

General Transportation Inc.
BROKER-CUSTOMER TRANSPORTATION AGREEMENT

THIS AGREEMENT, "Agreement", made and intended to be effective _____, by and between General Transportation Inc., having offices at Van Buren, Arkansas, (BROKER), and _____ having offices at _____ (CUSTOMER), collectively, the "PARTIES".

RECITALS

A. WHEREAS BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) under USDOT No. 603470, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. A copy of BROKER's authority and a copy of BROKER's Surety Bond or trust fund agreement will be provided on request of CUSTOMER; and

B. WHEREAS CUSTOMER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of CUSTOMER's freight.

NOW THEREFORE, intending to be legally bound, BROKER and CUSTOMER agree as follows:

AGREEMENT

1. **TERM.** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, 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.** BROKER agrees to arrange for transportation of CUSTOMER'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. BROKER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of CUSTOMER's freight. The PARTIES may, upon written mutual agreement, include additional service terms to be attached as Appendix A. CUSTOMER agrees and acknowledges that BROKER is performing services under this Agreement as a freight broker and not as a freight forwarder.

3. VOLUME.

A. CUSTOMER agrees to tender certain shipments to BROKER, and BROKER agrees to arrange for the transportation of said shipments. CUSTOMER is not restricted from tendering freight directly to motor carriers or other freight brokers. BROKER is not restricted from arranging transportation for other parties.

- B. CUSTOMER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.

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

- A. 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.
- B. 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/\$5,000,000 for hazardous materials

Cargo Liability - \$100,000

Worker’s Compensation – as required by law.

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

- C. Carrier shall agree that the provisions contained in 49 CFR § 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.
- D. Carrier shall authorize BROKER to invoice CUSTOMER for services provided by the Carrier. Carrier shall further agree that BROKER is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the shipper, consignee or BROKER’s customer.
- E. Carrier shall agree that, at no time during the term of its contract with BROKER, shall it have an “Unsatisfactory” or “Conditional” safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an Unsatisfactory or Conditional safety rating, it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an unsatisfactory safety rating in the performance of this Agreement. BROKER will require additional investigation if Carrier receives a conditional rating.

F. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. 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

G. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C. § 14101(b) to the extent they conflict with the contract.

5. **RECEIPTS AND BILLS OF LADING.** If requested by CUSTOMER, BROKER agrees to provide CUSTOMER 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 CUSTOMER. CUSTOMER's insertion of BROKER's name on the bill of lading shall be for CUSTOMER convenience only and shall not change BROKER's status as a property broker. CUSTOMER understands that even when, for CUSTOMER's convenience, BROKER is listed on the bill of lading, BROKER is not a motor carrier and will not perform transportation of freight. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement.

6. **PAYMENTS.** Where BROKER shall invoice CUSTOMER for its services in accordance with the written rate confirmation and any accessorial or other charges effective at the time of the shipment. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon BROKER's invoice to CUSTOMER and CUSTOMER's payment to BROKER. CUSTOMER agrees to pay BROKER's invoice within thirty days of invoice date without deduction or setoff. BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to BROKER shall relieve CUSTOMER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify CUSTOMER, Consignee or other responsible party against such liability.

7. **CLAIMS.**

A. **Freight Claims:** CUSTOMER must file claims for cargo loss or damage with BROKER within sixty (60) 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. The claim must include all supporting documentation including without limitation an invoice or certified copy of damages, bill of lading, and freight bill. If CUSTOMER fails to file the claim within the above-stated time frame, or fails to provide supporting documentation within such time frame, CUSTOMER agrees that such claim will be deemed waived. CUSTOMER must file any civil action against BROKER in a Court of Law within two (2) years from the date the carrier or BROKER provides written notice to CUSTOMER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by BROKER shall agree in writing with BROKER to be liable for cargo loss or damage as outlined in paragraph 4.a above. BROKER's and carriers' cargo liability shall not exceed \$100,000 per occurrence, unless BROKER is notified by CUSTOMER of the increased value prior to shipment pickup and with reasonable advance notice to allow BROKER and/or the carrier to procure additional insurance coverage. It is

understood and agreed that the BROKER is not a Carrier and that the BROKER shall not be held liable for loss, damage or delay in the transportation of CUSTOMER 's property unless caused by BROKER's negligent acts or omissions in arranging for transportation of CUSTOMER's freight pursuant to this Agreement. BROKER shall assist CUSTOMER in the filing and/or processing of claims with the Carrier. If payment of claim is made by BROKER to CUSTOMER, CUSTOMER automatically assigns its rights and interest in the claim to BROKER so as to allow BROKER to subrogate its loss. In no event shall BROKER or BROKER's Carrier be liable to CUSTOMER or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless CUSTOMER has informed BROKER in written or electronic form, prior to or when tendering a shipment or series of shipments to BROKER, of the potential nature, type and approximate value of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages. Notwithstanding, no claim will be filed for less than \$300.00.

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 sixty (60) 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.

8. **INSURANCE**. BROKER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

A. Comprehensive general liability insurance covering bodily injury and property damage	\$1,000,000
B. Contingent Cargo Insurance	\$100,000
C. Contingent Auto Liability	\$1,000,000

BROKER shall submit to CUSTOMER a certificate of insurance as evidence of such coverage and will name CUSTOMER as "Certificate Holder" upon request.

9. **SURETY BOND**. BROKER shall maintain a surety bond or trust fund agreement in the amount of \$75,000 and furnish CUSTOMER with proof upon request.

10. **HAZARDOUS MATERIALS**. CUSTOMER and BROKER 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. CUSTOMER is obligated to inform BROKER immediately if any such shipments do constitute hazardous materials. CUSTOMER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of CUSTOMER's failure to comply with applicable hazardous materials laws and regulations.

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 10 (ten) days written notice to the other Party. CUSTOMER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to CUSTOMER.

12. **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.

13. **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.

14. **INDEPENDENT CONTRACTOR.** It is understood between BROKER and CUSTOMER that BROKER is not an agent for the Carrier or CUSTOMER and shall remain at all times an independent contractor. CUSTOMER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers. For the purpose of clarity, the parties acknowledge and agree that (i) the carriers used by BROKER are third party independent contractors, (ii) nothing herein shall imply that carriers are employees or agents of BROKER and (iii) BROKER does not have, exercise or retain any control or supervision over carriers or their operations, employees, drivers, or equipment.

15. **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.

16. **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 (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as follows:

(BROKER)
General Transportation Inc.

P.O. Box 1580
Van Buren, AR 72957
Phone: 479-471-1200
Fax: 828-471-1700

(CUSTOMER)
Company:
Attn:

Address:
Phone:

17. **FORCE MAJEURE.** Except CUSTOMER's payment of fixed charges as they accrue, 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, labor disturbances or strikes, riot, civil disobedience, epidemic, quarantine, closure of public highways, disruption of transportation network, or the intervention of any government authority, or, without construing the foregoing as words of limitation, any other cause outside of the reasonable control of the CUSTOMER or BROKER, 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.

18. **CHOICE OF LAW AND VENUE.** 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 Arkansas without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. Any action filed by either party shall be filed only in a state or federal court embracing Crawford County, Arkansas and the Parties irrevocably consent to the exercise of personal jurisdiction by those courts. Notwithstanding the foregoing, this provision shall not be construed to prevent the removal of a case filed in state court to federal court.

19. **CONFIDENTIALITY.** The Parties agree that in the course of this Agreement, each will become privy to certain information about the other which is confidential. "Confidential Information" shall mean all written, oral and electronic information and documents provided by the one Party which: (i) is disclosed in any manner that, or which by its inherent nature, a reasonable person would understand that the information is confidential; or (ii) sets forth information relating to either Party's customers, customer lists, finances, systems, or rates; or (iii) is treated as confidential by applicable law or regulation, or is otherwise protected by applicable law or regulation including, but not limited to, trade secrets laws. Confidential Information does not include information which (1) is or becomes known to the public or within the logistics industry generally, (2) is disclosed to others on an unrestricted basis, or (3) is lawfully acquired before the date of this Agreement or from a third party. Each Party will use Confidential Information solely in connection with the Services. Each Party will use the same degree of care to protect Confidential Information as it uses to protect its own confidential information (but in no event less than a reasonable degree of care), and will disclose Confidential Information only to those of its employees and advisors who are involved in the performance of the Services, except as otherwise required by law or legal process. The provisions of this Section 18 shall survive the expiration or termination of this Agreement for a period of five (5) years.

20. **BACK SOLICITATION.** During the term of this Agreement and for a period of one year thereafter, CUSTOMER shall not solicit the services of BROKER's motor carriers where the CUSTOMER's use of such carrier first occurred through the BROKER's efforts. If the CUSTOMER breaches this provision of this AGREEMENT, BROKER shall be entitled, as reasonable damages and not as a penalty, to a commission of fifteen percent of the gross revenue from traffic assigned by CUSTOMER to such carrier for a period of fifteen months. CUSTOMER also agrees that the breach of this provision entitles BROKER to be entitled to obtain an injunction against CUSTOMER in a court of competent jurisdiction, at BROKER's

option.

21. **ENTIRE AGREEMENT:** This Agreement, including all Appendices and Addenda, 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. This Agreement may be executed in multiple counterparts, each of which

22. **LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND FOR ANY PURPOSE UNDER THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

23. **COUNTERPARTS/ ELECTRONIC SIGNATURE.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed to be an original, and all of which, when taken together, will constitute but one and the same agreement. An electronic signature (as defined under applicable law) on the signature page will have the same effect as the original. Delivery of an executed counterpart of this Agreement by facsimile or PDF electronic delivery will be equally as effective as delivery of a manually executed counterpart of this Agreement.

24. **FOOD SAFETY MODERNIZATION ACT (FSMA).** Any required documents to be compliant with FSMA shall be provided by Customer to BROKER when the shipment is tendered to BROKER. BROKER will relay those documents to the Carrier per FSMA. If Shipper fails to comply with this subsection, Shipper will defend, indemnify, and hold BROKER and motor carrier harmless from all fines, penalties, claims, liability, and damages, including reasonable attorney's fees and costs of defense as they are incurred.

25. **INTERMODAL EQUIPMENT AND SHIPMENTS.** If Customer requests that BROKER arrange for Intermodal Equipment to be dropped at a location for Customer's convenience and left unattended by the Carrier, Customer and its consignors or consignees will not lose, damage or misuse the intermodal equipment and Customer will pay for loss or damage to the intermodal equipment occurring during or as a result of such possession or use of the intermodal equipment if caused by Customer or its consignees or consignor or their agents or employees. Further, all charges assessed or incurred by BROKER or Carrier in connection with intermodal shipments are the sole responsibility of the Customer and shall be paid by the Customer immediately upon demand, including without limitation customs charges, demurrage charges, detention charges, and per diem charges, and any terminal charges such as tollage, wharfage, usage, loading or unloading charges, or any other port terminal charges at piers, wharves, dockside terminals or warehouses. BROKER shall have no liability for such charges. Customer further agrees to indemnify and hold harmless BROKER from any and all claims for unpaid charges related to intermodal shipments, including without limitation undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped.

26. **ACCURATE INFORMATION; CUSTOMS.** Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with Customs and Border Protection (CBP), other Government Agency and/or third parties, and will immediately advise BROKER of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's S behalf. In preparing and submitting CBP entries, export declarations, applications, security filings, documentation and/or other required data, BROKER relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer. Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify, defend, and hold BROKER harmless from any and all claims asserted and/or liability, expenses (including reasonable attorneys' fees) or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which BROKER reasonably relied. Customer agrees that it has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

27. **GENERAL INDEMNITY.** To the fullest extent allowed by law, BROKER shall indemnify, defend and hold harmless SHIPPER and each of its directors, officers, members, managers, partners, employees, agents and representatives (collectively, the "indemnitees") from and against any and all claims, demands, and liabilities (including reasonable attorneys' fees) arising out of the negligent acts or omissions of BROKER. BROKER'S indemnity obligations shall not extend to claims arising out of the negligence or willful misconduct of SHIPPER. BROKER'S defense and indemnity obligations hereunder shall survive termination of this Agreement and will continue until it is finally determined that any claim or claims are barred by the applicable statute of limitations and/or repose.

To the fullest extent allowed by law, SHIPPER shall indemnify, defend and hold harmless BROKER and each of its directors, officers, members, managers, partners, employees, agents and representatives (collectively, the "indemnitees") from and against any and all claims, demands, and liabilities (including reasonable attorneys' fees) arising out of the negligent acts or omissions of SHIPPER. SHIPPER'S indemnity obligations shall not extend to claims resulting from the negligence or willful misconduct of BROKER. SHIPPER'S defense and indemnity obligations hereunder shall survive termination of this agreement and will continue until it is finally determined that any claim or claims are barred by the applicable statute of limitations and/or repose.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

General Transportation Inc.
BROKER

Company: _____
CUSTOMER

Signed

Signed

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