

BROKER-CARRIER TRANSPORTATION AGREEMENT

Form KSBK BCTA 126 (file 2062-089) Rev. 11.1.2016

This BROKER-CARRIER TRANSPORTATION AGREEMENT ("Agreement" or "BCTA") by and between **K & J LOGISTICS, INC.**, a South Dakota corporation, hereinafter referred to as "BROKER" or "KSBK", and the transportation service provider identified below, hereinafter referenced as "CARRIER";

Whereas, BROKER is licensed by Federal Motor Carrier Safety Administration ("FMCSA") as a broker of property transportation services, under license MC-176595 (USDOT # 2212826), and is the agent of the shipper or the owner of goods for the control of transportation to be arranged with CARRIER, and

Whereas, CARRIER is a duly authorized ICC, FHWA or FMCSA motor carrier of property as more fully identified below, authorized to transport general commodities, with usual exceptions, between points in the United States and is qualified and competent to provide service to BROKER under this Agreement, for the benefit of third-party Shippers or Owners of goods for shipment; *NOW THEREFORE, IT IS AGREED:*

- 1. MUTUAL OBLIGATION OF PARTIES:** BROKER agrees to offer for shipment and CARRIER agrees to transport by suitable motor truck equipment (clean, food-grade, and temperature controlled, as required), such quantities of commodities as BROKER'S customers may require, subject to public demand or need. This Agreement is intended to control the relationship of BROKER and CARRIER as to all shipments offered by BROKER and accepted by CARRIER for motor truck transportation (the "Traffic"). CARRIER will neither cause nor permit any Traffic tendered by BROKER to be transported by any other motor carrier (whether by co-brokering, re-brokering, or otherwise), or any other third parties.
- 2. GROSS RATES, LOAD MEMO, REASONABLE DISPATCH:** CARRIER will invoice BROKER for all services performed on the basis of CARRIER'S Gross Rate, being the sum due when and as agreed upon between CARRIER and BROKER as to each shipment (or series of shipments, if applicable) constituting Traffic under this Agreement, as evidenced by *Load Memo B*, the form of which is referenced below, or other written memorandum contemporaneously prepared by BROKER, accepted by CARRIER, and incorporated by this reference. CARRIER'S Gross Rate shall include any applicable fuel surcharge, accessorial and ancillary charges, consistent in every case with the governing load memo. This Agreement shall govern the BROKER-CARRIER relationship, controlling over any inconsistent terms of any bill of lading, shipping memorandum, load memo, or other document pertaining to the Traffic. CARRIER shall transport the Traffic with reasonable dispatch, and complete delivery, consistently in any event with the commitment under the load memo. CARRIER will employ reasonable, usual measures to prevent theft, and ensure the physical integrity and security of the Traffic as to unauthorized introduction (or risk thereof) of harmful or dangerous materials, drugs, contraband, weapons or of unauthorized personnel in conveyance, container or motor truck equipment, with a full, continuous record of seals as required.
- 3. SHIPPING DOCUMENTS:** CARRIER shall issue each bill of lading or shipping document in its own name, as a motor carrier. CARRIER shall perform service for the Traffic in the capacity of a for-hire motor carrier, and not otherwise. This Agreement shall govern the relationship, controlling over any inconsistent terms of a bill of lading, shipping memorandum, load memo or other document pertaining to the Traffic, unless CARRIER and BROKER have clearly and mutually intended otherwise.
- 4. INDEPENDENT CONTRACTOR:** CARRIER'S relationship to BROKER shall, at all times, be that of an independent contractor. CARRIER'S employees or leased operators shall not be deemed the employees or agents of BROKER for any purpose. CARRIER shall have sole responsibility to determine and direct the manner, method and course of performing transportation service. CARRIER represents a "satisfactory" rating (SAFER-SYS), and will provide BROKER immediate, written notice of any change in CARRIER'S rating. When applicable, CARRIER must at all times retain "continue operations" status (CSA 2010). CARRIER shall provide immediate, written notice of any change in rating status, including FMCSA assignment to CARRIER of being "unfit" to continue operations.
- 5. CARGO LIABILITY, INSURANCE:** As between CARRIER and BROKER, CARRIER hereby assumes *all liability* for loss or damage to the Traffic, or claims of Shipper or Receiver, arising while in CARRIER'S custody or control, CARRIER shall as an insurer as to the Traffic, for the benefit of Shipper or Owner of the goods in shipment. CARRIER agrees to process and resolve cargo loss or damage claims in good faith, in accord with 49 CFR Part 370. CARRIER, regardless of whether required to do so by law, must maintain in force at all times broad-form, all risk legal liability cargo insurance (not scheduled by vehicle, and to include mechanical breakdown coverage) in a minimum amount of \$100,000 per occurrence (or the actual value of shipment if greater, *see* applicable load memo B, line 9(b)), and to further provide BROKER with a current certificate of insurance, endorsed as non-cancellable or nonrenewable absent 30 days minimum prior written notice to BROKER, issued by a reputable insurance carrier (rated B+ or better), without limit as to geographic scope, and without exclusion for infidelity, fraud or dishonesty of carrier, contractors, agents and employees.

6. INDEMNIFICATION, PUBLIC LIABILITY INSURANCE: CARRIER covenants and agrees to indemnify and hold harmless BROKER from and against loss, damage, injury or claims asserted by any and all persons, including but not limited to, the Shipper or Owner of the shipment, and employees of CARRIER, as arise in connection with CARRIER'S performance under this Agreement. CARRIER shall further maintain at all times, in amounts as required by the US-DOT or FMCSA, property damage and public liability insurance (subject to \$1,000,000 minimum) on all vehicles and its operations in connection with performance hereunder, endorsed as non-cancellable or nonrenewable absent 30 days minimum prior written notice to BROKER. CARRIER shall also maintain worker's compensation/employer's liability insurance, as required by applicable state law, with waiver of subrogation in favor of BROKER. CARRIER shall furnish written evidence of insurance coverage, BROKER to be named as additional insured (by endorsement) on all relevant policies. If required by terms of BROKER'S agreement with the Shipper or Owner, CARRIER, upon BROKER'S written request, shall also name the Shipper or Owner of the goods as an additional insured (by endorsement).

7. PAYMENT: BROKER will endeavor to pay CARRIER within thirty (30) days after receipt of proof of delivery and CARRIER'S invoice, except BROKER, in its discretion, may withhold or defer payment in the event payment to BROKER has been withheld or delayed due to any asserted claim for cargo loss or damage arising out of CARRIER'S performance (including delay or market loss claims). BROKER has the exclusive right to invoice the third-party payor for recovery of CARRIER'S Gross Rate, plus an amount to cover BROKER'S commissions. BROKER will not assess or demand of CARRIER a commission based on the Gross Rate (except as may be provided in Section 9, below). CARRIER, by this Agreement, waives the assertion of a lien as to the Traffic.

8. TERM AND TERMINATION: This Agreement shall be and remain in effect continuously from its date until cancelled by either party upon not less than thirty (30) days prior written notice to the other.

9. NON-INTERFERENCE AND INTERPRETATION: CARRIER agrees not to interfere with BROKER'S contractual rights with Shipper or Owner of goods ("Customer"), and will not directly solicit or contract with the Customer during the term of this Agreement, plus one year. CARRIER is not prohibited from soliciting or contracting with any such accounts not introduced by BROKER, or which pre-exist this Agreement. In the event of any violation, as liquidated damages, and not as a penalty, BROKER shall be entitled to a commission of 10% on all such directly contracted Traffic, whether CARRIER is acting as a contract or common carrier. BROKER may use reasonable means to ascertain compliance with this Section, upon reasonable notice and request. This Agreement shall be interpreted in accordance with the laws of the State of South Dakota and *The ICC Termination Act*, as amended, or regulations of FMCSA, promulgated pursuant thereto or other applicable federal laws.

10. VENUE: The parties especially agree that any action related to or arising out of this Agreement, whether by or on behalf of BROKER or CARRIER, may be maintained only in the Second Judicial Circuit Court, in and for Minnehaha County, State of South Dakota, and each party expressly consents irrevocably to submit to the exclusive personal jurisdiction of said court in any matter touching or concerning the relationship herein expressed. A party substantially prevailing on a claim or defense may, in addition, recover reasonable attorney's fees and other costs.

11. SUPPLEMENTAL PROVISIONS: *Schedules 1 and 2*, annexed, when signed by CARRIER'S representative, indemnify as to CARRIER'S compliance with California Air Resources Board (CARB) regulations, *FDA Food Safety Modernization Act*, and other applicable law, and all regulations adopted pursuant thereto. *Schedule 3*, annexed, comprises the "Conditions & Requirements" incorporated by reference into each *Load Memo B*; *Schedule 4*, annexed, presents the agreed form of *Load Memo B*, to be entered into by the parties hereto.

12. EXECUTION: The parties have entered into this Agreement by and through their duly authorized representatives or agents, effective the latest date entered below:

Broker:
K & J LOGISTICS, INC.

Carrier:

By _____
Title _____ Date: _____

By _____
Title _____ Date: _____

MC-176595, USDOT # 2212826
ADDRESS: 1800 E. 50th St. North
Sioux Falls, SD 57104

USDOT - _____
MC- _____ (Common) (Contract)
Full Address: _____

SCAC: KSBK
BCTA 126 (Rev. 11.1.2016)

SCAC: _____
K- _____

(Schedules 1, 2, 3 and 4, follow)

SCHEDULE 1 - Form KSBK BCTA 126 (Rev. 11.1.2016):

With respect to all shipments transported to, from, through or between points in the State of California, for the protection of all involved Shipper, Broker, and Consignee interests, CARRIER expressly warrants that (a) it is familiar with the applicable Airborne Toxic Control Measure standards adopted by California Air Resource Board (CARB), and (b) the trucks, tractors, and trailers used and to be used by CARRIER shall be equipped with Transport Refrigeration Units (TRU) in compliance with CARB's TRU ATCM in-use performance standards, and CARRIER shall respond to authorized enforcement personnel in a manner consistent with current CARB regulatory guidance. Broker is required by its shippers and receivers to hire *only those motor carriers that are compliant with such regulations*, and CARRIER's warranty regarding compliant status is a key factor in BROKER's tender of shipments to CARRIER. If based outside of California, CARRIER has voluntarily registered each TRU used for shipments, within the geographic scope warranted, in Air Resources Board Equipment Registration (ARBER) system (<http://arber.arb.ca.gov/publicTCCReports.arb>) and will provide BROKER with an ARBER Certification Page for all such units. CARRIER shall be liable to BROKER for any penalties, or other monetary or other liability, imposed on BROKER due to CARRIER's use of non-compliant equipment within the geographic scope as warranted, CARRIER, by the provisions of this Schedule 1, and the acceptance hereof, having especially agreed to indemnify and hold harmless BROKER with respect thereto.

Carrier Accepts and Agrees to perform according to the provisions of this Schedule 1:

By: _____ Title: _____ Date: _____

SCHEDULE 2 - Form KSBK BCTA 126 (Rev. 11.1.2016):

With respect to all shipments tendered by BROKER to CARRIER under this Agreement and within the scope of the *FDA Food Safety Modernization Act of 2011*, the *Sanitary Food Transportation Act of 2005*, and federal regulations adopted pursuant thereto, 21 CFR § 1.901, *et seq.*, BROKER will inform CARRIER of any shipper-supplied specifications for the performance of the transportation as may be applicable, including pre-cooling and operating temperatures required for perishable goods. CARRIER shall observe any temperature required by the terms of or notations upon the bill of lading, or other shipping documents. In all cases, CARRIER shall be responsible for meeting those specifications, and in supplying clean, sanitary trailers and maintaining same in like manner during the performance of service. Trailers supplied must be structurally sound, fully enclosed, designed and maintained to protect the cargo from becoming unsafe or in off-condition while in transit (whether moving as truckload or LTL quantities). "Off-condition" can include, as examples, failure to protect from temperature extremes, or to maintain at required temperatures, and odors from prior or other lading while in CARRIER'S possession. CARRIER'S acceptance of the shipment, described as to goods, shall be an implied representation that CARRIER'S personnel (both drivers and any handlers) are trained and familiar with the handling and protection needs of the named goods. When requested by terms of the Bill of Lading or other shipping documents provided to CARRIER, the maintenance of a full and complete record of seals, including each stop to complete loading or unloading, shall be maintained by CARRIER. CARRIER'S failure to comply with the cited provisions, and of this Schedule 2, shall constitute a material breach of this BCTA, exposing BROKER to the monetary claims of others having an interest in the shipments tendered to CARRIER hereunder; CARRIER agrees, by acceptance of this Schedule 2, to indemnify and hold harmless BROKER with respect thereto.

Carrier Accepts and Agrees to perform according to the provisions of this Schedule 2:

By: _____ Title: _____ Date: _____

SCHEDULE 3 - Form KSBK BCTA 126 (Rev. 11.1.2016):

Load Memo B (Rev. 11-1-2016) - "CONDITIONS & REQUIREMENTS" - By acceptance of this order as identified, CARRIER, agents and affiliates, agree to each of the following conditions or service requirements for the shipment(s) described in, and deemed incorporated into, each *Load Memo B*:

1. CARRIER is exclusively responsible for cargo loss or damage, and all necessary insurance coverage per BCTA specifications; BCTA 126, and schedules thereto, are incorporated by this reference, and shall fully govern this order, except where inconsistent with "negotiation comments" and/or "order comments" provided in this order.
2. KSBK must be informed of, and agree to, additional or further charges before incurred.
3. Original POD is required with CARRIER'S invoice, showing KSBK order #. KSBK is solely responsible for payment of CARRIER'S invoice.
4. CARRIER must furnish signed BOL within 24 hours of delivery to the mailing address listed above or email to tpauley@kandjlogistics.com or fax to (605) 332-6016. BOL must be accompanied by CARRIER'S invoice and cover sheet showing the KSBK load (order) number.
5. All loads must be sealed at loading origin, and arrive at consignee with seal intact. Multi-stop loads must have continuous seal record, noted by each shipper or consignee, and seal record must be submitted with BOL. Do not break seals without representative of shipper or consignee observing your driver.
6. Unloading charges incurred by CARRIER must be submitted to KSBK, with suitable receipt the same date as incurred. Unloading charges must be submitted with CARRIER'S initial invoice to KSBK. Failure to follow this requirement will result in non-reimbursement of this expense. CARRIER must advance unloading charges to service provider, subject to reimbursement under this part. If CARRIER does not have funds for unloading, a Com-check will be issued for an additional \$15.00 fee.
7. Shortages, overages or damaged goods must be reported to KSBK before leaving consignee. CARRIER should arrange for driver to digitally photograph contested or disputed conditions, promptly supplied to KSBK.
8. CARRIER IS REQUIRED TO OBTAIN FURTHER LOAD DETAILS AND REQUIREMENTS FROM KSBK, PRIOR TO ARRIVING AT SHIPPER, CALL – 605-977-8490 (Tim Pauley).
9. KSBK's customer has designated this shipment as "critical," requiring that CARRIER provide daily status report to KSBK, by 10 AM for each business day in transit. We will inform shipper and/or consignee of status.
10. CARRIER must provide equipment with satellite communication or technology capable of providing updates on demand or inquiry.
11. CARRIER accepts the shipment(s) in the capacity of "motor carrier," not as a broker of transportation services. Re-brokering or double brokering of this shipment is expressly prohibited.
12. CARRIER certifies that all transport refrigeration unit (TRU) equipment and tractors supplied, when handling shipments to, from or through California, will be compliant with in-use requirements of California Air Resources Board (CARB), as then in force, CARRIER having also agreed to indemnify KSBK as to any asserted violations/penalties of CARB regulations. (See Schedule 1 of BCTA.)
13. CARRIER shall additionally comply those provisions of law and regulations pertaining to sanitary transportation of food intended for human consumption, including protective services while in CARRIER'S possession, as required by the provisions of the BOL or other shipping documents, the terms of this order, or as related to CARRIER by other instructions given by KSBK. (See also Schedule 2 of BCTA.)
14. For payment status, please call 605-332-5531, Ext. 215.

Load Memo B – Conditions & Requirements – Rev. 11-1-2016 BCTA-126 (Rev. 11-1-2016)
Carrier Accepts and Agrees to perform according to the provisions of this Schedule 3:

By: _____ Title: _____ Date: _____

K & J LOGISTICS, INC. ("KSBK")
Sioux Falls, SD

NOTICE OF REQUIREMENT FOR CARRIER COMPLIANCE WITH
CALIFORNIA AIR RESOURCES BOARD
Truck and Bus Regulation, Title 13, California Code of Regulations, Sec. 2025

Carriers are required to comply with regulations adopted by the California Air Resources Board (CARB), Truck and Bus Regulation, 13 California Code of Regulations, § 2025. More information is available on line: <http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>

As a motor carrier supplying trucking services to KSBK, you must certify that you will only dispatch and use equipment in compliance with CARB's Truck and Bus Regulations while transporting property shipments on California highways or railways. The term "equipment" includes trucks, tractors and trailers, including Transport Refrigeration Units (TRU). Reference to these regulations and requirements are made also in Schedule A to the broker-carrier transportation agreement between us (Form KSBK-BCTA-126, Rev. 11.1.2016), providing, *inter alia*, the carrier is liable for any penalties or other monetary obligations imposed on KSBK, as broker, for the use of non-compliant equipment.

Your acceptance of the rate confirmation (load memo) and your driver's signature on the bill of lading are each an express acknowledgment of the above statement and your certification the transport equipment, including TRU, offered and used in each transaction moving to, from, between or through California points, is compliance with the regulations. Please sign and return a copy of this document, further certifying (by signature below) your carrier's agreement and acceptance of the duty to comply with CARB's regulations, completing (and attaching) also your method of compliance, as requested immediately following:

Proof of compliance, as applicable [check one]:

- Attached Certificate of Reported Fleet Compliance with Truck and Bus Regulation
- Attached Certificate stating compliance with the engine model year schedule
- Attached list of vehicle VIN with engine model year, PM filter information demonstrating compliance with engine model year schedules

CARRIER NAME: _____ SCAC _____

Authorized Signature: _____

_____ Title: _____ Date: _____

Date of this Request: _____

From:
K&J LOGISTICS, INC.