



GOLDEN FYNCH INC.
301 Park Ave
Piscataway, NJ, 08854
Phone: (732) 979-8756
Email: admin@goldenfynch.net
Website: <http://www.goldenfynch.net>

SHIPPER AGREEMENT

THIS AGREEMENT, dated this _____ day of _____, Month _____, between **Golden Fynch Inc.**, a **Delaware Corporation** the address of which is 301 Park Ave, Piscataway, NJ, 08854 (BROKER), and;
_____ (SHIPPER)

WHEREAS; Golden Fynch, Inc is licensed as a Property Broker by the Federal Motor Carrier Safety Administration ("FMCSA") **MC 878878**, or by appropriate State agencies, and as a licensed freight forwarder, arranges for freight transportation; and

WHEREAS; SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of **BROKER** to arrange for transportation of Shipper's freight. The parties understand and agree **BROKER** functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation.

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

TERM

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 this Agreement may be terminated at any time by giving ten (10) days prior written notice to the other party.

SERVICE

BROKER agrees to arrange for transportation of **SHIPPER'S** freight, with a carrier who is duly registered with the Department of Transportation ("DOT") pursuant to 49 U.S.C. 13902 and 13905. It is understood by the parties that **BROKER**, is not actually performing the transportation of the **SHIPPER'S** freight but will be arranging for the transportation of **SHIPPER'S** freight.

COMPENSATION OF COMPANY

The compensation of **BROKER** for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the **SHIPPER** to transport and deal with the goods and such compensation shall be inclusive of any commissions, dividends, or other revenue received by the **SHIPPER** from carriers, insurers and others in connection with the shipment. In any referral for collection or action against the **SHIPPER** for monies due the **BROKER**. Upon recovery by the **BROKER**. The **SHIPPER** shall pay the expenses of collection and/or litigation, including all reasonable attorney fees.



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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 **SHIPPER** further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

- i. Carrier shall defend, indemnify and hold harmless **SHIPPER** and their directors, employees, officers, and affiliated parent and subsidiary companies (the "Indemnified Parties") from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees, but excluding consequential damages) caused by and resulting from (i) the negligence or intentional misconduct of Carrier or its employees or agents, or (ii) Carrier or its employees' or agents' violation of applicable laws or regulations.
- ii. Carrier shall agree that its liability for cargo loss or damage shall be 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.
- iii. 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.
- iv. Carrier shall authorize **BROKER** to invoice Shipper 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** customer.
- v. Carrier shall agree that the terms and conditions of its contract with **BROKER** shall apply on all shipments it handles for **SHIPPER**. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with this Agreement shall be subordinate to the terms of this Agreement.
- vi. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, and Part B to the extent they conflict with the contract.
- vii. **BROKER** further warrants it will require proof of insurance and operating authority from each Carrier and, should **SHIPPER** utilize the services of any carrier or other broker on **SHIPPER'S** behalf, which carrier and/or broker does not have proof of insurance and/or operating authority, **BROKER** agrees to indemnify and hold harmless **SHIPPER** from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims.



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PAYMENT AND CHARGES

SHIPPER shall tender certain shipments, from time to time, to **BROKER**. The charges for each shipment shall be provided in Appendix A, attached hereto and incorporated herein, occasionally rates may be agreed upon orally. Appendix A can be revised by agreement signed by both parties, or, prior to transportation, by fax by **BROKER** to **SHIPPER** if not objected to by **SHIPPER**, in writing, within twenty-four (24) hours from the date and time faxed.

APPLICATION OF CHARGES

The rates and charges for the services provided by **BROKER** shall be in accordance with the rates and charges set forth in a Rate Confirmation Contract or Freight Quote Acceptance Sheet (the "Rate Confirmation") prepared by **BROKER** and provided to Customer for each individual shipment. Each Rate Confirmation can be supplemented or revised by written agreement signed by both parties. Payment shall be due from Customer within fifteen (15) days of the date of **BROKER** invoice.

FREIGHT DISCOUNTING

All charges must be paid by **SHIPPER** in advance unless **BROKER** agrees to extend credit to **SHIPPER**; the granting of credit to a **SHIPPER** in connection with a particular transaction shall not be considered a waiver of this provision by the **BROKER**. If credit has been granted to the Shipper and payment is made in accordance to the payment terms outlined the quoted discount freight rate will be applied. If payment is not made within the specified period a 25% rate increase will be assessed for the Premium Freight Rate.

SHIPPING DOCUMENTS

Unless otherwise agreed in writing, all shipments tendered shall be accepted on a bill of lading acceptable to **SHIPPER** as the shipping document. In the event of a conflict between the bill of lading terms and this **AGREEMENT**, this **AGREEMENT** shall prevail. Upon request of **SHIPPER**, **BROKER** shall require all 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.

ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT

No party may assign this **AGREEMENT** without the prior written consent of the other party. However, **BROKER** may assign freight to other qualified carriers for any shipments made on behalf of **SHIPPER** under this **AGREEMENT**.



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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. This **AGREEMENT** shall be construed in accordance with the laws of **New Jersey**.

QUOTATIONS NOT BINDING

Quotations as to freight charges given by the **BROKER** to the **SHIPPER** are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the **BROKER** unless the **SHIPPER** in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the **BROKER** and the **SHIPPER**.

SELECTION AND USE OF MOTOR CARRIERS

BROKER will subcontract the transportation services required by **SHIPPER** to motor carriers that are duly authorized to transport such shipments pursuant to all applicable regulatory authority (the "Carriers"). It is understood and agreed that the Carriers are independent contractors with the control over their respective drivers and employees, and are not agents, employees or authorized representatives of **BROKER**. However, the parties understand and agree that **BROKER**, by signing this **AGREEMENT**, makes no express or implied warranties or guarantees concerning delivery time or the locating of a carrier to provide the transportation services requested by **SHIPPER**.

ACCESS TO CUSTOMER'S FACILITIES

Customer shall provide the Carriers with access to the facilities necessary to load or unload the tendered shipments. Access to the facilities by the Carriers shall be without charge to the Carriers unless otherwise agreed to in writing between the parties. Customer is solely responsible for maintaining the loading and unloading facilities in a good and safe condition, and in compliance with all applicable laws, codes and regulations. Customer hereby waives and releases Access to Customer's Facilities. Customer shall provide the Carriers with access to the facilities necessary to load or unload the tendered shipments. Access to the facilities by the Carriers shall be without charge to the Carriers unless otherwise agreed to in writing between the parties. Customer is solely responsible for maintaining the loading and unloading facilities in a good and safe condition, and in compliance with all applicable laws, codes and regulations. Customer hereby waives and releases **BROKER** from any liability for any loss or damage to its facilities or to Customer's personal property located on such facilities.



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CARGO LOSS, DAMAGE, OR SHORTAGE

In the event of a cargo loss, damage or shortage claim, **SHIPPER** agrees to notify **BROKER** immediately 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 within twenty (20) days following the date of delivery. No claims or allowances for shortages, damage or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery.

BROKER assumes no liability for cargo loss, damage, or shortage. However, **BROKER** agrees to submit, negotiate and settle all cargo claims with the responsible carrier and to keep Shipper advised of the status of all such claims. Upon request by **SHIPPER**, **BROKER** shall assign its rights against the carrier to **SHIPPER**. Nothing herein shall be construed to restrict any right or cause of action **SHIPPER** may have against any carrier involved with the transportation of **SHIPPER'S** freight.

NOTIFICATION OF ACCIDENTS OR DELAYS

BROKER agrees to notify **SHIPPER** of any accident or other event, which prevents carrier from making a timely or safe delivery.

INDEMNIFICATION/HOLD HARMLESS

The **SHIPPER** agrees to indemnify, defend, and hold the **BROKER** harmless from any claims and/or liability arising from the importation or exportation of **SHIPPER'S** merchandise and/or any conduct of the **SHIPPER**, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the **BROKER** may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the **BROKER**, it shall give notice in writing to the **SHIPPER** by mail at its address on file with the **BROKER**.

OVERCHARGE, DUPLICATE PAYMENT AND OVER-COLLECTION CLAIMS

Any overcharge, duplicate payment or over-collection claim made by **SHIPPER** must be filed, in writing, with us within one hundred eighty (180) days from the date of the original freight bill.

COSTS OF COLLECTION

In any dispute involving monies owed to **BROKER**, the **BROKER** shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 19% per annum or the highest rate allowed by law, whichever is more, unless a lower amount is agreed to by **BROKER**.



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FORCE MAJEURE

The transportation brokering services provided by **BROKER** will be temporarily suspended to the extent that during any period **SHIPPER**, **BROKER** or the **CARRIERS** are unable to carry out their respective obligations by reason of act of God or the public enemy, fire, flood, labor, disorder, civil commotion, terrorist act, government interference, or any other event or occurrence beyond the reasonable control of the affected parties, and neither party shall have any liability to the other for delay in performance or failure to perform while the services are temporarily suspended, except for Shipper's payment obligations for services performed.

BILLS OF LADING

Each shipment tendered by **SHIPPER** and accepted by **BROKER** shall be evidence by and subject to the terms, conditions and provisions of a bill of lading or other proof of delivery receipt. In the event of a conflict between the terms, conditions and provisions of such bill of lading or receipt and these **TERMS AND CONDITIONS OF AGREEMENT**, the terms, conditions and provisions of these **TERMS AND CONDITIONS SHALL GOVERN**.

WEIGHTS AND DIMENSIONS

BROKER will provide the **SHIPPER** a freight rate quote based on the weights and dimensions provided by the shipper or professional specification guides in case of Heavy Equipment or Machinery transportation. It is the sole responsibility of the shipper to verify that all weights and dimensions are correct prior to transportation of freight. In cases where the weights and dimensions of cargo are incorrect or misrepresented additional freight and handling charges will be assessed to **SHIPPER**.

EQUIPMENT ORDERED BUT NOT USED

All loads cancelled by the **SHIPPER**, consignor and/or consignee less than 24 hours prior to appointed pickup time, a charge of \$250.00 for equipment ordered and not used shall apply. **SHIPPER** shall also be responsible for "**OUT OF ROUTE**" miles to carrier at the rate of \$2.50 per mile. **SHIPPER** also will incur al permit and escorts charges for cancelled shipments of over dimensional freight movements.



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RE-CONSIGNMENT OR DIVERSION

The terms re-consignment or diversion are considered synonymous and the use of either will be considered to mean:

- i. A change in the name of the consignor or consignee.
- ii. A change in the place of delivery within the original destination point.
- iii. A change in the destination point.

THE CHARGES FOR SUCH SERVICE WILL BE:

- i. If re-consignment occurs the minimum charge will be \$250.00 plus \$2.00 per mile for all “**OUT OF ROUTE**” miles in addition to all other applicable charges.

GENERAL LIEN AND RIGHT TO SELL CUSTOMER'S PROPERTY

BROKER shall have a general and continuing lien on any and all property of **SHIPPER** coming into **BROKER** actual or constructive possession or control for monies owed to **BROKER** with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

BROKER shall provide written notice to **SHIPPER** of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; **SHIPPER** shall notify all parties having an interest in its shipment(s) of **BROKER** rights and/or the exercise of such lien.

Unless, within seven days of receiving notice of lien, **SHIPPER** posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of **BROKER** guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, **BROKER** shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to **SHIPPER**.

DISPUTE RESOLUTION, GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE

These terms and conditions of service and the relationship of the parties shall be construed according to the **LAWS OF NEW JERSEY**, without giving consideration to principles of conflict of law. All disputes arising hereunder shall be resolved at **MIDDLESEX COUNTY, NEW JERSEY** or closest State or Federal jurisdiction and at no other place.

These Terms and Conditions of service constitute a legally binding contract between the **BROKER** and the **SHIPPER**. In the event the **BROKER** renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other documents(s) shall govern those services.



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The Terms and Conditions of Carriage set forth herein supersede all previous conditions of transportation and other prior statements concerning the rates and conditions of **BROKER'S** services.

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Shipper: _____

Authorized Party: _____

Address: _____

City, State, Zip: _____

Phone: (_____) _____ - _____