

## Mark Westby & Associates, Inc. Contract for Truck Transportation

This Agreement is effective as of \_\_\_\_\_ and between Mark Westby & Associates, Inc. ("MWA") having an office at 5335 S. Sheridan Tulsa, OK. 74147 and ("Carrier") \_\_\_\_\_, MC-\_\_\_\_\_.

MWA arranges transportation services for its customers as a broker with authority MC-455768-B. Carrier transports property as a contract carrier.

- 1. All Shipments under Contract Carriage:** Shipments accepted and services performed by Carrier for MWA and its customers will be according to contract carriage. With the exception of insurance, registration or safety provisions, the parties waive Title 49 rights or remedies not consistent with this Agreement.  
**Receipts and Bills Lading:** Carrier will issue proof of delivery in a form acceptable to MWA and its customers. In the event such documentation is lost, the Carrier remains obligated to all terms and conditions of the shipment and this Agreement. Carrier is then responsible for proving that these terms and conditions were met. Carrier acknowledges that Customer's insertion of Broker's name on the Bill of Lading, freight tender, or any other document shall be for Customer's convenience or procedure only and shall not change Broker's status as a Broker. In the event Broker's name is listed on the Bill of Lading, shipping manifest or other similar document as the "Carrier", Carrier shall cross-out or otherwise remove Broker's name and enter Carrier's name as applicable.
- 2. Carrier's Operations and Employees:** Carrier will provide all and only well-maintained equipment required for its services. Carrier will only employ legal and licensed employees; drivers are tested according to FMCSA regulations. Carrier will not allow any shipment to be transported by another carrier or substitute service. Carrier is responsible for determining best and safest routes and shall adhere to Legal Hours of Service under all circumstances. Any directions offered by MWA are as a courtesy and may be inaccurate or outdated. Shipping/delivery dates and times are as requested by Customer and according to shipping/delivery hours of operation. However, under no circumstance do they take precedence over Legal Hours of Service.
- 3. Freight Payments:** Carrier is billing according to MWA's Confirmation. MWA will mail payment within 30-days after receiving Carrier's invoice. Invoices must include a signed and clear POD. MWA has the right to designate a shipment as "prepaid" or "collect" without recourse to MWA according to "Section 7" of the "Uniform Straight Bill of Lading". MWA reserves the right to hold payment to Carrier in the absence of proof of delivery, or for a claim of loss or damage.

**Mark Westby & Associates Inc.**

- 4. Non-solicitation.** Carrier agrees that MWA's customers and shippers are a valuable asset to MWA and were gained through the efforts and expense of MWA. During the course of business, those customers will be made known to Carrier. Once accepting business from MWA, Carrier agrees that the customer and shipper information were "made known" to Carrier through MWA. If Carrier believes they have a right to solicit a customer or shipper made known by MWA, or are currently doing business with the same customer or shipper, Carrier will immediately notify MWA and seek written acknowledgment from MWA to further solicit business prior to any actual shipment transpiring. Otherwise, Carrier agrees MWA has a right to such protection and will pay MWA 10% of all freight charges, including attorney's fees and court costs, on any business gained from customers made known to Carrier during the term of this Agreement and for one-year after.
- 5. Indemnity.** Carrier will defend, indemnify and hold harmless MWA, MWA's customers and their respective employees, agents, officers, shareholders, successors and assigns of MWA and its customers from and against any and all loss, damage, expense, legal fees, actions and claims of every type and nature whatsoever arising out of or relating to this Agreement or Carrier's performance thereof or any other services rendered by Carrier to MWA or MWA's customers, including but not limited to personal injury, death, property or cargo damage, premium service or transportation delay or failure arising out of or in connection with the loading, handling, transportation, unloading or delivery of any shipment hereunder. Carrier's indemnification obligations under this paragraph shall include legal fees and expenses, and survives any termination of this Agreement.
- 6. Insurance.** (a) Carrier shall maintain workers compensation insurance as required by law; (b) Carrier will maintain at least \$1,000,000 liability coverage for personal injury, death and property damage; (c) At least \$100,000 all risk cargo coverage; (d) any other insurance required by laws, rules or regulations; (e) All of Carrier's insurance is primary and covers unlocked or unattended vehicles. (f) MWA and its customers are endorsed as additional insured regarding personal injury, death and property damage arising out of, or relating to acts of Carrier. Carrier assures MWA of 30-days notice to cancellation or change.
- 7. Freight Loss or Damage.** (a) Carrier contractually assumes liability of a common motor carrier as provided in Section 14706 of Title 49 of the United States Code as in effect on the Effective Date of this agreement; (b) If any shipment hereunder or any part thereof is lost, damaged or destroyed, Carrier is liable for the full actual price less any reasonable salvage value; (c) All claims shall be handled in accordance with the governmental regulations applicable to common carriers;(d) Carrier remains responsible and liable should Carrier's insurer deny coverage for any reason.

**Mark Westby & Associates, Inc**

**8. Arbitration of Disputes.** Disputes relating to this Agreement will be settled by arbitration in Tulsa, OK and in accordance with the rules of the American Arbitration Association. Substantive issues will be decided based on applicable Federal and Oklahoma laws. Judgment upon the award rendered by arbitration may be entered in any court of competent jurisdiction. Expenses of arbitration will be allocated among parties as part of the award providing that each party pays for its own expenses and legal fees. **This is a binding arbitration provision that may be enforced by either party.**

**9. Force Majeure.** Carrier's delay, failure or nonperformance may be excused to extent caused by fire, flood, explosion, war, Act of God or other similar cause beyond Carrier's control and without Carrier's fault or negligence, but only if and to the extent that MWA is also not liable by agreement or contract based on the same circumstances.

**10. Customer Procedures and Requirements:** In the event MWA's customer establishes specific requirements ("Customer Rules") affecting Carrier's services, and Carrier receives written notice of Customer Rules, Customer Rules shall be deemed incorporated in this Agreement and complied with by Carrier including, but not limited to liability for any transportation, services or instructions contained in Customer Rules.

**11. Terms of Agreement:** (a) This Agreement is effective for an initial period of one-year after signed by Carrier and automatically renews each year thereafter. (b) Carrier or MWA can terminate this Agreement upon at least 30-days prior written notice, but any obligations accruing prior to the termination or expiration hereof, or which by their nature would survive same (including but not limited to Carrier's indemnity obligations and the parties' forum selection agreement) shall survive any termination of this Agreement; (c) Any modification or change must be agreed to in writing from both MWA and Carrier. (d) In the event of any inconsistency between this Agreement and any other agreement terms or conditions by and between these parties, this Agreement's terms shall control unless the parties agree otherwise in writing with direct reference to this Agreement.

**12. Governing Law:** (a) This Agreement and all matters arising out of Carrier's and MWA's transactions and relationship shall be governed by Oklahoma law. (b) For value received, Carrier agrees and consents to submit all matters to the exclusive jurisdiction of the District Court of Tulsa County, Oklahoma and waives any jurisdictional or venue objections to said court and an removal or transfer right therefrom.

**Mark Westby & Associates, Inc.**

**By:** \_\_\_\_\_

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

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

Issuing Authority: Mark Westby 1.31.17

\_\_\_\_\_  
**(CarrierName)**

**By:** \_\_\_\_\_

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

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