



AVILLION LLC CUSTOMER CONTRACT

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 (314) 668-2229

 INFO@AVILLIONLLC.COM

 4126 METAXA LN | APT F
ST. LOUIS, MO 63129

CUSTOMER PROFILE

DATE: _____

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____

CONTACT NAME: _____

POSITION: _____

EMAIL: _____

ADDRESS *(if different)*: _____

PHONE *(if different)*: _____

If different
A/P CONTACT: _____

EMAIL: _____

PHONE: _____

DUNS#: _____

ANSONIA: _____



avillion

Freight brokerage
& forwarding company

AVILLION LLC
BROKER-CUSTOMER TRANSPORTATION AGREEMENT

THIS AGREEMENT, "Agreement", made and intended to be effective _____, by and between Avillion LLC, having offices at Saint Louis, Missouri, (BROKER), and _____ having offices at _____ (CUSTOMER), collectively, the "PARTIES".

RECITALS

- A. **WHEREAS BROKER** is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) under USDOT No. 3970540, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. A copy of BROKER's authority and a copy of BROKER's Surety Bond or trust fund agreement will be provided on request of CUSTOMER; and
- B. **WHEREAS CUSTOMER**, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of CUSTOMER's freight.

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

AGREEMENT

- 1. **TERM.** Subject to paragraph 10, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this agreement on 60 days written notice to the other Party, with or without cause, or otherwise provided in this Agreement.
- 2. **SERVICE.** 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 to be attached as Appendix A.
- 3. **VOLUME.**
 - A. CUSTOMER agrees to tender certain shipments to BROKER, and BROKER agrees to arrange for the transportation of said shipments. CUSTOMER is not restricted from tendering freight directly to motor carriers or other freight brokers. BROKER is not restricted from arranging transportation for other parties.

INITIALS: _____

- B. CUSTOMER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.
4. **FREIGHT CARRIAGE**. 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 substantially the following provisions:
- A. 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 39 USC § 14706 (The Carmack Amendment). Exclusions in Carrier’s insurance coverage shall not exonerate Carrier from this liability.
 - B. 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
Auto Liability -	\$1,000,000
Cargo Liability -	\$100,000
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.

- C. 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.
- D. 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 shipper, consignee or BROKER’s customer.
- E. Carrier shall agree that at no time during the term of its contract with BROKER, shall it have an “Unsatisfactory” or “Conditional” safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an Unsatisfactory or Conditional 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. BROKER will require additional investigation if Carrier receives a conditional rating.
- F. 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 carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract.
- G. Carrier shall expressly waive all rights and remedies under Title U.S.C. § 14101(b) to the extent they conflict with the contract.

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. CUSTOMER understands that even when, for CUSTOMER's convenience, BROKER is listed on the bill of lading, BROKER is not a motor carrier and will not perform transportation of freight. 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. **RATES AND PAYMENTS.** BROKER shall invoice CUSTOMER for its services in accordance with the previously agreed upon rates and charges. Such rates and charges shall be considered "written," and shall be binding, upon BROKER's invoice to CUSTOMER and CUSTOMER's payment to BROKER. CUSTOMER shall pay broker net forty (40) days on CUSTOMER's receipt of BROKER's invoice. BROKER's invoice will provide shipment date, invoice reference number, all applicable CUSTOMER reference numbers, the amounts calculated in accordance with this Agreement, and bill of lading copy. No offsets may be taken against invoiced charges. BROKER shall apply CUSTOMER's payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. BROKER will pay its carriers per the terms of its agreement with Carrier. If BROKER alleges undercharges, or CUSTOMER alleges overcharges, duplicate payment, or over-collection, notice of such claims or unidentified payments must be given within six (6) months of receipt of the invoice and a civil action or arbitration proceeding must be filed within twelve (12) months of delivery or tender or delivery of the shipments involved.

7. **CLAIMS.**
 - A. **Freight Claims:** CUSTOMER must file claims for cargo loss or damage with BROKER within sixty (60) days from the date of such loss, shortage or damage, which for purposes of this Agreement shall be delivery date or, in the event of non-delivery, the scheduled delivery date. CUSTOMER must file any civil action against BROKER in Court of Law within two (2) years from the date the carrier or BROKER provides written notice to CUSTOMER that the carrier 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 paragraph 4.b above. BROKER's and carriers' cargo liability for any one shipment shall not exceed \$100,000, 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 by BROKER's negligent acts or omissions in arranging for transportation of CUSTOMER's freight pursuant to 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 interests 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, unless CUSTOMER has informed BROKER in written or electronic form, prior to or when tendering a shipment or series of shipments to

BROKER, of the potential nature, type and approximate value of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages.

- B. **All Other Claims:** The PARTIES shall notify each other within sixty (60) days of learning of any claims other than cargo loss or damage claims, and shall file any such claims with the other Party within sixty (60) days from the date of notice. Civil action, if any, shall be commenced in a Court of Law within two (2) years from the date either Party provides written notice to the other Party of such a claim.
8. **SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement in the amount of \$75,000 and furnish CUSTOMER with proof upon request.
9. **HAZARDOUS MATERIALS.** CUSTOMER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFT §172.800 and §173 et seq. to the extent that any shipment constitutes hazardous materials. CUSTOMER is obligated to inform BROKER immediately if any such shipments do 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.
10. **DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 (ten) days written notice to the other Party. 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.
11. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither party may assign or transfer this Agreement, in whole or in part, without 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.
12. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision 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. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.
13. **INDEPENDENT CONTRACTOR.** It is understood between BROKER and CUSTOMER that BROKER is not an agent for the 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.

INITIALS: _____

14. **CUSTOMER'S OBLIGATIONS.**

- A. CUSTOMER will provide necessary shipping instructions and will properly identify all cargo and its actual value in the bill of lading or other shipping instructions provided to BROKER. CUSTOMER will not tender any commodities restricted under Circulars, including but not limited to hazardous materials and waste; shipments valued more than the cargo insurance limits in Section 4B; oversized or overweight shipments; coiled or rolled products and commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation thereof. Food Safety Modernization Act (FSMA). Any required documents to be compliant with the FSMA shall be provided by CUSTOMER to BROKER when the shipment is tendered to BROKER. BROKER will relay those documents to the carrier per the FSMA. If CUSTOMER fails to comply with the subsection, CUSTOMER will defend, indemnify, and hold BROKER and carrier harmless from all fines, penalties, claims, liability, and damages, including reasonable attorney's fees and costs of defense as they are incurred.
- B. Unless CUSTOMER has requested BROKER to arrange carrier to provide driver count services before dispatch and the BROKER performs such driver count services, shipper is responsible for causing all contents of shipments moving under this Agreement to be properly counted and recorded and to have a protective seal applied to the loaded equipment.
- C. CUSTOMER will cause all empty containers or trailers tendered for loading to be inspected and to reject any equipment that is not in apparent suitable condition to protect and preserve the cargo during transportation. CUSTOMER will promptly notify BROKER of any rejected equipment.
- D. If CUSTOMER requests that BROKER arrange for Intermodal Equipment to be dropped at a location for CUSTOMER's convenience and left unattended by the carrier, shipper and its consignors or consignees will not lose, damage or misuse the Intermodal Equipment and CUSTOMER will pay for loss or damage to the Intermodal Equipment occurring during or as a result of such possession or use of the Intermodal Equipment if caused by shipper or its consignees or consignor or their agents or employees.

15. **NONWAIVER.** Failure of either part 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 or permitted to be given under this Agreement shall be in writing or (fax with

machine imprint on paper acknowledging successful transmission) and shall be addressed as follows:

(BROKER)

Avillion LLC

4126 Metaxa Ln, Apt F

Saint Louis, MO 63129

Phone: (314) 668-2229

(CUSTOMER)

Company: _____

Attn: _____

Address: _____

Phone: _____

17. **FORCE MAJEURE**. Neither party shall be liable to the other 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, or the intervention of any government authority, or any other outside cause outside of the reasonable control of the CUSTOMER or BROKER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.
18. **CHOICE OF LAW AND VENUE**. All questions concerning the construction, interpretation, validity, and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Missouri without giving effect to any choice or conflict of law provision or rule that would cause the laws if any other jurisdiction to apply.
19. **CONFIDENTIALITY**. BROKER shall not utilize CUSTOMER's name or identity in any advertising or promotional communications without written confirmation of CUSTOMER's consent and the PARTIES shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. BROKER will require its carriers and/or other brokers to comply with this confidentiality clause.
20. **BACK SOLICITATION**. CUSTOMER shall not solicit the services of BROKER's motor carriers when the CUSTOMER's use of such carrier first occurred through the BROKER's efforts. If the CUSTOMER breaches this provision of this AGREEMENT, BROKER shall be entitled, as reasonable damages and not as a penalty, to a commission of fifteen (15) percent of the gross revenue from traffic assigned by CUSTOMER to such carrier for a period of fifteen (15) months. CUSTOMER also agrees that the breach of this provision intitles BROKER to be entitled to obtain an injunction against CUSTOMER in a court of competent jurisdiction, at BROKER's option.
21. **HOMELAND SECURITY**. As applicable to each, respectively BROKER and CUSTOMER shall comply with federal, state, and local Homeland Security related laws and regulations.
22. **ENTIRE AGREEMENT**: This Agreement, including all Appendices and Addenda, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and

INITIALS: _____

understandings, whether oral, written, expressed or implied, with the respect to the subject matter hereof.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

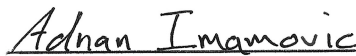
Avillion LLC
BROKER

Company: _____
CUSTOMER

 _____

Signed

Signed

 _____

Printed

Printed