREEMENT:** This Agreement, including all Appendices and Addenda, and any Service Order or Load Confirmation with respect to a shipment, constitutes the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.