

# BROKER-CARRIER CONTRACT

THIS CONTRACT is made \_\_\_\_\_ between **Top Flight Transportation, Inc.**, referred to as "Broker" and \_\_\_\_\_ hereinafter referred to as "Carrier".

## RECITALS:

A. **WHEREAS**, Broker is a freight broker, duly authorized under License Number MC 216484, a copy of which is attached hereto and made a part hereof, to arrange for the transportation of property by motor carrier on behalf of motor carriers, shippers, consignors, receivers, and consignees; and

B. **WHEREAS**, Carrier is a motor carrier of property, duly authorized under docket Number \_\_\_\_\_, a copy of which is attached hereto and made a part hereof, to provide transportation of property for shippers and receivers of general commodities; and

C. **WHEREAS**, CARRIER desires to provide motor carriage service to Broker and its customers under a continuing agreement; and

D. **WHEREAS**, BROKER and CARRIER understand that this contract does not bind the respective parties to mutually exclusive services to each other, and that Broker may enter into similar contracts with other motor carriers, and Carrier may enter into similar carriage contracts with other shippers and receivers.

**NOW, THEREFORE**, in consideration of the representations made herein, the parties agree as follows:

## TERMS AND CONDITIONS:

1. **General Obligations and Scope of Contract.** All for-hire motor carrier transportation services provided by Carrier for Broker during the term of this Contract shall be provided by Carrier under the terms of this Contract. The parties waive the provisions and rights otherwise provided for by 49 U.S.C. 14101.

2. **Terms and Termination.** The term of this Contract shall begin on the date set forth above or on the date the first shipment is tendered by Broker to Carrier and is transported by Carrier, whichever is earlier, and shall remain in effect for a period of one (1) year. Thereafter, the Contract shall automatically renew from month-to-month until terminated. The Contract may be terminated by Broker at any time for any reason by giving Carrier at least ten (10) days prior written notice. This Contract shall be automatically canceled in the event of the cancellation, suspension or revocation of Carrier's license, or in the event either party files a petition for bankruptcy.

3. **Specific Obligations of Broker.** Broker agrees to pay Carrier for the transportation of the commodities moved under this Contract the rates and charge pursuant to the procedure set forth in paragraph 5.a herein.

4. **Specific Obligations of Carrier.**

a. **Service.** Carrier shall transport shipments for Broker by motor vehicle from and to such points between which service may be required, without delay, subject to the availability of suitable equipment for the traffic offered and the specific shipment instructions, all in accordance with the terms and conditions of the Contract. Carrier shall transport and deliver all freight in as good condition as when received by the Carrier for transport. Carrier, at its sole cost and expense, shall furnish all equipment required to provide service hereunder and shall maintain all equipment in clean condition, good repair and working order. Carrier, at its sole cost and expense, shall provide all employees or other personnel necessary to provide service hereunder; and all employees or other personnel provided shall be competent and legally qualified to handle and transport the shipments transported hereunder. Carrier shall perform loading and unloading services as required by Broker or Broker's customers.

b. **Double Brokered.** Without the prior written consent of Broker, Carrier shall not cause or permit any shipment tendered hereunder to be brokered to or transported by any other motor carrier, or in substituted service by railroad or other modes of transportation. Failure to comply will result in non-payment of freight charges to Carrier or any other motor carrier involved in the delivery of said freight.

c. **Bill of Lading.** Carrier shall issue a bill of lading, in a form furnished by Broker or Broker's customer at the option of the Broker, for all property it receives for transportation under this Contract. Failure to issue or sign a bill of lading shall not affect Carrier's liability. The bill of lading shall be evidence of receipt of the described property by Carrier in good order and kind, quantity and condition except as noted on its face. To the extent that language contained in the bill of lading is in conflict or inconsistent with the terms and condition of this Contract, this Contract shall prevail. Carrier agrees that the bill of lading shall be for the sole purpose of, and function solely as, a receipt for the goods and shall not itself constitute a contract between Carrier and Broker or between Carrier and either the person tendering the goods to it or the person receiving the goods from Carrier. The bill of lading shall note that the shipment was transported by Carrier acting as a Carrier and that transportation for the shipment was arranged by Broker. The name of Broker or Broker's customer shall be inserted in the blank for the shipper, and the name of the receiver shall be inserted in the blank for the consignee. The bill of lading is to be signed by Carrier upon receipt of the shipment and will show the kind, quantity and condition of the commodities received and delivered by Carrier at the loading and unloading points. When Broker has assembled multiple shipments into carload or truckload lots, the list of underlying shippers and consignees will be attached as an appendix to the bill of lading.

d. **Refused and Rejected Shipments.** When a shipment is refused or rejected by the consignee, or Carrier is unable to deliver for any reason, Carrier must notify Broker immediately in order to receive disposition instructions. Until such disposition instructions are received, Carrier must place the shipment in a facility selected by the Broker or, at the option of the Broker, in a public warehouse or in another suitable facility such as its terminal or storage facility under reasonable security and provide immediate written notice of such act to Broker.

e. **Liability.** Carrier shall be liable to Broker's customers, the beneficial owner of the cargo, or their respective assigns, for the full actual loss, damage, or injury to freight, persons, business or other property, including expenses for delay, costs of recovery, cleanup or containment of commodity, occurring while shipment was in the possession or under the control of Carrier pursuant to this Contract or resulting from Carrier's performance of, or failure to perform, the services provided for herein. For purposes of this Contract, all liability standards and burdens of proof hereunder are governed by the common law applicable to common carriers and by 49 U.S.C. §14706. The above section of the United States Code will apply unless a higher degree of responsibility is called for by the terms and conditions herein, in which event this Contract shall prevail. Full value of lost or damaged items shall mean any replacement cost established by trade sale or other invoice documentation, plus any additional transportation loss. Expenses of delay will include employee or equipment compensation, overtime and the like. Damages for delay may include loss of sale and/or profit.

f. **Cargo Insurance.** Carrier shall maintain cargo insurance in an amount equal to the full value of the maximum quantity of goods expected to be transported at any one time under this Contract, but in no event in any amount less than \$50,000.00 per shipment to compensate Broker, Broker's customer, or the beneficial owner of the freight for any and all loss, damage or delay to property which was placed in the possession or control of Carrier in connection with services provided by Carrier hereunder. Carrier's cargo insurance must provide "all risks" and "broad form" coverage and meet all requirements for such coverage as required by Broker or Broker's customer contingent cargo insurance carrier. In addition, except for the amount indicated above, the cargo insurance shall also be in the form required by 49 C.F.R. § 1043 and shall have no exclusions or restrictions that would not be accepted by the regulatory body for a filing under the statutory requirements of that section. Carrier shall cause its insurance carrier to immediately forward to Broker a standard Certificate of Insurance requiring the insurance carrier to give Broker written notice thirty (30) days prior to the cancellation of the cargo insurance.

g. **Public Liability and Worker's Compensation Insurance.** Carrier shall maintain primary public liability insurance in an amount sufficient to cover any and all liability risks associated with providing service hereunder, and in no event shall the amount be less than that required by the regulatory body and U.S. Department of Transportation. The liability insurance shall be in the form and amount required by 49 C.F.R. §1043 and in no event less than \$1,000,000, and shall have no exclusions or restrictions that would not be accepted by the regulatory body for filing under the statutory requirements of that section. Carrier's insurance carrier shall provide Broker a certificate of public liability insurance prior to or at the time this Contract is signed by the parties, which certificate shall require the insurance carrier to give Broker written notice thirty (30) days prior to cancellation of the liability insurance. Carrier also shall carry and keep in force at all times Worker's Compensation insurance in the amount required by Oregon law.

h. **Duration of Liability.** Carrier's liability shall begin at the time the Carrier assumes possession or control of the freight from the shipper, which in no event will be later than the time the cargo is loaded upon Carrier's equipment at the point of origin, and shall continue until the cargo is unloaded from Carrier's equipment at the point of destination, has been delivered to the consignee named in the bill of lading, Carrier has obtained a signed delivery receipt from the consignee named on the bill of lading, and nothing else remains to be done by Carrier to deliver the shipment to the consignee.

i. **Hold Harmless.** Carrier shall defend and hold Broker and Broker's customer harmless from and indemnify Broker and Broker's customer for, any and all liability, costs, damages or claims, including attorney's fees, for loss or damage to, or delay in delivery of any freight in Carrier's possession or control pursuant to this Contract. Carrier further shall defend and hold Broker and Broker's customer harmless and indemnify Broker and Broker's customer from any and all liability, costs, damages and claims, including attorney's fees, for personal injury or death or property loss or damage arising out of the acts or omissions of Carrier in providing services hereunder. Carrier's obligation to defend, hold harmless and indemnify Broker shall survive any termination of this Contract.

j. **Authority.** Carrier warrants that it has, and will have during the entire term of this Contract, authority from all federal, state and other governmental bodies to legally provide all services called for hereunder in a lawful and prudent manner. Carrier will immediately notify Broker of any change in its authority. No freight charges will be due or owing by Broker or Broker's customer during any period that Carrier's authority is canceled, suspended or revoked.

k. **Return of Freight.** Any freight refused by Broker's customer must be returned by the Carrier within five (5) days of the initial request by the Broker or the Broker's customer.

l. **Delivery Receipts.** Carrier shall retain delivery receipts for a period of three (3) years after the delivery of shipments or for such greater period of time as may be required by federal or state laws, rules or regulations.

m. **Waiver of Lien.** Carrier shall neither have nor claim any lien rights on or against any property transported under this Contract. In the event that Carrier violates the terms of this paragraph, it shall forfeit all rights to any and all charges for shipments transported pursuant to this Contract then due and owing Broker or Broker's customers to Carrier.

## 5. **Rates and Charges.**

a. **Rates.** The rates and charges Carrier agrees to bill Broker for services provided under this Contract, and the rates and charges Broker agrees to pay Carrier for services provided under this Contract, shall be determined on a shipment-by-shipment basis. Prior to each load Broker will fax a Top Flight Dispatch Confirmation with agreed rate to Carrier for Carrier's review and, if the rate is acceptable, immediately sign the Dispatch Confirmation and fax it back to Broker. Carrier shall immediately notify Broker if the proposed rate or other terms, if any, are not acceptable. Broker shall be the agent for Carrier for the collection and payment of charges to Carrier. Broker is solely responsible for payment of all freight charges to the Carrier.

b. **Billing.** Carrier shall send its invoices for prepaid freight bills to **Top Flight Transportation, Inc.; PO BOX 25090, Portland, Oregon 97298-0090**. Broker shall pay Carrier within 30 days of receipt of invoice, provided that, original delivery documents, signed by consignee and driver free of exception accompany invoice. Carrier shall have no recourse against Broker or Broker's customer for unpaid collect shipments.

c. **EDI Service.** Carrier agrees to provide delivery time and date information via facsimile or other acceptable means within twenty-four (24) hours of delivery. In any event Carrier shall supply Broker with proof of delivery information within twenty-four (24) hours of the Broker's request. At the request of the Broker, Carrier shall use its best efforts to provide proof of delivery information within one (1) hour.

d. **Time Limitations.** Any claim for payment of a rate or charge by Carrier against Broker or for return of overpayment by Broker against Carrier, must be made within six (6) months after date of delivery of the shipment issue.

e. **Right of Set-Off.** In the event of an overcharge, over-collection, duplicate payment, or claim for loss, damage or injury filed with Carrier, Carrier agrees that Broker and Broker's customer shall have the right to set-off an amount sufficient to cover the overcharge, overcollection, duplicate payment or claim, and to deduct and withhold such amount from any freight payments due Carrier.

f. **No Loss of Discount of Other Penalty.** No loss of discount, interest penalty, or other credit enforcement provisions shall apply in the event of Broker's or Broker's customer's failure to pay.

g. **Inadvertent Shipment Without Preexisting Rate.** In the event that Carrier inadvertently is tendered and does transport a shipment for which at time of tender of shipment no applicable rates or charges had been agreed to as provided by paragraph 5.a, Carrier and Broker agree that Carrier shall be due a reasonable charge for the transportation of such shipments.

h. **Payment by Broker's Customers.** Payment of the freight charges to Broker by Broker's customers shall relieve the Broker's customer, receiver, consignor, consignee and any third party of any additional liability for freight charges. Carrier's sole recourse shall be against Broker except where otherwise provided in this Contract.

i. **Authorized Collections.** Carrier authorizes broker to invoice and collect from shipper, receiver, consignor or consignee of each shipment for freight charges billed to broker by carrier as carrier's agent. Payment received by broker and paid to carrier pursuant to carrier's freight bill shall relieve shipper or consignee of any further liability to carrier for non-payment.

6. **Claims.** Claims against Carrier for loss, damage, injury or delay to freight may be filed with carrier by Broker, Broker's customers, parties to the bill of lading, or the beneficial owner of the freight within nine (9) months of delivery or, in the event of loss, within nine (9) months of when delivery should have reasonably occurred. Carrier shall acknowledge freight claims within forty-eight (48) hours of receipt. Claims shall be settled within thirty (30) days of receipt unless otherwise agreed. The time limit within which suit must be instituted by an aggrieved party against Carrier to recover on a claim shall be two years and a day from the date Broker received a written disallowance of the claim from Carrier.

7. **Carrier's Equipment and Driver Responsibility.**

a. **Confiscation.** Neither Broker nor Broker's customers shall be liable to carrier for any damage sustained by or to Carrier's equipment or for loss by confiscation or seizure of Carrier's equipment by any public authority.

b. **Condition.** Carrier's equipment shall be clean, odor-free, dry, leak-proof and free of contamination and infestation. Said equipment shall be subject to inspection for suitability of cleanliness and safety by Broker or Broker's customer, and must meet with their approval.

8. **Compliance with other Laws and Regulations.** Carrier shall comply with all applicable regulatory body and DOT regulations as well as all other federal and state laws or regulations applicable to motor carriers.

9. **Independent Contractor Relationship.** The relationship of the Carrier to the Broker shall at all times be that of an independent contractor, except that Broker shall be the agent for the Carrier for the collection of freight charges. Carrier shall be an independent contractor and not a servant, agent, employee, joint venturer or partner of Broker. Carrier shall be totally responsible for the following: Selection, compensation, working hours, working conditions, retention and discipline of personnel; supervision and control of the personnel of Carrier and the mode and manner in which they perform their duties; legality of length, weight and height of cargo as loaded, selection of routing, periods of rest, periods of maintenance, maintenance of logs, safety precautions and all such other activities involved in performing its duties hereunder; compliance with federal, state, municipal and other applicable motor carrier and other laws and regulations; payment of all federal, state and local personal and business income taxes, sales and use taxes, social security contributions, unemployment taxes, worker's compensation premiums or expenses, other expenses or contributions typical for employees, business and license fees, fines or penalties, or fines, penalties or interest on any of the foregoing arising out of the activities of Carrier pursuant to this Contract; selection, repair and maintenance of all equipment; and all costs and expenses incurred in providing services hereunder.

10. **No Solicitation of Customers.** During the term of this Contract and for a period of five (5) years from the time of the termination of this Contract, Carrier shall not directly or indirectly, solicit or do business of a transportation or warehousing nature with any of Broker's customers who are serviced by Carrier

as a result of this Contract, unless otherwise agreed to in writing. Further and without waiving the foregoing, Carrier shall pay Broker the sum of ten (10) percent of all gross revenues that Carrier either receives or bills Broker's customer in violation of the provisions of this paragraph. Broker shall also be entitled to seek other relief, such as injunctive relief, to enforce the provisions of this paragraph.

11. **Exchange of Information.** Carrier agrees to the exchange of information with Broker via electronic transmission, including, but not limited to, electronic facsimile, electronic mail, and telephone.

12. **Taxes and Assessments.** The liability for payment of any taxes or assessments imposed under federal or state law and arising out of the transportation service, including but not limited to road, fuel and other taxes, fees or permits, provided by Carrier pursuant to this Contract is assumed entirely by Carrier. If any such tax or assessment is imposed upon Broker or Broker's customers, Carrier shall indemnify Broker or Broker's customer as provided by this Contract.

13. **Third Party Beneficiaries.** Broker's customers, the consignors and consignees named on the bills of lading, and the beneficial owner of the goods, are third-party beneficiaries of this Contract and may rely on it to seek recovery of claims from Carrier or in defending any claims made against them.

14. **Force Majeure.** Neither party is liable for the failure to tender or timely transport freight under this Contract if the delay or other omission is caused by strike, acts of God, war, accidents, civil disorder, or through compliance with legally constituted order of civil or military authorities.

15. **Nonassignment.** Neither party shall sell, convey, assign, transfer, dispose or encumber any of its rights, interests or benefits under this Contract without obtaining prior written consent of the other party, which consent shall not be unreasonably withheld.

16. **Integration.** This Contract embodies the entire understanding between parties, and it is agreed that there are no other arrangements, agreements or understandings, oral or written, which effect this Contract in any way. This Contract may not be changed, waived or modified except by written agreement signed by both parties stating that it is an amendment to this Contract. This Contract supersedes any and all prior written or oral agreements of the parties.

17. **Severability.** If any term, provision, covenant or condition of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

18. **Obligations Upon Termination.** Those duties and obligations in force at the time of any termination of this Contract shall survive until performed according to the terms hereof.

19. **Nonwaiver.** Waiver of any default or breach of this Contract of any warranty, representation, covenant or obligation contained herein shall not be construed as a waiver of any subsequent breach.

20. **Governing Law; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any action filed in relation to this Contract shall be filed in the District or Circuit Court for the State of Oregon, whichever court is appropriate, in either the county of Broker's domicile or Multnomah County, Oregon, at the option of the Broker. Carrier agrees to, and hereby does, submit to the jurisdiction of the courts of the State of Oregon and further consents that the proper venue for any action shall be either Multnomah County, Oregon or the county of the Broker's domicile, at the option of the Broker.

21. **Attorney's Fees and Costs.** In the event that an action is filed in relation to the enforcement of this Contract, the unsuccessful party in the action shall pay to the successful party, in addition to all of the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees and costs, including appeals.

22. **Confidentiality.** Carrier shall not disclose, and shall cause its employees and agents not to disclose, the terms and conditions of this Contract to any third party without the prior written consent of the Broker.

23. **Authority of Representation to Bind Parties.** The parties warrant that the persons signing this Contract respectively for Carrier and Broker are their authorized representatives to sign such Contract. No further proof of authorization is or shall be required.

24. **Originals and Counterparts.** The Contract may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original hereof.

25. **Notices.** All notices under this Contract required or authorized to be given by either party shall be given in writing to be sent by certified mail, return receipt requested, or overnight delivery service, and shall be addressed to the company, person, and address set forth in the signature section of this Contract.

**BROKER:**

**TOP FLIGHT TRANSPORTATION, INC.**

9400 SW Beaverton Hillsdale Hwy, Suite 145  
Beaverton, OR 97005

By: \_\_\_\_\_  
Michael Pierce Date:

Title: PRESIDENT

**CARRIER:**

\_\_\_\_\_  
Carrier Legal Name

\_\_\_\_\_  
Physical Mailing Address

\_\_\_\_\_  
City, State

\_\_\_\_\_  
ZIP Code

By: \_\_\_\_\_  
Authorized Signature Date:

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_