

# TRADEWINDS BROKERAGE INC

## BROKERAGE AGREEMENT

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between Tradewinds Brokerage Inc. PO Box 1568 Albany, OR 97321 (hereinafter referred to as “Broker”) and \_\_\_\_\_ (hereinafter referred to as “Carrier”).

### PREMISES

- A. Broker is a corporation duly organized and existing for the purpose, among others, of arranging for the transportation of property by motor vehicle under its authority as a for-hire broker and subject to the provisions of the Interstate Commerce Act and to the extent applicable the relevant laws of the several states within which operations may be conducted: and
- B. Carrier is a motor carrier in the interstate commerce holding authority issued by the Interstate Commerce Commission (hereinafter “ICC”) under docket number MC-\_\_\_\_\_ and Sub Numbers thereto, authorizing the movement of freight. A copy of the Carrier’s pertinent authority is attached hereto as Exhibit A.

**NOW THEREFORE**, in consideration of the mutual covenants, conditions and agreements set forth in this agreement, the parties agree as follow:

- 1. **Transportation** – Carrier agrees to provide the Broker with truck transportation service for the transportation of various commodities between points within the scope of Carrier’s authority as identified on Exhibit A attached hereto.
- 2. **Compensation: Billing of Customers** – Carrier shall receive as compensation for transportation provided under this agreement the rates and charges as are published or agreed upon by the Carrier and Broker and to the extent required by the ICC, shall be published in appropriate ICC tariffs. Mileage used in computing charges will be determined using *PC Miler* software. Carrier and Broker agree that Broker shall bill the customer directly. Carrier agrees that it shall not bill the consignor/consignee or any third party directly nor shall it accept any payment from any consignor/consignee or any third party for providing transportation under this agreement. Carrier shall invoice the Broker for the prescribed charges and shall forward to Broker, along with invoice, an original signed delivery receipt, the original shipping document and any other documentation required by Broker for each shipment listed on the invoice for which Carrier seeks payment. Carrier shall reference Broker dispatch number on the invoice. Broker shall make full payment of the invoice to Carrier thirty (30) days after the invoice is received by the Broker. Failure of Carrier to object in writing to Carrier’s settlement within ten (10) days of receipt of same will constitute acceptance of settlement by Carrier and thereby waive any future objection Carrier may have to such settlement. The rates and charges shall remain in effect until such time as either party gives the other party notice of a desire to renegotiate a rate or charge within thirty, (30) days following either party’s receipt of such notice. In the event either part proposes a modification to such rates and charges and agreement on such proposal is not attained within thirty, (30) days of both parties receipt of such proposal, either party upon giving of thirty, (30) days written notice may terminate this agreement thereafter.

**Carrier:** \_\_\_\_\_

3. **Bills of Lading: Carrier's Report** - Each incident of transportation of property pursuant to this agreement shall be evidenced by a written Bill of Lading, showing the Carrier as the motor carrier, the kinds and quantity of property received and delivered by Carrier at the loading and unloading points, respectively. Such receipt shall be prima facie evidence of receipt of such property in good order and condition, unless such property is not readily observable or as may be otherwise noted upon the face of the Bill of Lading. Copies of the Bill (s) of Lading shall be retained by Carrier for one (1) year or at least the period of time required by the ICC, whichever is greater and shall be available for inspection and use by the Broker or third parties designated by the Broker. Any exceptions noted by the consignee (s) on the Bill of Lading relating to any shipment moved under this agreement shall constitute prima facie evidence that the goods received by the consignee (s) were not received in good order and condition.
4. **Control of Transportation Service** - Carrier shall provide all facilities and equipment and properly licensed drivers and other personnel necessary to perform the required transportation service in a safe and efficient manner. Carrier shall provide, operate and maintain in good working condition, the motor vehicles and related equipment necessary for the performance of transportation service under this agreement. Carrier must operate in compliance with FMCSA HOS regulations. Effective January 1, 2013, Carrier equipment shall be in accordance with California CARB TRU ATCM in-use regulations and will comply with all other ARB TRU ATCM equipment requirements moving into, out of, or through California. Carrier shall have sole and exclusive control over the manner in which Carrier and its employees or contractors perform any transportation service provided for hereunder and Carrier shall engage and employ such individuals as it may deem necessary in connection therewith; it being understood and agreed that such individuals shall be considered employees of or independent contractors controlled solely by Carrier and shall not be considered, under any circumstances, as employees of or independent contractors controlled by Broker and/or any third parties which Broker represents and/or the consignor/consignee on any shipment which moves under this agreement.
5. **Carrier's Liability** – Carrier shall be liable for full actual loss resulting from loss, damage, injury, or delay on shipments transported under the terms of this agreement. Full actual loss is the replacement cost of freight tendered to the carrier for transport. All claims for loss and damage shall be handled and processed in accordance with regulations published in the Code of Federal Regulations at 49 CFR Part 370. The terms, conditions or provisions of the governing bill of lading or any other shipping form, tariff or rule utilized shall be subject and subordinate to the terms of this agreement and, in the event of a conflict, this agreement shall govern. This contract cannot be changed, modified, limited, or supplemented by reference to any carrier rates, rules, classification, practice, schedule or tariff.
6. **Indemnification** – Carrier shall indemnify and hold harmless Broker and parties which Broker represents and consignors/consignees of shipments moving under this agreement, without limitation, from and against all loss, damage, fines, expense, actions, and claims for injury to persons (including injury resulting in death) and damage to property or cargo where such loss, damage, fines, expenses, actions, or injury are caused by acts of omissions of Carrier, its drivers, agents, or employees in performing the services provided for under this agreement. Carrier agrees without limitation, that it shall provide counsel approved by Broker to defend any and all lawsuits and/or workmen's compensation claims and/or consignors/consignees of shipments moving under this agreement are named parties to a lawsuit as a result of any Carrier operations performed under this agreement. Carrier agrees to pay all claims, judgments, attorney's fees and costs of any litigation brought against Broker, parties represented by the Broker and/or consignors/consignees of shipments moving under this agreement and Carrier shall hold Broker, parties represented by the Broker and/or consignor/consignees of shipments moving under this agreement harmless for all claims,

judgments, attorneys' fees and costs of litigation as concerns Carrier operations performed under this agreement.

**Carrier:** \_\_\_\_\_

7. **Insurance** – Carrier's insurer must be rated A- or better. Carrier will procure, maintain, enforce continuously through the term of this agreement and provide written proof to Broker of its coverage under each of the following types of insurance prior to carriage of traffic under this agreement.
  - 7.1 Insurance required under the Workmen's Compensation Laws of the states in which the transportation service shall be performed, covering Carrier and its employees in such amounts as are required by the statutes of said states. Broker, parties represented by broker and/or consignors/consignees on any shipment which moves under this agreement shall have no responsibility to either defend any workmen's compensation claim which arises due to Carrier's operations under this agreement or to pay any awards resulting from such claims.
  - 7.2 Automobile Bodily Injury and Property Damage Insurance protecting against claims for bodily injury, including accidental or intentional death and loss of or damage to tangible property in at least the amount of One Million and no/100 dollars (\$1,000,000.00), such not being lower than limits required by the Interstate Commerce Commission, U.S. Department of Transportation, Federal Highway Administration or other governmental body having jurisdiction to prescribe insurance requirements for interstate and/or intrastate for-hire carriers. Said insurance will name Broker as an additional named insured. The parties agree that said policies will contain an agreement from the insurance carrier to provide written notice to Broker in the event that such policies are canceled or the limits of the coverage are reduced.
  - 7.3 Cargo Insurance in at least the amount of One Hundred Thousand and no/100 dollars (\$100,000.00). Said insurance shall name Broker as an additional insured and shall provide for written notice to Broker in the event of cancellation or the limits of coverage are reduced.
  - 7.4 In the event Carrier's cargo insurance falls below the sum of One Hundred Thousand and no/100 dollars (\$100,000.00) said Carrier will be subject to approval on a load to load basis. Carrier shall be solely responsible for cargo liability, whether or not such cargo value exceeds Carrier's maximum cargo insurance coverage.
8. **Claims for Loss or Damage** - Carrier shall, within 30 days of receipt of a claim, acknowledge its receipt in writing to the party which has filed the claim and to Broker, in the event that Broker was not the party who filed the claim in the first instance. Carrier shall indicate in its acknowledgement what, if any, additional documentary evidence or other pertinent information may be required by it to further process the claim. Carrier shall promptly and thoroughly investigate each claim filed. Carrier shall pay, decline or make a firm compromise settlement offer in writing to the party filing the claim and Broker within 120 days after receipt of the claim; however, if the claim cannot be disposed of within 120 days, Carrier at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the party filing the claim and Broker in writing of the status of the claim and the reason for the delay in making final disposition thereof. Any suit to be instituted against Carrier shall be commenced not more than three (3) years from the day Carrier gives notice that it has declined the claim or any part thereof. Whenever property is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected upon tender of such property to any consignee or person entitled to receive such property, Carrier, after giving due notice to the parties that may have an interest in the property and unless advised to the contrary, shall undertake to sell or dispose of such property directly or by employment of a competent salvage agent. Carrier shall only dispose of the property in a manner that will fairly and equally protect the interest of all persons having an interest therein. Regardless of the foregoing procedures, the parties specifically agree that

Broker shall have the right to offset the amount of any loss, damage or other claims against any rates and charges due to Carrier under Paragraph 2 above and that Carrier shall make no claim on Broker, any third party which the Broker represents and/or any consignor/consignee of traffic moved under this agreement for the amount of such offset.

Carrier: \_\_\_\_\_

9. **Scheduling for Loading and Unloading** – Upon reasonable request by Broker, consignee or others designated by them, Carrier will, without additional charge, prearrange schedules for arrival of vehicles for loading and unloading. Such schedules may be on a one-time or continuous basis mutually agreeable to all parties. In the absence of a prearranged schedule, Carrier will have equipment available for loading within a reasonable time after having been notified by Broker.
10. **Confidentiality** – Neither party shall divulge to any third party (a) the terms of this agreement or (b) any proprietary information derived in the course of performance of this agreement. Carrier specifically agrees that it shall not reveal the terms on which it provides transportation to any third party represented by the Broker and/or consignee/consignors of any shipment moving hereunder.
11. **Term** – This agreement shall become effective on the date hereof and shall remain in effect until terminated by either party upon not less than ten (10) days prior written notice. Nothing in this paragraph shall be construed as limiting or superseding any right of cancellation or termination of this agreement as may be specified in any other paragraph of this agreement.
12. **Status** – The parties understand and agree that Broker operates as an independent contractor for the purpose of arranging transportation of goods for various consignors/consignees.
13. **Non-Compete** – Carrier further agrees to not directly solicit freight from shippers that it hauled for as a result of the efforts of Broker under this agreement for a period of one (1) year after termination of this agreement. Should Carrier breach the above provision, it is understood between the parties that damage to Broker would be hard to calculate. Therefore, the parties have stipulated and agreed that should Carrier breach the above provision, the sum of Twenty-five Thousand and no/100 dollars (\$25,000.00) shall be paid by Carrier to Broker upon demand.
14. **Breach and Termination** – Notwithstanding other provisions in this agreement relating to termination, the parties agree and understand that Broker may terminate this agreement immediately on material breach by Carrier. Such material breach shall include, but not be limited to, any of the following events:
  - a. Carrier's failure to provide the required cargo insurance, workmen's compensation insurance and/or property damage and bodily injury insurance in the amounts and under the conditions required herein;
  - b. Broker's receipt of notice that any required Carrier insurance hereunder has been revoked by the insured;
  - c. Carrier's failure to comply with the hold harmless and indemnification provisions of this agreement;
  - d. Any instance where the Carrier, its agents, or representatives solicit any consignor/consignee whose traffic moves under this agreement where Carrier or its agents or representatives attempt to secure the direct routing of such freight. Any act of such back-solicitation shall be cause for termination of this agreement. Such termination shall not affect any rights, which Broker has against Carrier under this agreement.

15. **Titles** – The heading titles, and captions used in the agreement and in the Exhibit attached hereto are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify or modify the terms of this agreement nor affect the meaning of it.

**Carrier:** \_\_\_\_\_

16. **Notices**- Whenever this agreement requires or permits any consent, approval, notice, request or demand from one party to another, the consent, approval, notice, request or demand must be given in writing to be effective and shall be deemed to have been given on the day after it is enclosed in an envelope, addressed to the party to be notified at the address stated below ( or at such other address as may have been designated by written notice), properly stamped, sealed and deposited in the United States mail, Certified Mail-Return Receipt Requested. The address of each party for the purposes hereof is as follow:

**Broker:**  
Tradewinds Brokerage Inc.  
PO Box 1568  
Albany, OR 97321

**Carrier:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. **Survival** – All covenants, agreements, representations, and warranties made in this agreement shall survive all closing hereunder for a period of three (3) years from the date of this agreement.

18. **Entire Agreement** – This agreement constitutes the entire agreement by and between the parties hereto pertaining to the subject matter hereof and supersedes all prior contemporaneous understandings and negotiations or discussions, whether written or oral, of the parties.

19. **Amendments or Modifications** – The parties hereto may amend or modify this agreement or the instruments given and executed pursuant to the terms of this agreement only by written instrument executed by the Carrier and Broker with the sole exception being that the rates and charges referred to herein may be verbally modified by mutual consent of both parties provided that written confirmation of said modification is received by the party against which the modification is sought within ten (10) days.

20. **Counterparts** – This agreement may be executed in counterparts and each such counterpart shall have the same effect as the original.

21. **Incorporation by Reference** – Any Exhibit referred to herein is expressly incorporated into this agreement by this reference and made a part thereof.

22. **Governing Law** – The substantive laws of the State of Oregon shall govern the validity, construction, enforcement, and interpretation of this agreement and the documents, instruments, or agreement executed and delivered pursuant to the terms of this agreement unless otherwise specified therein and proper venue on any suit arising under this agreement shall be in Linn County, Oregon.

23. **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 thereof, such provisions shall be fully severable and this agreement shall be construed and never comprised a part of this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

24. **Parties Bound** – This agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, successors and assigns.

**Broker:**

Tradewinds Brokerage Inc.  
PO Box 1568  
Albany, OR 97321

**Carrier:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_

Print Name

Federal ID # 68-0541208

By:

\_\_\_\_\_

Terminal Agent

Print Name

\_\_\_\_\_

Federal ID #