



## TWW Carrier Setup

This Agreement is entered into on the undersigned date, by Titan Worldwide and the undersigned carrier; collectively, the "Parties".

### **I. Carrier represents and warrants that it:**

- 1.1. Is a Registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities.
- 1.2. Shall transport the property, under its own operating authority and subject to the terms of this Agreement;
- 1.3. Makes the representations herein for the purpose of inducing BROKER to enter into this Agreement.
- 1.4. Agrees that a Shipper's insertion of BROKER's name as the carrier on a bill of lading shall be for the Shipper's convenience only and shall not change BROKER's status as a property broker nor CARRIER's status as a motor carrier. BROKER is not a motor carrier and assumes no motor carrier responsibility for cargo loss and damage in the event that the National Motor Freight Traffic Association (NMFTA) (effective in August 2016), form of bill of lading is utilized.
- 1.5. Will not re-broker, co-broker, subcontract, assign, interline, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority, without prior written consent of BROKER. If CARRIER breaches this provision, among all other remedies (whether at equity or in law), BROKER shall have the right of paying the monies it owes CARRIER directly to the delivering carrier, in lieu of payment to CARRIER. Upon BROKER's payment to delivering carrier, CARRIER shall not be released from any liability to BROKER under this Agreement or otherwise, including any claims under MAP-21 (49 U.S.C. § 13901 et seq.). In addition to the indemnity obligation in Par 1.H, CARRIER will be liable for consequential damages for violation of this provision.
- 1.6. (i) Is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials (including the licensing and training of Haz-Mat qualified drivers), as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances and alcohol testing, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, including without limitation the Food Safety Modernization Act, the Sanitary Food Transportation Act of 2005 and the FDA's Final Rule pertaining to Sanitary Transportation of Human and Animal Food, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; all applicable insurance laws and regulations including but not limited to workers' compensation. CARRIER agrees to provide proof of compliance upon request.  
(ii) Is solely responsible for any and all management, governing, discipline, direction and control of its employees, owner/operators, and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of CARRIERS vehicles, drivers and facilities. CARRIER and BROKER agree that safe and legal operation of the CARRIER and its drivers shall completely and without question govern and supersede any service requests, demands, preferences, instructions, and information from BROKER or BROKER's customer with respect to any shipment at any time.
- 1.7. CARRIER will notify BROKER immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- 1.8. CARRIER shall defend, indemnify and hold BROKER and its shipper customer harmless from any claims, actions or damages, arising out of its performance under this Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence or intentional act of the other Party, or the shipper. The obligation to defend shall include all costs of defense as they accrue.

1.9. Does not have an "Unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify BROKER in writing immediately if its safety rating is changed to

"Unsatisfactory" or "Conditional". Authorizes BROKER to invoice CARRIER's freight charges to shipper, consignee, or third parties responsible for payment.

1.10. Has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of BROKER and is granting BROKER credit terms accordingly.

1.11. On behalf of shipper, consignee and broker interests, to the extent that any shipments subject to this Agreement are transported within the State of California on refrigerated equipment, CARRIER warrants that it shall only utilize equipment which is in full compliance with the California Air Resources Board (CARB) Transport Refrigerated Unit (TRU) Airborne Toxic Control Measure (ATCM) in-use regulations. CARRIER shall be liable to BROKER for any penalties, or any other liability, imposed on, or assumed by BROKER due to penalties imposed on BROKERS customer because of CARRIER's use of non-compliant equipment.

## **II. Broker's Obligations.**

2.1. Payment. Broker agrees to pay Carrier as provided in section 5 below.

2.2. Authority. Broker represents that it has the authority to tender its customer's freight for transportation as provided in this Agreement.

2.3. Limitation on Liability. BROKER MAKES NO REPRESENTATIONS OR PROMISES OTHER THAN AS SPECIFICALLY REFERRED TO IN THIS SECTION AND CARRIER ACKNOWLEDGES AND AGREES IT IS NOT RELYING ON ANY ALLEGED REPRESENTATION OR PROMISE, EXPRESS OR IMPLIED, NOT SPECIFICALLY REFERRED TO HEREIN. BROKER'S LIABILITY, IF ANY AND NOT OTHERWISE DISCLAIMED, IS LIMITED AS PROVIDED IN SECTION 3 BELOW.

## **III. Carrier's Obligations.**

3.1. In performing the services as provided in this Agreement, Carrier agrees that it shall, at its expense and at all times:

3.1.1. Compliance with Law. Carrier shall at all times comply with federal, state, and local laws relating to the provision of services under this Agreement, specifically including but not limited to security regulations, loading and securing of freight regulations, drivers safety regulations, and all applicable equipment and driver safety regulations.

3.1.2. Permits & Licenses. Carrier represents that it does and shall have at all times all necessary permits and licenses required to provide transportation services as required under this Agreement.

3.1.3. Satisfactory Rating. Carrier does and shall have at all times a "Satisfactory" rating issued by the United States Department of Transportation's Federal Motor Carrier Safety Administration (or its predecessor).

3.1.4. Drivers & Equipment. Carrier shall provide only drivers who have been properly trained in the requirements imposed by the Federal Motor Carrier Safety Regulations set for in C.F.R. 390 *et seq.* Further, Carrier shall provide only drivers with enough available hours of service to pick up and complete delivery as described in this Agreement within the time frame without violating the Federal Motor Carrier Administrations hours of service regulations. Carrier shall furnish all equipment necessary to provide the services envisioned in this Agreement and such equipment shall comply with all applicable federal, state, and local laws and all applicable safety regulations.

3.1.5. Carrier Responsible for Drivers and Agents. Carrier has the exclusive responsibility for any and all drivers, management, staff, employees, or other agents of Carrier and has the exclusive responsibility to manage, discipline, and control all such persons and all equipment used or provided to such persons.

3.1.6 Prompt Service. Carrier shall promptly and efficiently and efficiently receive, transport, and deliver the goods entrusted to Carrier and Carrier understands that that is of the essence.

3.1.7. Bill of Lading. The shipment shall be evidenced by a Bill of Lading in compliance with 49 U.S.C. 80101 *et seq* and also specifically includes the following information:

a) the equipment number or serial number of the cargo and, if the cargo is a car, the year, make, model, ID number of the vehicle (VIN) and the odometer reading;

b) a specific, not general, description, of the condition of the goods after a thorough inspection;

c) if an automobile or other vehicle, a specific description of any defect or damage to the vehicle (including any scratch, dent, or ding larger than a quarter or an abundance of scratch, dents, or dings smaller than a quarter);

d) if any automobile, the odometer reading (if the Carrier adds more than 4 miles to the reading, the Carrier shall be liable for the greater of Broker's damages or a liquidated sum of \$100.00 per mile and such damages are cumulative of any other damages at law or equity);

3.1.8. Delivery Receipt. Carrier shall acquire and provide to Broker a delivery receipt for the goods signed by the intended recipient acknowledging full receipt of the goods. A notation on the Bill of Lading shall suffice, if it otherwise complies with the requirements of this section 3.1.8;

3.1.9. Delays, Breakdowns, or Accidents. Carrier shall immediately notify Broker of any delays (including but not limited to those occasioned by breakdowns or accidents), breakdowns, accidents, damages, injuries, thefts, hijacking or other events which impair the complete and timely delivery of the goods. Carrier agrees that Broker has the right to withhold all payments due from Broker to Carrier until all claims occasioned as a result of any delays or accidents during transport (including loading and unloading) are settled in full;

3.1.10. Refused Goods. Carrier shall immediately notify Broker of any refused freight at the shipper or the intended recipient and immediately request additional instructions from Broker regarding delivery or storage of the freight;

3.1.11. Co-Brokering. Under no circumstance may Carrier broker any freight tendered to Carrier by Broker to any other shipper, carrier, or broker without the prior express, written consent of Broker.

3.1.12. Liability& Indemnity. Carrier shall be solely and exclusively liable to the shipper for any and all damages or loss as a result of damage to the freight, delays in delivery of the freight, or any other damage or loss arising out of the transportation of the freight by Carrier.

Further, Carrier shall indemnify, defend, and hold harmless Broker, Broker's customer, and their affiliates, agents, and assigns, from and against any liability, claims, loss, damages, or expenses (including attorneys' fees) arising out of the transportation of the freight by Carrier. In the event a claim is brought against Broker, Carrier, upon notice, shall, within thirty days, reimburse Broker for any and all attorney's fees incurred up to the point of that notice (that is, reimburse attorneys' fees as incurred).

3.1.13 Claims. If carrier alleges any claim against Broker for any reason arising out of or related to this Agreement, Carrier shall comply with the Dispatch Resolution section of this Agreement; failure to do so shall be deemed an admission of Carrier that Broker bears no responsibility or liability for such alleged claim.

3.1.14. Confidentiality & Non- Solicitation; No Lien. Drivers and Carriers are not permitted to discuss or collect any payment from the shipper or the recipient; Broker shall pay Carrier as provided in this Agreement (including the applicable Rate Confirmation).

Carrier acknowledges and agrees all of Broker's customers are Broker's accounts, not Carriers. Carrier will not solicit freight from such customers for a period of 18 months after full performance of all services pursuant to this Agreement. Violation of this section shall, in addition to all remedies at law or in equity, entitle Broker to an immediate injunction and all such funds received from any such customer shall be placed in constructive trust in favor of Broker.

Carrier hereby expressly waives its right to any lien on any cargo or any property of Broker or any property of Broker's customers.

3.1.15. W-9. Carrier shall promptly provide Broker with a W-9. The thirty (30) day time for payment will not start and no payment shall be due until after this paperwork is received. See also section V, below.

3.1.16. Insurance. Carrier has and shall have at all times, the following insurance.

Carrier shall have their insurance agent promptly provide Broker a certificate of insurance or other proof of such insurance satisfactory to Broker in Broker's sole discretion.

*Current Insurance Certificate should include the following:*

- *Titan Worldwide showing as a certificate holder and additional insured on both GL & AL*
- *General Liability -- \$1,000,000+*
- *Cargo Liability -- \$100,000+ (Broad Form Cargo or All Risk)*
- *Auto Liability -- \$1,000,000 (options below)*
  - *Any Auto*
  - *Scheduled Autos, Hired Autos, Non-Owned Autos*
  - *Scheduled Autos with vehicle information on the policy \*\*\*IF POLICY IS ON SCHEDULED UNIT, WE MUST OBTAIN COPY OF SCHEUDLED VEHICLES\*\*\**
  - *Any other combination of insurance (inquire for clarification)*

3.2. Material. Carrier acknowledges and agrees that the terms in this section are material terms and that failure to comply with any such terms constitutes a breach of this agreement.

## **IV. Independent Contractor Status.**

4.1. Relationship. It is understood and agreed that Carrier is an independent contractor and shall not be deemed to be an employee of the Broker. Carrier acknowledges and agrees that no term in this Agreement is intended to or does create any other relationship, including but not limited to any joint venture, partnership, principal/agent, fiduciary, employer, employee or other such relationship between the parties. Neither party shall hold itself out as the partner, agent, or employee of the other party nor make any representations or warranties on behalf of the other party, except as otherwise expressly agreed herein. If Carrier uses a factoring company, Broker shall be notified at the commencement of this Agreement, before the shipping process begins. If Broker is not notified, Carrier agrees that, in addition to all other remedies and rights in this Agreement and at law or equity, Broker may: (1) withhold payment until any and all claims are resolved in writing between the factoring company and Carrier; and (2) Carrier will indemnify and defend Broker for any and all claims or costs incurred by Broker as a result of Carrier's use of a factoring company.

## **V. Payment.**

5.1 Amount. Broker agrees to pay Carrier the amount described in the Rate Confirmation attached hereto or, as agreed in writing, the Rate Confirmation applicable to any subsequent delivery.

5.2. Time of Payment. Broker shall pay Carrier no later than thirty days after the Conditions, as defined in section 5.3. below, are satisfied. ***The thirty days shall not begin to run until all the following conditions are satisfied.***

5.3 Conditions. The following are conditions precedent to payment by Broker to Carrier:

5.3.1. Timely Delivery. Carrier's delivery of the freight, as identified on the applicable Rate Confirmation, within the time frame and to the proper person/location all as identified on the applicable Rate Confirmation;

5.3.2. Paperwork. Carrier shall invoice Broker. The invoice shall be accompanied with the following, if not already provided: (1) a copy of the Bill of Lading and the Delivery Receipt as described in section 3 above, (2) the W-9 as described in section 3 above, (3) the proof of current insurance with stated cargo amount as described in section 3, (4) federal ID number; (5) and (6) all other "Required Papers" as identified in section 7.9 below;

5.3.3. Special Conditions. Any other conditions identified on the attached Rate Confirmation.

5.4. Detention Time. Carrier agrees that, in the event Carrier either has to wait to pick up or drop off the cargo, or if the delivery is cancelled after Carrier has been dispatched, Carrier's damages will be capped sixty dollars (\$60.00) an hour. It is agreed this is Carriers exclusive remedy and the total amount Carrier is entitled to receive by way of any such delay. In the event Carrier arrives at the pick up or drop off and is forced to wait, Carrier shall immediately notify Broker. Carrier's right to receive ant payment occasioned as a

result of any such delay is explicitly condition upon this prompt notification, and Carrier agrees the time used to compute such "detention time" shall not start until Carrier notifies Broker. For example, if carrier is forced to wait to load for two hours, but does not notify Broker until after an hour has passed, Carrier will be entitled to \$60 only, and this will be Carrier's exclusive and sole remedy.

## **VI. Dispute Resolution; Governing Law; Venue.**

6.1. Governing Law. The parties agree that the laws of the State of Texas shall govern this contract, disregarding any conflict of laws principals.

6.2. Arbitration. In the event of any disagreement over the terms or application of this agreement, or arising out of or related to this Agreement, the parties hereto will work together in good faith to resolve the disagreement. If they are not successful, then the parties agree to submit their disagreement to binding, non-appealable and confidential arbitration before one former or retired judge practicing, officing, or residing in Dallas, Dallas County, Texas knowledgeable in this type of litigation. The exclusive venue for this arbitration is in Dallas, Dallas County, Texas. This arbitration provision specifically includes but is not limited to any disagreement regarding fees and the services, including any claim for claim for negligence or malpractice.

Each party to this agreement agrees that other than through such arbitration he will not bring any claim or action against any other party to it regarding any such disagreement. Arbitration may be commenced by giving written notice of intent to arbitrate. The arbitrator will be retired or former judge practicing,

officing, or residing in Dallas, Dallas County, Texas. If the parties cannot agree on an arbitrator, the parties shall petition a district court to compel arbitration pursuant to the Texas General Arbitration Act. The Court shall then select an arbitrator who is a retired or former judge practicing, officing, or residing in Dallas, Dallas County, Texas.

6.3. Venue Not Remote. Carrier acknowledges that Dallas, Dallas County, Texas is not a remote or difficult location for Client to appear for purposes of arbitration.

## **VII. Miscellaneous.**

7.1. No Contra Praforentem. Should any provision of this Agreement require judicial interpretation (be it in arbitration or, if agreed, in court), it is agreed that the arbitrator or court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly against the party itself or through its agent prepared the same, it being agreed that the agents of both parties have participated in the preparation hereof.

7.2. Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. Every right and remedy of each of the parties shall be cumulative and either party, in its sole direction, may exercise any and all rights or remedies stated in this Agreement or otherwise available at law or in equity.

7.3. Variations of Pronouns. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

7.4. Notices. All notices and other writings required or permitted to be given under the terms of this Agreement shall be hand delivered or mailed, postage prepaid by certified or registered mail, return receipt requested, faxed to the address or number provided on the applicable Rate Confirmation, or emailed to the email address identified on the applicable Rate Confirmation.

7.5. Amendments. Amendments may be made to this Agreement only upon the mutual consent and approval in writing signed by the parties.

7.6. Force Majeure. Neither party shall be liable to the other for default in the performance of any of the terms and provisions of this Agreement by riot, war, Act of God, governmental order or regulation, or other similar contingency beyond the reasonable control of the respective parties. The party claiming such force majeure must notify the other party within twenty-four (24) hours of the time the party learned, or should have learned through the exercise or reasonable diligence, of the existence of such condition and failure to do so shall constitute a waiver of such force majeure and shall be deemed an admission that no such condition existed or was the cause of the failure to perform. If such condition constituting force majeure hereunder is not remedied within twenty days, then the unaffected party shall have the right to terminate any obligation under this Agreement by written notice to the other party.

7.7. Acceptance by Performance. Performance of any work by carrier pursuant to this Agreement shall constitute an acceptance of the terms of this Agreement, regardless of whether or not Carrier has signed a copy of this Agreement.

7.8. Objection to Additional Terms. Broker objects to any terms proposed by Carrier, whether in Carrier's acknowledgement or other form of acceptance of Broker's offer. Any such terms shall be void and this Agreement shall constitute the complete and entire agreement, along with any non-contradictory terms in the attached Dispatch Order.

7.9. Required Papers. Carrier shall, without further request, provide Broker with a W-9, proof of current insurance with stated cargo amount, a federal ID number, and active operating authority. Carrier shall promptly provide Broker with any other information reasonably requested by Broker in furtherance of this Agreement (specifically including the delivery and payment for such delivery by customer).

7.10. Authorizations. The parties, and specifically the signatories hereto, represent they have the authority to sign this Agreement and bind the respective parties hereto.

7.11. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all proposals, oral and written, and all other communications between the parties.

IN WITNESS WHEREOF, we have signed this Agreement the date and year first shown below.

**Please sign this Document below: By electronically signing this document below, you acknowledge you have the authority to sign this for your Company and agree to the terms of this agreement. This is an electronic legal signature as defined by the Electronic Signatures Act of 2000.**

## **Signature Page**

(BROKER)

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Authorized Signature

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Printed Name

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Title

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Email

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Company Address

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Phone

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Fax

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(CARRIER)

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Authorized Signature

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Printed Name

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Title

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Email

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Company Address

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