



## MICHIGAN TURKEY PRODUCERS TRANSPORTATION AGREEMENT

This Transportation Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between MICHIGAN TURKEY PRODUCERS, LLC, a Michigan limited liability company of 1100 Hall Street SW, Grand Rapids, Michigan 49503 ("MTP") and the undersigned interstate motor carrier registered under authority issued by the Federal Motor Carrier Safety Administration ("FMCSA") within the U.S. Department of Transportation ("Carrier" and collectively with MTP, the "Parties").

MTP desires to retain Carrier to provide transportation services for MTP's food products and Carrier desires to furnish MTP with its interstate motor carrier services under the terms and conditions of this Agreement. Now therefore, for the consideration set forth in this Agreement, the Parties agree as follows:

### A. MTP and Carrier agree as follows:

1. Agreement. MTP hereby retains Carrier, on a non-exclusive basis, to provide MTP with Carrier's transportation services under the terms and conditions of this Agreement. The terms and conditions of this Agreement shall be incorporated by reference into each and every contract of transportation or shipment, as evidenced by either (i) the acceptance by Carrier of MTP's goods for shipment; or (ii) Carrier's issuance to MTP of a shipping receipt or bill of lading for such goods. This Agreement supersedes any and all conflicting terms and conditions contained in any shipping receipt or bill of lading.
2. Shipments. MTP shall inform Carrier of: (i) the place of origin and the place of destination of all shipments; and (ii) if applicable, any special shipping instructions or special equipment requirements.
3. Billing and Rates. All transportation charges of Carrier shall be in accordance with Carrier's Rate Confirmation Sheet (the "Rate Confirmation Sheet") issued by Carrier to MTP prior to each shipment and is incorporated herein by reference. Additional rates or any modifications or amendments to the agreed rates shall be agreed to by the Parties in advance and confirmed in writing and all additional, modified, or amendments to the Rate Confirmation Sheet that are mutually agreed to by the Parties shall be confirmed in writing and upon confirmation, shall automatically be incorporated herein by reference. Rates or charges for such things as stop-offs, detention, loading or unloading, fuel surcharges or other accessorial charges shall only be valid when included in the Rate Confirmation Sheet or otherwise agreed to in writing by the Parties.

4. Payment. MTP agrees to pay Carrier's undisputed invoice within fifteen (15) days, but not before receipt of a legible copy of the bill of lading signed by the consignee.

**B. Representations of Carrier.** Carrier hereby represents and warrants to MTP the following:

1. Authorization. Carrier is a Registered Interstate Motor Carrier of Property authorized to transport meat and poultry products.
2. Compliance. Carrier does not have an "Unsatisfactory" safety rating issued by the FMCSA, and will notify Carrier in writing immediately if its safety rating is changed to "Unsatisfactory" or "Conditional." Carrier is in compliance (and at all times while providing transportation services to MTP will be in compliance) with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, hours of service regulations, sanitation, temperature, contamination requirements for transporting food, perishables, and other products, qualifications and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance of control of the means and method of transportation including, but not limited to, performance of its drivers. Carrier will notify MTP immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; if it is sold; if there is a change in control of ownership; or if any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
3. Refrigeration. Carrier is experienced in transporting refrigerated products and understands and agrees that: (i) delivery time requirements and temperature specifications are critical and that failure to comply with either or both time requirements and temperature specifications may result in partial or total damage to the shipment and/or partial or total rejection of a shipment; (ii) refrigerated products are commonly subject to strict quality control specification that may require destruction of the shipment in the event required temperatures are not maintained, which may eliminate the ability to salvage the shipment in whole or in part; and (iii) it will be responsible for required security (including trailer seals), temperature control protection.

**C. Covenants of Carrier.** Carrier hereby promises that while it is performing transportation services for MTP under this Agreement, it will comply with the following:

1. Carrier Services. Carrier will transport the load under Carrier's own operating authority and subject to the terms of this Agreement. Carrier will not re-broker, subcontract, assign or interline the shipments hereunder, without prior written consent of MTP. If Carrier breaches this provision, MTP shall have the right to pay all funds owed to Carrier under such shipment directly to the delivering carrier, in

lieu of payment to Carrier. Upon MTP's payment to delivering carrier, Carrier shall not be released from any liability to MTP under this Agreement and shall remain liable for all obligations under this Agreement.

2. Loading and Notification. Carrier will not accept shipments until Carrier's trailer has been pre-cooled to proper temperature. Carrier will confirm delivery dates and temperature requirements on the bill of lading. Carrier assumes all risk of loss for any discrepancies. Carrier accepts all risk of loss for loading or transporting shipments at incorrect temperatures and Carrier agrees to transport the shipment at the required temperature during the entire period of transportation. Carrier will immediately report any temperature reading outside the shipment's specified range to MTP (by means of facsimile, email or telephone) and abide by instructions from MTP as to the disposition of the freight. Carrier shall not sell, auction, or otherwise dispose of any cargo without the express written approval of MTP.
3. Trailer Seals. Carrier shall ensure that a trailer seal, as described in the bill of lading, is applied for each and every load to be transported for MTP under this Agreement prior to transporting the load, and that the serial number for each such seal has been entered on the applicable bill of lading. In the event that the seal has not been applied to each trailer door or if the number of each seal does not match the number entered on the applicable bill of lading, Carrier shall contact MTP for instructions as to disposition of the load or whether Carrier may transport the load to its contracted destination. Carrier acknowledges and agrees that loads may be rejected for any of the following reasons: (1) any seal serial number does not match the serial number indicated on the bill of lading; (2) any seal serial number is not entered on the bill of Lading; (3) any seal is broken in-transit without prior notification and approval of MTP or by the driver upon arrival at the load destination, or (4) there is readily visible evidence that the integrity of the shipment has been compromised while in Carrier's custody and care. Carrier shall have no liability for seals broken by lawful authorities, provided such broken seals are replaced by lawful authorities and Carrier has notified MTP promptly and has made appropriate effort to maintain the chain of custody of the load. Carrier has responsibility to maintain and document a clear chain of custody at all times. In the event of a seal breach and the Carrier provides clear chain of custody, MTP will work diligently to mitigate Carrier's loss. Carrier acknowledges that any intentional violation of MTP's transportation security requirements, including any misrepresentation of the related policies by Carrier or application and enforcement thereof will represent a default under this Agreement and will entitle MTP to not pay Carrier for its transportation services. Carrier further acknowledges that no freight charges will be payable for loads rejected where the Carrier is at fault. In the event that a load is rejected in part, Carrier freight charges will be paid in proportion to the amount of the load accepted.
4. Compliance. Carrier shall insure that all Carrier personnel, contractors or agents having access to any shipment under this Agreement shall comply with any lawful

special instructions of MTP relating to the shipment. In the event a refrigerated shipment is partially or wholly rejected (for any reason), or Carrier is unable to deliver a shipment for any reason, Carrier will immediately notify MTP, for disposition/salvage instructions. Pending receipt of disposition instructions, Carrier shall place the shipment in a holding facility as instructed by Carrier, or MTP, or if no instructions then at a receiver, a public warehouse, or in its own storage facility at the required temperature.

5. Equipment. Carrier agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required by MTP. Carrier will **not** supply equipment that has been used to transport hazardous wastes, solid, or liquid, regardless of whether they meet the definition in 40 C.F.R. §261.1 et. seq. Carrier will furnish equipment for transporting refrigerated products which are sanitary, free of any contaminations, suitable for the particular commodity being transported and which will not cause in whole or in part adulteration of the MTP's products. Carrier acknowledges and agrees that, in transporting shipments which contain food products intended for human or animal consumption, it will not utilize Equipment which has been utilized for the transportation of Hazardous Materials within the meaning of 49 U.S.C. §5102 or Solid Waste within the meaning of 42 U.S.C. §6903 or which otherwise is not fully suitable for use in the transportation of any Food, Food Additive, Drug, Cosmetic or Device within the meaning of those terms as used in 21 U.S.C. §321 or any other applicable law of similar kind or content. Furthermore, the Carrier agrees that all Equipment provided will comply with the Sanitary Food Transportation Act of 1990 and regulations promulgated thereunder or any other applicable law of similar kind or content. Equipment may be rejected at the point of pickup or delivery, at no cost to Carrier or MTP, if it does not pass MTP's inspection standards or otherwise meet MTP's requirements. Carrier agrees and acknowledges that any breach of this provision may result in substantial harm to MTP's goods or customers and may have a detrimental effect on MTP's reputation and image in the marketplace as well as product integrity and goodwill, and in recognition of this, Carrier hereby agrees that in the event Carrier breaches the terms of this Section, Carrier shall pay MTP such damages suffered by MTP and indemnify MTP from any claims made against it by customers of MTP.
6. Bills of Lading. Carrier shall issue a bill of lading in compliance with 49 U.S.C. §81010 et seq., and 49 C.F.R. §373.101 (and any amendments thereto), for the property it receives for transportation under the Agreement. Unless otherwise agreed in writing, Carrier shall become fully liable for the freight when it takes and/or receives possession thereof, or the Carrier's trailer is loaded, regardless of whether a bill of lading has been issued, signed and/or delivered to Carrier. Carrier's liability shall continue until delivery of the shipment to the consignee and receipt of signature from the consignee on the bill of lading or delivery receipt. Any terms of the bill of lading (including but not limited to payment terms) inconsistent with the terms of this Agreement shall be controlled by the terms of this Agreement.

Failure by Carrier to issue a bill of lading or sign a bill of lading acknowledging receipt of freight shall not affect the liability of Carrier.

7. Loss and Damage Claims.

- a. Carrier shall comply with 49 C.F.R. §370.1 et seq. and any amendments thereto and any other applicable regulations adopted by the FMCSA, U.S. Department of Transportation, or any applicable state regulatory agency, for processing any loss and damage claims and salvage.
- b. Carrier shall be liable for loss, damage to or delay in delivery of goods when such loss, damage or delay is the result of the action or failure to take action of the Carrier. Unless otherwise agreed to in writing by both Parties, Carrier's maximum liability for cargo loss or damage shall be One Hundred Thousand Dollars (\$100,000.00) per occurrence. Claims for "delay" as specified in this Agreement shall not include "chargeback", "late delivery penalties" or other purely punitive measures, where there is no actual physical damage to the cargo. Shipments having an invoice value in excess of One Hundred Thousand Dollars (\$100,000.00) per shipment will be subject to procedures and fees as described in a separate agreement between MTP and Carrier. Notification of and acceptance by Carrier of such high value freight shall only be effective if made in writing and by an authorized representative of Carrier. Carrier's liability for loss or damage shall be determined solely by the terms of this Agreement, irrespective of any provisions in Carrier's tariffs, pricing agreements, schedules, rules, regulations or practices. Carrier agrees that, in the transportation of goods hereunder, it assumes the liability of an interstate motor carrier, as provided in 49 U.S.C. sec. 14706 and as modified by this Agreement. Carrier shall have no liability for any cargo loss or damage of any kind caused by the act of God, the public enemy, the authority of law, inherent vice or nature of cargo, or the acts or omissions of MTP, its agents, employees, customers, consignees, or consignors. Regardless of the content contained in the bill of lading, Carrier shall have no liability for shortage so long as loads arrive at consignee(s) with seal(s) intact and matching the related paperwork.
- c. Carrier's indemnification liability herein for freight loss and damage claims shall include legal fees which shall constitute special damages, the risk of which is expressly assumed by Carrier, and which shall not be limited by any liability of Carrier described herein.
- d. Carrier shall promptly notify MTP by telephone at 616-245-2221 (extension 188 or extension 162), facsimile or e-mail of any accident, spill, theft, suspicious activity, hijacking, delay, seal breach or shortage that may impair the safe and prompt delivery of the goods in its control.

- e. MTP will submit freight loss and damage claims, in compliance with 49 CFR §370.1 et seq., to Carrier within nine (9) months of delivery date or scheduled delivery, whichever is earlier. Carrier shall pay, decline or make a settlement offer in writing on all cargo loss and damage claims within thirty (30) days of receipt of the claim. Failure of Carrier to pay, decline or offer settlement within such thirty (30) day period shall be deemed admission by Carrier of full liability for the amount claimed and shall be deemed a material breach of this Agreement.
8. Indemnification. Carrier will indemnify, defend and hold MTP harmless from any claims, actions or damages, arising out of or related to Carrier's transportation services, including cargo loss or damage, theft, delay, damage to property, personal injury or death. Carrier's obligation to defend shall include all costs of legal defense with MTP's choice of counsel.
9. Insurance. Carrier shall furnish MTP with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance written notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits: Commercial General Liability of One Million Dollars (\$1,000,000.00); motor vehicle (including hired and non-owned vehicles) of Seven Hundred Fifty Thousand Dollars (\$750,000.00); cargo damage/loss of One Hundred Thousand Dollars (\$100,000.00); workers' compensation with limits as required by law. Except for any higher coverage limits specified above, the insurance policies shall comply with minimum requirements of the FMCSA and any other applicable regulatory agency. MTP shall be named as a loss payee with respect to the cargo damage/loss insurance. Nothing in this Agreement shall be construed to avoid Carrier's liability due to any exclusion or deductible in any insurance policy.
10. Carrier Packet. Carrier will comply with the terms and provisions applicable to it contained in the Michigan Turkey Producers Carrier Packet, a copy of which is attached to this Agreement as Exhibit A.

#### D. Miscellaneous Terms and Conditions:

1. Independent Contractor. It is understood and agreed that the relationship between Carrier and MTP is that of independent contractor and that no employer/employee relationship exists or is intended. Carrier has no control of any kind over MTP.
2. Disputes.
  - a. In the event of a dispute arising out of this Agreement, MTP shall have the unilateral right to demand that the dispute be submitted to arbitration in accordance with and under the rules of the American Arbitration Association. The Parties shall each pay one-half (1/2) of the fees of the arbitrator(s). The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of

competent jurisdiction. The prevailing party, whether in a court proceeding or in arbitration, shall be entitled to recover its costs, expenses and reasonable attorney fees, including, but not limited to, any incurred on appeals, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted in or around Grand Rapids, Michigan or such other place as mutually agreed upon in writing or directed by the acting arbitration association.

- b. Venue, controlling law and jurisdiction in any court or arbitration proceeding shall be in the State of Michigan, Kent County and the laws of the State of Michigan shall be controlling.
3. Term of Agreement. The term of this Agreement shall commence on the date first written above and shall continue until either Party notifies the other thirty (30) days in advance of its election to terminate this Agreement. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance in the terms of the Agreement.
4. Severability. 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. The representations, rights and obligations of the Parties hereunder shall survive termination of the Agreement for any reason.
5. Assignment. This Agreement may not be assigned or transferred in whole or in part by either Party.
6. Entire Agreement. Unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all prior verbal or written agreements, arrangements, or understandings of the Parties relating to the subject matter stated herein. This Agreement supersedes any and all conflicting terms and conditions contained in any bill of lading or shipment receipt.

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

*[end of document; signature page follows]*

*[signature page of MTP and Carrier to Transportation Agreement]*

**MICHIGAN TURKEY PRODUCERS, LLC**, a Michigan limited liability company

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

Its President

**CARRIER:**

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(Carrier Name)

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(Authorized Signature)

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(Name/Title)

FMCSA Number: \_\_\_\_\_

---

(Carrier Address)

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(Telephone Number)

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(Facsimile Number)

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(Email Address)

**EXHIBIT A**

MICHIGAN TURKEY PRODUCERS CARRIER PACKET