



P.O. Box 889 • 394 NE Hemlock • Redmond, OR 97756

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## BROKER AND CARRIER AGREEMENT

All loads tendered by Central Oregon Truck Company ("Broker") and accepted for transportation by third party carriers ("Carrier") shall be subject to the following terms and conditions:

### Recitals

A. Broker is licensed as a property broker by the Federal Motor Carrier Safety Administration ("FMCSA"), or by appropriate state agencies, and as a licensed or registered broker, arranges for freight transportation; and

B. Carrier is authorized to operate in inter-provincial, interstate and/or intrastate commerce, is registered, if required, with each applicable State in the U.S. and/or Province in Canada as is necessary and is qualified, competent and available to provide for the transportation services required by Broker; and

Accordingly, the Parties agree as follows:

### Agreement

1. **APPLICABILITY.**

(a) This document sets out the terms of multiple, independent transactions. Each transaction will be between Carrier and the undersigned or one of the entities identified as Broker on Schedule 1. Each transaction will be considered a separate contract involving the individual Broker entity requesting the Services (as defined in Section 4(a) below) and Carrier. The liability of each of the Broker entities for each transaction will be several (not joint). The entity signing below on behalf of Broker is authorized, by way of its common controlling entity to bind each of the other Broker entities listed in Schedule 1 only for the Services pursuant to this Agreement.

(b) For each transaction, the parties will prepare and sign a "Rate Confirmation Sheet" (the "Rate Sheet"). The Rate Sheet or the shipment information tendered through electronic data interchange ("EDI"), will identify the specific parties and other additional terms of the specific transaction. Any additional provisions on the Rate Sheet or the shipment information tendered through EDI ("EDI Shipment Info") shall be binding between the Carrier and the Broker referenced in the applicable Rate Sheet or EDI Shipment Info. In the event of a conflict between this Agreement and the terms of a Rate Sheet or the EDI Shipment Info, the Rate Sheet and the EDI Shipment Info shall control (but only for the transaction identified in the applicable Rate Sheet or EDI Shipment Info). The form Rate Sheet is attached as Appendix A.

2. **TERM AND TERMINATION.**

(a) The Term of this Agreement shall be for one (1) year. At the end of each year, the Term will automatically renew for another year. Both Parties may terminate this Agreement at any time in writing with 30 days advance notice.

- (b) Broker may terminate this Agreement if Carrier: (i) cannot legally perform its obligations under this Agreement; (ii) files for bankruptcy, seeks creditors' protection, or becomes insolvent; or (iii) breaches this Agreement. The termination is effective when Carrier receives notice in writing from Broker.

3. **CARRIER'S OPERATING AUTHORITY AND COMPLIANCE WITH LAW.**

- (a) The Parties enter into this Agreement in accordance with 49 U.S.C. § 14101(b)(1) and expressly waive any and all rights and remedies that each may have under 49 U.S.C. §§ 13101 through 14914 that are contrary to specific provisions of this Agreement.
- (b) Carrier shall be in full compliance with all federal, state, provincial, territorial, and local laws, regulations, rules, and ordinances which apply to Carrier and its business or the Services contemplated herein (collectively, "Applicable Law").
- (c) **Safety Ratings.** During the term of this Agreement, Carrier must not have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration ("FMCSA"). If Carrier receives an "Unsatisfactory" or "Conditional" safety rating, it will immediately notify Broker. Carrier will not use any carrier or subcontractor with an "Unsatisfactory" safety rating even if Broker authorizes use of another carrier or subcontractor.

4. **PERFORMANCE OF SERVICES.**

- (a) Carrier agrees that it is an independent contractor under this Agreement. The Parties understand and agree that the relationship between the Parties is and will remain that of independent contractors and that no employer-employee, franchisor-franchisee, or principal-agent relationship exists or is intended. Carrier agrees that it has complete responsibility for all provincial, state and federal taxes, assessments, insurance (including, but not limited to, workers' compensation, unemployment compensation, disability, pension and social security insurance) and any other financial obligations arising out of the transportation services provided under this Agreement (the "Services"). Additionally, Carrier (through its driver) shall be solely responsible for controlling the method, manner and means of accomplishing the Services, including route selection.
- (b) Carrier agrees that this Agreement applies to all shipments handled by Carrier for Broker. This Agreement and the applicable Rate Sheet or EDI Shipment Info control the relationship between the Parties as to each individual transaction. The Carrier's tariff, terms and conditions, service guide, bill of lading, and similar documents do not apply to the Services. Notwithstanding the foregoing, the bill of lading shall apply to the Services solely in the limited capacity described in Section 5 below.
- (c) Carrier shall transport all shipments without delay. This Agreement does not grant Carrier an exclusive right to perform any services for Broker or the entity that has retained Broker (hereinafter, the "Customer"). If the applicable Broker uses EDI, the Carrier agrees that any load tendered through EDI by that Broker to Carrier will be

considered accepted upon Carrier's electronic receipt of the EDI transfer for such load. Otherwise, if EDI is not utilized by the Broker, then Carrier agrees that any load tendered to it by Broker will be considered accepted upon Broker's receipt of a signed Rate Sheet from Carrier.

- (d) Carrier's drivers will register with MacroPoint, if required by shipper, at time of pick up to facilitate automated check-calls. Failure of Carrier's drivers to comply will result in a charge back of \$50 per day until the Carrier's driver registers with MacroPoint.

5. **RECEIPTS AND BILLS OF LADING.** Each shipment shall be accompanied by a bill of lading which names Carrier as the transporting carrier. Broker's status as a property broker will not be affected by any bill of lading which erroneously names Broker as a "carrier". Upon delivery of each shipment, Carrier shall require the recipient sign a receipt showing the kind and quantity of product delivered. The terms and conditions of any bill of lading or other freight documentation used by Carrier or its subcontractors will not supplement, alter, or modify the terms of this Agreement. If Carrier fails to issue a bill of lading, Carrier is still responsible for any shipment it accepts under this Agreement. Carrier shall notify Broker immediately of any exception noted on the bill of lading or delivery receipt.

6. **CARRIER'S OPERATIONS.**

- (a) Carrier shall, at its sole cost and expense: (i) furnish all equipment required to properly perform the Services hereunder (the "Equipment"); (ii) ensure that the Equipment, particularly to be used to perform the Services has not previously been used to transport solid or liquid waste or garbage of any kind (hazardous or nonhazardous); (iii) maintain the Equipment in good repair, mechanical condition and appearance; and (iv) provide Broker with accurate records of Equipment use upon request.
- (b) Carrier shall have full control of, and shall be legally responsible for, the acts and omissions of each of its employees, agents, contractors, and subcontractors who provide the Services (its "Personnel"). All of Carrier's Personnel shall be fully qualified, competent, and legally licensed in compliance with all Applicable Law to perform the Services. Carrier shall be solely responsible for all Personnel costs. By accepting a shipment under this Agreement, Carrier warrants that it will assign a driver who has sufficient time remaining under the applicable hours of service regulations to complete the duties assigned by the Carrier.
- (c) Carrier shall be solely responsible for making sure that the Services comply with all Applicable Law. This includes rules and laws about over-dimension and overweight loads and air quality and environmental standards including, but not limited to, those of the California Air Resources Board ("CARB"). Carrier is responsible for choosing routes that comply with all Applicable Law and for ensuring that shipments are not damaged in transit.
- (d) Carrier must comply with 49 CFR Part 395 regarding use of Electronic Logging Devices ("ELDs"). Carrier must have on-board each vehicle an ELD from a provider listed on the FMCSA's ELD registry and must notify Broker if the provider is removed

from the registry or if the ELD malfunctions while Services are being provided by Carrier to Broker.

7. **RATES & PAYMENTS.**

- (a) Carrier will invoice and Broker will pay the rates and charges for the Services as stated in the Rate Sheet or EDI Shipment Info. Carrier agrees that there are no other applicable rates or charges except those set forth explicitly in the Rate Sheet or EDI Shipment Info.
- (b) Carrier shall submit an invoice and all appropriate supporting paperwork within fourteen (14) days of delivery. Carrier will fax or email proof of delivery to Broker within twelve (12) hours of delivery unless the Rate Sheet or EDI Shipment INFO requires a shorter timeframe for providing Proof of delivery. Supporting paperwork includes a legible copy of Carrier's freight bill, bill of lading, or other document evidencing delivery of the load in good condition and free of all claims. The supporting paperwork must be signed by a representative of the recipient. Broker will pay Carrier within thirty (30) days (or less depending on the applicable Broker's quick pay programs) after it receives Carrier's invoice and all supporting paperwork. Carrier will be liable to Broker for any and all revenues that are uncollectible by Broker because of Carrier's failure to timely provide all supporting paperwork.
- (c) Carrier agrees that Broker has the exclusive right to handle all billing to the Customer for all Services. Carrier shall not engage in any collection efforts against the shipper, receiver, or the Customer unless Broker expressly authorizes Carrier to do so in writing. If Broker authorizes Carrier to conduct collection efforts, Carrier's sole recourse will be against such party. Once Broker pays Carrier for any Services, all of Carrier's rights to payment for those Services is hereby automatically assigned to Broker.
- (d) If Carrier does not submit an invoice and all supporting documentation within one hundred eighty (180) days of delivery, it will be deemed to have waived its right to payment for those Services. All claims for undercharges must also be brought within one hundred eighty (180) days of the original invoice related to such claim. If Carrier has timely complied with the foregoing, Carrier must bring suit for any unpaid amounts within eighteen (18) months of the date of delivery, or its right to sue or otherwise seek payment shall be waived.

8. **WAIVER OF CARRIER'S LIEN.** Carrier may not withhold any goods transported under this Agreement as a result of any dispute with Broker over any issue related to this Agreement (including nonpayment). Carrier is relying upon the general credit of Broker and waives and releases all liens which Carrier might otherwise have to any goods of Broker or its Customer which may be in the possession or control of Carrier.

9. **FREIGHT LOSS, DAMAGE OR DELAY.** Carrier will have the sole and exclusive care, custody and control of the cargo from the time it is delivered to Carrier until the recipient has accepted delivery and executed appropriate receipts. Except as otherwise provided herein, Carrier is liable for loss

of, damage to, or delay of Goods according to the provisions of 49 U.S.C. § 14706 (the Carmack Amendment).

- (a) Carrier shall notify Broker immediately in the event any cargo is lost, stolen, damaged, or destroyed, and if Carrier becomes aware that a delivery will be late.
  - (b) Carrier shall be liable for the full actual value of any cargo lost, damaged, delayed, or destroyed, as well as any additional costs or fees imposed upon Broker by the cargo claimant. Unless it is specified on the Rate Sheet or EDI Shipment Info for a specific load, no limitation of liability shall apply. Broker's agreement to a limitation for one shipment shall not be construed as a waiver of full liability with respect to any other shipment tendered to Carrier.
  - (c) Broker or its Customer may specify the value of the cargo or maximum liability for the shipment on the Rate Sheet, EDI Shipment Info, or bill of lading. In that case, Carrier's acceptance of the load shall evidence Carrier's acknowledgement it will be liable for the full actual value of the cargo. Carrier agrees to maintain cargo insurance of at least the full actual cargo value. Upon request, Carrier will provide Broker or Customer evidence of sufficient cargo insurance limits. The insurance will also comply with all other provisions of this Agreement.
  - (d) Carrier waives any Applicable Law regarding processing of claims and handling of salvage, including, but not limited to, the provisions of 49 C.F.R. Part 370. Carrier shall pay to Broker, or allow Broker to deduct from (set off) any amount Broker owes to Carrier, Customer's full actual loss for the kind and quantity of goods that are lost, delayed, damaged or destroyed, except where not allowed by law. Payment by Carrier to Broker or its Customer shall be made within thirty (30) days following Carrier's receipt of Broker's or Customer's undisputed claim and supporting documentation. Carrier shall fully assist Broker in investigating any claim for cargo loss, damage, delay, or destruction.
  - (e) Carrier waives any right to salvage goods subject to this provision, as well as any right to claim an offset for the value of salvage.
  - (f) Exclusions from coverage contained in Carrier's Cargo Insurance as required herein shall not affect Carrier's liability for freight loss, damage, or delay.
10. **INSURANCE.** Carrier shall obtain and keep in force, at its sole cost and expense, the following insurance coverages from reputable and financially responsible insurance companies authorized to do business in the applicable state(s). Each carrier must have an A.M. Best rating of A-, VII or better (or be otherwise reasonably acceptable to Broker):
- (a) Public liability and property damage insurance ("AL") covering all owned, non-owned, and hired vehicles insuring Carrier in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence; this policy must include a Sudden and Accidental Pollution Endorsement (CA 9948);

- (b) Commercial General Liability (“CGL”) Insurance covering the transportation of shipments and other operations under this Agreement in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence. Such insurance shall also cover Carrier’s contractual liability under this Agreement;
- (c) All Risk Broad Form Motor Truck Cargo Legal Liability (“Cargo”) insurance in an amount not less than \$100,000.00 (U.S. Dollars) per occurrence. Coverage shall be for the full actual value of the components, including freight and cleanup costs, or \$100,000.00 (U.S. Dollars) per truckload, whichever is greater. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims including, but not limited to, exclusions for unattended or unattached trailers, theft, commodities transported under this Agreement;
- (d) Statutory Workers’ Compensation Insurance coverage in such amounts and in such form as required by applicable state law;
- (e) All insurance policies required by this Agreement shall, as applicable, be primary and shall waive subrogation and contribution against Broker, and are required to respond and pay prior to any other available coverage. Carrier shall furnish written certificates to Broker from the insurance carrier showing that such insurance has been procured and is being properly maintained, the expiration date, and specifying that written notice of shall be given to Broker at least thirty (30) days prior to any cancellation or modification of the policies. These designations shall be evidenced by an endorsement on the certificates of insurance. Upon request of Broker or its designated insurance consultant, Carrier shall provide Broker, Broker’s consultant, or Customer with copies of the applicable insurance policies. Nothing in this Agreement shall be construed to avoid or limit Carrier’s liability due to any policy limits or exclusion or deductible in any insurance policy.

11. **INDEMNITY.** CARRIER SHALL DEFEND, PAY, REIMBURSE, INDEMNIFY, AND HOLD BROKER, ITS CUSTOMER, AND EACH OF THEIR AFFILIATED ENTITIES (THE “BROKER PARTIES”) HARMLESS FROM AND AGAINST ALL DIRECT OR INDIRECT LOSS, LIABILITY, DAMAGE, CLAIM, FINE, COST OR EXPENSE, INCLUDING REASONABLE ATTORNEY’S FEES, ARISING OUT OF OR IN ANY WAY RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT BY CARRIER OR ITS PERSONNEL (COLLECTIVELY, THE “CLAIMS”), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR OR RELATED TO PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND CARRIER’S POSSESSION, USE, MAINTENANCE, CUSTODY OR OPERATION OF THE EQUIPMENT; PROVIDED, HOWEVER, THAT CARRIER’S INDEMNIFICATION AND HOLD HARMLESS OBLIGATIONS UNDER THIS PARAGRAPH WILL NOT APPLY TO THE PRORATED EXTENT THAT ANY CLAIM IS DIRECTLY AND PROXIMATELY CAUSED BY THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF THE BROKER PARTIES. CARRIER HEREBY EXPRESSLY WAIVES ANY EXCLUSIVE REMEDY DEFENSE, INCLUDING, BUT NOT LIMITED TO, THOSE AVAILABLE UNDER ANY WORKERS’ COMPENSATION OR OTHER OCCUPATIONAL ACCIDENT STATUTORY REGIME, TO THE EXTENT NECESSARY TO EFFECTUATE CARRIER’S OBLIGATIONS UNDER THIS PROVISION. THIS PROVISION SHALL EXPRESSLY SURVIVE ANY TERMINATION OF THIS AGREEMENT.

12. **HANDLING, LOADING AND SEALING.**

- (a) Carrier shall comply with all handling instructions provided by the shipper, consignor or consignee (including such instructions that may be passed through to Carrier by

Broker). If Carrier receives contradictory or confusing instructions regarding any shipment, Carrier shall obtain all necessary clarifications confirmed in writing via email or text before it accepts the shipment.

- (b) Unless a shipment is loaded and sealed prior to their arrival, the manner of loading and securing freight upon Equipment shall be the responsibility of Carrier Personnel. Carrier shall inspect any unsealed loads prior to departing. Carrier represents that each driver shall be competent to manage the loading and transportation of the goods subject to this Agreement.
- (c) When required by Broker, the shipper or the consignor, Carrier shall secure shipments with a serialized seal. Carrier shall ensure that the serialized seal number appears on the bill of lading or other form of manifest or receipt. Carrier shall be solely responsible for maintaining seal integrity during transportation of the shipment. Except as required by law enforcement personnel, under no circumstances shall Carrier or any of its personnel break any seal without the express consent of Broker. Carrier shall immediately notify Broker to report a missing or broken seal.
- (d) If law enforcement personnel require Carrier to break any seal on any shipment, Carrier shall document such fact on the bill of lading or other form of manifest by noting the law enforcement agency, time, location, and officer name and badge number. Upon completion of inspection by law enforcement personnel, Carrier shall immediately re-seal the shipment with a serialized seal and shall indicate the second seal number on the bill of lading or other form of manifest. As soon as reasonably possible following such an inspection, Carrier shall notify Broker (or the consignee of the shipment if Broker cannot be contacted) of the events leading to the unsealing of the shipment.
- (e) Carrier shall bear the sole risk of rejection of cargo arising from or related to broken seals or failure to comply with load handling instructions.

13. **CONFIDENTIALITY AND NON-SOLICITATION.** Neither Party may disclose the terms of this Agreement to a third party without the written consent of the other Party, except: (1) as required by law or regulation; (2) disclosure to its accountants, tax advisors, attorneys, or any parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent if such agent agrees to keep the terms of the Agreement confidential. Carrier will not accept shipping business, either directly or indirectly, from any shipper, consignor, consignee or customer of Broker (a "Broker Contact") where: (1) the Broker Contact's business first became known to Carrier as a result of the efforts of Broker; or (2) shipments for the Broker Contact were first tendered to Carrier by Broker. If Carrier breaches this Agreement and provides services to a Broker Contact during the term of this Agreement or for twelve (12) months after any termination of this Agreement without utilizing the services of Broker, Carrier shall be obligated to pay Broker commissions in the amount of twenty percent (20%) of the transportation revenue from such Broker Contact during the period beginning with the first shipment in violation of this Agreement and ending fifteen (15) months thereafter. Carrier shall provide Broker with all documentation requested by Broker to verify such revenue. Carrier shall not utilize Broker's or the Customer's name or identity in any advertising or promotional communications without written consent. This provision shall expressly survive any termination of this Agreement.

14. **NO "DOUBLE BROKERING"**. Carrier agrees that all freight tendered to it by Broker shall be transported on Carrier's Equipment or equipment operating solely under Carrier's motor carrier authority, and that Carrier shall not subcontract, broker, or otherwise allow the freight to be transported by a third party without Broker's prior written consent. If Carrier breaches this provision, Carrier shall remain directly liable to Broker and shall further hold harmless and indemnify Broker from any and all loss, liability, damage, claim, fine, cost or expense (including reasonable attorney's fees) arising out of or in any way related to such violation or the conduct or omissions of Carrier, the subcontractor, or any other third party. If Carrier violates this Section 14, in addition to any other rights and remedies available to Broker, Broker may, in its sole discretion, pay the underlying carrier directly, which payment will relieve Broker of any and all payment obligations to Carrier with respect to such load. This provision shall expressly survive any termination of this Agreement.

15. **BROKER'S RECORDS**. Carrier hereby waives its right to obtain copies of Broker's records as provided under 49 C.F.R. Part 371. Notwithstanding the foregoing, to the extent that Carrier obtains records set forth in 49 C.F.R. §371.3 by any means whatsoever, Carrier agrees to refrain from utilizing such records in negotiating for the provision of services with any third party, including existing Customers of Broker. Carrier further agrees and understands that all such records comprise Broker's confidential information and trade-secrets. Nothing in this section is intended to relieve Carrier of any other obligations imposed upon it by this Agreement, or to limit any rights of Broker to enforce such obligations.

16. **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT**. This Agreement may not be assigned or transferred in whole or in part by Carrier without Broker's prior written consent. This Agreement supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by Carrier. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement.

17. **SEVERABILITY**. If any portion of this Agreement results in a violation of any law, the Parties agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.

18. **WAIVER**. Carrier and Broker expressly waive any and all rights and remedies allowed under 49 U.S.C. §14101 to the extent that such rights and remedies conflict with this Agreement. Failure of Broker to insist upon Carrier's performance under this Agreement or to exercise any right or privilege arising hereunder shall not be a waiver of any Broker's rights or privileges herein.

19. **NOTICE**. All notices or other communications required or permitted by this Agreement shall be effective upon receipt; shall be in writing; and shall be personally delivered, or mailed by registered or certified mail, return receipt requested, or sent by an overnight delivery service which provides proof of delivery, or sent by electronic mail to [notices@daseke.com](mailto:notices@daseke.com) with a duplicate copy sent by first class mail, postage prepaid, to the address for each party set forth on the signature page below.

20. **DISPUTE RESOLUTION**. This Agreement shall be governed by the laws of the State of Oregon. In the event of any disagreement or dispute, the laws of Oregon shall apply except to the extent superseded by applicable federal law. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in Deschutes County, OR, in accordance with its Commercial Arbitration Rules,



and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties hereby agree and consent to such venue and waive any objection to it. In the event either party incurs legal fees, costs or expenses (including reasonable attorneys' fees) in enforcing any of the provisions of this Agreement, or in exercising any right or remedy arising out of any breach of this Agreement by the other party, the prevailing party shall be entitled to receive such legal fees, costs, and expenses from the other party.

21. **COMPLETE AGREEMENT.** This Agreement supersedes all prior agreements between the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both PARTIES. Notwithstanding the foregoing, if a secondary agreement (including any addendums or riders) exists between another Broker listed in Schedule 1 and Carrier that has more restrictive obligations to the Carrier, this Agreement shall not supersede that agreement between those parties.

22. **REPRESENTATION ON AUTHORITY OF PARTIES AND SIGNATORIES.** Each Party represents and warrants that their signatory is duly authorized and has the legal capacity to execute and deliver this Agreement. Each Party represents and warrants that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal Agreement binding on such Party and enforceable in accordance with its terms.