

SHIPPER – BROKER TRANSPORTATION AGREEMENT

This Broker/Carrier Agreement is being entered into by and between **FLANKER LOGISTICS SOLUTIONS, LLC**, a FLORIDA LLC located at 19505 Biscayne Blvd. Ste. 2350, Aventura, FL 33180 (hereinafter referred to as “BROKER”), and _____, a _____ located at _____ (hereinafter referred to as “SHIPPER”), on this ____ day of _____, 20__ (the “Effective Date”).

I. RECITALS

1. BROKER is a Federal Motor Carrier Safety Administration (“FMCSA”) registered broker holding License No. MC 01583328, a copy of which is incorporated herein by this reference.
2. SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation.

II. AGREEMENT

1. **TERM.** Subject to Paragraph 12, the term of this Agreement shall be one (1) year, commencing on the date shown above, and shall automatically renew for successive one (1) year periods; provided, however, that either PARTY may terminate this Agreement on thirty (30) days written notice to the other PARTY, with or without cause, or as otherwise provided in this Agreement.
2. **SERVICE.** BROKER agrees to arrange for transportation of SHIPPER’s freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER’s responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER’s freight.
3. **VOLUME.**
 - A. SHIPPER anticipates tendering a series of shipments to BROKER during the term of this Agreement for BROKER to arrange transportation for, but SHIPPER is not obligated to tender any minimum number of shipments to BROKER. SHIPPER is not restricted from tendering freight to other brokers, freight forwarders, third-party logistics providers, or directly to motor carriers. BROKER is not restricted from arranging transportation of freight for other parties.
 - B. SHIPPER shall be responsible to BROKER for timely and accurate delivery specifications and description of the cargo, including, but not limited to, dimensions, weight, and any special handling or security requirements.
4. **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into, bilateral written contracts with each Carrier it utilizes in the performance of this Agreement (the Broker-Carrier Contracts are referred to herein as “Carrier Contract”). BROKER further warrants that those Carrier Contracts will comply with all applicable federal and state laws and regulations and shall include (but not be limited to) the substance of the following terms:
 - A. Carrier is in, and shall maintain compliance during the term of the Carrier Contract, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to:
 - (1) security regulations;
 - (2) owner/operator lease regulations;
 - (3) loading and securement of freight regulations;
 - (4) implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulation;
 - (5) sanitation, temperature, and contamination requirements for transporting food, perishable, and other products;
 - (6) qualification and licensing and training of drivers;
 - (7) implementation and maintenance of equipment safety regulations;
 - (8) maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers;
 - (9) all registration and licensing requirements required to perform the services
 - B. To the fullest extent allowed by law, Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from any and all damages, claims or losses arising out of its performance of the Carrier Contract, including cargo loss and damage, theft, delay, damage to property, and personal injury or death; provided, however, that Carrier is not obligated to indemnify BROKER to the extent the claim is caused by BROKER’s negligence and is not obligated to indemnify SHIPPER to the extent the claim is caused by SHIPPER’s negligence.
 - C. Carrier shall agree that its liability for cargo loss or damage shall be determined by 49 USC §14706 (the Carmack Amendment). Exclusions or limitations in carrier’s insurance coverage shall not exonerate carrier from this liability. No limitation of Carrier's liability under 49 USC § 14706 (c)(1)(A) or otherwise shall apply, unless BROKER first obtains the express written consent of SHIPPER.

- D. Carrier shall agree to maintain at all times during the term of the Carrier Contract, insurance coverage with limits not less than the following:

Auto Liability	\$1,000,000
Cargo Liability	\$100,000
Worker's Comp.	as required by law

BROKER shall verify that each Carrier it utilizes in the performance of this Agreement has insurance coverage as defined above.

- E. BROKER and Carrier agree that BROKER is the sole party responsible for payment of Carrier's charges. Failure of BROKER to collect payment from its customer shall not exonerate BROKER of its obligation to pay Carrier. BROKER agrees to pay Carrier's undisputed invoice within 30 days of receipt of the signed bill of lading or proof of delivery, provided carrier is not in default under the terms of the Carrier Contract. If BROKER has not paid Carrier's undisputed invoice as agreed, and Carrier has complied with the terms of the Carrier Contract, Carrier may seek payment from the SHIPPER or other party responsible for payment after giving BROKER twenty (20) days advance written notice, except that Carrier shall have no right to, and shall not, seek payment from SHIPPER or any other party responsible for payment if SHIPPER or such other party can prove payment to BROKER.
- F. Carrier agrees that at no time during the term of the Carrier Contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration ("FMCSA"), and that it has no knowledge of any threatened or pending interventions by FMCSA; if Carrier is assigned, or receives notice that it will be assigned, an "Unsatisfactory" safety rating, or that Carrier's rating has changed from "Satisfactory" to "Conditional," or if any future safety rating has otherwise been downgraded or assigned (i.e. an unrated carrier being assigned a rating) by the FMCSA, it shall immediately notify BROKER and shall not transport any freight pursuant to the Carrier Contract without BROKER's prior written consent. The provisions of this paragraph are intended to include safety-rating designations that may replace those above, which are subject to change by FMCSA at any time.
- G. Carrier shall agree that the terms and conditions of its Carrier Contract with BROKER shall apply on all shipments it handles for BROKER. Any tariff terms or provisions published by Carrier that are inconsistent with the Carrier Contract shall be subordinate to the terms of the Carrier Contract.
- H. Pursuant to 49 USC § 14101(b), Carrier and BROKER shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the Carrier Contract.
- I. Carrier will not re-broker, co-broker, assign, or interline any shipments without prior written consent of BROKER. If Carrier breaches this provision, BROKER shall have the right of paying the monies it owes Carrier directly to the delivering carrier in lieu of payments to the Carrier. Under no circumstance shall Carrier be released from any liability or obligation to BROKER or SHIPPER under the Carrier Contract or this Agreement.

Upon request, SHIPPER shall be provided with copies of BROKER's standard form of Broker-Carrier Contract (aka "Carrier Contract") and Load Confirmation document prior to executing this Agreement, has reviewed it, and hereby acknowledges that each document is acceptable to and approved by SHIPPER to be in compliance with this paragraph 4 and shall not be subject to any subsequent claim by SHIPPER that either or both violate this paragraph 4.

5. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of shipments in the form of copies of a signed Bill of Lading or Proof of Delivery. SHIPPER's, Carrier's, or any other person's or party's insertion of BROKER's name on the bill of lading shall be for SHIPPER's, Carrier's or other person's or party's convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any Bill of Lading or other freight documentation used by SHIPPER, BROKER, Carrier selected by BROKER, or any other person, will not supplement, alter, or modify the terms of this Agreement.
6. **PAYMENTS.** BROKER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions mutually agreed to between the BROKER and SHIPPER whether orally, verbally in writing, or implicit from the circumstances, including prior shipments the rates agreed or applied to historically. If rates are not confirmed in writing, such rates shall be considered "written," and shall be binding, upon BROKER's invoice to SHIPPER and SHIPPER's payment or failure to deliver (fax or email acceptable) written objection within seven (7) days after the date of BROKER'S invoice. SHIPPER agrees to pay BROKER's invoice within thirty (30) days of invoice date without deduction or setoff. BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to BROKER shall relieve SHIPPER, consignee or other responsible person or party of any liability to the Carrier for non-payment of its freight charges. BROKER shall indemnify SHIPPER from and against any claim for freight payment brought by Carrier against SHIPPER when SHIPPER has paid BROKER and BROKER has failed to pay Carrier. BROKER reserves the right to contract with a factoring company to receive payment from SHIPPER on behalf of BROKER; provided, however, that SHIPPER has tie right to reject the factoring company's terms and may instead elect to make the payments directly to the BROKER.

7. CLAIMS.

- A. Freight Loss and Damage Claims:** Except as otherwise provided under this subparagraph 7.A., BROKER's sole obligation in regard to claims for loss or damage shall be to assist SHIPPER in filing and processing claims with the motor carrier arranged by BROKER, if requested to do so by SHIPPER.

SHIPPER must file claims for cargo loss or damage with BROKER within ninety (90) days from the date of such loss, shortage or damage, which for purposes of this Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER's filing a claim with BROKER, and BROKER's receipt of SHIPPER's claim, shall be and is for convenience only since BROKER is not liable as a Carrier under 49 USC § 14906. SHIPPER has the right to file a claim directly with the Carrier rather than with BROKER.

Carriers utilized by BROKER shall agree in the Carrier Contract with BROKER to be liable for cargo loss or damage as outlined in paragraph 4.c above. The Carriers' cargo liability for any one shipment shall not exceed \$100,000; provided, however, that these limitations shall not apply if BROKER is notified by SHIPPER of the increased value prior to shipment pickup and with reasonable advance notice to allow BROKER and the Carrier to procure additional insurance coverage.

It is understood and agreed that BROKER is not a Carrier and that BROKER shall not be liable under 49 USC § 14706 for loss, damage or delay in the transportation of SHIPPER's property unless caused by BROKER's negligent acts or omissions in the performance of this Agreement; and any such claim against BROKER by SHIPPER must be made within ninety (90) days from the date of the loss, shortage, or damage; and any civil action in a court of law must be commenced within one (1) year from the date the BROKER provides written notice to SHIPPER that all or any part of the claim is denied or disallowed.

In the event BROKER elects, in its sole and absolute discretion, to pay a claim for freight loss or damage made by SHIPPER even though BROKER has no contractual obligation to do so, upon such payment SHIPPER automatically assigns and transfers to BROKER, without further action required, all of SHIPPER's rights and claims against any and all parties that may be liable for the loss or damage, including but not limited to the motor carrier arranged by BROKER to transport the shipment and the motor carrier that actually transported the shipment; **provided, however,** SHIPPER shall execute any written assignment or similar document if requested to do so by BROKER. Where BROKER elects to pay a claim and all rights thereto are assigned and transferred to BROKER pursuant to this paragraph, SHIPPER agrees to provide all documents and witnesses necessary for BROKER to prosecute the claim.

In no event shall BROKER or Carrier be liable to SHIPPER for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER informed BROKER in written or electronic form, prior to or when tendering a shipment or series of shipments to BROKER, of the potential nature, type and approximate amount of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages prior to BROKER's acceptance of the shipment and issuance of Load Confirmation to a Carrier. In no event shall BROKER or Carrier be liable for punitive or exemplary damages.

- B. All Other Claims:** BROKER and SHIPPER shall notify each other of all known material details within forty-five (45) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available. Civil action, if any, shall be commenced within one (1) year from the date either PARTY provides written notice to the other PARTY of such a claim.

- 8. SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement as required by the FMCSA in the amount of \$75,000 or as otherwise required by the FMCSA and furnish SHIPPER with proof upon request.

- 9. HAZARDOUS MATERIALS.** SHIPPER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and § 397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments constitute hazardous materials. SHIPPER shall defend, indemnify, and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

- 10. HOMELAND SECURITY.** As applicable to each, respectively, BROKER and SHIPPER shall comply with state and federal Homeland Security related laws and regulations.

11. "CURE"/DEFAULT.

- A.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either PARTY materially fails to perform its duties under this Agreement, the PARTY claiming default may terminate this Agreement on thirty (30) days prior written notice to the other PARTY. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments scheduled and in transit but not yet completed and/or not yet invoiced to SHIPPER.

- B.** Default: The following actions, in addition to any other material breach described elsewhere in this Agreement, shall each constitute a material breach of this Agreement.

- (1)** Either PARTY files a voluntary petition under Chapter 7 or 11 of the U.S. Bankruptcy Code, or any equivalent state law; or such a petition is filed against the PARTY under federal or state law, which is not dismissed within sixty (60) days.

- (2) Any license required for BROKER to perform its obligations under this Agreement is revoked, canceled, suspended, or discontinued by operation of law or otherwise.

C. In the event of the occurrence of any breach(es) listed in this Section 12.B. above, the non-breaching PARTY may terminate this Agreement effective immediately upon written notice to the breaching PARTY.

- 12. INDEMNIFICATION.** Except as provided in paragraph 14 and as otherwise provided in this paragraph 13, subject to the monetary insurance limits in and the coverages provided by the policies required in paragraph 8, BROKER and SHIPPER shall defend, indemnify, and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified PARTY shall not offer settlement in any such claim without the agreement of the indemnifying PARTY which agreement shall not be unreasonably withheld. If the indemnified PARTY offers or agrees to a settlement for such a claim without the written agreement of the indemnifying PARTY, the indemnifying PARTY shall be relieved of its indemnification obligation. Neither PARTY shall be liable to the other PARTY for any claims, actions or damages to the extent due to the negligence of the other PARTY. Although paragraph 8 only imposes insurance requirements upon BROKER, for purpose of this paragraph 13, those amounts also shall limit the scope of SHIPPER's indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.
- 13. BROKER'S LIABILITY FOR USING CARRIER LACKING REQUIRED CARGO INSURANCE.** If BROKER uses a Carrier without requiring the Carrier to maintain the cargo insurance coverage specified in paragraph 4.D., BROKER shall be liable to SHIPPER for cargo loss, damage and delay up to the limit of the cargo insurance that the Carrier was required to maintain under paragraph 4.D. BROKER shall be deemed to have required the Carrier to maintain the cargo insurance required under paragraph 4.D. if it holds a certificate of insurance issued by the Carrier's cargo insurance provider, or obtains a report issued by a third party service provider (e.g. Carrier411 or Transcore DAT CarrierWatch), or can verify that it electronically checked the Carrier's compliance on the FMCSA's or the third party service provider's website, within thirty (30) days prior to the date BROKER hired and issued the load confirmation to the Carrier with respect to a shipment, which certificate, report or verification confirms that the Carrier had in effect the required limits of cargo insurance.
- 14. ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither PARTY may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other PARTY. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.
- 15. SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the PARTIES agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.
- 16. INDEPENDENT CONTRACTOR.** It is understood between BROKER and SHIPPER that BROKER is not an agent for the carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers.
- 17. NONWAIVER.** Failure of either PARTY to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.
- 18. NOTICES.** All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail with return receipt requested, or delivered by an overnight delivery service (with confirmation) to the PARTIES at the addresses or facsimile numbers (or at such other address or facsimile number as a PARTY may designate by like notice to other PARTIES) set forth below.
- 19. FORCE MAJEURE.** Neither PARTY shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the PARTY so prevented uses its best efforts to perform under this Agreement and provided further, that such PARTY provide reasonable notice to the other PARTY of such inability to perform.
- 20. CHOICE OF LAW.** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Oregon, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.
- 21. MUTUAL COOPERATION AND RESOLUTION OF DISPUTES.** The PARTIES shall use reasonable commercial efforts to resolve by mutual agreement any and all disputes arising out of or relating to this Agreement and agree to follow the following procedure before resorting to litigation:
- A. The respective Presidents (or other designated company official that has the power to settle a dispute without obtaining approval from others) of the PARTIES shall initially attempt to resolve any dispute in person or by telephone. If the PARTIES' Presidents do not resolve the dispute within thirty (30) days of becoming aware of the dispute, the PARTIES shall refer the dispute to appropriate mediation, as described in paragraph B;

- B. If the dispute is not resolved by the PARTIES' respective Presidents, the PARTIES shall submit the dispute to a neutral mediator for mediation, which mediation shall be completed within thirty (30) days after the failure to resolve the dispute by the PARTIES' Presidents, and the costs of the mediator and mediation shall be shared equally by the PARTIES;
 - C. Any resolution of the dispute shall be recorded in writing and signed by the PARTIES. The signed document(s) shall be deemed to form part of this Agreement;
 - D. The PARTIES shall use their best efforts and act under an obligation of good faith to resolve any dispute in a mutually satisfactory manner during the above dispute resolution process; and
 - E. If the matter is not resolved by the PARTIES' respective Presidents or through mediation, either PARTY may pursue litigation, provided that such litigation must be brought in either The Circuit Court of the State of Oregon for Marion County or, subject to jurisdictional requirements, in the United States District Court for Oregon, Eugene Division. In the event of litigation, the prevailing PARTY shall be entitled to recover attorney fees, including but not limited to any incurred on appeals.
22. **CONFIDENTIALITY.** Other than as required to comply with law or legal process requiring disclosure, the PARTIES agree to the following:
- A. In addition to Confidential Information protected by law, statutory or otherwise, the PARTIES agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the PARTIES and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.
 - B. In the event of violation of this Confidentiality paragraph, the PARTIES agree that the remedy at law, including monetary damages, may be inadequate and that the PARTIES shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating PARTY from further violation of this Agreement in which case the non-prevailing PARTY shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.
23. **ENTIRE AGREEMENT:** This Agreement, including all Appendices and Addenda, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof. The PARTIES further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.
24. **WAIVER.** Although BROKER is not a Carrier, the PARTIES nevertheless hereby waive, pursuant to 49 USC 14101 (b)(1), any and all provisions of Title 49, U.S. Code, Subtitle IV, Part B, to the extent they conflict with any provision of this Agreement.
25. **ALTERNATIONS.** Any alternation, addition or erasure on this Agreement or a Rate Confirmation Sheet that is made without the special notation hereon by a authorized agent or BROKER shall be without effect and this Agreement shall be enforced according to its original tenor.
26. **AMENDMENTS AND MODIFICATIONS.** This Agreement cannot be modified, amended, limited or supplemented, except by mutual written agreement by Carrier and BROKER.

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IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully authorized representatives as of the dates first above written.

BROKER

SHIPPER

Signed

Signed

Printed

Printed

Title

Title

Flanker Logistics Solutions, LLC
19505 Biscayne Blvd. Ste. 2350.
Aventura, FL 33180
info@flanker.co

Location and Mailing Address

Phone: _____
Fax: _____
Email: _____

