

## **BROKER CARRIER CONTRACT**

This Master Transportation Contract (hereinafter "Agreement"), effective as of, ("Effective Date") is made by and between (Broker Name), (hereinafter referred to collectively as "Broker"), one or more licensed transportation brokers that control their Customer's freight and (full carrier legal name) located in, (city, state), a licensed motor carrier authorized by Permit No. MC \_\_\_\_\_ that provides transportation and related services under contract (hereinafter "Carrier"), and their respective customers (hereinafter collectively referred to as "Customer").

The parties do hereby enter into this contract pursuant to 49 U.S.C. 14101 (b) for the purposes of providing and receiving specified services subject to specified rates and conditions, and under which the parties intend to waive certain rights and remedies permitted to be waived under the Interstate Commerce Act and all amendments thereto, including the ICC Termination Act, and Title 49 of the United States Code and all corresponding regulations, to the extent that any provision therein is inconsistent with any of the provision of this Contract. In consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

### **GENERAL BUSINESS COVENANTS**

1.Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter from year to year until terminated by either party, with or without cause, on thirty (30) days prior written notice at any time and shall renew for successive one year periods without the proper notice by either party hereto.

2.Independent Contractor. Carrier understands and agrees that Carrier is an independent contractor of Broker and that Carrier has exclusive control and direction of the work Carrier performs pursuant to this Agreement and each Tender Document. Carrier represents that it is registered with FMCSA as a motor carrier in interstate, intrastate, and/or foreign commerce and is in all respect qualified to transport freight as required by Broker. Carrier agrees to assume full responsibility for the payment of all local, state, federal and provincial payroll taxes, and contributions or taxes for unemployment insurance, workers' compensation insurance, pensions, and other social security or related protection with respect to the persons engaged by Carrier for Carrier's performance of the transportation and related services for Broker or the Customer, and Carrier agrees to indemnify, defend and hold Broker and Customer(s) harmless therefrom. Carrier agrees to perform the services under this Agreement in accordance with the highest standards of the industry, operating under its own authority, using its own employees and using its own tractor unit. Carrier shall be wholly responsible for performing the contemplated transportation and for all costs and expenses of such transportation, including, without limitation, costs and expenses of all Carrier's transportation equipment, its maintenance, and those persons who operate it. In providing services, Carrier represents and warrants that the driver(s) utilized are competent and properly licensed, and are fully informed of their responsibilities for the protection and care of the involved commodities.

3.Compliance with Applicable Laws and Regulation.. Carrier warrants that (1) it is legally qualified to perform the contemplated transportation, (2) it does not have a "conditional" or "unsatisfactory" FMCSA safety rating, (3) maintains all applicable statutory and regulatory required insurance, and (4) it shall immediately notify Broker in writing of any adverse change in its safety rating or any suspension or revocation of its operation authorities. Carrier agrees to comply with all applicable provisions of any international, federal, provincial, state and/or local law, rules and regulations. Without limiting the foregoing, Carrier shall, at Carrier's expense, comply with all laws, rules and regulations (including, obtaining all permits and licenses) which are required for Carrier to provide Broker the transportation and related services under this Agreement. Carrier agrees not to accept a shipment from Broker if that shipment would require Carrier or any of its employees, agents or permitted subcontractors to exceed or violate any speed or safety law, rule or regulation.

4.Solicitation of Broker's Customers. Carrier shall not during the term of this Agreement and for six (6) months following the termination of this Agreement, directly or indirectly, solicit the traffic of the freight between the origins and destinations that were first offered to Carrier by Broker (hereinafter "Brokered Traffic"). If Carrier transports Brokered Traffic other than for Broker during the term of this Agreement and for Twelve (12) months following the termination of this Agreement, then Broker shall be immediately entitled to a commission of fifty percent (50%) on the rates and charges received by Carrier on such Brokered Traffic.

5.Successors and Assigns. This agreement shall be binding upon the successors and permitted assigns of the parties hereto. Carrier shall not assign this Agreement, or any part thereof, without the prior written consent of Broker.

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6. Venue and Choice of Law. The terms and conditions of this Agreement and the Tender Documents, including but not limited to Bills of Lading, Rate Confirmations, Proof of Delivery and the like, shall be governed by, and enforced in accordance with, the laws of the State of State without regard to its conflict of laws rules, and any suit or action enforcing the terms and conditions of this Agreement and all Tender Documents shall be brought and adjudicated in the court of general jurisdiction for your County, your State. By the execution and delivery of this Agreement, both parties hereto consent to the exclusive jurisdiction of those courts. Each party hereto irrevocably waives any objection, including any objection to the laying of venue or based upon the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any documents or instruments relating hereto. Each party hereto waives personal service of any summons, complaint or other process. Such process may be made by certified mail or by any other means permitted by your State state law.

7. Modification. No waiver, alteration or modification of any of the provisions of this Agreement, or any Tender Documents, shall be binding upon either party unless in writing signed by the duly authorized representative of the party against whom such modification is sought to be enforced. Carrier agrees that Carrier's rules tariff(s), circular(s) or other publication(s) are not incorporated into this Agreement or any Tender Document. Any printed provisions on the reverse side of Carrier's forms shall be deemed deleted.

8. Savings Clause. If any provision of this Agreement or any Tender Document is held to be invalid, the remainder of the Agreement or the Tender Document shall remain in full force and effect with the offensive term or condition being stricken to the extent necessary to comply with any conflicting law. Carrier agrees that the termination, breach or invalidity of this Agreement or any Tender Document does not cause Carrier's rules tariff (s), circular(s) or other publication(s) to govern the transportation and related services that Carrier provides to Broker or its Customers.

9. Waiver. No provision of this Agreement or any Tender Document shall be waived by any party hereto, unless such waiver is written and signed by the authorized representative of the party against whom such waiver is sought to be enforced. Waiver by either party of any breach or failure to comply with any provision of this Agreement or any Tender Document by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement or any Tender Document.

10. Notices. All notices required by or related to this Agreement shall be in writing and sent to the parties at the addresses set forth below and shall be deemed given when personally delivered, by confirmed facsimile, or three (3) days after having been mailed by certified mail, return receipt requested, to the following addresses:

Notice Addresses:

BrokerCarrier

\_\_\_\_\_

\_\_\_\_\_

Fax: Fax:

\_\_\_\_\_

\_\_\_\_\_

Either party may change the address to which future notices are to be addressed by giving written notice of such change to the other party.

11. Non-Exclusive Dealing. This Agreement does not grant Carrier an exclusive right to perform the transportation and related services for Broker or its Customer(s). Broker does not guarantee any specific amount of shipments, tonnage, or revenue to Carrier. Broker is not restricted against tendering its freight to other carriers; Carrier is not restricted against performing transportation for other shippers.

12. Factoring. Carrier shall provide Broker written notice of any assignment, factoring, or other transfer of its right to receive payment arising under this Contract thirty (30) days prior to such assignment, factoring, or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date, date assignment is to begin, and terms of the

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assignment, and shall be considered delivered upon receipt of such written notice by Broker. Carrier shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time, and no multiple assignments, factoring or transfers by the Carrier shall be permitted. Carrier shall indemnify Broker against and hold Broker harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney's fees, obligation, liabilities and liens) arising or imposed in connection with the assignment or transfer of any account or right arising thereunder. Carrier also releases and waives any right, claim or action against Broker for amount due and owing under this Contract where Carrier has not complied with the notice requirements of this section.

13. Assignment of Rights to Payment by Carrier. Any factoring, assignment, pledge, hypothecation or granting of a security interest in Carrier's right to payment hereunder shall in no event modify, limit or terminate (i) Unlimited and Unilateral Rights of offset or recoupment provided to Broker or Customer hereunder or by law; or (ii) claims of Broker or customer for offset, recoupment, loss or damage to any cargo or other property, including personal injury, or any other claim which Broker or Customer may have against Carrier for any reason. All of Broker's and Customer's claims and rights are specifically preserved and shall be superior to any such assignee's, factor's or creditor's rights or claims to payment, regardless of any notice to Broker or Customer to the contrary. Carrier shall notify any such factor, secured creditor or assignee of Broker's and Customer's rights in this regard.

14. Miscellaneous. This Contract may be executed by facsimile and in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute by one and the same instrument. In the event either party incurs attorney's fees, costs or expenses in enforcing any of the provision of this Contract, or in exercising any right or remedy arising out of any breach of this Contract by the other party or their agents, subcontractors or representatives, the prevailing party shall be entitled to an award of attorney's fees, costs and expenses against the defaulting party.

#### **INSURANCE & LIABILITY**

15. Insurance. Carrier, at Carrier's expense, shall maintain during the term of this Agreement commercial automobile liability insurance for the benefit of Broker and Customer, covering all vehicles however owned or used by Carrier to transport Broker's shipments and property damage arising out of Carrier transportation under this Agreement, with minimum limits of not less than \$1,000,000 (one million) per occurrence for personal injury (including death) and property damage, cargo liability insurance with minimum limits of not less than \$100,000 (one hundred thousand) per shipment, and if requested by Broker, commercial general liability insurance of One millions dollars (\$1,000,000) per occurrence Carrier agrees to defend, indemnify and hold harmless Broker from all losses, damages, fines, expenses, attorneys fees, actions or claims for injury to persons, including death, which Broker may incur arising out of this contract. Carrier shall provide Broker a certificate of insurance naming Broker as Certificate Holder and as additional named insured providing for notice prior to cancellation, and evidencing the foregoing coverage, prior to providing any services to Broker under this Agreement. The Carrier shall also maintain any insurance coverages required by any government body including worker's compensation (if applicable) for the types of transportation and related services specified. If Carrier fails to maintain such insurance, Broker may do so and charge Carrier for such cost and offset in accordance with this Agreement.

16. Cargo Liability. Carrier assumes liability as a common carrier for loss, damage to or destruction of the goods entrusted to it or its permitted subcontractor's care, custody or control and shall provide evidence of a BMC-32 Endorsement upon request. Carrier shall indemnify Broker for all indirect, special or consequential damages, or other special economic losses, including lost profits that might be awarded against Broker on any claim. Carrier shall pay to Broker, or it shall allow Broker to deduct from the amount Broker owes Carrier, for Customer's loss for the commodities so lost, delayed, damages or destroyed and the amount of any indemnity, as stated above. Carrier shall not allow any of the goods tendered to Carrier to be sold or made available for sale or otherwise disposed of in any salvage markets, employee stores or any other secondary outlets without Broker's prior written consent. Carrier agrees to either pay or settle all cargo claims within 60 days of the receipt of a claim. Carrier agrees to notify Broker's Claims Department in writing, immediately whenever an accident or potential claim occurs and provide Broker with any written reports, affidavits or other assistance necessary to assess the claim.

17. Indemnification. Carrier agrees to indemnify, defend and hold Broker and Customer, and their officers, employees, agents and directors, harmless from and against any and all fines, penalties, costs, demands, damages, (including bodily injury and property damage) losses, obligations, claims, liabilities and expenses (including reasonable attorney's fees) of whatever type or nature arising out of or related to: (i) any act or omission by Carrier or its subcontractors, (ii) Carrier's or any of its permitted subcontractor's performance or breach of this Agreement, and (iii) any use, operation, maintenance or possession of Customer's

or Broker's owned or leased equipment by Carrier or any of its subcontractors. Carrier further agrees to indemnify, defend and hold Broker and Customer, together with their officers, employees, agents and directors, harmless from and against any and all fines, penalties, costs, losses, claims, obligations, liabilities, demands, damages and expenses (including reasonable attorney's fees) of whatever type or nature arising out of or related to Carrier's use, operation, maintenance or possession of Customers' or other third party owned or leased equipment used to transport the freight tendered by Broker herein or otherwise provided on behalf of a Customer. The obligations of Carrier under this Section shall survive termination of this Agreement.

### **SERVICE**

18. Performance of Services. Carrier agrees to meet Broker's distinct transit and pricing requirements agreed to by the parties from time to time after the Effective Date as confirmed by the Broker's issuance of a Tender sheet, Pre-note, Rate Confirmation, Bill of Lading, Proof of Delivery or other load tender document that Broker may use from time to time (hereinafter "Tender Document"). Additional service requirements of Carrier are as follows:

Carrier shall transport Broker's shipments without delay. Carrier shall immediately notify Broker of any likelihood of delay.

Carrier shall transport all freight tendered by Broker only on equipment operated under Carrier's authority.

Carrier shall comply with all of Broker's reasonable shipping instructions communicated to Carrier, and to comply with all applicable provisions of any provincial, federal, state and/or local law or ordinance and all lawful orders, rules and regulations issued thereunder.

Carrier shall obtain from the consignee a complete, signed delivery receipt for each shipment, and it shall notify Broker immediately of any exception on any document. Carrier shall send Broker delivery receipts and bills of lading within twenty-four (24) hours of delivery, as Broker directs.

If Broker requests Carrier to transport any shipment required to be placarded under DOT rules as a hazardous material, the additional provisions in Appendix A, including additional insurance requirements, shall apply for each such shipment.

Documents for each of Broker's shipments shall name Broker as "broker" and Carrier as "carrier". If there is a wrongly worded document, the parties will treat it as if it showed Broker and "broker" and Carrier as "carrier". If there is a conflict between this Agreement and any transportation document related to Broker's shipment, this Agreement shall govern.

Carrier is responsible for ensuring that all freight is properly blocked and braced for transportation to allow for the safe and damage-free delivery of the goods and to avoid damage to other property.

Carrier is responsible to determine that the goods being shipped are in apparent good order and condition, to the extent that such is ascertainable through a visual examination of the exterior of the goods shipped, before loading and, in the event that they are not, Carrier will contact Broker for further instructions.

19. Bills of Lading and Delivery Receipts. Carrier will issue and sign a standard, uniform straight bill of lading or other receipt acceptable to Broker and Customer, upon acceptance of goods for transportation. All terms or conditions written or printed on the receipts or bills of lading which have not been specifically agreed to by Broker, either in this Contract or on any signed addenda hereto, shall have no binding effect against Broker. The receipt of bill of lading issued or executed by Carrier shall be prima-facie evidence of receipt of goods in good order and condition by Carrier unless otherwise noted on the face of said document. Carrier shall submit to Broker the original signed bill of lading evidencing good delivery of the goods, unless otherwise specifically agreed by Broker; and in that case, Carrier shall maintain custody of the original signed bills of lading and will provide them to Broker upon request. If Carrier fails to maintain and provide the bills of lading as agreed, Carrier assumes all risk of loss resulting from the failure to prove good delivery. In the event that Carrier's personnel are not allowed or afforded an opportunity to view and/or examine the good in order to ascertain the condition of those goods prior to loading on to Carrier's vehicle, Carrier's personnel shall immediately notify Broker and await instructions prior to transporting the shipment, and shall note on the bill of lading that they were not allowed or afforded an opportunity to view and/or examine the goods shipped.

### **BUSINESS CONDUCT**

20. Rates and Charges. The rates and charges that shall ~~be in effect for all~~ movements tendered to Carrier by Broker shall be as set forth on the Tender Document issued by the Broker and given to Carrier ("the Charges"). For purposes of this Agreement "~~Tender Document~~" shall be defined as the Bill of Lading and the rate corresponding confirmation contract sheet which originates with Broker and is sent to Carrier. Carrier represents, warrants and agrees that there are no other applicable rates or charges except those set forth on the Tender Document issued by Broker from time to time. Broker shall pay Carrier 30 days after Broker's receipt of Carrier's invoice, shipper's bill of lading, signed, clear delivery receipt and other document required by Broker or Customer. Carrier agrees that it shall not bill the shipper/consignee or any third party directly nor shall it communicate in any

manner, directly or indirectly, with Broker's customers, consignors, consignees or any party other than Broker, concerning the collection of any charges relating to transportation services accruing in connection with or as a consequence of this Contract; and waives any right it may otherwise have to proceed or commence any action against any Customer for the collection of any freight bills arising out of transportation services performed by Carrier under this Contract. Carrier will not accept payment from any shipper/consignee or any third party for providing transportation under this agreement. Carrier's performance of the work contained in the Tender Document, or commencement to perform, is confirmation of acceptance of the rate and Charges contained in that document. No other rates, terms, conditions, charges, fees, expenses or any other amounts shall be payable by Broker to Carrier unless such items are included in the written Tender Document. Nothing in any Bill of Lading or other Carrier issued document shall be binding upon Broker or Customer. Unless specifically included in the Tender Document, Broker shall not be required to make payment for any accessorial charges, equipment or escort rentals for the tendered movement, or any other special permitting or operating expenses.

21. Carrier's Right to Subcontract. Except as provided in this section, Carrier shall not, in any manner, sub-contract, broker or tender to any third party for transportation, any freight tendered to Carrier by Broker for transportation pursuant to this Contract. Carrier may subcontract the services that Carrier has agreed to perform for Broker under this Agreement, only if: (i) Carrier provides Broker prior written notice of such subcontracting, (ii) Broker acknowledges in writing, that the subcontracting may occur; and (iii) Carrier remains liable for the full and faithful performance of all obligations contained in this Agreement, including the obligation to indemnify Broker and Customer in accordance with Section 17, as if no such subcontracting has taken place. Nothing in this Agreement, or in this Section shall permit or allow Carrier to assign or delegate any of its other that as specifically provided in this section, duties or obligations under this Agreement.

22. Payment. On a monthly basis, Broker will issue Carrier an invoice for any undisputed amounts due and owing by Carrier pursuant to this Agreement. Separate invoices for repairs, penalties, and any other miscellaneous charges will be issued as necessary. Payment in full of an invoice shall be made by Carrier within fifteen (15) days from the date of the invoice. In the event Carrier contests any portion of any invoice, Carrier shall provide a written explanation and submit substantiating documentation to Broker within the fifteen (15) day time period. Payment for all portions of the invoice not being contested shall be made by Carrier within the fifteen (15) day time period. Carrier also agrees to pay Broker all costs it incurs to collect as past due invoice, including reasonable attorney's fees. Payment to Carrier by Broker shall be complete and final and without recourse. Broker may deduct from any payment any amount Carrier is indebted to Broker, including but not limited to those reasons such as freight loss on a any load, damage, and or/delay or detention claims on related or unrelated loads.

23. Waiver of Carrier's Lien. Carrier, for itself and on behalf of all of its agents or subcontractors, hereby waives and agrees not to assert or make any claim arising out of any motor carrier's lien which Carrier would otherwise be allowed to assert upon any cargo or goods which are tendered by Broker to Carrier or which are otherwise in the possession or control of Carrier or its subcontractors or agents. Carrier shall not withhold delivery of any freight due to any dispute with Broker or Customer.

24. Insolvency. In the event of insolvency proceedings being instituted by or against Carrier, then Broker, any agent of Broker, or Customer may immediately enter upon any owned or leased property of Carrier where any cargo, goods or Customer owned or leased equipment may be found and take possession of such goods or owned or leased equipment without notice or liability to Carrier.

25. Set-Off and Recoupment. Broker or Customer, each for the other, may set off, withhold, recover or recoup: (i) any amounts payable to Carrier hereunder or under any other agreement or arrangement between Carrier and either Broker or Customer, or any of their affiliates, subsidiaries, or their parent, against (ii) any amounts due from Carrier to either Broker or Customer, or their respective subsidiaries, parent or affiliates, under this Agreement, under law, or which arises out of the transportation provided herein or any other agreement between Carrier on the one hand and Broker or Customer on their subsidiaries, parent, or affiliates on the other hand. In addition, in the event Broker makes payment to Carrier as provided herein and Carrier fails to make payment to any applicable subcontractor, then Broker may, at its option and sole discretion, pay such subcontractor and offset the amount paid against any amounts owed or to be owing to Carrier by Broker or any of Broker's affiliates. Failure to comply with any DOT, FMCSA policy, law or regulation, or any breach of any element of this contract, howsoever minor, may result in non payment for freight charges and/or set off and recoupment claims.

26. Hostage Loads. For purposes of this Agreement "hostage loads" is defined as the Carrier refusing to immediately release shipper's freight upon demand or otherwise exerting unauthorized control over freight, refusal to deliver a load at the scheduled time and place of delivery, refusing to provide Broker with information on the location of shipper's freight or refusing to deliver, or failure to release or produce such freight. In the event that Carrier does hold freight hostage, Carrier agrees to pay Broker



\$5,000.00 for each day that freight is held. Carrier agrees that such amount constitutes reasonable liquidated damages for damage to Broker's reputation with the shipper and/or others. Broker shall be entitled to all other available or alternative remedies at law or equity in the case of hostage loads.

27. Entire Agreement. This Agreement, with the Tender Documents issued by Broker constitutes the entire agreement between the parties and supersedes all contemporaneous oral agreement and all prior oral and written communications, agreements and contracts between Carrier and Broker with respect to the subject matter of this Agreement. Any provisions on any Carrier-provided form whether before or after the execution of this Agreement, shall be deemed null and void and of no effect and shall not modify the terms and conditions of this Agreement. Broker may, from time to time, modify or amend the terms or conditions of this Contract, or the specific Broker companies which are parties to this Contract by means of a written amendment which it shall promptly mail or otherwise transmit to Carrier. Said modification or amendment shall become effective three (3) days after transmission by Broker. Carrier's continued acceptance of freight tender by Broker or Broker's customer thereafter shall constitute acceptance by Carrier of such modification or amendment of this Contract. In the event that any portion of this Contract is declared void or unenforceable, then such provision shall be deemed severed from this Contract which shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, the undersigned individuals have executed this Agreement at ,  
(city, state) as of the Effective Date, and by doing so, represent and warrant that they ~~have been or are specifically authorized to~~ do so on behalf o the organization they represent.

Broker: \_\_\_\_\_

Carrier Legal Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PLEASE EMAIL TO [ACCOUNTING@MIMARTRANSPORTATION.COM](mailto:ACCOUNTING@MIMARTRANSPORTATION.COM)