

CONTRACT CARRIER – BROKER CONTRACT

Mid-Pacific Transportation, Inc.
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This agreement is made this _____ day of _____, 201_____, by and between Mid-Pacific Transportation, Inc., a Washington corporation, hereinafter referred to as “BROKER”, and _____, hereinafter referred to as “CARRIER”.

(1) Whereas CARRIER is a motor carrier of property authorized by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, under permit No. **MC-**_____ (a copy of which is attached hereto and made a part hereof) to provide transportation of property, in interstate and foreign commerce and

(2) Whereas BROKER holds authority issued by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration under license No. 414083, to engage in operations in interstate or foreign commerce as a broker, arranging for transportation of freight by motor vehicle for compensation and controls the transportation of the commodities to be tendered to Carrier, in accord with the criteria established in Dixie Midwest Express 132 M.C.C. 794 (1982), and, thus is a shipper under those criteria.

NOW THEREFORE, in consideration of the representation made herein, the parties agree as follows:

I. SPECIFIC OBLIGATION OF CARRIER

Liability of CARRIER

(a) CARRIER shall issue a bill of lading for property it receives for transportation under this Contract and shall be liable to the person entitled to recover under the bill of lading. The liability imposed by this paragraph is for the actual loss or injury to the property caused by CARRIER. Failure to issue a bill of lading does not affect the liability of CARRIER. CARRIER'S liability shall be the same as a carrier's liability under 49 U.S.C. 14706. Notwithstanding the foregoing, the parties acknowledge and agree that under no circumstances shall the CARRIER'S liability hereunder be less than the actual loss or injury to the property as represented by the shipper less salvage value, if any, BROKER'S fees associated with the shipment and the freight charges. CARRIER'S liability hereunder may not be limited by any provision purporting to limit CARRIER'S liability, including without limitation, any bill of lading or common carrier tariff, schedule, service guide or similar document issued by or on behalf of CARRIER. CARRIER further recognizes and acknowledges that it is an accepted practice in the transportation industry for shippers to prepare bills of lading. CARRIER agrees that the preparation and acceptance of such bills of lading shall be for the sole purpose of receiving the property and shall not constitute an agreement or contract between CARRIER and the shipper tendering the goods. Moreover, the terms, conditions, and provisions of such bill of lading shall be subject and subordinate to the terms, provisions, and conditions of this contract and in the event of a conflict between the terms, conditions, and provisions of such bill of lading and of this Contract, the terms, conditions and provisions of this Contract shall govern.

(b) CARRIER agrees to maintain All Risk Broad Form Motor Cargo insurance in the minimum amount of \$100,000 to compensate those parties entitled to recover under the preceding paragraph. In the event of a shipment of unusual value, BROKER may from time to time request that Carrier increase its cargo insurance coverage on a per trip basis. CARRIER shall cause its insurance carrier to forward to BROKER a standard Certificate of Insurance which Certificate shall require the insurance carrier to give BROKER written notice thirty (30) days prior to the cancellation of such cargo insurance. Policies must not have any exclusions or limitations e.g. unattended vehicles not being covered. No invoice will be paid until the Certificate of Insurance is on file in BROKER'S office. The cargo insurance shall be in the form required by 49 C.F.R. 1043.2, and shall have no exceptions, exclusions, or restrictions that would not be accepted by the Federal Highway Administration for a filing under the statutory requirements of the above-cited section, but shall, in all respects, be identical to the cargo insurance filed in accord with the said section. In addition to cargo insurance, CARRIER shall procure, maintain and keep in force during the term of this Contract, at the expense of CARRIER, public liability insurance with a reputable and financially responsible insurance carrier or carriers, with minimum limits of \$1,000,000.00; Worker's compensation and employer's liability insurance with minimum limits of liability meeting the applicable state statutory minimum; and any other insurance required by the Federal Motor Carrier Safety Administration or the Department of Transportation.

(c) CARRIER agrees to have their insurance company list BROKER as Certificate Holder on each of their policies for General Liability, Public Liability, and All Risk Cargo. The insurance company is required to fax a copy of all the above mentioned coverages to BROKER, as well as mail an original copy to BROKER.

- (d) CARRIER'S liability shall begin at the time cargo is loaded upon CARRIER'S equipment at point of origin, and shall continue until such time as CARRIER receives a signed delivery receipt from the proper named consignee at destination or to any intermediate stop off party and nothing remains to be done by CARRIER to deliver the shipment to the consignee.
- (e) On shipments tendered by BROKER that are "Shipper Load & Count" CARRIER, or shipper shall seal the trailer after loading, in the presence of a shipper representative, and note that the shipment is "Shipper Load & Count" or "SLC" on the bill of lading, together with the seal number, and obtain the signature of an authorized representative of the shipper confirming same at each pick up location. CARRIER further agrees that the seal shall only be broken by a shipper representative at the next pick up location, by the designated consignee or by authority of law, and that person breaking the seal shall sign and note the number of the seal being broken on the bill of lading. In the event of shipments with multiple pick-ups and/or drops, after each pick-up or drop, the CARRIER shall cause the shipper or consignee to reseal the trailer, and sign and note the number of the seal used to reseal the trailer on the bill of lading.
- (f) CARRIER shall indemnify and hold harmless BROKER and its customers from and against any and all loss, damage, cost, expense, including reasonable attorney's fees and other costs of defense, which may be incurred by BROKER, or any person, persons, firm, association or corporation resulting from any acts or omissions, negligent or otherwise, of CARRIER or its employees, in performing or failing to perform the transportation services specified hereunder, including the loading, handling, transportation and unloading of the freight, including, but not limited to, claims for loss or damage, personal injury or death of persons (including without limitation, employees of BROKER and its customers), loss, damage, delay, destruction or conversion of the property of any person or legal entity, theft, defalcation or embezzlement by CARRIER or its employees. Further CARRIER shall indemnify and hold BROKER harmless from any loss, damage, cost or expense, including attorney's fees, which may be imposed upon or incurred by or asserted against BROKER and/or its customers, by reason of CARRIER'S or its employees' actual or alleged failure to comply with state and federal rules and regulations under which BROKER and/or CARRIER operate, or by doing, permitting or causing any act to be done which CARRIER or BROKER is not legally authorized to do. Notwithstanding any provision herein, CARRIER shall indemnify and hold BROKER and its customers harmless for all actual or consequential losses, damages, costs or expenses, including but limited to, reasonable attorney's fees and consequential and incidental damages, arising out of or in any way connected to the intentional misconduct of CARRIER, or its employees, agents or subcontractors. Moreover, CARRIER, at no time, shall bring a cause of action against BROKER for any loss, damage, expense, action and/or claim for injury to persons and/or damage to property arising out of or in connection with CARRIER'S performance under this Contract. The provisions of this Indemnification shall survive termination of this Contract.
- (g) CARRIER agrees to provide proof of operating authority and that it shall transport all loads tendered to it under its own carrier authority, on equipment owned or leased by it, and using employees or independent contractors under contract with it who are operating solely under CARRIER'S authority listed on this Contract. CARRIER may not move any load tendered to it by BROKER under CARRIER'S broker/freight forwarder authorities even if the same MC# is noted. There will be no second brokering or trip-leasing of BROKER'S freight allowed. A violation of the preceding sentences shall be considered a breach of this contract and the terms listed herein. CARRIER agrees to pay any and all charges relating to the movement of the shipment, and to indemnify and hold harmless BROKER and / or BROKER'S CUSTOMER from any and all claims for freight charges. CARRIER also agrees that BROKER may pay any freight charges claimed to be owed directly to the underlying motor carrier. CARRIER assumes full responsibility for any cargo claims or property claims on all loads tendered by BROKER, and agrees to settle any cargo claims or property damage claims pursuant to 49 U.S.C. 14706, and the terms of this Contract. CARRIER will pay BROKER for any such claims directly and seek the recovery their costs solely from any the carrier they had tendered the freight to at CARRIER'S own expense. CARRIER will forfeit any funds due to CARRIER due to breach of contract for double brokering.
- (h) CARRIER agrees to immediately notify BROKER in the event its operating authorities are suspended or revoked, in which case this Contract will immediately terminate without written notice. CARRIER further represents and warrants that it does not have a conditional or unsatisfactory safety rating issued from the U.S. Department of Transportation, and that CARRIER will notify BROKER in the event of a safety audit that results in less than a satisfactory safety rating.
- (i) CARRIER agrees that by accepting any shipments from BROKER that it is the sole responsibility of the CARRIER to ensure that it can meet all pick up and delivery appointments scheduled on each shipment tendered to it while complying with all hours of service regulations, and not violate these regulations. All routing instructions noted on information provided CARRIER is for informational purposes only.
- (j) CARRIER agrees to safely and efficiently transport shipment and adhere to all federal, state and local laws and regulations governing it for such shipment, including FMCSRS 382 & 395.

(k) On behalf of the shipper, consignee and broker interests, to the extent that any shipments subject to this Agreement are transported within the State of California, CARRIER warrants that:

(i) All 53 foot trailers, including both dry-van and refrigerated equipment it operates and the Heavy-Duty Tractors that haul them within California under this Agreement is in compliance with the California Air Resources Board (CARB) Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations. (ii) All refrigerated equipment it operates within California under this Agreement is in full compliance with the California Air Research Board (CARB) Transport Refrigerated Unit (TRU) Airborne Toxic Control Measure (ATCM) in-use regulations.

CARRIER shall be liable to BROKER for any penalties, or any other liability, imposed on, or assumed by BROKER due to penalties imposed on BROKERS customer because of CARRIER's use of non-compliant equipment.

II. SPECIFIC OBLIGATIONS OF BROKER

BROKER agrees to pay CARRIER for the transportation of the commodities moved under this agreement in accordance with the rate agreed upon as indicated by the relevant Rate Confirmation, within 30 days of the receipt by BROKER of CARRIER'S invoice, covering such transportation, ORIGINAL BILL of LADING (signed as received in full, in good condition, no exceptions) and the signed Rate Confirmation. In the event CARRIER fails to provide BROKER with signed delivery receipts for all movements, at BROKER's sole discretion, BROKER may withhold compensation due CARRIER hereunder until such time as CARRIER provides BROKER with the requisite delivery receipts. If blind a Bill of Lading is required on load, this must be turned in. Also, if scale tickets are required, copies must be turned in for payment.

III. RATES AND CHARGES

The parties acknowledge and agree that the actual compensation to be paid to CARRIER shall be determined on a load-by-load basis as mutually agreed upon by BROKER and CARRIER, in order to take into consideration special arrangements between BROKER and its customer. Prior to the commencement of services BROKER shall issue a Rate Confirmation setting forth the origin city and state, and delivery information, any special instructions, and the rate to be paid the CARRIER. Unless objected to by CARRIER upon receipt of the Rate Confirmation, CARRIER shall be conclusively presumed to have agreed that the terms and conditions set forth on such Rate Confirmation are fully and correctly stated. CARRIER further represents and warrants that said mutually agreed upon rates are sufficient and shall not be subject to a later claim for undercharges. Additional rates or modifications of the agreed rate may be established or amended in order to meet specific shipping schedules or requirements, as mutually agreed, but such changes shall be sent by the BROKER to the CARRIER requiring the CARRIER to sign the revised Rate Confirmation and return to BROKER via fax or email.

CARRIER authorizes BROKER to be the sole party responsible for invoicing shipper, receiver, consignor or consignee for freight charges. Payment of the freight charges to BROKER shall relieve shipper, receiver, consignor or consignee of any liability to CARRIER for non-payment of charges. CARRIER further agrees that it shall not look to BROKER's customers under any circumstances for payment of freight charges. On all shipments transported by CARRIER pursuant to this Contract, CARRIER shall bill all freight charges to BROKER. CARRIER shall at no time call or contact BROKER'S customers, consignor, consignee's to discuss any terms of payment. If any such calls or contacts are made by CARRIER, or anyone acting on behalf of CARRIER, this will be considered a breach of contract. Any violation of these billing conditions shall result in the forfeiture of all funds due to the CARRIER for the freight charges on the shipment incorrectly billed, or for improper contact of BROKER'S customer, consignor, or consignee. CARRIER agrees that even though CARRIER may hold authority from the FHWA to operate as a common carrier under 49 U.S.C. 10102, no shipment will be hauled on behalf of BROKER as a common carrier. CARRIER'S rates and tariffs filed with the FHWA, shall not under any circumstance, be applicable to any shipment transported on behalf of BROKER.

IV. BILL OF LADING

The bill of lading shall note that the shipments were transported by CARRIER, acting as a carrier, and that the shipment was arranged by BROKER, acting as a broker. The name of the underlying shipper shall be inserted in the blank for the shipper, and the name of the consignee shall be inserted in the blank for the consignee. When BROKER has assembled multiple shipments into carload or truckload lots, the list of underlying shippers will be attached as an Appendix to the bill of lading.

V. PROCEDURE FOR LOSS AND DAMAGE CLAIMS

CARRIER agrees to abide by the rules and regulations concerning the disposition and settlement of claims for loss and damage set forth at 49 C.F.R. Part 370.

VI. RELATIONSHIP OF THE PARTIES

The relationship of CARRIER to BROKER shall, at all times, be that of an independent contractor, except that BROKER shall be the sole party billing the freight charges for any shipment handled by CARRIER, and BROKER will be the sole party responsible for the collection of charges. Payment to BROKER shall relieve shipper, receiver, consignor, or consignee, when the freight charges are paid to BROKER.

VII. ACCOUNT PROTECTION

CARRIER understands and agrees that BROKER has put forth substantial effort and investment to develop its accounts and to secure the good will of its customers. As part consideration of this Contract, neither CARRIER, nor a related or unrelated person or entity acting on CARRIER'S behalf shall, for the term of this Contract and for a period of one (1) year after the effective date of any termination hereof, directly or indirectly, attempt to solicit, serve, divert or bypass, or perform any services for compensation for any shipper or receiver where (i) such shipper or receiver first became known to the CARRIER as a result of BROKER'S efforts; or (ii) where the freight of the shipper or receiver was first tendered to CARRIER by BROKER. Unless CARRIER is given prior written authorization, CARRIER agrees to pay BROKER a commission of thirty (30%) percent of all revenues billed to any account of BROKER in violation of any of the foregoing for a period of fifteen (15) months, and such commission shall be due and payable within thirty (30) days after the billing date.

CARRIER further agrees as part consideration for this Contract, that it will treat all matters relating to the business of BROKER, or its customers, as confidential business information entrusted to CARRIER solely for its use in performing services under this Contract. Such information will not be divulged in any way to any person except as is necessary for CARRIER to carry out its obligations under this Contract. The provisions of this Section VII., shall survive termination of this Contract.

VIII. REMEDIES

CARRIER acknowledges that breach by CARRIER of the provisions of Section VII. of this Contract will cause BROKER irreparable harm that is not fully remedied by monetary damages. Accordingly, CARRIER agrees that BROKER shall, in addition to any relief afforded by law, be entitled to temporary, preliminary or permanent injunctive relief in the event of a breach or threatened breach of this Contract, without bond or security and irrespective of the availability of legal relief in damages. CARRIER agrees that both damages at law and injunctive relief shall be proper modes of relief and are not to be considered alternative remedies.

CARRIER further agrees that BROKER shall be entitled to recover costs of litigation and reasonable attorney's fees incurred in enforcing Section VII. of this Contract. It is mutually agreed by BROKER and CARRIER that venue for any legal action or litigation required in the enforcement of this Contract, will be only in the State or Federal Courts residing within the County of Clark, in the state of Washington.

IX. FORCE MAJEURE

Neither party hereto will be liable for the failure to tender or timely transport freight under this AGREEMENT if such failure, delay or other omission is caused by strikes, acts of God, war, civil disorder, or through compliance with legally constituted order of civil or military authorities.

X. TERM

This AGREEMENT shall remain in effect for a period of one year from effective date, and from year to year thereafter, subject to the right of either party hereto to cancel or terminate the AGREEMENT at any time upon not less than thirty (30) days' written notice of one party to the other.

