

BROKER-CARRIER AGREEMENT

This Agreement is entered into this ____ day of _____, 20__ by and between KM Logistics, LLC a Registered Property Broker, Lic. No. MC-634637 with offices located at 4375 S. Kansas Ave. Saint Francis, WI thereafter, "BROKER". And _____, a Registered Motor Carrier. Permit/Certificate No. MC-_____ DOT# _____ with offices located at _____ (Hereinafter, "CARRIER"): collectively, the "Parties", ("Registered" means operated under authority issued by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation.)

A. CARRIER, DURING THE PENDENCY OF THIS AGREEMENT, REPRESENTS AND WARRANTS THAT IT:

- 1) Is a Registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities:
- 2) Shall transport the property, subject to the terms of this Agreement:
- 3) Makes the representations herein for the purpose of inducing BROKER to enter into this Agreement:
- 4) Has and will maintain cargo, personal injury and public liability insurance as described below, which covers the risks referred to in Pars: A10, A11, and C4, as well as any cargo transported under this Agreement, without exclusions:
 - a) Cargo Insurance-Minimum \$100,000 coverage per incident
 - b) Auto Liability-Minimum \$1,000,000
- 5) Will not insert, nor authorize a SHIPPER, Carrier or Driver to insert BROKER'S name on a bill of lading as the SHIPPER without BROKER'S express consent:
- 6) Has authorized the person signing this Agreement to do so:
- 7) Will not assign or co-broker, Double Broker or interline the shipments hereunder, without prior written consent of BROKER. If CARRIER breaches this provision, Broker shall have the right to paying the monies it owes CARRIER directly to the delivering carrier, in lieu of payment to the CARRIER or no payment at all leaving the carrier responsible for all delivery charges to co-brokered or double brokered carrier. Upon Broker's payment to delivering carrier, CARRIER shall not be released from any liability to Broker under this agreement. In addition to the indemnity obligation reflected in this agreement, the carrier will be liable for consequential damages for violation of this clause in the agreement:
- 8) CARRIER is in compliance with all applicable federal, state, and local laws relating to the provision of its services and the performance of this Agreement:
- 9) Will notify BROKER immediately if CARRIER'S federal Operating Authority is revoked, suspended, or rendered inactive for any reason: and/or if CARRIER is sold, or if there is a change in control of CARRIER.
- 10) Will defend, indemnify, and hold BROKER and its customers harmless from any claim, losses, damages, or liability of any kind (including reasonable attorney's fees) arising out of CARRIER'S performance or violation of any of the terms of this Agreement. BROKER reserves the right to control the defense of any such matters, including the right to designate counsel:
- 11) Shall comply with all applicable laws and regulations relating to the transportation of Hazardous Materials as defined in 49 C.F.R. 173 et seq. to the extent that any shipments hereunder constitute Hazardous Materials. In such instance(s), CARRIER shall be solely responsible for any violation of the applicable laws and regulations and shall defend, indemnify, and hold BROKER and its customers harmless from any liability incurred including, but not limited to reasonable attorney's fees arising from any non-compliance.
- 12) CARRIER Moving Perishable: CARRIER warrants that the carrier will inspect or hire a service representative to inspect a vehicle's refrigeration or heating unit at least once a month. CARRIER warrants that they shall maintain a record of each inspection of refrigeration or heating unit and retain the records of inspection for at least one year. Copies of these records must be provided upon request to the carrier's insurance company and broker. CARRIER warrants that in accepting a load that requires a trailer with a refrigerated unit, they have and will maintain reefer breakdown insurance and ensure that such a policy is in force and in good standing at the time in which the order is in their care, custody, and control.
- 13) CARRIER shall not have a U.S. DOT safety rating of Unsatisfactory: otherwise they are not authorized to provide the proposed services.
- 14) Carrier will NOT double broker, re-broker or dispatch out to another carrier or truck that is not running under their authority. If carrier does behave by double brokering or re-brokering to another company or truck not under their authority, they will not be compensated for the load or agreed amount and could be subjected to further litigation. KM Logistics, LLC DBA KM Logistics Services will then reserves the right to pay the actual carrier who moved said load directly or not all.
- 15) All Brokers loads are a dedicated truck. If any delay occurs due to adding freight to truck causing delay to KM Logistics load, will result in non payment as KM Logistics requests dedicated equipment. Only upon written request will KM Logistics decide if it is acceptable to add other freight other than KM Logistics brokered load to the truck and only through written fax or email. No verbal permission is acceptable or allowed.

B. BROKER RESPONSIBILITIES:

- 1) SHIPMENTS, BILLING & RATES: BROKER agrees to solicit and obtain freight transportation business for CARRIER to the mutual benefit of CARRIER and BROKER, and shall offer CARRIER at least three (3) loads/shipments annually. BROKER shall inform CARRIER of (a) place of origin and destination of all shipments and (b) if applicable, any time-sensitivity instructions or special equipment requirements provided BROKER has received such information from SHIPPER.
- 2) BROKER agrees to conduct all billing services to shippers. CARRIER shall invoice BROKER for its (CARRIER) charges, as mutually agreed in writing or by fax contained in CARRIER'S schedules of rates and charges, which are attached and incorporated herein by reference (Exhibit A). Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates or additional rates, may be established to meet changing market conditions, shipper requirements, BROKER requirements, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by fax, mail or email) by both Parties. Any such changes in rates shall automatically be incorporated herein by reference as part of Exhibit A.

Amendment 1. et seq. CARRIER'S schedule of rates and charges(Exhibit A) shall be provided by CARRIER to BROKER in writing (fax or mail)and shall include all rates, classifications, rules and practices upon which any rate applicable to the shipments transported is based and no part thereof shall be amended, modified or changed without mutual written consent of the Parties.

- 3) Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where CARRIER has billed the agreed rate and BROKER has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by reference as part of Exhibit A. Amendment 1 et seq. Unless specifically agreed to in writing, no rates or charges, including, but not limited to, accessorial charges, "released rates" or "limited liability" rates or values, other than those mutually agreed upon by the Parties herein shall be valid.
- 4) PAYMENT: BROKER agrees to pay CARRIER for its services rendered hereunder, upon written receipt of proof of delivery and bill of lading, in accordance with the rates set forth above, or as otherwise agreed, within 30 days of receipt of CARRIER'S invoice and required documents. The Parties agree that BROKER shall be solely responsible for payment of CARRIER'S charges and under no circumstance shall CARRIER seek payment from BROKER'S customer, the shipper or the consignee of any shipment tendered to CARRIER under this Agreement. Upon receipt of payment CARRIER automatically assigns all of its rights to payment from shippers, consignees, or third parties to BROKER.

C. CARRIER RESPONSIBILITIES:

- 1) EQUIPMENT: All shipments tendered by a shipper or customer to CARRIER, procured by BROKER under the terms of this Agreement, shall be accepted by CARRIER for transportation, provided such shipment does not exceed the capacity (weight or cubic volume) of CARRIER'S equipment. CARRIER agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for BROKER and/or its customers. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed. CARRIER understands that if BROKER requests a specific type of vehicle and carrier uses or sends wrong vehicle into customer and freight doesn't fit, BROKER is NOT responsible for any loss's occurred such as time wasted, fuel, deadhead or any other cost. Even if customer decides to add additional freight from original order, as long as the BROKER's requested truck size would have fit the additional freight, BROKER and it's customer are not responsible even if CARRIER elected to send a smaller truck in at their own will.
- 2) BILLS OF LADING: CARRIER shall issue a bill of lading in compliance with 49 U.S.C. 80101 et seq. 49 C.F.R 1035 (and any amendments thereto), for the property it receives for transportation under this Agreement, unless otherwise agreed in writing. CARRIER shall become fully responsible/liable for the freight when it takes/receives possession thereof, and the trailer(s) 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 Agreement shall be controlled by the terms of this Agreement. Failure to issue a bill of lading or sign a bill of lading acknowledging receipt of the cargo by CARRIER, shall not affect the liability of CARRIER.
- 3) LOSS & DAMAGE CLAIMS:
 - a) CARRIER shall comply with 49 C.F.R 370.1 et seq. and any amendments and/or any other applicable regulations issued or adopted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, for the processing all loss and damage claims and salvage, which arise out of the discharge of CARRIER'S duties and responsibilities hereunder: and
 - b) The burden of proof for CARRIER'S liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C 14706; and
 - c) Special Damages: Any liability of CARRIER under Pars A10 and A11 above shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability under Subp. (b) above.
 - d) If the CARRIER fails to cover their liability of loss, KM Logistics, LLC reserves the right to take the CARRIER to court for the amount owed, with interest, incurred costs and attorney fees.
- 4) INSURANCE: CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies, protecting BROKER from the risks referred to in Pars. A10, A11, C3, and this Par. 4, providing thirty (30) days advance notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits:
 - a) Workers compensation-Statutory limits in each state by law.
 - b) Commercial General Liability in a combined single limit of Two Million Dollars (\$2,000,000).
 - c) Commercial Auto Liability including Bodily Injury and Property Damage in the amount of a Combined Single Limit of One Million Dollars (\$1,000,000) each occurrence (primary). Coverage includes owned vehicles, leased vehicles, hired vehicles, and non-owned vehicles.
 - d) Cargo Liability Insurance, with minimum limits based on the value of the cargo being hauled, but in no case less than \$100,000.
 - e) Other insurance-All other insurance required by any applicable law.
- 5) Carrier is responsible for being prompt and on time in accordance with rate confirmation. Accepting loads from KM Logistics, LLC DBA KM Logistics Services Carrier understands these are ALL time definite Guaranteed delivery time loads and times must be met to assure service is provided to KM Logistics, LLC's customer exactly as KM Logistics promises to them. If carrier is late for either pick up or delivery and cannot meet those times, Carrier must call proactively to KM Logistics, LLC notifying dispatch that they will not be able to meet pick up time, reason why, location and current ETA. Late services will have consequences if Carrier fails to call KM Logistics, LLC prior to arriving late. Up to 1 hour: \$50.00, 1 to 2 hours \$100.00, 2 to 4 hours \$200.00, 4-6 Hours late 50% Deduction of agreed rate from rate con, 6 hours or more will result in no payment at all. If KM Logistics decides to pay anything, it will be at the discretion of KM Logistics.

Except for the higher coverage limits specified above, the insurance policies shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Cargo insurance provided by Contract Carriers shall contain the same language as was present in the past BMC 32 endorsement applicable to common carriers. Nothing in this

Agreement shall be construed to limit liability to the insurance limits set forth above nor shall any exclusion in any insurance policy exonerate CARRIER from liability.

6.) Carrier is responsible for providing updates on any and all shipments or loads it carries. KM Logistics will require Macro Point on all Expedited loads and either the carrier can provide it under their account and send updates every hour to kmlogisticsllc@gmail.com or KM Logistics, LLC will set it up on its own account and charge back the carrier for the fee of the Macro Point which is \$5.00 for a 24hour tracking period and higher for longer durations. It is the carriers responsibility to make sure the correct phone number is provided, if in the event that KM Logistics was provided the wrong cell number for the driver for Macro Point Tracking, Carrier will be charged the additional charges for the cancellation fee and the new charge to setup the accurate cell phone number. Carrier is responsible to make sure driver has GPS turned on and location services turned on his cell phone. Smart phones need to download the free application provided by Macro point and install so acceptance of Macro Point request will confirm. If at any point driver turns off tracking, cancels tracking or does not accept request after 2 hours, it will be considered a service failure and deductions will apply.

7.) Waiting time and hold over times are only allowed to negotiate between KM Logistics and its customer. The carrier or dispatchers cannot agree on any additional charges, waiting times, hold over charges if customer is closed. Only KM Logistics management can negotiate those rates and charges between KM Logistics and the carrier. If Carrier threatens to take freight back to shipper, keep freight, hold freight hostage unless KM Logistics meets their demands, zero payment will be made on that shipment and any and all open invoices to be paid to that carrier will be also voided and zero payment will be made. The original rate con will apply as the rate con in the event of a dispute.

8.) Any Carrier that uses a factoring company will be subjected to a \$5.00 service fee from KM Logistics. Late invoices will have deductions made after 7 Days. It is the carrier's responsibility to get paperwork to KM Logistics within 7 days of delivery. \$5.00 per day will be deducted for paperwork sent to KM Logistics after 7days from delivery. Acceptable paperwork can be mailed but also if legible and clear copies are in hand they can be faxed or emailed. DO NOT send photos of the BOL that are dark in any way because they will be rejected. Drivers should use the App Cam Scan, which is free to send clear paperwork.

9.) Rate cons may have clerical error from time to time. It is important that the carrier keeps a copy of the original posting to validate any requests for details on a shipment from KM Logistics. KM Logistics post's a majority of its freight on Sylectus and carriers need to respond to the post. If you bid is accepted by KM Logistics and you are not part of the Sylectus network and there is a discrepancy with the details which cause delay or problems, no future work will be tended to your company and you will forfeit your payment for the load/loads you hauled for KM Logistics that you found though sharing some other companies Sylectus account.

10.) KM Logistics uses Macro Point Tracking service. Your driver is required upon KM Logistics request to allow us real time Macro Point GPS tracking to their cell phone while they are under a load from KM Logistics. If you provide a wrong cell# to KM Logistics you the carrier will be charged \$10.00 for that if we enter it into our system and tracking begins. If a carrier is on a direct shipment and the Macro Point shows the driver sitting in a city for more that 2 hours and carrier does not immediately update KM Logistics of the delay, late penalties will apply. KM Logistics will not accept any excuses that are communicated after KM Logistics calls carrier noticing the vehicle sitting. It is the Carriers Responsibility to call KM Logistics at the time of the delayed incident or with in 30 Minutes of it. When Macro Point is required and Carrier does not accept it, or unable to use it for any reason, it is required that either a email or phone call is made to KM Logistics every 2 hours until freight is delivered providing location updates while on the trip. Macro Point is ACCURATE. If it shows your truck in the wrong direction or going the wrong way and freight is delayed, It is up to the carrier to get a written statement from Macro Point stating the error was on the Macro Point system. In the event Macro point shows driver is late and carrier says delivered on time, the carrier must within 15 minutes of delivery send signed POD to KM Logistics to prove freight arrived on time.

11.) In the event of a breakdown and freight needs to be recovered by another unit, carrier will get that amount deducted from their pay to finalize the load. The carrier has the right to dispatch any truck of their choice but further delay could harm any payments so we must get the fairest and fastest truck to accomplish the delivery. If KM Logistics gets the truck for the recovery and delivery, those charges will be deducted from the rate of the carrier that said vehicle broke down causing the delay. KM Logistics will post the load and get the fairest and fastest truck no matter what the charges are to accomplish the customer's delivery.

12.) If carrier accepts the rate and the rate con they must follow through with it. Once carrier is loaded and they try to renegotiate rates or transit times, KM Logistics may send a rate con meeting those requests or demands only to protect KM Logistics and their customer. At that point, in the body of the rate con, KM Logistics will identify the behavior by the carrier and why the rate con changed in this event. If and when that happens, KM Logistics will NOT pay anything to carrier based on what seems to be a blackmail situation due to the carrier already having possession of the freight. By behaving this way it can cause long-term harm between KM Logistics and their customer and potentially cost KM Logistics further business from its customer.

D. MISCELLANEOUS:

- 1) **INDEPENDENT CONTRACTOR:** 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. It is also understood that if the CARRIER is found in breach of this contract, KM Logistics, LLC reserves the right to take the CARRIER to court for any amount owed, with interest, incurred costs and attorney fees.
- 2) **NON-EXCLUSIVE AGREEMENT:** CARRIER and BROKER acknowledge and agree that this contract 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.
- 3) **WAIVER OF PROVISIONS:**
 - a) Failure of either party to enforce a breach or waiver of any provision or term of this Agreement 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.
 - b) This Agreement is for specified services pursuant to 49 U.S.C 14101(b) To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, of Title 49 U.S.C.(ICC Termination Act of 1995), the parties expressly waive any or all rights and remedies they may have under the Act.
- 4) **DEFAULT:** In the event of a material breach by CARRIER of any provisions of this Agreement, BROKER shall have the right to withhold and/or set off any payments owing to CARRIER and/or received from shippers which, BROKER is obligated to pay CARRIER. The right of withholding and/or setoff is not an exclusive

remedy and BROKER shall have and may exercise, subject to Paragraph 5 below, all other remedies it may have at law or in equity against CARRIER.

- 5) **DISPUTES:** In the event of a dispute arising out of this Agreement, the party's sole recourse (except as provided below) shall be to file a claim against KM Logistics active bond and the final decision will be up to them. The bond is in place to protect the carrier and both parties will accept their final judgments. The decision of the broker's bond company shall be binding and final and the award of the bond company may be entered as judgment in any court of competent jurisdiction. Any disputes, Arbitration or courts judgment proceedings shall be conducted at the office of the KM Logistics.LLC or it's active attorneys office. Provided, however, it is agreed that prior to the formation of the courts help, either party may apply to a court in Broker's (KM Logistics, LLC) Jurisdictions. Unless preempted by Federal Bankruptcy Law, federal common law, or otherwise controlled by the Federal Motor Carrier Safety Administration/U.S. Department of Transportation laws and regulations, the laws of the State of Wisconsin shall be controlling. This paragraph shall not apply to enforcement of the award of arbitration.
- 6) **NO BACK SOLICITATION:** CARRIER shall not solicit or accept freight shipments from any shipper, consignor, or consignee, or other customer of BROKER when (a) the availability of such shipments first became known to CARRIER as a result of BROKER'S efforts: or (b) where such shipments of the shipper, consignor, or consignee or BROKER customer was first tendered to the CARRIER by the BROKER. In the event of breach of this provision, BROKER shall be entitled, for a period of 12 months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of fifteen percent (50%) of the transportation revenue (as evidenced by freight bills) received by CARRIER for the transportation of said freight as liquidated damages. Additionally, BROKER may seek injunctive relief and in the event it is successful in obtaining such injunctive relief, CARRIER shall be liable for all costs and expenses incurred by BROKER related thereto, including, but not limited to, reasonable attorney's fees. ANY BACK SOLICITATION by anyone from or used by carrier that KM Logistics brokered a load to will result in no payment of any monies owed to that carrier including and open invoices and result in KM logistics reporting to any and all networks of carriers behavior.
- 7) **MODIFICATION OF AGREEMENT:** This Agreement and the rate schedules attached may not be amended, except by mutual written agreement, or the procedures set forth above (Paragraphs B2 and B3).
- 8) **NOTICES:**
 - a) All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax.
 - b) BROKER shall notify CARRIER of any claim that is asserted against CARRIER of which BROKER has knowledge.
- 9) **CONTRACT TERM:** The term of this Agreement shall be one year from the date hereof and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon thirty (30) day's prior written notice, with or without cause, by either party at any time.
- 10) **SEVERANCE:** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written.
- 11) **ENTIRE AGREEMENT:** Except for Exhibit A (and its amendments) billing, invoices and receipt of payment documents referred to above, and unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

IN WITNESS WHEREOF, we have signed this Agreement the date and year first shown above.

For BROKER

For CARRIER

SIGNATURE

SIGNATURE

PRINTED NAME

PRINTED NAME

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____