



BROKER/SHIPPER AGREEMENT

THIS BROKERAGE AGREEMENT (“Agreement”) is made and entered on _____, by and between _____ (“SHIPPER”) and **T PRIME LOGISTICS INC.** (“BROKER”) (collectively, the “Parties”).

I. **Recitals**

A. **WHEREAS** BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (“FMCSA”), or by appropriate State agencies, and as a licensed broker, arranges for freight transportation; and

B. **WHEREAS** SHIPPER seeks to utilize the services of BROKER to facilitate the transportation of goods on behalf of SHIPPER; and

NOW THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:

II. **Agreement**

1. **SCOPE.**
 - a. The terms of this Agreement may be amended or supplemented by written agreement of BROKER and the SHIPPER as set forth in Appendix A, or in any other written appendices or schedules mutually agreed upon by BROKER and the SHIPPER (collectively, “Appendix”). If a conflict exists between the provisions of this Agreement and the terms of any Appendix, or to the extent that an Appendix addresses matters not addressed herein, BROKER and SHIPPER hereby agree that the terms of the Appendix shall control.
 - b. Unless otherwise set forth in an Appendix, this Agreement applies to all services performed by BROKER with respect to shipments tendered by SHIPPER.
 - c. The Parties intend that this Agreement shall not be exclusive. Nothing herein shall grant BROKER any exclusive right to perform property brokerage services on behalf of SHIPPER or obligate SHIPPER to tender any minimum amount of cargo to BROKER.
2. **TERM AND TERMINATION.**
 - a. The term of this Agreement shall be for one (1) year and shall automatically be renewed for successive one (1) year periods; provided, however, that either Party may terminate this Agreement with or without cause at any time by giving the other Party thirty (30) days prior written notice.
 - b. Either Party may additionally terminate this Agreement immediately upon written notice to the other of the following events:
 - i. Breach of any covenant, obligation, condition or requirements imposed by this Agreement if such breach continues for a period of ten (10) days after written notice thereof; or
 - ii. A Party becomes insolvent, unable to pay its debts in a timely manner, seeks protection under bankruptcy or receivership laws, or is forced into bankruptcy or receivership.
 - c. Shipper may additionally terminate this Agreement immediately upon written notice if:
 - i. Broker loses its operating authority;
 - ii. Fails to procure or maintain insurance coverages required by this Agreement; or
 - iii. Utilizes the services of Servicing Motor Carriers (as defined below) that do not hold the requisite authority to provide services required by SHIPPER.
3. **BROKER’S COMPLIANCE WITH LAW.** BROKER represents and warrants that it is duly and legally qualified to operate as a property BROKER and to provide the transportation services contemplated

herein. BROKER agrees to comply with all federal, state and local laws regarding the provision of such brokerage services. The Parties understand and agree that BROKER functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation, and that the actual transportation of shipments tendered to BROKER shall be performed by third-party motor carriers ("Servicing Motor Carriers").

4. **PAYMENT AND CHARGES.** SHIPPER shall tender certain shipments, from time to time, to BROKER. With respect to any shipment tendered by SHIPPER to BROKER, BROKER shall invoice SHIPPER for its services in accordance with the rates and charges as agreed to in writing by both Parties prior to the movement of the shipment. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding upon BROKER's invoice to SHIPPER and SHIPPER's payment to BROKER. In the event that Brokerage services are provided and it is subsequently discovered that there was no applicable or understood rate, the Parties agree that the charges invoiced by BROKER shall be the agreed upon contract rate of the Parties for the services provided, unless such payment is objected to by SHIPPER within ten (10) days of the invoice date. SHIPPER agrees to pay BROKER within thirty (30) days of receiving invoice, without deduction or setoff unless agreed to in writing by the Parties, with interest accruing monthly at a rate of one percent (1%) on past due invoices. Shipper shall also be liable for any expenses, including attorney fees, BROKER incurs in collecting its rates and charges with respect to undisputed invoices. BROKER shall be solely responsible for making payments of freight and other accessorial charges to Servicing Motor Carriers utilized by BROKER to provide the transportation services. BROKER will implement and maintain in their written contracts with Servicing Motor Carriers that BROKER has the exclusive right to handle all billing of freight charges to the Shipper and/or Customer for the transportation services provided, and as such, the Servicing Motor Carrier shall agree to refrain from all collection efforts against the SHIPPER, Customer, or the receiver. Payment of the freight charges to BROKER shall relieve SHIPPER or other responsible party of any liability to the Servicing Motor Carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify SHIPPER or other responsible party against such liability.

5. **SERVICING MOTOR CARRIERS.** Unless set forth in an Appendix, BROKER shall require by written contract that each Servicing Motor Carrier providing transportation services to SHIPPER agrees:

- a. That it is duly and legally licensed under applicable state, provincial and federal law to provide any transportation services required under this Agreement, and that it does not have an unsatisfactory or unfit safety rating issued by the United States Department of Transportation ("DOT") or any state or provincial authority with jurisdiction over its operations.
- b. That it is performing services pursuant to contract and that in no event shall any provision in any tariff, service guide, bill of lading, delivery receipt, or other shipment documentation apply to services performed with respect to shipments tendered by or to SHIPPER.
- c. That it will obtain a receipt showing the kind and quantity of product delivered to the consignee of each shipment at the destination.
- d. That it will furnish all equipment necessary at its sole cost and expense and bear all expenses related to the use or operation of the equipment; that it will utilize only legally licensed personnel qualified in accordance with governing law; and that it shall provide all services as an independent contractor and assume responsibility for financial obligations arising out of the transportation services.
- e. That it shall accept liability as a motor carrier under the Carmack Amendment (as currently codified at 49 U.S.C. § 14706 and as amended from time to time) for loss, damage, or delay to goods tendered by or on behalf of Shipper; that no limitation of liability shall apply to any such shipment except that Servicing Motor Carrier's full value liability shall be limited to \$100,000 per trailer or conveyance unless a higher value is declared in writing prior to pickup and Servicing Motor Carrier has agreed to such valuation; and that it waives any right to salvage goods (as well as any right to claim entitlement offset salvage value) tendered by or to Shipper.
- f. That it will, at its sole cost and expense, procure and maintain during any period in which it handles shipments tendered by or to Shipper the following insurance coverage:
 - i. Commercial General Liability Insurance ("CGL") covering the transportation of shipments and other operations under this Agreement in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence;

- ii. Commercial Automobile/Trucking Liability insurance (“AL”) coverage with limits of not less than \$1,000,000.00 (U.S. Dollars) per occurrence;
- iii. All Risk Broad Form Motor Truck Cargo Legal Liability insurance (“Cargo”) in an amount not less than \$100,000 (U.S. Dollars) per occurrence; and
- iv. Workers’ Compensation insurance or analogous coverage with statutory limits (or compliance with monopolistic state funds).

g. That all coverages set forth above shall be with reputable and financially responsible insurance companies (rated B+ or better). Servicing Motor Carrier shall agree to furnish to BROKER written certificates showing that such insurance has been procured.

- h. Servicing Motor Carrier shall agree to defend, indemnify against, and hold harmless SHIPPER from any and all claims, actions, losses, expenses, fines, fees, verdicts, judgments, or any other damages, obligations, or liabilities, including attorneys’ fees (“Servicing Motor Carrier Claims”), arising pursuant to the services provided to SHIPPER to the extent such Servicing Motor Carrier Claims are caused by the negligence or other wrongful conduct of the Servicing Motor Carrier.
- i. That it will perform the transportation services directly with equipment under its own authority and that it shall not co-broker, trip lease, or otherwise subcontract the transportation or handling of any shipment tendered to it pursuant to this Agreement. The foregoing shall not be construed as prohibiting interlining which, for the purposes of this Agreement, shall mean that the Servicing Motor Carrier performs some part of the motor carrier transportation in Equipment operating under the Servicing Motor Carrier’s own authority.
- j. That it will waive liens it may otherwise have with respect to goods tendered by or to SHIPPER.

6. **INDEMNIFICATION.**

- a. BROKER shall indemnify, defend and save SHIPPER harmless from and against any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney’s fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof, suffered or claimed to have been suffered by any person or persons, arising out of BROKER’s services provided in connection with this Agreement to the extent such claim is caused by 1) the negligence or intentional misconduct of BROKER; 2) BROKER’s or its employees’ violation of applicable laws or regulations; or 3) BROKER’s or its employees’ breach of this Agreement.
- b. BROKER shall also indemnify, defend, and save SHIPPER harmless from and against any and all claims of payment made by Servicing Motor Carriers as long as SHIPPER has made timely payment in accordance with the provisions of this Agreement to BROKER of the full amount owing to BROKER for the services underlying the Servicing Motor Carrier’s claim.
- c. SHIPPER shall indemnify, defend and save BROKER harmless from and against any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney’s fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof, suffered or claimed to have been suffered by any person or persons, arising out of SHIPPER’s performance under this Agreement to the extent such claim is caused by 1) the negligence or intentional misconduct of SHIPPER; 2) SHIPPER’s or its employees’ or agents’ violation of applicable laws or regulations; or 3) SHIPPER’s or its employees’ or agents’ breach of this Agreement.
- d. In the event that such claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including without limitation, reasonable attorney fees) are caused by the joint and concurrent negligence or other fault of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses shall be borne by each Party in proportion to its degree of negligence or other fault.
- e. Any indemnified Party shall promptly tender the defense of any claim to the indemnifying Party.

- f. In no event shall either Party be responsible for any special, punitive or consequential damages under this Agreement regardless of whether such Party had notice of the possibility of such damages.

7. **INDEPENDENT CONTRACTOR.** BROKER represents and warrants that it is an independent contractor under this Agreement and that its employees are under BROKER's exclusive management and control, and that SHIPPER neither exercises nor retains any control over BROKER, its operations or employees in any manner whatsoever.

8. **BROKER INSURANCE.** BROKER shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain a surety bond to benefit the SHIPPER.

9. **CARGO LOSS, DAMAGE, OR SHORTAGE.**

- a. SHIPPER acknowledges and agrees that the Servicing Motor Carrier's liability for cargo loss and damage is limited to \$100,000 per trailer or conveyance. At the time of communicating the shipment to BROKER, but in no event later than twenty-four (24) hours prior to scheduled pick-up, SHIPPER may request that BROKER arrange to transport a shipment with a higher valuation as set forth in the Rate Confirmation Agreement. If BROKER agrees to arrange such transportation, BROKER will arrange the transportation with a Servicing Motor Carrier that agrees to such limitation as long as SHIPPER has declared such increased value on the face of the bill of lading presented to or by the Servicing Motor Carrier at pick-up.
- b. In the event of a cargo loss, damage, delay or shortage claim, BROKER agrees to facilitate filing of cargo claims with the Servicing Motor Carrier as long as SHIPPER complies with the obligations set forth in this section. SHIPPER agrees to notify BROKER promptly after becoming aware of any such claim by phone and to subsequently submit to BROKER a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage. Thereafter, SHIPPER shall comply, at SHIPPER's cost and expense, with BROKER's reasonable requests intended to resolve such claim.
- c. SHIPPER must submit a written claim to BROKER within eight (8) months of delivery, or within eight (8) months of the date delivery should have occurred if no delivery is made, or BROKER shall have no obligation to assist in the facilitation of such claims.
- d. It is understood and agreed that BROKER is not a motor carrier and as such, BROKER shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused by BROKER's negligent acts or omissions. With respect to the standard for BROKER negligence with respect to Servicing Motor Carrier's insurance, the failure of the Servicing Motor Carrier to possess insurance required by law will be deemed a negligent act or omission on the part of BROKER.
- e. Shipper acknowledges that where less-than-truckload, intermodal or rail shipments are tendered, the published service conditions, accessorial charges and released rates of the applicable Servicing Motor Carrier shall apply.

10. **SHIPPING DOCUMENTS.** Unless otherwise agreed in writing, all shipments tendered shall be accepted on a bill of lading. The bill of lading shall act as a receipt only and in no event shall the terms and conditions of the bill of lading be binding on the Parties. Upon request, BROKER shall instruct Servicing Motor Carriers to obtain a delivery receipt from the consignee, showing the products delivered condition of the shipment and the date and time of such delivery.

11. **NOTIFICATION OF ACCIDENTS OR DELAYS.** BROKER agrees to notify SHIPPER of any accident or other event of which BROKER is apprised and which prevents the Servicing Motor Carrier from making a timely or safe delivery.

12. **LEGAL RESTRAINT OR FORCE MAJEURE.** In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking



reasonable measures to remove or mitigate the effects of the applicable cause, then the performance of all obligations required herein shall, with the exception of payment of invoices, be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. No liability shall be incurred by either Party for damages resulting from such suspensions.

13. **COMMUNICATIONS.** To the extent practicable, communications between BROKER and SHIPPER, including, but not limited to, invoicing, payment, Rate Confirmation Agreements, and proofs of delivery, will be electronic in a format mutually agreeable to the Parties. The Parties hereby waive any objection to the authenticity of such electronic communications as long as such communications comply with the Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act, or related legislation as applicable.

14. **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part. This Agreement shall be binding upon and inure to the benefit of the Parties hereto.

15. **SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, the Parties agree that such portion shall be severable and that the remaining provisions of this agreement shall continue in full force and effect.

16. **DISPUTE RESOLUTION.** This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the state of Illinois and in the event of any disagreement or dispute, the laws of Illinois shall apply and suit must be brought in Illinois as each party specifically submits to the exclusive personal jurisdiction of such courts for disputes involving this Agreement.

17. **COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

BROKER: T PRIME LOGISTICS INC.

SHIPPER: _____

Signature: _____

Signature: _____

Printed: Ciprian Filip

Printed: _____

Title: Operations Manager

Title: _____

Address: 13038 Melon Avenue
Chino, CA 91710

Address: _____

Phone: (909) 479-1228

Phone: _____

Fax: (949) 271-4141

Fax: _____

Email: dispatch@tprimelogistics.com

Email: _____

FID No.: _____