



Physical / Mailing

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Checklist for Carrier Set Up

- Signed Contract – all pages must be initialed and returned
- Signed Payment Agreement
- Carrier Profile
- Certificate of auto liability and cargo insurance with \$1,000,000 in auto coverage and \$100,000 in cargo coverage with Montgomery Logistics listed as the certificate holder
- W9



CARRIER/BROKER AGREEMENT

THIS CARRIER/BROKER AGREEMENT is made and entered into on _____, 20__ (the “Effective Date”), by and between _____ (“Carrier”) and **Montgomery Logistics DE, LLC** (“Broker”) (Broker and Carrier each being a “Party” and collectively referred to herein as the “Parties”).

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

B. WHEREAS Carrier is authorized to operate in interstate and/or intrastate commerce and is qualified, competent, and available to provide the transportation services required by Broker.

NOW THEREFORE, intending to be legally bound, Broker and Carrier agree as follows:

1. TERM AND TERMINATION. The initial term (the “Initial Term”) of this Agreement starts on the Effective Date and will continue for one (1) year from the Effective Date unless earlier terminated as set forth herein. This Agreement shall automatically renew for additional one (1) year terms (each a “Renewal Term”) at the end of the Initial Term or any Renewal Term, as applicable, unless either Party gives the other Party notice of non-renewal not less than thirty (30) days before the end of the Initial Term or the then current Renewal Term, or unless earlier terminated as set forth herein. The Initial Term together with any Renewal term is sometimes collectively referred to herein as the “Term”. Either Party may terminate this Agreement without cause by providing thirty (30) days prior written notice of termination to the other Party hereto.

2. NON-EXCLUSIVE SERVICES. From time to time during the Term, Broker may offer Carrier the opportunity to transport freight or cargo and provide ancillary services related thereto (collectively the “Services”), for third party customers (each a “Customer”) as arranged by Broker. The details of each individual shipment shall be set forth in a Rate Confirmation Sheet (the “Rate Confirmation Sheet”) provided by Broker and signed by Carrier which shall be subject to the terms of this Agreement. Carrier agrees to be bound by the provisions of the Rate Confirmation Sheet by signing the Rate Confirmation Sheet, acknowledging its agreement to provide such services set forth in the Rate Confirmation Sheet, or by transporting, or arranging transport, of cargo identified in the Rate Confirmation Sheet. This Agreement is non-exclusive in that: (i) Broker is not required to offer Carrier any set amount of freight, and Broker is free to engage any other motor carriers; and (ii) Carrier is free to perform transportation services for any other broker. Carrier acknowledges and agrees that Broker does not prohibit or otherwise restrict Carrier’s ability to provide services and engage in such business dealings with Carrier’s separate clientele.

3. PERFORMANCE OF SERVICES; CARRIER’S OPERATIONS. Carrier hereby represents, warrants, and covenants throughout the Term that:

(a) Carrier is and at all times shall be solely responsible for its day to day operations including, but not limited to, controlling the method, manner, and means of accomplishing the Services. Carrier or its driver are solely responsible for determining the appropriate route for transportation (including, but not limited to, clearances for bridges; etc.), and shall set appropriate routes to ensure that transportation of shipments is accomplished in accordance with all Applicable Laws and to otherwise ensure shipments are not damaged in transit. Any route directions provided by Broker to Carrier are provided as a convenience only and: (i) Carrier shall have no obligation to follow such routing directions; and (ii) Broker shall have no liability to Carrier in connection with any such route directions. To allow Broker to comply with Customer requests regarding shipment status, Carrier shall provide contact information for any driver transporting cargo pursuant to this Agreement.

(b) Carrier will perform all Services in a professional and workmanlike manner in accordance with industry best standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and shall devote adequate resources to meet its obligations under this Agreement including each Rate Confirmation Sheet.

(c) Carrier’s Services are designed to meet the needs of Broker under the specified rates and conditions set forth herein. The terms and conditions of this Agreement apply to all shipments handled by Carrier for Broker and the terms of this Agreement control the relationship between the Parties. Regardless of whether they are required by law, in no event shall any provisions of Carrier’s tariff, terms and conditions, service guide, bill of lading, or similar documentation apply to Services provided under this Agreement.

(d) Carrier is duly and legally qualified in accordance with all federal, state, provincial, territorial, and local laws, statutes, regulations, rules, and ordinances (collectively, “Applicable Law”) to provide, as a contract carrier, the Services contemplated herein. Carrier shall comply with all Applicable Law in the performance of the Services.

(e) Carrier does not, and at no point during the Term will it, have an unsatisfactory or unfit safety rating issued by any regulatory authority with jurisdiction over Carrier’s operations, including, but not limited to, the Federal Motor Carrier Safety

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Administration (“FMCSA”) of the U.S. Department of Transportation (“DOT”). In the event that Carrier receives an unsatisfactory or unfit safety rating, is notified that it may receive an unsatisfactory or unfit safety rating, fails to maintain insurance required hereunder, is notified that such insurance may become ineffective or is otherwise prohibited by Applicable Law from performing Services hereunder, Carrier shall immediately notify Broker of such fact and shall not carry any loads or goods tendered to Carrier by Broker until such prohibition on operations is removed.

(f) Carrier shall transport all shipments provided under this Agreement without delay, and all occurrences which would be probable or certain to cause delay shall be immediately communicated to Broker by Carrier.

(g) Carrier shall, at its sole cost and expense:

- i. furnish all equipment necessary or required for the performance of its obligations hereunder (the “Equipment”);
- ii. pay all expenses related, in any way, with the use and operation of the Equipment;
- iii. maintain the Equipment in good repair, mechanical condition, and appearance; and
- iv. maintain records of Equipment use which will be provided to Broker upon request.

(h) Any Equipment used by Carrier to transport cargo pursuant to this Agreement shall be used exclusively for such purpose while loaded with Customer cargo, and in no event will property of any other party be loaded on such Equipment unless Broker expressly consents thereto in writing.

(i) Carrier shall be solely responsible for the acts and omissions of each of its employees, agents, representatives, contractors, and subcontractors and shall utilize only competent and able personnel that are legally licensed in accordance with all Applicable Law to perform the Services. Carrier shall have full control of any personnel used in the provision of the Services and will be solely responsible for the selection and qualification of such personnel. Carrier shall be solely responsible for ensuring, and will ensure, at Carrier’s cost and expense, that such personnel are fully qualified to perform the Services, and that such personnel have access to all locations into which access is necessary to perform the Services. Without limiting the foregoing, Carrier shall ensure that any personnel providing Services have sufficient hours available to complete scheduled deliveries in accordance with, and without violation of, applicable hours of service regulations. Carrier shall be solely responsible for determining whether scheduled Services can be completed without violation of Applicable Law, and if Services cannot be completed without violation of Applicable Law, shall notify Broker prior to acceptance of such load.

(j) Carrier shall perform the Services as an independent contractor and assumes complete responsibility for all 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 performed hereunder.

(k) With respect to Carrier’s general business operations, Carrier shall provide Broker, upon Broker’s request, all necessary supporting documents, information, and materials necessary to confirm, the following:

- i. Carrier’s operations and Services are free from any direction and control by Broker with respect to the performance of the work.
- ii. Carrier has obtained, and shall always maintain, each applicable license, permit, and/or tax registration, required by Applicable Law, necessary for Carrier to operate its business.
- iii. Carrier maintains and operates out of its headquarters or other primary business location located at the address identified in the signature block below.
- iv. Carrier is customarily engaged in the business of providing for-hire motor carrier services to the public, including to property brokers. This business is independent from that of Broker’s.
- v. Carrier provides motor carrier services for its own, separate clientele, including under separate motor carrier services agreements.
- vi. Carrier actively advertises its motor carrier services and holds itself out to the public as an available for-hire motor carrier.
- vii. Carrier provides its own tools, vehicles, and all other equipment necessary to provide the Services. Carrier determines its own hours of operations and business location(s).

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- viii. Carrier negotiates its own rates and, with respect to this Agreement, has had the opportunity to negotiate rates with Broker.
- ix. Carrier is not performing the type of work for which a license is required by the California State License Board, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code

(l) Carrier shall be solely responsible for compliance, and shall comply, with all provisions of Applicable Law regarding air quality and environmental standards including, but not limited to, those of the California Air Resources Board (“CARB”). By entering into this Agreement, Carrier acknowledges and agrees that it is aware of applicable CARB regulations, including the Truck and Bus Regulation (“TBR”) at 13 C.C.R. § 2025, the Drayage Truck Regulation (“DTR”) at 13 C.C.R. § 2027, the regulation on Transportation Refrigeration Units (“TRU”) at 13 C.C.R. § 2477 *et. Seq.*, and the Tractor Trailer Greenhouse Gas (“GHG”) regulation at 17 C.C.R. § 95300 *et. Seq.*, and has adopted policies and procedures to ensure compliance with such regulations, as they may be revised, adopted, and amended from time to time. Carrier shall only dispatch and operate compliant vehicles (including vehicles with compliant TRUs) and shall maintain shipment specific records evidencing such compliance, which records shall be provided to Broker upon request. Without limiting the foregoing, if Carrier operates TRUs in California under this Agreement, it shall ensure all such units are registered with the CARB’s Equipment Registration system (“ARBER”).

(m) Carrier will not perform the Services at any time while Carrier is included on the list of port trucking companies with unsatisfied court judgments, tax assessments, or tax liens published by the California Labor Commissioner pursuant to Cal. Labor Code § 2810.4.

(n) With respect to transportation governed by regulations of the Food and Drug Administration (“FDA”) codified at 21 C.F.R. Part 1.900, and regardless of whether such FDA regulations apply to Carrier, Carrier shall be responsible for the safety and sufficiency of all items used in the transportation of the goods, including all vehicles and Transportation Equipment as defined in such regulations. Carrier is responsible for all sanitary conditions during transport. Carrier must confirm the vehicle and Transportation Equipment: (i) is in appropriate physical condition to transport the goods tendered; (ii) is dry, leak proof, free of harmful or offensive odor, free from pest infestation and free from evidence of prior cargo that could render the shipment unsafe; and (iii) shall never have been used to transport any waste (whether hazardous or not), refuse, garbage, rodenticide, pesticide, or insecticide.

(o) In the event Carrier is requested to transport waste or hazardous materials, Carrier represents and warrants that it has obtained all necessary federal, state and provincial permits and registrations to transport hazardous materials or waste in inter-provincial, interstate and/or intrastate commerce. Upon request, Carrier shall provide Broker with a copy of all such federal and state permits and registrations. Carrier further represents and warrants that: (i) it is in compliance with any and all applicable laws, rules and regulations applicable to such transportation, including, but not limited to 49 C.F.R. Parts 171-178; (ii) all drivers used to transport such shipments have undergone the necessary training requirements of all applicable state, provincial and federal laws; and (iii) all drivers used to transport hazardous material have the proper endorsements on their Commercial Driver's License (or such analogous operator permit as is applicable to such driver) to legally transport such shipments. Carrier acknowledges and agrees that Broker’s sole obligation with respect to requesting services with respect to such shipments is to pass through information (including commodity descriptions and classifications) and documentation (including shipping papers) provided to Broker by the Customer. Broker shall have no obligation to independently verify the accuracy of such information or documentation.

(p) Carrier shall maintain appropriate security infrastructure to ensure the physical security of shipments and equipment handled under the terms of this Agreement.

(q) Carrier understands and agrees that Broker’s Customers require that Broker provide real time tracking of shipments while in transit and as such that Broker may request or obtain GPS tracking information that would have the effect of tracking the location of Carrier’s driver. Carrier represents, warrants, and covenants throughout the Term that it has obtained driver consent to allow Broker to perform such tracking and, where relevant, to share driver tracking information obtained by Carrier with Broker.

4. **RECEIPTS AND BILLS OF LADING.** Each shipment hereunder shall be evidenced by a bill of lading acceptable to Broker naming Carrier as the transporting carrier. The fact that Broker is named as a “carrier” upon any applicable bill of lading shall not affect its status as a property broker. Upon delivery of each shipment made hereunder, Carrier shall obtain a receipt showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by Broker or the Customer, and Carrier shall cause such receipt to be signed by the consignee. The bill of lading is intended to act as a receipt only. Carrier’s failure to issue a bill of lading shall not affect its liability hereunder. Carrier shall notify Broker immediately of any exception made on the bill of lading or delivery receipt.

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5. RATES & PAYMENTS.

(a) For Services provided hereunder, Carrier will invoice Broker using the rates and charges set forth in the applicable Rate Confirmation Sheet. Carrier represents and warrants that there are no other applicable rates or charges except those established in this Agreement or in the applicable Rate Confirmation Sheet signed by Broker. Rates for any and all accessorial services that might be provided by Carrier must be set forth in the Rate Confirmation Sheet to be valid. In no event will Broker be responsible for payment of such rates unless paid by the Customer. Broker shall not be liable for detention charges unless paid by Customer. Notwithstanding anything to the contrary herein, in no event shall Broker be liable to Carrier for any charges (detention or otherwise) caused by events outside of Broker's control including, but not limited to, acts of God, storm, tornado, wind, hail, snow, ice, flood, earthquake, natural disaster, fire, breakage or accident to machinery or equipment, war, riot, explosion, or plant shutdown.

(b) Carrier agrees to be bound by the provisions of the Rate Confirmation Sheet by signing the Rate Confirmation Sheet, or acknowledging its agreement to provide such Services set forth in the Rate Confirmation Sheet, or by transporting, or arranging transport, of cargo identified therein.

(c) In the event Services are provided and it is subsequently discovered that the Rate Confirmation Sheet was not signed by Carrier, the Parties agree that the rate listed in the most recent Rate Confirmation Sheet provided by Broker to Carrier for such shipment shall be the agreed upon contract rate of the Parties for those specific services.

(d) Provided that Services have been properly completed without damage, loss, or delay, payment by Broker will be made within thirty (30) days of receipt by Broker of Carrier's freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents enabling Broker to ascertain that Services have been properly completed at the agreed upon charge without damage, loss, or delay. As a condition to payment, Carrier shall provide Broker with a legible copy or photocopy of the bill of lading or other proof of delivery. Failure to provide such documentation within forty-eight (48) hours of delivery may result in a reduction in the rate. Carrier's failure to provide Broker with a legible copy or photocopy of the bill of lading or other proof of delivery will result in Carrier being held responsible to Broker for any and all revenues that are uncollected by Broker because of Carrier's failure to provide needed support paperwork to Broker.

(e) Carrier agrees that Broker has the exclusive right to handle all billing of freight charges to the Customer for the Services provided herein, and, as such, Carrier agrees to refrain from all collection efforts against the shipper, receiver, or the Customer unless Broker, in its sole discretion, expressly authorizes Carrier in writing to collect from any such party, in which case, Carrier's sole recourse will be against such party. Upon Carrier's receipt of payment from Broker, any right of Carrier to payment from the Customer or any other third-party for services performed will be automatically assigned to Broker.

(f) Carrier further agrees that Broker has the discretionary right to set off or reduce the amount of any payments owed to Carrier hereunder for any amounts owed by Carrier to Broker including, but not limited to, any amounts advanced by Broker to Carrier, and any liability incurred by Carrier, including, but not limited to, claims for freight, loss, damage, or delay.

(g) Carrier shall submit all freight bills to Broker within 180 days of delivery. Carrier hereby waives its right to payment for Services rendered for which freight bills are not submitted to Broker within 180 days of delivery. Claims for undercharges must be brought within 180 days of Broker's receipt of the original invoice giving rise to such undercharge claim. To the extent Carrier has not otherwise waived its right to payment for Services: (i) Carrier may only bring suit related to unpaid freight charges or undercharges within 18 months of the date of delivery, and (ii) Carrier hereby waives its right to bring suit related to unpaid freight charges or undercharges to the extent not brought within 18 months of the date of delivery.

(h) Carrier shall provide Broker with written notice providing Broker with remittance instructions a ("Notice of Release") in the event Carrier enters any factoring, assignment, pledge, hypothecation, or granting of a security interest in Carrier's right to payment under this Agreement ("Factoring"). Any Factoring shall in no event modify, limit, or terminate Broker's or its Customer's right to offset or recoup or claims of Broker or its Customer for offset, recoupment, loss, or damage to any cargo or other property, including personal injury, or any other claim which Broker or its Customer may have against Carrier for any reason. All of Broker's and its Customer's claims and rights are specifically preserved and shall be superior to any such assignee's, factor's, or creditor's rights or claims to payment, regardless of any notice to Broker or its Customer to the contrary. Carrier shall notify any such factor, secured creditor, or assignee of Broker's and its Customer's rights in this regard. Further, if Broker discovers that Carrier has not provided a valid Notice of Release, Carrier shall be deemed in breach of this Agreement and Broker may at its sole discretion terminate this Agreement. Broker's remittance of payment in accordance with any Notice of Release shall be deemed payment to Carrier in all regards and shall absolve Broker of any liability with respect to payment to Carrier for the Services underlying such invoice. Should Carrier provide multiple or conflicting Notices of Release, Broker's compliance with instructions in any Notice of Release shall absolve Broker of any liability with respect to amounts owed to Carrier for the Services in question.

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6. **WAIVER OF CARRIER'S LIEN.** Carrier shall not withhold any goods transported under this Agreement for any reason including, without limitation, on account of any dispute as to rates or any alleged failure of Broker to pay charges incurred under this Agreement. Carrier is relying upon the general credit of Broker and hereby waives and releases all liens which Carrier might otherwise have to any goods of Broker or its Customer in the possession or control of Carrier. Carrier is liable for any amounts incurred by Broker to secure release or delivery of cargo, including, but not limited to, any amounts paid to warehouses or towing companies.

7. **FREIGHT LOSS, DAMAGE OR DELAY.**

(a) Carrier shall have the sole and exclusive care, custody and control of the cargo tendered hereunder from the time it is tendered for transportation until delivery to the consignee accompanied by the appropriate receipts. Carrier shall notify Broker immediately in the event any such cargo is lost (including stolen), damaged or destroyed, or in the event Carrier becomes aware that applicable delivery schedules will not be met.

(b) Carrier assumes the liability of a motor carrier under the Carmack Amendment as currently codified at 49 U.S.C. § 14706 for loss, delay, damage to or destruction of any and all goods or property tendered for transportation pursuant to this Agreement. Notwithstanding anything to the contrary herein, Carrier shall be liable for the full invoice value of the cargo lost, damaged, delayed, or destroyed, as well as any additional costs or fees imposed upon Broker by the cargo claimant or any amounts paid by Broker to its Customer related to any such loss, damage, delay or destruction, which may include amounts for consequential damages and diminished value.

(c) 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 its Customer, or allow Broker to deduct from the amount Broker owes Carrier, Customer's full actual loss for the kind and quantity of commodities so lost, delayed, damaged or destroyed. Payments by Carrier to Broker or its Customer, pursuant to the provisions of this section, shall be made within fifteen (15) days following receipt by Carrier of Broker's or Customer's claim and supporting documentation. Carrier shall fully assist Broker in investigating any claim for cargo loss, damage, delay, or destruction.

(d) 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.

(e) Neither denials of coverage nor exclusions from coverage with respect to Carrier's cargo insurance (or other insurance required to be maintained by Carrier or otherwise maintained by Carrier) shall in any way affect Carrier's obligations or liability pursuant to this Agreement, including (but not limited to) with respect to the amounts or types of damages owed by Carrier. Without limiting Carrier's contractual liability to Broker hereunder, Carrier acknowledges and agrees that Broker may, in its sole discretion, but is not required to, pursue claims for cargo loss and damage on behalf of its Customer, and in such instances is not required to obtain an assignment of claim from its Customer in order to pursue such a claim. Should Broker or its Customer incur costs to collect amounts owed by Carrier pursuant to this Agreement, in addition to any other amounts owed by Carrier hereunder, Carrier will be liable to reimburse any and all such costs including, but not limited to, reasonable attorneys' fees.

(f) In the event that Carrier's Equipment breaks down or other events occur which prevent Carrier from completing the safe and timely performance of the Services: (i) Carrier acknowledges and agrees that it has a duty to mitigate damages and that it shall use its best efforts to prevent the loss, delay, spoilation, or perishing of cargo; and (ii) Carrier shall follow all reasonable instructions of Broker in order to facilitate the completion of the Services including, but not limited to, re-powering trailers, transloading shipments, or releasing cargo pursuant to Broker's instructions. Without limiting the remedies available to Broker, Carrier acknowledges and agrees that a breach of this Section 7(f) may result in material irreparable injury to Broker for which there is no adequate remedy at law, that it will not be possible to precisely measure damages for such injuries and, that in the event of such a breach or threat of breach of Section 7(f) Broker shall be entitled, without the requirement to post bond or other security, to obtain a temporary restraining order and/or injunction or such other relief as may be required to specifically enforce any of the requirements in this Section 7(f).

8. **INSURANCE.** Throughout the Term, Carrier shall procure and maintain at its sole cost and expense the following insurance coverages:

(a) Commercial Automobile Liability Insurance ("AL") covering all vehicles and trailers used in connection with the Services (regardless of whether owned, leased, rented, non-owned, hired, or otherwise used), including hired auto coverage, insuring Carrier in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence. If requested by Broker with respect to a specific shipment, the AL policy must include specified pollution liability endorsements.

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(b) Commercial General Liability Insurance (“CGL”) covering bodily injury, property damage, and contractual liability with respect to this Agreement with no exclusion for transportation related services, in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence and \$2,000,000 General Aggregate, and a Products-Completed Operations General Aggregate Limit of not less than \$2,000,000 that is separate from, and not included within, the policy’s General Aggregate Limit.

(c) Motor Truck Cargo Legal Liability Insurance (“Cargo”) in an amount not less than \$100,000.00 (U.S. Dollars) per occurrence. If requested by Broker, the Cargo policy must list Broker as a loss payee. The coverage provided under the Cargo 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, refrigerator breakdown or lack of refrigerator fuel.

(d) Statutory Workers’ Compensation Insurance coverage in such amounts and in such form as required by applicable state law but in no event with limits less than: (i) 1,000,000 Bodily Injury by Accident – Each Accident; (ii) \$1,000,000 Bodily Injury by Disease – Policy Limit; and (iii) \$1,000,000 Bodily Injury by Disease – Each Employee.

(e) If requested by Broker, Trailer Interchange Insurance covering all non-owned trailers used for the Services, insuring Carrier in an amount of no less than \$80,000.

(f) If requested by Broker, Pollution Liability Insurance with limits not less than \$5,000,000 per occurrence.

With respect to each of the above listed insurance coverages, each insurance policy shall: (i) be written with insurance companies with an A.M. Best Rating of A- V or better; (ii) name Broker as an additional insured; (iii) contain a waiver of subrogation in favor of Broker; and (iv) be primary to, and shall not seek contribution from, any other insurance available to Broker (this requirement does not apply to Workers Compensation Insurance listed in item (d) above). Prior to performing Services, Carrier shall furnish to Broker written certificates obtained from each applicable insurance carrier properly evidencing that the insurance coverages required by this Agreement have been procured, are being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to Broker at least thirty (30) days prior to the cancellation or modification of any policy (unless cancellation is for non-payment of premium, in which case Broker shall be notified in writing by such insurance company at least ten (10) days prior to cancellation). Upon request of Broker or its designated insurance agent, Carrier shall provide Broker, Broker’s insurance agent, or Customer with complete copies of the insurance policies required by this Agreement (including all riders, amendments, and exclusions).

9. USE OF BROKER’S TRAILER(S) BY CARRIER. In the event that Carrier utilizes a trailer, container, chassis or other equipment owned by or leased to Broker, its Customer, Broker’s or Customer’s affiliates, or otherwise provided to Carrier by Broker or its Customer or any of their affiliates (“Trailer(s)”) for the performance of the Services contemplated hereunder, Carrier shall be liable for any damage to Trailers, destruction of Trailers, theft of or from Trailers, theft of any contents of Trailers, loss of Trailers and for any claims for bodily injury (including death) or property damage arising from or related to any accident involving Trailer(s) regardless of whether such damage, injury, destruction, or theft is caused or occurs while the Trailer is attached or unattached to any power unit operated by Carrier, except to the extent such damage, loss, destruction, or theft is directly and proximately caused by the negligence, recklessness, or willful misconduct of the party providing such Trailer to Carrier. The initial burden of proving such damage, injury, destruction, loss or theft was directly and proximately caused by the negligence, recklessness, or willful misconduct of such party in any proceeding brought pursuant to this Agreement shall rest on Carrier. In the event that applicable state law does not allow waiver of liability to the extent contained in this provision, the Parties expressly agree that the liability of the party providing the Trailer will be waived to the fullest extent allowed by applicable state law. In no event will any such Trailer be used for any purpose other than performing Services hereunder, and in no event will Carrier allow any third party or any power unit not operating under Carrier’s for-hire motor carrier authority to operate any such Trailer, unless expressly authorized to do so in writing which written notice must be specific to the movement at issue. CARRIER ACKNOWLEDGES AND AGREES THAT NEITHER BROKER NOR THE CUSTOMER MAKE ANY WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE TRAILER INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE.

10. INDEMNITY. Carrier shall defend, indemnify, and hold Broker, its Customer, the consignor and consignee, and each of their affiliated entities, and each of their respective owners, stockholders, members, managers, directors, officers, employees, and agents (collectively the “Indemnitee”) harmless from and against, and shall pay and reimburse, any and all direct or indirect loss, liability, damage, claim, demand, judgment, settlement, liability, assessment, fine, penalty, cost or expense, including reasonable attorneys’ fees, arising out of or in any way related to any of the following (collectively the “Claims”): (i) the Services; (ii) the performance of any duties or obligations of Carrier under this Agreement regardless of whether performed by Carrier, its employees, agents, or independent contractors working for Carrier; (iii) breach of this Agreement or violation of any Applicable Law, rule, or regulation by Carrier, its employees, agents, or independent contractors; (iv) any acts of omissions of Carrier, its employees, agents, or independent contractors; (v) any claim for employee related benefits made by or on behalf of any individuals providing any part of the Services or other obligations of Carrier; (vi) Carrier’s possession, use, maintenance, custody

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or operation of the Equipment; and/or (vii) any bodily injury, illness, death to persons or damage to property in connection with any of the foregoing; provided, however, that Carrier's indemnification and hold harmless obligations under this paragraph will not apply to the prorated extent that any Claim is caused by the negligence or willful misconduct of the Indemnitee. 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.

11. HANDLING, LOADING AND SEALING.

(a) Carrier will comply with handling instructions provided by the Customer, shipper, consignor or consignee (including such instructions that may be passed through to Carrier by Broker) including, but not limited to, compliance with requirements related to transportation of temperature-controlled shipments. Without in any way limiting the generality of the foregoing, Carrier shall ensure that any shipments requiring controlled temperature transit are maintained at all times within required temperature ranges.

(b) If goods are tendered to Carrier and a reasonable person would understand that the goods require controlled temperature transportation, and Carrier has not been provided instructions regarding controlled temperature goods, Carrier shall request and obtain such instructions prior to loading the goods. If Carrier receives contradictory or confusing instructions regarding any shipment, Carrier must resolve the contradictory or confusing instructions prior to accepting the shipment for transport.

(c) With respect to cargo requiring controlled temperature transportation, Carrier shall abide by the following: (i) Carrier shall perform regularly scheduled maintenance on any refrigeration unit used to transport cargo pursuant to this Agreement in accordance with manufacturer recommendations, and shall maintain records of such maintenance; (ii) Carrier shall ensure all refrigeration units are sufficiently fueled; (iii) Carrier is responsible to ensure pre-cooling of all transportation equipment prior to pick-up; (iv) Carrier shall ensure that all trailers are equipped with functioning temperature monitoring devices capable of demonstrating that required temperatures were maintained during the entire period of transit; and (v) Carrier will only use refrigeration equipment capable of producing a downloadable report demonstrating that required temperatures were maintained throughout the entire period of transit, which reports will be maintained for at least three (3) years after delivery and provided to Broker or its Customer upon request.

(d) Unless a shipment is loaded, secured, and sealed (each as applicable) prior to arrival of Carrier personnel, the manner of loading and securing freight upon Equipment shall be the sole responsibility of Carrier. With respect to unsealed or unsecured loads loaded prior to or upon Carrier's arrival, Carrier shall be obligated to inspect such loading prior to departing and properly secure such loads. Carrier represents that each driver utilized by it shall be competent to manage the loading, securing, and transportation of the goods subject to this Agreement.

(e) For sealed shipments, 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 is 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.

(f) In the event that law enforcement personnel require that Carrier break any seal on any shipment, Carrier shall document such fact on the bill of lading or other form of manifest or receipt by noting the law enforcement agency, time, location, and officer name and badge number. Upon completion of inspection by law enforcement personnel, Carrier personnel 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 or receipt. Furthermore, Carrier shall, as soon as reasonably possible after being required to break a seal by law enforcement personnel, communicate such fact to Broker and, if not Broker, the consignee of the shipment.

(g) Carrier agrees that food that has been transported or offered for transport under conditions that are not in compliance with the load handling instructions, as provided to Carrier, including loads delivered with a broken, missing or unreadable seal, may be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C § 342(i), and its implementing regulations. Carrier understands and agrees that adulterated shipments may be refused by the consignee or receiver, upon their delivery, at destination and Carrier shall bear sole risk of rejection of cargo arising from or related to broken, missing or unreadable seals or failure to comply with load handling instructions.

12. CONFIDENTIALITY AND NON-SOLICITATION.

(a) Carrier shall maintain records related to shipments transported under this Agreement, and with respect to shipments consisting of food shall also obtain records related to prior shipments transported in the same equipment, for a period of not less than three (3) years from the date of delivery. Carrier shall provide such records to Broker upon request, and regardless of

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whether this Agreement remains in effect at the time of such request. Carrier shall not disclose the terms of this Agreement to a third party without the written consent of Broker except as required by law or regulation. In addition, in no event will Carrier disclose any information regarding Broker's or its Customers' business or operations, (including Customer identities, locations, volumes, etc.), the rates for services agreed between Broker and Carrier, or the rates paid by Broker to Carrier with respect to services hereunder.

(b) While this Agreement is in effect and for eighteen (18) months following termination or expiration, Carrier will not accept freight, either directly or indirectly, from any shipper, consignor, consignee or customer of Broker where: (1) the availability of such freight first became known to Carrier as a result of Broker's efforts; or (2) the freight of the shipper, consignor, consignee or customer of Broker was first tendered to Carrier by Broker. If Carrier breaches this paragraph, Carrier shall be obligated to pay Broker commissions in the amount of eighteen percent (18%) of the transportation revenue resulting from freight transported in violation of this provision, and Carrier shall provide Broker with all documentation requested by Broker to verify such transportation revenue. Carrier shall not utilize Broker's or the Customer's name or identity in any advertising or promotional communications without written confirmation of Broker consent.

13. SUB-CONTRACT PROHIBITION. Carrier acknowledges and agrees that all freight tendered to it by Broker shall be transported on equipment operated only under the for-hire motor carrier authority of Carrier, and that Carrier shall not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of Broker. Regardless of whether consent is obtained, Carrier shall: (a) remain directly liable to Broker as if Carrier transported such freight under its own authority in accordance with this provision, (b) be liable for consequential and special damages arising from or related to Carrier offering cargo tendered by Broker to any third party, and (c) shall further hold harmless and indemnify Broker from any and all loss, liability, damage, claim, fine, cost or expense, including reasonable attorneys' fees, arising out of or in any way related to the use of any subcontractor regardless of whether arising from the conduct or omissions of Carrier, the subcontractor, or any other third party. If Carrier in any manner sub-contracts, brokers, or otherwise arranges for freight to be transported by a third party, in addition to any other rights and remedies available to Broker, Carrier waives and forfeits any and all right to payment for services subcontracted in violation of this provision and is liable to Broker for any and all costs and expenses arising from or related to such breach. In addition, 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.

14. BROKER'S RECORDS. Carrier hereby waives its right to obtain copies of Broker's records as provided for 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.

15. ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT. Carrier shall not assign this Agreement, nor any of its rights, duties, or obligations hereunder, in whole or in part, without the prior written consent of Broker. Any assignment in violation of this Agreement shall be void. This Agreement may not be amended or modified except by an instrument in writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto. In addition, Customers are express intended third-party beneficiaries of this Agreement.

16. SEVERABILITY. If any provision (including any word, sentence, or part of a sentence) of this Agreement is deemed invalid, determined to violate any law, rule, or regulation, or is otherwise found unenforceable by any applicable court of law: (i) such provision shall be deemed voided and replaced with a modified provision that is as close to the parties' original intent as legally permissible under applicable law; or (ii) only if such provision cannot be so modified and replaced, such provision shall be deemed severed from this Agreement without affecting any other provision of this Agreement, and the Agreement shall be enforced as if the modified or restricted provision was originally included or as if the excised provision was originally excluded.

17. SURVIVAL. Those provisions of this Agreement which, by their terms, extend beyond the termination of this Agreement, including without limitation the provisions of Section 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 25 will remain in full force and effect and survive such termination.

18. WAIVER. Carrier and Broker expressly waive any and all rights and remedies allowed under Part B of Subtitle IV to Title 49 of the U.S. Code as allowed by 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. No waiver will be deemed effective or binding unless executed in writing by the party making the waiver.

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19. **NOTICE.** With the exception of shipment specific communications (including, but not limited to, Rate Confirmation Sheets, shipment specific instructions and insurance requirements, status updates, bills of lading, proofs of delivery, and claims information), all of which may be exchanged via email, fax or other electronic means, all notices or other communications required or permitted by this Agreement shall be in writing and personally delivered, transmitted by email, sent by mail, postage prepaid, or sent by overnight courier to such Party at the address set forth below such Party's signature to this Agreement or to such other address as such Party may hereafter indicate by written notice to the other Party and shall be effective: (i) if personally delivered, upon receipt, (ii) if mailed, five business days after deposit in the U.S. mail, (iii) if sent by nationally recognized overnight courier (such as Federal Express or UPS), on the next business day after being deposited with said courier, and (iv) if by email, upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, return e-mail or other written acknowledgement).

20. **GOVERNING LAW.** This Agreement, as well as any claim or dispute arising from, related to, or in connection with this Agreement, or with respect to any aspect of the relationship between the Parties, will be governed by the laws of the state of Alabama, without regard to the choice-of-law rules of that or any other jurisdiction.

21. **VENUE.** ANY CLAIM, ACTION, PROCEEDING, OR DISPUTE ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT MUST BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS PHYSICALLY LOCATED IN JEFFERSON COUNTY, ALABAMA, EXCEPT THAT IF BROKER IS SUED BY A THIRD PARTY (OTHER THAN BY CARRIER OR ITS AGENTS) IN CONNECTION WITH ANY SERVICES PROVIDED BY CARRIER, BROKER MAY (BUT IS NOT OBLIGATED TO) INITIATE SUIT AGAINST CARRIER IN THE SAME JURISDICTION WHERE THE LAWSUIT AGAINST BROKER IS PENDING. EACH PARTY HEREBY CONSENTS TO THE AFOREMENTIONED JURISDICTION OF SUCH COURTS AND HEREBY IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH ACTION OR PROCEEDING, ANY CLAIM THAT SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF THE STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA, THAT SUCH ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF SUCH ACTION OR PROCEEDING IS IMPROPER OR THAT THE AGREEMENT MAY NOT BE ENFORCED IN OR BY SUCH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA.

22. **JURY TRIAL WAIVER.** THE PARTIES TO THIS AGREEMENT DESIRE TO AVOID THE ADDITIONAL TIME AND EXPENSE RELATED TO A JURY TRIAL OF ANY DISPUTES ARISING HEREUNDER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, PROCEEDING, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, IN TORT, OR OTHERWISE.

23. **CLASS AND COLLECTIVE ACTION WAIVER.** CARRIER HEREBY WAIVES ANY RIGHT TO INITIATE, JOIN (I.E., OPT IN TO), REMAIN IN (I.E., NOT OPT OUT OF), OR OTHERWISE PARTICIPATE IN ANY CLASS ACTION, COLLECTIVE ACTION, CONSOLIDATED ACTION, OR REPRESENTATIVE ACTION BROUGHT AGAINST BROKER.

24. **COUNTERPARTS.** This Agreement may be executed in separate counterparts, each of which shall be an original, but which together shall constitute one and the same instrument, and that electronic or scanned and emailed signatures on this Agreement shall be effective as if they were originals.

25. **COMPLETE AGREEMENT.** This Agreement supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by Carrier. This Agreement constitutes the entire agreement between the Parties and fully replaces and supersedes all prior and contemporaneous agreements, representations, and understandings, oral and written, pertaining to the subject matter contained herein.

[Signature Page Follows.]

Initial _____

BROKER:

Montgomery Logistics DE, LLC

By: _____

Name: _____

Its: _____

Address: _____

Email: _____

Phone: _____

MC # : MC-964005-B _____

CARRIER:

By: _____

Name: _____

Its: _____

Address: _____

Email: _____

Phone: _____

MC #: _____

Payment Policy

Standard Terms:

Payment is released within 30 days from when the invoice and all required paperwork have been received.

Required paperwork:

- Clear, legible, signed Proof of Delivery ***Must include ALL pages***
- **Signed** rate confirmation
- Carrier invoice

Montgomery Logistics has implemented TRANSFLO \$Velocity and uses it as our preferred method to receive invoices. Please see the attached page for instructions to download and invoice or email invoices to invoices@montgomerylogistics.com.

Please select your preferred payment method from list below. **Note once selected payment method is permanent.**

Standard pay terms within 30 days of invoice

Quick Pay is only available to eligible carriers **AFTER** carrier has invoiced 5 loads and paid on our Standard Pay terms (30 days). After 5 loads have been invoiced, Payment in 2 business days for a 4% charge via ACH Deposit; E-mail paperwork with invoice to quickpay@montgomerylogistics.com

Are you currently under contract with a factoring company? Yes No

If so, please provide the factoring company name, address and contact information.

The Quick Pay time starts when we receive all proper required paperwork. **It does not start at the delivery date.**

Print Name

Date

Signature

Montgomery Logistics

Carrier/Broker Direct Deposit Payment Terms

AUTHORIZATION AGREEMENT FOR AUTOMATIC DIRECT DEPOSITS

I hereby authorize Montgomery Logistics to initiate credit entries and to initiate, if necessary, debit entries and adjustments for any credit entries in error to my account indicated below and the depository name below to credit and/or debit the same to such account.

Bank Name: _____

City, State: _____

Bank Telephone Number: _____

Please select the account type: _____ Checking _____ Savings

Bank Transit/ ABA#: _____

Account #: _____

Name on Account: _____

Tax Payer Identification Number: _____

****Please attached a company check marked VOID****

If you would like notification of deposit via fax or email, please provide fax number or email address below:

Company: _____

MC Number: _____

Authorized Signature: _____

Title: _____

Date: _____



TRANSFLO Express, TRANSFLO \$Velocity® and TRANSFLO Mobile+ Common Carrier Questions



1. Why should I use these?

These are our preferred delivery methods so you can GET PAID FASTER.

2. I fax and/or email today, can I still do this?

TRANSFLO \$Velocity, TRANSFLO Mobile+ and TRANSFLO Express are the preferred delivery methods. With these processes, you are provided a confirmation number giving you the ability to see what you sent, when it was sent and when it was DELIVERED to us. No follow up calls needed to inquire if the documents were received, no lost paperwork.

3. What is the cost to me?

The service is free.

4. What do I need to scan at the Truck Stop with TRANSFLO Express?

You must use our Cover Sheet with the appropriate barcode on it to send in the documents.

5. Where can I get the TRANSFLO \$Velocity or TRANSFLO Mobile+ Software?

You can go to your smart phone store or to www.transflovelocity.com and download it for free.

6. Once I download the software, what do I need to do?

- Once the software is installed, it will open to the Registration Information screen where you need to fill out the registration information fully.
- Enter the Broker/Recipient ID **MGYLV**
- You will receive a Registration Email after submission.

7. Can I send paperwork and invoices for multiple loads all at once?

No, you should send only the loads associated with the specific invoice/load being sent.

8. How do I know that you received the paperwork?

A confirmation email will arrive confirming delivery of the documents or you will receive a receipt at the truck stop. You may also use the unique confirmation number to access the documents online for 14 days at www.transfloexpress.com.

9. How can I get additional help with the TRANSFLO \$Velocity product?

Please call Customer Support at **866.503.5707**, or email them at tfvsupport@transflo.com. Hours of operation are 830-530E, Monday through Friday.

10. If I want to continue to mail, can I?

We strongly encourage you to use one of the TRANSFLO methods for submission so you get paid faster. If you must mail, please send to our new PO Box of:

Montgomery Logistics
PO Box 9349
Louisville, KY 40209



CARRIER PROFILE

Company: _____

MC#: _____ DOT# _____ Federal Tax #: _____

Physical Address

City _____ State _____ Zip _____

Dispatch Contact _____ Email _____

A/R or Billing Contact _____ Email _____

Owner/President _____

Local Phone _____ Fax _____

Toll Free _____ After Hours _____

Remit to Address Company: _____

Address: _____

City _____ State _____ Zip _____

of Company Drivers _____ # of Owner-Operators _____ # of Tractors _____

of units currently on e-logs? _____

TRAILER TYPES (please list quantity)

48' Dry Van _____	48' Flatbed _____	RGN _____	Bulk-Wet _____
53' Dry Van _____	53' Flatbed _____	Multi Axle _____	Bulk- Dry _____
57' Dry Van _____	Step Deck _____	Conestoga _____	Curtain Side _____
48' Reefer _____	Double Drop _____	Landoll _____	Straight Trk _____
53' Reefer _____	Stretch Trailer _____	Hot Shot _____	

Please Check all service your company provides:

Haz-Mat Certified _____	Power Only _____	Smart Way Carrier _____
Partial shipments _____	Blanket Wrap _____	
Over-dimensional _____	TWIC cards _____	
Team Service _____	Coil Certified _____	
Satelite tracking _____	Warehousing _____	

Where do you need additional freight?

Example: Z2 to Southeast, Z4 to Z9, Chicago to Z3

_____ to _____

_____ to _____

_____ to _____

_____ to _____

Please provide 3 references:

Would you like to receive a daily copy of our available load list?

YES - By fax By E-mail





U.S. Department of Transportation
Federal Motor Carrier Safety Administration

1200 New Jersey Ave., S.E.
Washington, DC 20590

SERVICE DATE

April 29, 2016

LICENSE

MC-964005-B

U.S. DOT No. 2873821
MONTGOMERY LOGISTICS, INC
BIRMINGHAM, AL

This License is evidence of the applicant's authority to engage in operations, in interstate or foreign commerce, as a **broker, arranging for transportation of freight (except household goods)** by motor vehicle.

This authority will be effective as long as the broker maintains insurance coverage for the protection of the public (49 CFR 387) and the designation of agents upon whom process may be served (49 CFR 366). The applicant shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

A handwritten signature in black ink, appearing to read "Jeffrey L. Secrist".

Jeffrey L. Secrist, Chief
Information Technology Operations Division

BPO