

**PLEASE E-MAIL PACKET BACK TO:**

**carriersetup@berrytrans.com**

**Berry Transport**

**MOTOR CARRIER/ BROKER AGREEMENT**

**This agreement** is made and entered into on \_\_\_\_\_, 20\_\_, by and between Berry Transport (Broker) and \_\_\_\_\_ (Carrier).

**Recitals**

- A. BROKER is licensed transport broker pursuant to Docket no. MC 819264 (Sub I-B) that controls the transportation of freight under its contractual agreement with various consignors and consignees (the customers);
- B. CARRIER is authorized to operate in inter-provincial, interstate, and/or intrastate commerce and is qualified, competent and available to provide for the transportation services required by BROKER.

**Agreement**

- 1. **TERM.** The Term of this agreement shall be for (1) one year and shall automatically renew for successive one (1) year periods; provided however, that this agreement may be terminated at any given time by giving thirty (30) days prior written notice.
- 2. **CARRIER'S OPERATING AUTHORITY AND COMPLIANCE WITH LAW.** CARRIER represents and warrants that is duly and legally qualified to provide, as a contract carrier, the transportation services contemplated herein. CARRIER further represents and warrants that it does not have a conditional or unsatisfactory safety rating issued from the U.S. Department of Transportation, and further agrees to comply with all federal, state and local laws regarding the provision of the transportation services contemplated under this agreement. In the event that the CARRIER is requested by BROKER to transport any shipment required by the U.S. Department of Transportation to be placarded as a hazardous material, the parties agree that the additional provisions included in Appendix A shall apply for each shipment.
- 3. **PERFORMANCE OF SERVICES.** CARRIER'S services under this agreement are specifically designed to meet the distinct needs of BROKER under the specified rates and conditions set forth herein. CARRIER shall transport all shipments provided under the 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 grant CARRIER an exclusive right to perform the transportation related services for BROKER or its Customer.
- 4. **RECEIPTS AND BILLS 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 quality 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. Ant 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 bill of lading or delivery receipt.

5. **CARRIER'S OPERATIONS.** CARRIER shall, at its sole cost and expense: (a) furnish all equipment necessary or required for the performance of its obligations hereunder (the Equipment); (b) pay all expenses related, in any way, with the use of the Equipment; (c) maintain the Equipment in good repair, mechanical condition and appearance; and (d) utilize only competent, able, and legally licensed personnel. CARRIER shall have full control of such personnel, shall perform the services hereunder as an independent contractor; and shall assume 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.
6. **INDEMNITY.** CARRIER shall defend, indemnify, and hold BROKER harmless from and against all loss, fees, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the performance or breach of this Agreement by Carrier, its employees or independent contractors working for Carrier (collectively the "Claims"), including but not limited to, Claims for or related to personal injury (including death), property damage and Carriers possession, use, maintenance, and custody or operation of the Equipment; provided, however, that Carrier's indemnification and hold harmless obligations under this paragraph will not apply to any portion of such claim attributable to the tortuous conduct of BROKER.
7. **INSURANCE.** CARRIER shall procure and maintain, at its sole cost and expense, the following insurance coverages:
  - (a) Public liability and property damage insurance with a reputable and financially responsible insurance company insuring CARRIER in an amount not less than \$1,000, 000.00 (U.S. Dollars) per occurrence. (b) All Risk Broad Form Motor Truck Cargo Legal Liability insurance in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence. Such insurance policy shall name CARRIER and BROKER as insureds and provide coverage to BROKER, the Customer or the owner and/or consignee for any, or delay related to any property coming into the possession of CARRIER under this Agreement. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims.
  - (c) Statutory Workers' Compensation Insurance and Employee Liability Coverage in such amounts and in such form as required by applicable state law.
  - (d) CARRIER shall furnish to BROKER written certificates obtained from the insurance CARRIER showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying the written notice of cancellation or modification of the policies shall be given to the BROKER at least thirty(30) days prior to such cancelation or modification. Upon request, CARRIER shall provide BROKER with copies of the applicable insurance policies.
8. **FREIGHT LOSS, DAMAGE OR DELAY.** CARRIER shall have the sole and exclusive care, custody, and control of the Customer's property from the time it is delivered to CARRIER for transportation until delivery to the consignee accompanied by the appropriate receipts as specified in Paragraph 4. CARRIER assumes the liability of a common carrier (i.e. Carmack Amendment Liability) for loss, delay damage to or destruction of any and all of the Customer's goods or property while under CARRIER's care, custody, or control. CARRIER shall pay to BROKER, or allow BROKER to deduct from the amount BROKER owes CARRIER, Customer's full actual loss for the kind and quality of commodities so lost, delayed, damaged or destroyed. CARRIER shall be liable to BROKER for all economic loss, including consequential damages that are incurred by BROKER or the Customer for any freight loss, damage, or delay claim. Payments by

CARRIER shall be made within thirty (30) days following receipt by CARRIER of BROKER's or Customer's invoice and supporting documentation for the claim.

- 9. WAIVER OF CARRIER'S LIEN** CARRIER shall not withhold any goods of the customer on account of any disputer as to rates and charges or any alleged failure of BROKER to pay charges incurred under this Agreement. CARRIER is relying upon the general credit of the BROKER and hereby waives and releases all liens which CARRIER might otherwise have to any goods of BROKER or its Customer in the procession or control of CARRIER.
- 10. PAYMENTS** CARRIER will charge and BROKER will pay for transportation services performed under this Agreement the rates and charges as shown on separate Rate Confirmation Sheet 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 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 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. CARRIER further agrees that BROKER has the discretionary right to offset any payments owed to CARRIER hereunder for liability incurred by CARRIER pursuant to Section 8 of this Agreement.
- 11. CONFIDENTIALITY AND NON-SOLICITATION.** Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure 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. CARRIER will not solicit traffic from shipper, consignor, consignee, or Customer of BROKER was first tendered to CARRIER by BROKER. If CARRIER breaches this agreement and directly or indirectly solicits traffic from customers of BROKER and obtains traffic from such customer during the term of this Agreement or for twelve (12) months thereafter, CARRIER shall be obligated to pay BROKER, for a period of fifteen (15) months thereafter, commission in the amount of thirty-five percent (35%) of the transportation revenue resulting from traffic transported for the Customer, and CARRIER shall provide BROKER with all documentation requested by BROKER to verify such transportation revenue.
- 12. SUB-CONTRACT PROHIBITION.** CARRIER specifically agrees that all freight tendered to it 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 prior written consent of BROKER.
- 13. ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part, and supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed, or otherwise maintained by CARRIER. This Agreement shall be binding upon and ensure to the benefit of the parties hereto.
- 14. SEVERABILITY** In the event that the operation of any portion of this Agreement results in a violation of the law, the parties agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.

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

**16. DISPUTE RESOLUTION.** This Agreement shall be deemed to have been drawn up in accordance with the statues and laws of Alabama and in the event of any disagreement or dispute, the laws of this state shall apply and suit must be brought in this state.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

**BROKER**

Berry Transport

BY: Donald Berry  
Its: Owner

Address: 537 26<sup>th</sup> Avenue N.W.  
Birmingham, AL 35215

Phone: 205-856-6334  
Fax: 205-856-6153

**CARRIER**

\_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
FID No.: \_\_\_\_\_  
MC No. \_\_\_\_\_

**PLEASE REMIT ALL INVOICES AND P.O.D.'S TO**  
**BERRYACCOUNTING@BELLSOUTH.NET.**