



BROKERAGE AGREEMENT

This Agreement is made as of _____, by and between _____ ("CARRIER") with an address at _____ and Sunco Logistics, a division of Sunco Carriers, Inc., a Florida Corporation, whose address is 1025 N. Chestnut Road, Lakeland, FL 33805 (hereafter "BROKER").

RECITALS

WHEREAS, BROKER is a duly licensed motor carrier broker engaged in the motor carrier brokerage business under license as evidenced in Federal Motor Carrier Safety Docket No. MC-293923-B; and

WHEREAS, CARRIER is a duly licensed motor carrier, engaged in the business of common and contract motor carrier services in interstate, intrastate and/or inter-provincial commerce;

NOW, THEREFORE, in consideration the mutual covenants and promises set forth below, BROKER and CARRIER agree as follows:

AGREEMENT

1. SHIPMENTS

During the term of this Agreement, BROKER agrees to offer CARRIER for transportation certain shipments of goods for transportation by CARRIER, and BROKER shall pay CARRIER for such transportation, all in accordance with the terms and conditions set forth in the attached Appendix "A", which Appendix is incorporated herein by this reference. CARRIER agrees to transport shipments tendered by BROKER in equipment operating under CARRIER's applicable motor carrier operating authority and pursuant to BROKER's and/or its customers' specific requirements and/or as communicated at the time of tender of such shipments. 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. This Agreement does not grant CARRIER an exclusive right to perform the transportation related services for BROKER or its Customer.

2. INDEMNITY AND LIABILITY

(a) CARRIER shall defend, indemnify and hold harmless BROKER, its subsidiary and parent corporations, and all of their respective past, present and future officers, directors and employees, and the Customer, from any and all claims, demands, actions or suits and any and all losses, damages, liabilities, penalties, fines, interest, awards, benefits and expenses (including, without, limitation all expenses and costs of litigation or alternative dispute resolution, attorneys' and paralegals' fees and expert witnesses' fees), arising out of any or in any way connected with the performance or non-performance of transportation and related services under this Agreement by CARRIER, its employees and/or contractors including, without limitation, any negligent or intentional acts or omissions of CARRIER, its employees and/or contractors and any breach of this Agreement by CARRIER. Further, and notwithstanding any other provisions of this Agreement to the contrary, CARRIER shall be liable to BROKER as a bailee for hire at common law for the full extent of any and all losses and/or damages of any kind or nature whatsoever to the lading tendered by BROKER for transportation and accepted by CARRIER, and to BROKER and all parties identified on specific bills of lading for any and all losses, damages or delays to shipments. BROKER may set off any claimed amounts hereunder from any freight charges due and owing to CARRIER.

(b) CARRIER will supply trailers of the type needed for the shipment of goods which are clean, dry and free of any contaminants and contaminating odors. CARRIER shall be liable for, and shall defend, indemnify and hold BROKER harmless against, any loss, damage or claim incurred by BROKER and/or its customer arising out of the use of unclean or contaminated trailers or other equipment. CARRIER shall remain liable for the foregoing, and for any damages incurred by BROKER or its customers caused by CARRIER'S failure to comply with this provision..

(c) CARRIER shall have the sole custody and control of cargo tendered pursuant to this Agreement from the time the property is delivered to the CARRIER until delivery of the property by CARRIER as evidenced by properly executed receipts, bills of lading, or other shipment documentation. CARRIER shall be liable for loss, damage, or delay to product pursuant to the Carmack Amendment as currently codified at 49 U.S.C. § 14706 for the full value of any cargo tendered to CARRIER pursuant to this Agreement to BROKER, its Customer and all parties identified on specific bills of lading for any and all losses, damages or delays to shipments. BROKER may set off any claimed amounts hereunder from any freight charges due and owing to CARRIER. In no event shall any limitation of liability apply to CARRIER's liability under this provision and any provision in any bill of lading, tariff, or rate confirmation sheet to the contrary shall be null, void, and superseded by the provisions of this Agreement.

3. CARRIER AS INDEPENDENT CONTRACTOR

CARRIER is, and shall remain at all times in the performance of this Agreement, an independent contractor, and CARRIER shall not,



under any circumstances, be or be deemed to be an employee, agent, partner or joint venturer of BROKER. CARRIER shall at all times have exclusive control and direction of all persons operating its motor vehicles and equipment or otherwise engaged by CARRIER in providing transportation services hereunder, as well as the methods and means of performance of all services contemplated or actually performed by CARRIER hereunder. CARRIER shall pay and shall be solely responsible for payment of any and all premiums, contributions, payroll taxes, and other taxes now or hereafter required by any federal, state, or local laws or regulations as to all persons engaged in the performance of the services rendered hereunder and agrees to comply with all applicable federal, state, and local laws and regulations relating to social security, Medicare, unemployment compensation or other similar laws.

4. **BACK SOLICITATION PROHIBITED AND CONFIDENTIALITY**

During the initial term of this Agreement, during any renewals hereof and for a period of twenty-four (24) months following the termination of this Agreement, CARRIER shall not solicit traffic or perform transportation services for or on behalf of any shipper, consignee, consignee, or customer of BROKER where (a) the availability of such traffic first became known to CARRIER through BROKER, or (b) the specific traffic was first tendered to the CARRIER by BROKER. In the event CARRIER breaches this Section, BROKER shall be entitled to recover as liquidated damages 15% of all revenue earned by CARRIER for all traffic solicited and obtained and/or transportation services performed in violation of this Section during the twenty-four (24) month period commencing from the date the involved traffic first begins to move together with any and all expenses incurred by BROKER, including without limitation attorney fees, in enforcing this provision. This Section shall survive the termination of this Agreement. 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 is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential.

5. **REQUIRED INSURANCE**

CARRIER shall procure and maintain in force and effect, continuously throughout the initial term of this Agreement and all renewals hereof, the following types of insurance and limits of coverages which shall apply to CARRIER's transportation services hereunder whether rendered in the United States or in Canada:

- (a) Trucker Auto Liability, with policy limits of not less than \$1,000,000.00 (U.S. Dollars) combined single limits for each accident for personal injuries and for property damage. Further, all Trucker Auto Liability insurance coverage furnished pursuant to this clause shall be endorsed by the issuing insurance carrier to provide pollution liability, broadened coverage, in a form acceptable to BROKER. BROKER shall be named as an additional insured under CARRIER's Trucker Auto Liability Policy.
- (b) Commercial General Liability, including Contractual Liability, with policy limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 (U.S. Dollars) aggregate. BROKER shall be named as an additional insured under CARRIER's Commercial General Liability Policy;
- (c) Workers' Compensation, (including "other states" endorsements for interstate drivers), to the extent required or permitted by the law of any jurisdiction in which CARRIER operates;
- (d) Employer's Liability insurance, with a policy limit of not less than \$1,000,000.00 (U.S. Dollars) per occurrence.
- (e) Motor Truck Cargo "All Risk" Liability coverage, with a policy limit of not less than \$100,000.00 (U.S. Dollars) per trailer. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims. If CARRIER is self-insured, CARRIER agrees to be liable to BROKER for total amount of any claim filed in regards to cargo damage or loss, as set forth in Paragraph 2(a). BROKER shall be named as a Loss Payee under such Cargo Liability policy. If CARRIER's Motor Truck Cargo Liability policy excludes coverage for employee or contractor theft, CARRIER shall also procure and maintain for the benefit of BROKER a Fidelity Bond with coverage in the amount not less than \$100,000.00 (U.S. Dollars) per occurrence.

All insurance policies required by this Agreement shall, as applicable, be primary and waive subrogation and contribution against BROKER. CARRIER shall provide BROKER, at the time of execution of this Agreement, with Insurance Certificates for all policies or coverages described above, each of which Certificates shall name BROKER as Certificate Holder and expressly assure that BROKER shall be provided with 30-day's notice from the insurance carrier issuing such Certificate(s) of any material change or cancellation of policies or coverages. Upon written request, CARRIER shall provide BROKER or Customer with copies of insurance policies. No exclusion from insurance coverage, limit of coverage, or other bar to recovery or applicability of any insurance required by this Agreement shall limit or otherwise affect Carrier's liability as set forth by this Agreement or as imposed by governing law.

6. **TAXES**

CARRIER shall have sole and full responsibility for payment of all federal, state, and local tax assessments or any other taxes or assessments arising out of the transportation provided pursuant to this Agreement.

7. **COMPLIANCE WITH STATUTES & CARRIER WARRANTIES**

CARRIER and BROKER shall at all times comply with all applicable federal, state, and local laws and/or regulations governing their



respective obligations hereunder and of carriers and shippers, generally. CARRIER may refuse any shipment offered by BROKER that CARRIER believes it cannot carry safely or within compliance of applicable laws and/or regulations. CARRIER further represents and warrants that it does not have an unsatisfactory safety rating issued from the U.S. Department of Transportation. CARRIER represents and warrants that all drivers used to transport hazardous material shipments have undergone the necessary training requirements of state and federal laws, including, but not limited to, the training requirements under 49 C.F.R. § 172.700 et. seq.. CARRIER further warrants and certifies that all drivers used to transport hazardous material have the proper endorsements on their Commercial Driver's License to legally transport such shipments. CARRIER further agrees to comply with all federal, state and local laws regarding the transportation of hazardous material, including, but not limited to, the requirements specified under 49 C.F.R. Part 397.

8. **FORCE MAJEURE.**

If the performance of this Agreement or of any obligations hereunder, is interfered with by reason of any circumstances beyond the reasonable control of the party whose performance is affected, including without limitation, by fire, explosion, power failure, acts of God, war, revolution, by civil commotion or acts of public enemies, by any law, order, regulation ordinance, or requirements of any government or legal body or any representative of any such government or legal body, by labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts, by failure or reduction of shipper's supply of commodities, or by other circumstances beyond the control of the Parties and to the extent that the same prevent or delay the performance of the obligations herein contained, then the Party so affected shall be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligation on a day-to-day basis to the extent such Party's obligations relate to the performance so interfered with), provided that the Party so affected shall use reasonable efforts to remove such cause of non-performance.

9. **BILL OF LADING.**

Each shipment hereunder shall be evidenced by a Uniform (Standard) Bill of Lading naming CARRIER as the transporting carrier. 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. Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contract shall be subject and subordinate to the terms, conditions and provisions of this Agreement. CARRIER shall notify BROKER immediately of any exception made on the bill of lading or delivery receipt. The fact that BROKER is named as a "carrier" upon any applicable bill of lading shall not affect its status as a property broker.

10. **SUBCONTRACT PROHIBITIONS**

CARRIER specifically agrees that all freight tendered to it by BROKER shall be transported on equipment operated only under the 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.

11. **WAIVER OF CARRIER'S LIEN.**

CARRIER shall not withhold any goods of the Customer 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.

12. **PAYMENTS.**

CARRIER will charge and BROKER will pay for transportation services performed under this Agreement the rates and charges as shown on Appendix A or on separate Rate Confirmation Sheets to be signed and agreed to by CARRIER and BROKER before each shipment made under this Agreement. CARRIER represents and warrants that there are no other applicable rates or charges except those established in this Agreement or in any Rate Confirmation Sheet signed by BROKER. 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 service has been provided at the agreed upon charge. In the event service is provided and it is subsequently discovered that there was no applicable rate in the existing Schedule of Rates or supplements, the parties agree that the rate paid by BROKER and collected by CARRIER shall be the agreed upon contract rate. CARRIER agrees that BROKER has the exclusive right to handle all billing of freight charges to the Customer for the transportation services provided herein, and, as such, CARRIER agrees to refrain from all collection efforts against the shipper, receiver, consignor, consignee or the Customer.

13. **ARBITRATION**

Any and all disputes arising under this Agreement, including whether any dispute is arbitrable, shall be resolved through binding arbitration through services of and pursuant to rules of the American Arbitration Association. The exclusive venue for the conduct of all arbitration proceedings shall be Knoxville, Tennessee. In any arbitration proceeding hereunder, the prevailing party shall be entitled to recover, in addition to any other relief awarded by the arbitrator(s) his, her or its reasonable attorneys' and paralegals' fees and all reasonable costs and expenses of such proceedings; moreover, the arbitrator(s) are hereby expressly authorized to determine the amount of and to tax such fees and expenses as part of any arbitration award. Any arbitration award rendered pursuant to this clause may be domesticated as a judgment against the non-prevailing party and enforced by any court of competent jurisdiction. This Section



shall survive the termination of this Agreement.

14. **TERM AND TERMINATION**

The term of this Agreement shall be one (1) year from the effective date shown above. This Agreement shall automatically renew on a month-to-month basis thereafter. Either party may terminate this Agreement and any renewal periods at any time by giving the other party at least thirty (30) days' written notice of such termination.

15. **NOTICES**

All notices required or permitted hereunder shall be in writing, sent by U.S. Certified Mail, and deemed to have been given when so sent, addressed as follows:

To Carrier:

To Broker:

Sunco Logistics, a division of Sunco Carriers, Inc.
1025 N. Chestnut Road
Lakeland, FL 33805

Attention: _____

Attention: _____

16. **SEVERABILITY**

If any portion of this Agreement is found unenforceable for any reason, such portion shall be severable, and the remaining provisions of this Agreement shall thereafter continue in full force and effect.

17. **MODIFICATION; ENTIRE AGREEMENT; GOVERNING LAW.**

This Agreement, together with any and all schedules, addenda and/or exhibits hereto, constitutes the parties full understanding and complete and exclusive agreement of the Parties. No amendments or modifications of this Agreement shall be enforceable unless set forth in a writing signed by the Parties and made a part hereof. This Agreement shall be construed, performed, and enforced exclusively under the laws of the State of Tennessee without regard to the State's choice of law or conflicts of laws rules. 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. BROKER shall be considered a shipper for purposes of effecting such waiver, and solely for that purpose. Failure of BROKER to insist upon CARRIER's performance under this Agreement or to exercise any right or privilege, shall not be a waiver of any BROKER's rights or privileges herein.

In witness whereof, the parties hereto have executed this Agreement effective as of the date shown above.

BROKER

Sunco Logistics

By: _____

Title: _____

CARRIER

By: _____

Title: _____

