



## **CARRIER TERMS & CONDITIONS**

**MJN Services, Inc.**

534 East 800 North, Orem UT 84097

Phone: (801) 705-9030 – Fax: (801) 705-9051

**Effective: August 4, 2016**

1. **PURPOSE.** MJN Services, Inc. (BROKER) is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA), under docket number MC375676, and as such, is authorized to arrange for the transportation of both regulated and exempt shipments in interstate commerce. This CARRIER TERMS AND CONDITIONS (Carrier Terms) establishes the terms and conditions applicable to the transportation of freight arranged by BROKER and transported by CARRIER as those terms are used herein and defined below. A copy of this Carrier Terms will be furnished by BROKER upon request and is published to the public at <http://www.mjnservices.com/ctc.pdf>.
2. **DEFINITIONS.** As used in this Carrier Terms, the words and phrases underlined below have the meaning set forth thereafter.
  - a) **BROKER** means MJN Services, Inc. residing at 534 East 800 North, Orem, UT 84097.
  - b) **SHIPPER** includes (a) each person identified as a shipper in any transit document respecting a shipment subject to this Carrier Terms, and (b) unless the context clearly otherwise requires, the consignor, consignee and owner of a shipment subject to this Carrier Terms.
  - c) **Transportation Agreement** means the written agreement between BROKER and CARRIER with respect to the transportation of freight arranged by BROKER.
  - d) **CARRIER** includes (a) each person identified as a carrier in any transit document respecting a shipment subject to this Carrier Terms, (b) in the case of any shipment subject to a Transportation Agreement, the party identified as the carrier in such Transportation Agreement, and (c) unless the context clearly requires otherwise, the actual carrier used to perform the transportation of freight provided by BROKER.
  - e) **Delivery** means the service performed by CARRIER or its agent in transporting freight to a dock, platform, doorway, job site or receiving area directly accessible to highway vehicles of CARRIER at a warehouse, factory, store, place of business, or other location designated by BROKER.
  - f) **Pickup** means the service performed by CARRIER in calling for and collecting freight from a platform, doorway or shipping area directly accessible to highway vehicles of CARRIER at a warehouse, factory, store, place of business, or other location designated by BROKER.
3. **EFFECTIVE DATE.** This Carrier Terms is effective as of the date first written above.
4. **SCOPE.** Except as otherwise agreed in a signed Transportation Agreement, the terms and conditions set forth in this Carrier Terms are applicable with respect to all transportation arranged by BROKER and transported by CARRIER in interstate commerce, in intrastate commerce, and in foreign commerce, regardless of the commodities shipped or the origins or destinations involved. In the event of a conflict between the terms set forth in this Carrier Terms and the terms set forth in a signed Transportation Agreement, the terms in the Transportation Agreement shall control.
5. **CARRIER AGREES:**
  - a) To cause that the goods be transported between points on a time schedule authorized and designated by BROKER at rates mutually agreed upon and negotiated on a per shipment basis. Rates must be established in writing per BROKER'S Carrier Rate Confirmation. In the event, rates are not established in writing per BROKER'S Carrier Rate Confirmation, the rate of \$0.80 per mile, all inclusive, will apply. CARRIER understands and agrees that BROKER'S freight is time sensitive and CARRIER may be charged late fees for any product that is delivered late, said late fee to be solely determined by BROKER

after considering all facts and circumstances.

- b) Shipments made under this Carrier Terms will be subject to all the terms and conditions of the Uniform Straight Bill of Lading. All such documents shall show actual consignor and consignee and the CARRIER'S name shall be shown on the bill of lading as the Carrier of Record. The BROKER'S name will not be shown on the bill of lading as Carrier and if it does appear it must be reflected as "Transportation Broker" only. CARRIER shall become solely liable for the freight when it takes/receives possession thereof, and the trailer is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER. Any terms of the bill of lading inconsistent with the terms of this Carrier Terms shall be controlled by the terms of this Carrier Terms.
- c) To bill all charges for transportation services directly to BROKER within ten (10) days of delivery and shall provide BROKER with **ORIGINAL** signed bills of lading and delivery receipts evidencing such service, together with BROKER'S Carrier Rate Confirmation and CARRIER'S invoice.
- d) That payment will be denied if the documents referred to in paragraph 5.c) above are not received by BROKER within ninety (90) days from the first pickup date of shipment, and no billing adjustments will be accepted by BROKER after the ninety (90) day period has expired..
- e) To assume full and complete responsibility and shall be liable to BROKER for loss, damage, and delay to any property transported under this Carrier Terms. Such liability shall begin at the time CARRIER takes/receives possession of the freight and shall continue until said cargo is delivered to consignee at destination, or to any intermediate named stop off party directed by BROKER. CARRIER shall be liable for the full value of the shipment which shall be understood to mean the replacement cost of the lost or damaged items or delay charges plus associated brokerage fees and freight. Exclusions in CARRIER'S insurance coverage shall not exonerate CARRIER from this liability.
- f) To indemnify, defend and hold BROKER and its customers (including their officers, directors, employees, subcontractors and agents) harmless from and against any and all lawsuits, claims, charges, liabilities, judgments, damages, fines, penalties, costs, demands and expenses (including costs of defense, settlement and reasonable attorney's fees) of whatever type or nature, including damage or destruction of any property, or injury (including death) to any person, arising out of or related to, directly or indirectly, CARRIER'S transportation of freight pursuant to this Carrier Terms.
- g) To maintain adequate insurance coverage for trucker's auto liability in an amount of not less than \$1,000,000 combined single limit and motor truck cargo coverage in an amount equal to the full value of the maximum quantity of goods transported under this Carrier Terms, but in no event less than \$100,000 per shipment. The auto and cargo insurance shall be in the form required by 49 CFR 1043.2 and have no exclusions or restrictions that would not be accepted by the Interstate Commerce Commission for filing under those statutory requirements aforesaid. CARRIER shall cause its insurance carrier to forward forthwith to BROKER a standard Certificate of Insurance, which certificate shall require the insurance carrier to list BROKER as a certificate holder and to give BROKER written notice thirty (30) days prior to cancellation of such insurance. CARRIER is liable for all cargo loss or damage above amounts paid by insurance.
- h) CARRIER is solely responsible for any Worker's Compensation in accordance with the laws of all states in or through which the CARRIER will operate. The CARRIER agrees to assume the total and sole responsibility to assure adequate worker's compensation coverage is in place for its employees and other persons as the law may require.
- i) BROKER may set off against the amounts invoiced by the CARRIER: (1) any amounts advanced to the CARRIER or its representatives; (2) any expenses incurred by the BROKER on behalf of the CARRIER; (3) the replacement cost of any lost or damaged shipping devices, such as, but not limited to, pallets, barrels, boxes, or other containers; and, (4) any amount CARRIER is indebted to BROKER or its

customers, including freight loss, damage and delay claims.

- j) If for any reason, CARRIER fails to complete transportation of commodities in transit under the terms of this Carrier Terms, or abandons a shipment and thereby subjects BROKER to liability, CARRIER expressly agrees that BROKER shall have the right to complete the trip using other equipment, and hold CARRIER liable for costs and damages.
- k) CARRIER is relying on the general credit of BROKER and hereby waives and releases all liens which CARRIER might otherwise have to any goods of BROKER'S Customers in the possession or control of CARRIER. CARRIER shall not withhold any goods of BROKER'S Customers on account of any dispute as to prices or alleged failure of BROKER to pay charges incurred under this Carrier Terms.
- l) CARRIER further acknowledges and agrees that BROKER is an independent contractor as to its Customers, and is not the agent of any Customer. CARRIER authorizes BROKER to invoice SHIPPER for services provided by CARRIER, and CARRIER agrees that it shall not look to the Customers of BROKER under any circumstances for payment of freight charges and hereby waives any such right.
- m) For a period of two (2) years after the later of (a) the date of delivery, or (b) the termination date of a Transportation Agreement, CARRIER shall not, directly or indirectly, solicit or do business of a transportation nature with any of BROKER'S Customers who are serviced by CARRIER as a result of this shipment. Solicitation prohibited under this Carrier Terms means participation in any conduct, whether direct or indirect, the purpose of which involves transportation and/or handling of property by CARRIER for which CARRIER does, or did in the past, provide such services for that customer under arrangements first made or procured by BROKER. If CARRIER performs services of a transportation nature for compensation for any Customer of BROKER without prior authorization from BROKER, CARRIER shall immediately pay to BROKER an amount equal to fifteen percent (15%) of all revenues invoiced by CARRIER to the solicited Customer. BROKER shall identify its Customers to CARRIER as each first load from each Customer is tendered to CARRIER. CARRIER'S acceptance of the load and movement of the property will acknowledge that this new customer is BROKER'S Customer.

**6. BROKER AGREES:**

- a) To perform all billing, invoicing, and collection services to or with respect to customers whose property is transported by CARRIER pursuant to this Carrier Terms.
- b) To pay CARRIER for CARRIER'S services within twenty-one (21) days, after receipt of **ORIGINAL** shipment bills of lading and delivery receipts, free and clear from any question of claim, shortages, or damage, together with BROKER'S Carrier Rate Confirmation and CARRIER'S invoice for the agreed upon transportation compensation.

**7. OTHER:**

- a) It is understood and agreed that the relationship between BROKER and CARRIER is that of independent contractor and that no employer/employee relationship exists, or is intended. BROKER has no control of any kind over CARRIER, including but not limited to routing of freight, and nothing contained herein shall be construed to be inconsistent with this provision.
- b) CARRIER and BROKER acknowledge and agree that this Carrier Terms does not bind the respective parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.
- c) Failure of either party to enforce a breach or waiver of any provision or term of this Carrier Terms shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either party to thereafter enforce such a term or provision.

- d) Obligations of this Carrier Terms are separate and divisible and in the event that any clause is deemed unenforceable, the balance of this Carrier Terms shall continue in full force and effect. CARRIER expressly waives all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with this Carrier Terms.
- e) CARRIER shall limit disclosure of information concerning this Carrier Terms and each of BROKER'S Carrier Rate Confirmations relating to freight transported by CARRIER, to only CARRIER'S agents, employees and subcontractors directly involved in its execution and performance. CARRIER shall only use BROKER'S and its Customer's technical and business information to provide the transportation and related service required under this Carrier Terms and the related Carrier Rate Confirmation.
- f) CARRIER shall forthwith pay to BROKER the amount of all actual attorneys' fees and all filing, recording, publication, collection, search, and related administrative costs, including interest at 18% per annum from the date said costs are incurred until paid, with respect to the defense or enforcement of BROKER'S interests under this Carrier Terms (whether or not BROKER files a lawsuit against CARRIER). Without limiting the generality of the foregoing, CARRIER shall, with respect to each and all of the foregoing, pay all actual attorneys' fees and costs BROKER incurs in order to: obtain legal advice; enforce or seek to enforce any of its rights; prosecute actions against, or defend actions by third parties; commence, intervene in, respond to, or defend any action or proceeding; or file or prosecute a claim or right in any action or proceeding, including, but not limited to, any probate claim, bankruptcy claim, third-party claim, or secured creditor claim. In the event BROKER brings any lawsuit against CARRIER predicated on a breach of this Carrier Terms, or in any manner relating to this Carrier Terms, BROKER shall be entitled to recover its costs and attorney's fees in addition to any amounts awarded by the court, including, but not limited to, interest at 18% on all unpaid balances from the date said amounts are incurred or awarded until paid, and attorneys' fees and costs incurred in the enforcement of, execution upon or defense of any order, decree, award or judgment.
- g) In the event of Insolvency proceedings being instituted by or against CARRIER, BROKER, or an agent of BROKER, may immediately enter upon any owned or leased property of CARRIER, including a trailer where property belonging to BROKER'S customer may be found and take possession of such goods.
- h) CARRIER specifically agrees that all freight tendered to it through BROKER shall be transported on equipment operated only under the authority of CARRIER and CARRIER shall not in any manner subcontract, broker, or in any other form arrange for the freight to be transported by a third party without the specific written consent of BROKER. All shipments accepted by CARRIER shall be transported by equipment registered, licensed, insured and identified by CARRIER under its own name and USDOT number; and all shipments, equipment and operations shall be insured by insurance policies obtained by CARRIER and specifically naming CARRIER as the insured.
- i) This Carrier Terms shall be governed, construed and interpreted in accordance with the laws of the State of Utah. CARRIER: (i) agrees that all actions or proceedings relating directly or indirectly to this Carrier Terms or any of the obligations contained therein shall be litigated in courts located within the State of Utah, Utah County, or such other court as BROKER may elect, in its sole discretion; (ii) consents to the jurisdiction and venue of any such court, irrevocably agrees to be bound by any judgment rendered thereby in connection with this Carrier Terms, and consents to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights CARRIER may have to object to the jurisdiction of any such court, or to, transfer or change the venue of any such action or proceeding.
- j) This Carrier Terms, together with the Transportation Agreement, if any, contains the entire agreement herein between the parties and no amendments or additions hereto can be made except by written instrument executed by both parties. Notwithstanding the provisions of this paragraph, BROKER may in the future modify, add to, or take away from this Carrier Terms and publish a new amended document to its

web site along with a new effective date. Carrier understands and agrees that if CARRIER performs transportation services for BROKER, which take place after the new effective date of the amended document, then CARRIER will be subject to the terms and conditions set forth in the new amended document. No tariff, rule or service condition published by CARRIER and not expressly agreed to in writing shall apply.

- k) The provisions of this Carrier Terms shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of the parties hereto; provided, however, that CARRIER may not assign or transfer any of its rights under this Carrier Terms without the prior written consent of BROKER, and any prohibited assignment shall be void. No consent by BROKER to any assignment shall relieve CARRIER from its liability for its obligations under this Carrier Terms. Without limiting the generality of the foregoing, all rights and benefits of BROKER under this Carrier Terms may be exercised by any person or entity designated by BROKER. CARRIER understands that BROKER may from time to time transfer and assign its rights and obligations under this Carrier Terms to one or more assignees. CARRIER hereby consents to these transfers and assignments. CARRIER further hereby consents and acknowledges that any and all defenses, claims, or counterclaims that it may have against BROKER shall be limited to, and may only be brought against BROKER and may not extend to any assignee. CARRIER and BROKER intend that any and all direct or indirect assignees of BROKER of the type set forth above shall be the third party beneficiaries of this Agreement.
- l) CARRIER agrees to only use drivers that meet the requirements of the FMCSA. CARRIER agrees that at no time while transporting freight subject to this Carrier Terms shall it have an "Unsatisfactory" safety rating as determined by the FMCSA. CARRIER agrees to cease transporting BROKER'S freight and to immediately notify broker if it receives an "Unsatisfactory" safety rating. CARRIER agrees to indemnify BROKER from any losses incurred by BROKER, of any nature whatsoever, resulting from or related to CARRIER transporting BROKER'S freight while having an "Unsatisfactory" safety rating.

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