

## CONTRACT CARRIER AGREEMENT

This Agreement is made and entered into on \_\_\_\_\_ by and between \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ ("Shipper") and D. M. BOWMAN, INC. located at 10038 Governor Lane Boulevard, Williamsport, MD 21795 ("Carrier").

**1. TERM OF AGREEMENT:**

The term of this Agreement shall commence on the date listed above, shall remain in force for one year from that date and shall automatically renew for successive one year periods; provided, however, that either party may terminate this Agreement at any time by giving thirty (30) days prior written notice.

**2. CARRIER'S SERVICES:**

Carrier represents and warrants that it is duly and legally qualified to provide all interstate and intrastate transportation services contemplated herein. Carrier's services under this Agreement are to meet the specified needs of Shipper under specified rate and conditions as set forth herein.

**3. RATES, CHARGES, AND PAYMENTS:**

On prepaid shipments, the charges and payment terms for the services performed hereunder shall be in accordance with the rates, charges, and rules set forth in the Contract Rate Schedule and the Fuel Increase Supplement attached hereto. The Contract Rate Schedule and the Fuel Increase Supplement can be supplemented or revised by written agreement signed by both parties, or, prior to transportation, by Carrier to Shipper if not objected to by Shipper, in writing, within 24 hours from the date and time faxed. Payment shall be due from Shipper within thirty (30) days of the invoice date by Carrier, and in the event the payment is not made within thirty (30) days, Shipper agrees that interest shall accrue daily and be payable to Carrier at the interest rate of 18% per annum, together with any and all collection costs, including attorney fees. Carrier and Shipper agree that any payments made hereunder are made in payment of debts incurred in the ordinary course of business and are made according to ordinary business terms. Shipper shall be liable for all charges, without offset, arising out of transportation services requested by Shipper and performed by Carrier unless the parties expressly agree otherwise in writing.

Remit to address:

DM Bowman, Inc.

PO Box 37683

Baltimore, MD 21297-3683

**4. INDEMNITY:**

Shipper shall defend, indemnify, and hold harmless Carrier and Carrier shall defend, indemnify, and hold harmless Shipper from and against all loss, damage, expense, costs, including reasonable attorney's fees, fines, actions and claims for injury to persons (including death) and for damage to property arising out of or in connection with the other party's sole negligence or failure to comply with the terms of this Agreement.

IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, STATUTE, OR OTHERWISE

**5. INSURANCE:**

Carrier shall procure and maintain auto liability insurance insuring Carrier against liability for bodily damage (including death), property damage, and for loss of or damage to cargo, in at least the minimum amounts required for motor carriers by applicable federal or state law or regulations. Carrier liability for loss or damage to cargo shall be limited to \$5.00 per pound per article and limited to a maximum of \$100,000 per trailer or conveyance.

**6. FREIGHT LOSS OR DAMAGE:**

Carrier shall accept liability as a motor carrier under the Carmack Amendment (as currently codified at 49 U.S.C. § 14706 and as amended from time to time) for loss or damage to goods tendered by or to Shipper. Notwithstanding the above, Carrier's maximum liability for any cargo loss or damage claim shall be limited to the lesser of the actual value of the goods or \$100,000 per shipment regardless of the cause of such damage or loss. Shipper shall submit to Carrier written notice of any cargo claim within nine (9) months of the delivery date of the shipment or, if no delivery, the date of the occurrence resulting in the claim. Any civil action filed by Shipper must be filed no later than two (2) years from the date of delivery specified on the bill of lading. The filing, processing and disposition of

all cargo claims shall be governed by 49 C.F.R. § 370 ET. Seq. Carrier shall be liable to Shipper for cargo claims occurring while in the possession of or under the control of Carrier, relating to or arising out of Carrier's solely negligent performance of this Agreement. Neither Shipper nor Carrier shall be liable to the other for any loss, damage, or failure to perform caused by acts of God, public enemy, inherent nature of the cargo, wars, strikes, fires, floods or any other causes not within the control of the party in default. In addition, Carrier shall not be liable to Shipper for any economic loss or consequential damages to Shipper beyond actual loss or damage to the cargo being transported. Shipper shall not deduct or offset any cargo claims from the freight charges owed to Carrier herein.

**7. INDEPENDENT CONTRACTOR:**

Carrier is an independent contractor and not an agent or employee of Shipper. Carrier assumes full responsibility for the payment of costs and expenses required to perform transportation services provided under terms and conditions of this Agreement.

**8. CONFIDENTIALITY:**

Shipper and Carrier agree to maintain confidentiality of information contained in or related to this Agreement. Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential. Both Shipper and Carrier agree to treat information received concerning the other party's business with confidence and agree not to divulge such information to third parties except where required to perform delivery or to comply with applicable laws, codes, regulations, rules and orders.

**9. NON-EXCLUSIVITY:**

Neither Party intends to give the other Party any exclusive rights or privileges under this Agreement. Except as otherwise stated in this Agreement, either party may contract with or otherwise provide service to any other motor carrier, broker, other intermediary or shipper.

**10. ARBITRATION:**

Shipper and Carrier agree that disputes arising from this Agreement will be settled by binding arbitration, with Shipper selecting an arbitrator, Carrier selecting an arbitrator, and with the representative chosen by each party jointly selecting a third arbitrator. As a result of the arbitration, the successful party will be awarded costs and expenses. The arbitration shall occur in Maryland or such other state as mutually agreed to by both parties.

**11. GOVERNING LAW:**

This Agreement shall be interpreted in accordance with the laws of the State of Maryland, disregarding any choice-of-law principle under which that State would look to the laws of another jurisdiction.

**12. HAZARDOUS MATERIAL TRANSPORTATION:**

Shipper shall comply with all laws, rules, regulations and ordinances regarding tender of hazardous materials, as that term is used and defined in the Hazardous Material Transportation Act, 49 U.S.C. § 50101 et seq., as well as any other hazardous or non-hazardous waste ("Hazardous Material"), including any and all applicable notices and/or manifests related to such Hazardous Material. Shipper further agrees that, prior to any shipment, it shall provide Carrier with a current copy of the Material Safety Data Sheet for the Hazardous Materials to be tendered to Carrier for transportation. Carrier and its drivers shall be authorized in accordance with all applicable laws, rules, regulations, and ordinances regarding transportation of Hazardous Materials and will comply with all applicable laws, rules, regulations, and ordinances related to transportation of Hazardous Materials, including those designed to ensure: (i) that no unauthorized release of any Hazardous Materials occurs; (ii) that in the event any Hazardous Materials are released, all applicable reporting and recordkeeping requirements are fully complied with; and (iii) that in the event any Hazardous Materials are released due to Carrier's failure to comply, all such Hazardous Materials and any contaminated environmental medium or media is/are expeditiously and properly cleaned up and remediated. Shipper shall indemnify, defend and hold harmless Carrier and its officers, employees, agents and insurers, against all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out or related to the exposure to a release of any Hazardous Material, including without limitation, fines or expenses relating to the removal or treatment of Hazardous Material or other remedial action pertaining to the Hazardous Material under federal or state law, if: (i) Shipper fails to provide the notice required by this provision prior to tendering the Hazardous Material to Carrier; (ii) the contact, exposure or release resulted from the improper packaging of loading or other acts or

omissions of the Shipper, its employees or agents; or (iii) the contact, exposure or release occurred subsequent to the transport of the Hazardous Material by Carrier.

**13. WAIVER.**

Shipper and Carrier expressly waive any and all rights and remedies under Part B of Subtitle IV to Title 49 of the U.S. Code to the extent that such rights and remedies conflict with this Agreement as allowed by 49 U.S.C. § 14101. Failure by either party to insist upon the other party's performance under this Agreement or to exercise any right or privilege herein shall not be a waiver of any of the rights or privileges provided for in this Agreement.

**14. COMPLIANCE WITH LAW.**

Both parties shall comply with all applicable federal, state or provincial laws, rules, or regulations, including those related to hazardous materials or dangerous goods.

**15. BILLS OF LADING:**

Each shipment hereunder shall be evidenced by and subject to the terms, conditions and provisions of a bill of lading, or other proof of delivery receipt. In the event of a conflict between the terms, conditions and provisions of such bill of lading or receipts and this Agreement, the terms, conditions and provisions of this Agreement shall govern.

**16. GOVERNING TARIFFS:**

The contract is governed by the following tariff and their supplements:  
 (A) Hazardous materials - American Trucking Association, Inc. - ICC ATA 111  
 (B) Mileage Guide – PC Miler Practical 24.0 and reissues thereof.

**17. COMPLETE AGREEMENT:**

This agreement, including schedules of rates and charges, constitutes the entire agreement between the parties and may be modified or amended only as evidenced by written agreement signed by both parties expressly purporting to do so.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

**Shipper:**

By: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Fax: \_\_\_\_\_

**Carrier: D. M. BOWMAN, INC.**

By: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: President  
 Address: 10228 Governor Lane Boulevard  
 Suite 3006  
 Williamsport, MD 21795  
 Fax: 301-223-5968