

## **FREIGHT BROKERAGE AGREEMENT**

**Please read these Terms and Conditions of the Freight Brokerage Agreement (“Agreement”) carefully. By accepting the Terms and Conditions below, Customer agrees to be bound by its terms.**

WHEREAS, Crane Solutions LLC (“BROKER”) is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-773440, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation; and

WHEREAS, CUSTOMER, in order to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of CUSTOMER’s freight.

NOW THEREFORE, for good and valuable consideration, and intending to be legally bound, BROKER and CUSTOMER agree as follows:

**1. TERM.** Subject to the provisions of Section 11, the term of this Agreement (the “Term”) shall be one (1) year, commencing on the Effective Date, and shall automatically renew for successive one year periods thereafter; provided, however, that either BROKER OR CUSTOMER may terminate this Agreement at any time during the Term, without cause, upon providing not less than thirty (30) days prior written notice, or as otherwise provided in this Agreement.

### **2. SERVICES.**

A. BROKER agrees to arrange for transportation of CUSTOMER’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 CUSTOMER’s freight. The Parties may, upon written mutual agreement, include additional service terms.

B. CUSTOMER shall provide to BROKER timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.

**3. NON-EXCLUSIVE NATURE.** Nothing herein shall be construed to prohibit CUSTOMER from tendering freight to other brokers, or directly to motor carriers, and BROKER is not restricted from arranging transportation for parties other than CUSTOMER.

**4. CARRIER CONTRACTS.** BROKER warrants that it has entered into, or will enter into, bilateral contracts with each carrier it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

A. Carrier shall agree to defend, indemnify and hold BROKER and CUSTOMER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death, except to the extent caused by BROKER or CUSTOMER.

B. Carrier shall agree that its liability for cargo loss or damage shall be no less than that of a Common Carrier as provided for in 49 USC 14706 (the Carmack Amendment). Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability.

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

General Liability/Property Damage - \$1,000,000

Cargo Liability - \$100,000

Auto Liability - \$1,000,000

Worker's Compensation – as required by law.

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

D. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.

E. Carrier shall authorize BROKER to invoice CUSTOMER for services provided by the Carrier. Carrier shall further agree that BROKER is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the CUSTOMER, consignee or BROKER's customer.

F. Carrier shall agree that, at no time during the term of its contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA) . If Carrier receives an Unsatisfactory safety rating, it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an Unsatisfactory safety rating in the performance of this Agreement.

G. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract

H. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.

I. BROKER further warrants it will require proof of insurance and operating authority from each Carrier and, should BROKER utilize the services of any Carrier or other broker on CUSTOMER's behalf, which Carrier and/or broker does not have proof of insurance and/or

operating authority, BROKER agrees to indemnify and hold harmless CUSTOMER from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims.

**5. RECEIPTS AND BILLS OF LADING.** If requested by CUSTOMER, BROKER agrees to provide CUSTOMER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by CUSTOMER. CUSTOMER's insertion of BROKER's name on the bill of lading shall be for CUSTOMER convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement.

**6. PAYMENT TERMS.** BROKER shall invoice CUSTOMER for its services in accordance with the rates, charges and provisions agreed to by the parties, and any written supplements or revisions that are mutually agreed to between the Parties in writing. 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 CUSTOMER and CUSTOMER's payment to BROKER. CUSTOMER agrees to pay BROKER's invoice within 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 CUSTOMER, consignee or other responsible party of any liability to the carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify CUSTOMER, consignee or other responsible party against such liability. Any unpaid amounts shall bear interest from the date due at the lesser of 1.5% per month or the maximum rate allowed under applicable law. Should BROKER, in its sole discretion, find it necessary to employ an attorney to collect amounts due hereunder, BROKER shall be entitled to recover all reasonable attorneys' fees incurred by BROKER in connection therewith.

## **7. CLAIMS PROCEDURES.**

A. Freight Claims: CUSTOMER must file claims for cargo loss or damage with BROKER within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. CUSTOMER must file any civil action against BROKER within two (2) years from the date the carrier or BROKER provides written notice to CUSTOMER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by BROKER shall agree in writing with BROKER to be liable for cargo loss or damage as outlined in Section 4.b above. The carriers' cargo liability for any one shipment shall not exceed \$150,000, unless BROKER is notified by CUSTOMER of the increased value prior to shipment pickup and with reasonable advance notice to allow BROKER and/or the carrier to procure additional insurance coverage. It is understood and agreed that the BROKER is not a Carrier and that the BROKER shall not be held liable for loss, damage or delay in the transportation of CUSTOMER's property unless caused solely by BROKER's negligent acts or omissions in the performance of this Agreement. BROKER shall assist CUSTOMER in the filing and/or processing of claims with the Carrier. If payment of claim is made by BROKER to CUSTOMER, CUSTOMER automatically assigns its rights and interest in the claim to BROKER so as to allow BROKER to subrogate its loss.

**IN NO EVENT SHALL BROKER OR BROKER'S CARRIER BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT RELATE TO LOSS, DAMAGE OR DELAY TO A SHIPMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.**

B. With respect to all other claims, the Parties shall notify each other within sixty (60) days of learning of the existence of such claims, and shall file such claims with the other Party within one hundred eighty (180) days from the date of notice. Any civil action relating to such claim must be commenced within two (2) years from the date either Party provides written notice to the other Party of such a claim.

**8. INSURANCE.** BROKER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

A. Comprehensive general liability insurance \$1,000,000 covering bodily injury and property damage

B. Contingent Cargo Insurance \$100,000

C. Errors and Omissions Insurance \$100,000.

At the written request of CUSTOMER, BROKER shall submit to CUSTOMER a certificate of insurance as evidence of such coverage and which names CUSTOMER as "Certificate Holder".

**9. SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration and shall furnish CUSTOMER with proof of the same, upon request.

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

**11. TERMINATION FOR DEFAULT.** If either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement upon written notice to the other Party, if such party has provided written notice of the occurrence of such default to the defaulting party, describing such default in reasonable detail, and the defaulting party has failed to cure such default within thirty (30) days after receipt of such notice. CUSTOMER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to CUSTOMER.

**12. ASSIGNMENT/AMENDMENT.** 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.

**13. SEVERABILITY.** 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.

**14. INDEPENDENT CONTRACTOR.** The Parties agree that BROKER is not an agent for any carrier or CUSTOMER and shall remain at all times an independent contractor. CUSTOMER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers.

**15. NON-WAIVER.** 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.

**16. NOTICES.** Unless the Parties notify each other in writing of a change of address, any and all notices required to be given under this Agreement shall be in writing and shall be delivered to the other party by certified mail, return receipt requested, to the address provided. If to BROKER, then notice shall be made to the following address:

CRANE SOLUTIONS, LLC  
16680 Central Green Blvd., Suite 150  
Houston, Texas 77032  
281-233-9490  
ATTN: Legal

**17. 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, terrorist acts or threats, or the intervention of any government authority, or any other cause outside of the reasonable control of the CUSTOMER or BROKER, provided that the Party so prevented uses reasonable commercial efforts to perform under this Agreement and provided further, that such Party provides reasonable notice to the other Party of such inability to perform.

**18. CHOICE OF LAW AND VENUE.** This Agreement and all claims or causes of action arising hereunder shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflicts of laws provisions, and in the event of a dispute arising under this Agreement, the parties hereby submit to exclusive jurisdiction in the federal or state courts located in Harris County, Texas, and agree that venue is proper and convenient in such forum. In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this

Agreement or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorney's fees, and costs.

**19. AUTHORITY TO ENTER INTO AGREEMENT.** CUSTOMER hereby represents and warrants that he/she is duly authorized and has legal capacity to accept the terms and conditions of this Agreement on behalf of CUSTOMER with respect to the matters contained herein and stated herein.

**20. DISCLAIMERS.** CUSTOMER USES THIS WEBSITE OF BROKER AT ITS OWN RISK. ALL INFORMATION AND CONTENT CONTAINED ON THIS WEBSITE AND BROKER'S PORTAL IS PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. IN NO EVENT WILL BROKER, ITS SUBSIDIARIES, AFFILIATED COMPANIES, LICENSORS, LICENSEES, OR JOINT PARTNERS BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES FOR ANY USE OF THIS WEBSITE, OR ANY OTHER SITE OF BROKER'S, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES, LOST PROFITS, LOSS OF PROSPECTIVE ECONOMIC ADVANTAGE, BUSINESS INTERRUPTION OR LOSS OF DATA, EVEN IF ADVISED OF SUCH DAMAGES OR FOR ANY CLAIM BY A THIRD PARTY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING BROKER'S WEBSITE.

**21. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties as to the subject matter herein, 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. BY DOING BUSINESS WITH BROKER, CUSTOMER IS SUBJECT TO AND AGREEING TO BE BOUND THE THESE TERMS CONTAINED HEREIN.