



RPM FREIGHT SYSTEMS, LLC
STANDARD TERMS AND CONDITIONS
For Broker-Shipper Relationship

RPM FREIGHT SYSTEMS, LLC, a Michigan limited liability company, holds authority from the U.S. Federal Motor Carrier Safety Administration (“FMCSA”), as a property transportation broker under FMCSA License Number MC _____ and is hereafter referred to as “Broker.”

Broker’s services for its customers (“Shipper(s)”) include, but are not limited to, arranging/brokering full truckload (“FTL”), less than truckload (“LTL”), and intermodal (via a combination of motor carrier and rail) transportation.

Broker and Shipper (also sometimes referred to individually as a “Party”, and collectively as the “Parties”) agree that their relationship with respect to shipments tendered by Shipper to Broker shall be governed by the following terms and conditions (“Agreement”):

Tender of Shipments. Shipper agrees to tender or cause to be tendered by Shipper on its own behalf or as agent for and on behalf of Shipper’s customer(s), one or more shipments to Broker for the purpose of having Broker arrange the transportation of the shipments by motor carriers to be selected by Broker. Shipper and Broker agree that this Agreement does not restrict Shipper from tendering shipments to other property transportation brokers or directly to motor carriers.

Brokerage Services. For all shipments tendered by Shipper to Broker and accepted by Broker, Broker agrees to arrange for the pick-up, transport and delivery of the shipments, as Shipper may reasonably request, exclusively by motor carriers that hold the proper governmental authority to perform the requested service(s). In arranging transportation services for Shipper, Broker shall not be responsible for packaging, handling or loading of shipments, which, instead, shall be the responsibility of Shipper and/or the underlying motor carrier selected by Broker to transport the shipments. Every shipment handled by Broker for or on behalf of Shipper while this Agreement is in effect will be deemed tendered to Broker under this Agreement. Broker has the sole right to select the motor carriers used to perform the transportation services, and Broker is solely authorized to make the necessary transportation arrangements with regard to each shipment tendered by Shipper to Broker. In performing brokerage services for Shipper, Broker shall only select motor carriers that meet the following criteria:

FMCSA Authority. Motor carriers selected by Broker shall have and maintain the proper and necessary authority from the FMCSA and any applicable state agency to perform transportation services in intrastate, interstate and/or foreign commerce.

Safety. Broker shall only select a motor carrier to transport a shipment if: (A) (i) at the time the shipment is to be transported the motor carrier has a safety rating or determination from the U.S. Department of Transportation (“U.S. DOT”)/FMCSA that is either “Satisfactory,” “Unrated,” “None,” “Continue To Operate” or similar safety rating issued by the FMCSA, or (ii) the motor carrier has an FMCSA safety rating or fitness determination of “Conditional” or the equivalent,

but has furnished evidence satisfactory to Broker regarding corrective action taken by the carrier to fully correct the safety deficiency(ies) which resulted in the carrier receiving such rating, and (B) the motor carrier has agreed to perform transportation of the shipment in full compliance with all applicable safety laws and requirements.

Insurance. Motor carriers selected by Broker shall maintain insurance of the kind and in the amounts as required in Section 13 of this Agreement.

Cargo Loss or Damage. Broker shall require that motor carriers selected by Broker agree to be liable to Shipper for damages, including cargo loss or damage, as provided in Section 12 of this Agreement.

Shipment Schedules. Motor carriers selected by Broker shall be required to perform timely and reliable pick-up and delivery of all shipments in accordance with reasonable schedules communicated in writing by Shipper to Broker and/or Broker's arranged motor carriers providing the actual, physical transportation of such shipments.

Performance of Services. Broker will arrange the dispatch and transport of each shipment tendered to it by Shipper. Broker will provide Shipper with prompt notification by telephone or electronic communication when this obligation cannot be met for any reason. Broker will communicate any delivery schedule requested by Shipper to each motor carrier that it engages to transport any particular shipment of Shipper. Broker will require that its selected motor carriers perform the actual physical transportation of the shipment, and agree not to "double broker" such transportation to another motor carrier.

Hazardous Materials. Shipper and Broker shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 C.F.R. Parts 171 *et seq.* to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform Broker immediately if any shipments constitute hazardous materials. Shipper shall defend, indemnify and hold Broker harmless from any penalties or liability of any kind, including reasonable attorneys' fees, arising out of Shipper's failure to comply with the requirements set forth in this Section.

Independent Contractor. Broker's relationship to Shipper is that of an independent contractor, not an agent or employee, and nothing in this Agreement shall be construed as establishing an employment relationship, partnership or joint venture between the Parties. Broker shall make arrangements that it deems appropriate for the transportation of shipments tendered to it by Shipper under this Agreement. Neither Party shall be liable for any obligation incurred by the other, except as expressly set forth in this Agreement.

Compliance with Law. Shipper shall comply with any and all federal, state and local laws or regulations applicable to its tendering of shipments for transportation pursuant to the terms of this Agreement and to its performance obligations hereunder.

Indemnification.

Shipper shall be responsible for any wrongful or negligent acts, omissions and/or violations committed by Shipper, its employees and/or agents, and shall defend, indemnify and hold Broker

harmless from and against any and all taxes, penalties, fines, damages, sanctions, losses, assessments, liabilities, claims, costs and other expenses (including reasonable attorneys' fees) (collectively, "Losses") resulting from or relating thereto; provided, however, that Shipper shall not be responsible to the extent any such Losses are caused by any wrongful or negligent acts, omissions or violations by Broker, its employees and/or its agents.

Broker shall be responsible for any wrongful or negligent acts, omissions and/or violations by Broker, its employees and/or agents, and shall defend, indemnify and hold Shipper harmless from and against any and all Losses resulting from or relating thereto; provided, however, that Broker shall not be responsible to the extent any such Losses are caused by any wrongful or negligent acts, omissions or violations by Shipper, its employees and/or its agents.

Compensation to Broker. Compensation for Broker's services shall be paid by Shipper to Broker for all shipments tendered by Shipper to Broker in accordance with rates and/or charges agreed to by Broker and Shipper through written agreement, email correspondence, facsimile transmission, text message, other electronic transmission or verbal communication.

Payment Terms. Shipper shall pay Broker the agreed compensation for each shipment tendered pursuant to this Agreement within thirty (30) days from receipt by Shipper of Broker's invoice and a copy of the delivery receipt for the shipment signed by or on behalf of the consignee and showing satisfactory delivery of the shipment. Any amounts due by Shipper to Broker which are unpaid on or after thirty (30) days of Broker's invoice will bear interest at the rate of 1.5% per month, or the maximum rate permitted by law, whichever is less. The accrual or payment of any interest as provided above will not constitute a waiver by Broker of any rights and remedies in connection with a default by Shipper. Shipper will pay all court costs, attorneys' fees and other costs incurred by Broker in collecting past due amounts, including interest.

Bill of Lading and Receipt. Broker shall require each motor carrier it selects to transport a shipment tendered by Shipper to Broker: (i) to issue a bill of lading at origin evidencing receipt of the shipment tendered to the motor carrier, and (ii) to obtain a receipt for delivery of the shipment from the consignee or other party accepting delivery.

Payment to Motor Carriers. Broker shall be solely and exclusively liable and responsible for the payment of rates and charges to motor carriers engaged by Broker that relate to the transportation of shipments tendered by Shipper to Broker pursuant to this Agreement. Shipper's sole obligation with regard to the payment of transportation charges for services provided under or in relation to this Agreement is to pay Broker as required by Section 8 and Section 9 of this Agreement.

Cargo Liability.

Liability Limits. The motor carrier arranged by Broker shall have liability for cargo loss or damage. Except as otherwise provided in this Section 12, recovery (as opposed to liability) for cargo loss or damage may be limited to a maximum of one hundred thousand dollars (\$100,000) per shipment or per consolidated shipments – unless insurance coverage for increased cargo value has been requested by Shipper, and Broker has advised Shipper in writing prior to tender of the shipment(s) that it has arranged higher cargo loss or damage coverage. To the extent that multiple shipments or consolidated shipments are tendered by Shipper and, at the specific written request of

Shipper, are transported at the same time and in the same vehicle, such multiple shipments or consolidated shipments shall be considered a “single shipment” for the purposes of this Section.

Liability of Motor Carrier.

The motor carrier arranged by Broker to transport Shipper’s property shall be liable as a motor carrier under 49 U.S.C. § 14706 and as a motor carrier under common law to Shipper with respect to damages for loss of or damage to any shipment tendered by Shipper pursuant to this Agreement.

The motor carrier arranged by Broker shall not be liable for any loss or damage caused by any act of God, the public enemy, authority of law, the act or omission of Shipper, or due to the inherent vice of the goods shipped.

Processing of Cargo Loss or Damage Claims. In processing of cargo loss or damage claims, the motor carrier selected by Broker shall comply with 49 C.F.R. § 370.1, *et seq.* and any amendments and/or any other applicable regulations adopted by the U.S. DOT/FMCSA, or any applicable state regulatory agency.

Insurance. Broker shall require all motor carriers to have and maintain public liability and property damage insurance in the amount of one million dollars (\$1,000,000) and cargo loss or damage insurance in the amount of one hundred thousand dollars (\$100,000) per shipment. Broker agrees to maintain a complete and up to date file of all Certificates of Insurance evidencing public liability and property damage insurance policies, and cargo loss or damage insurance policies of all motor carriers that it contracts with regarding transportation arranged for or on behalf of Shipper.

Exclusion of Certain Damages. Neither Party shall be liable for, and each Party hereby waives any right to, any special, indirect, incidental, consequential or punitive damages, including lost profits, lost fees, lost business, loss of use, costs associated with business interruptions or like damages (the “**Excluded Damages**”), whether based upon contract, tort or any other legal theory, resulting from or in any way connected with the performance by either Party of their respective covenants and agreements pursuant to this Agreement. Neither Party shall be liable to the other for the Excluded Damages, whether foreseeable or not, and even if such Party has been advised or otherwise has knowledge of the possibility of the Excluded Damages.

Notice. Any notice and other communication relating to this Agreement shall be in writing and be sent: (a) by certified mail, return receipt requested, postage prepaid, (b) by nationally recognized overnight courier service to the addresses stated above, (c) by fax, with proof of receipt by the intended recipient, (d) by email with proof of receipt by the intended recipient, or (e) in such other manner or to such other address as shall have been designated by the Party to which such notice or other communication is to be given. All such notices and other communications will be deemed to have been given and received (1) in the case of personal delivery, on the date of such delivery, (2) in the case of facsimile or e-mail transmission on the date of transmission if sent on a business day (or if sent on other than a business day, on the next business day after the date sent), (3) in the case of delivery by nationally recognized overnight courier service, on the business day following dispatch if sent by guaranteed next day delivery, or (4) in the case of mailing, on the third business day following such mailing.

Force Majeure. If either Party is prevented from performing its obligations under this Agreement due to causes beyond its reasonable control, including, without limitation, acts of God, acts or omissions of the other Party, acts of civil or military authority, fires, strikes, floods, epidemics, pandemics, quarantine restrictions, war, riots, acts of terrorism, or delays in transportation or transportation embargoes (each, a “**Force Majeure Event**”), such Party shall immediately provide notice of such Force Majeure Event to the other Party, and shall be excused from the performance of any and all of its obligations under this Agreement for the duration of the Force Majeure Event. No liability for any loss, damage or delay with respect to freight shipped or transported shall accrue on account of the occurrence of any such Force Majeure Event absent the actual negligence of Broker.

Non-Disclosure of Information.

Broker and Shipper agree to keep confidential any information provided by the other Party relating to such Party’s operations or business activities, including, but not limited to: (i) the names of motor carriers, customers, suppliers and vendors, and (ii) freight rates and charges (collectively “**Confidential Information**”). For purposes hereof, Confidential Information shall also include the terms and conditions of this Agreement and any amendments or attachments hereto. Each Party

agrees to hold all such Confidential Information in confidence and shall not use any such Confidential Information other than for the benefit of the other Party or in performance of its obligations under this Agreement.

The restriction against disclosure of Confidential Information as specified in this Section 17 shall not apply to information which (i) was already known prior to the time it was imparted to the receiving Party by the other Party, (ii) is available or becomes generally available to the public other than through a breach of this Agreement by the receiving Party, (iii) is acquired or received by the receiving Party rightfully and without confidential limitation from a third party, or (iv) is independently developed by the receiving Party without breach of this Agreement. If either Party becomes legally required to disclose Confidential Information, or any part thereof, that Party will give the other prompt notice of such requirement. If the non-disclosing Party waives compliance with any of the terms of this Agreement or is unable to obtain a protective order or other appropriate remedy with respect to such disclosure of Confidential Information, then the disclosing Party shall disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan except and only to the extent that any mandatory federal law is applicable to this Agreement.

Assignment. Neither Party shall assign this Agreement or any interest in this Agreement, without the prior written consent of the other Party, except if notice is provided and the assignment is to a parent, subsidiary or affiliated entity of the assigning Party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon, the successors and assigns of the Parties.

Entire Agreement. Neither Party has rights, warranties or conditions expressed or implied, statutory or otherwise, other than those contained in this Agreement. This Agreement contains the entire agreement between Broker and Shipper and may only be modified or rescinded by a writing signed by both Parties. Any document submitted by Shipper to Broker confirming its intention to tender a shipment to Broker will be deemed to constitute a confirmation and acceptance of this Agreement, even if such document states terms in addition to or different from those in this Agreement. All agreements between Broker and Shipper will be solely under the terms and conditions of this Agreement, and Broker objects to any and all such additional or different terms contained in any document submitted to Broker by Shipper. Any execution by Broker of any other document submitted by Shipper in connection with the tender of any shipment does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in this Agreement, but will constitute only acknowledgment of receipt of such document.

Waiver. No waiver of any provision of this Agreement will be binding unless in writing signed by an authorized representative of the Party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either Party to insist upon strict performance of this Agreement will not be construed as a waiver of any term or condition of the Agreement.

Severability. If any provision of this Agreement is or becomes invalid or unenforceable, that provision (to the extent invalid or unenforceable) shall be deemed amended or reformed to the extent required to render it valid and enforceable, and the remainder of this Agreement shall be unaffected and shall continue in effect.

Disputes. In the event of a dispute between the Parties arising out of or relating to this Agreement, which the Parties are unable to resolve within fifteen (15) days after the dispute has arisen, shall be subject to final and binding arbitration as set forth in this Section 23. Arbitration proceedings shall be conducted under the rules of the Transportation ADR Council (“**TADR**”), or the American Arbitration Association (“**AAA**”), at Broker’s sole discretion. Arbitration proceedings shall be started within eighteen (18) months from the date of the occurrence from which the dispute allegedly arose. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the TADR or AAA. The decision of the arbitrator(s) shall be binding and final, and the award of the arbitrator(s) may be entered as judgment in any court of competent jurisdiction. The prevailing Party shall be entitled to recovery of costs, expenses and reasonable attorney’s fees as well as those costs and fees incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of the arbitrator(s). Arbitration proceedings shall be conducted at the office of TADR or the AAA nearest Detroit, Michigan or such other place as mutually agreed upon in writing by the Parties or directed by the acting arbitration organization. Notwithstanding the foregoing, either Party may apply to a court of competent jurisdiction for injunctive relief. Venue for any such action against Broker shall be Oakland County, Michigan. The arbitration provisions of this Section 23 shall not apply to enforcement of the award of any such arbitration.