

# ATLAS HEAVY TRANSPORT LLC | CONTRACT-FOR-CARRIAGE TERMS

## DEFINITIONS:

“**Carrier**” means Atlas Heavy LLC d/b/a Atlas Heavy Transport LLC f/k/a Hansa Meyer Heavy Haul & Rigging USA, LLC, whether as carrier, bailee or otherwise.

“**Carriage**” means the whole or any part of transport operations and ancillary services undertaken by or on behalf of Carrier in respect of Cargo, including but not limited to bailment, engineering, fabrication, lashing, crating, rigging, staging, loading, unloading, and transporting by any means for any distance.

“**Cargo**” means any and all property/materials/goods tendered by client to Carrier for Carriage.

“**Client**” means the party engaging Carrier to perform Carriage of the Cargo.

“**Subcontractor**” includes all direct and indirect subcontractors and vendors of Carrier and their respective subcontractors, servants and agents, including but not limited to truckers, crane operators, bucket and boom truck operators, packers, bridge engineers, pilot and escort car operators and others.

## 1. APPLICABILITY:

These Contract-For-Carriage Terms shall apply to all methods and aspects of Carriage and to all claims against Carrier relating to the Cargo and/or the performance of the Carriage however founded.

## 2. CLIENT AUTHORITY:

In agreeing and accepting the terms of this document, Client acts for itself, the shipper, consignee and any other party bearing any interest whatsoever in the Cargo and Client warrants it has the authority to bind all such parties to the terms of this document.

## 3. ENTIRE AGREEMENT, SEVERABILITY AND HEADINGS:

**3.1** In addition to these Contract-For-Carriage Terms, Carriage of the Cargo is also subject to specific terms of any accepted “Proposal for Project Cargo Services” or other quotation extended by Carrier.

**3.2** These Contract-For-Carriage Terms and the terms of any accepted “Proposal for Project Cargo Services” or other quotation form extended by Carrier constitute the entire agreement for the Carriage. No servant or agent of Carrier shall have the power to waive or vary any of these Contract-For-Carriage Terms or any term within the “Proposal for Project Cargo Services” or other quotation form unless such waiver or variation is authorized or ratified in writing signed by Carrier. Unless otherwise agreed and accepted by Carrier in writing, these Contract-For-Carriage Terms shall prevail in the event of a conflict with the terms of any purchase order or Client or third-party document.

**3.3** If any part of this document is rendered invalid or unenforceable, such invalidity or unenforceability shall attach only to the offending provision or part thereof and the remaining part of such provision and all other provisions herein shall continue in full force and effect. Headings herein are for convenience of reference only and do not define or limit the scope of any provision.

## 4. CARRIER'S SUBCONTRACTORS, SERVANTS AND AGENTS:

**4.1** All or part of the Carriage may be performed by subcontractors, servants and agents of Carrier without prior notice to Client. Carrier may freely engage such third parties in accordance with their terms and conditions, which shall in all events be binding upon Client.

**4.2** Claims or suits may only be brought against Carrier. In the event a claim or suit is nevertheless brought against any Subcontractor, servant or agent of Carrier, that party is entitled to all exceptions, exemptions, defenses, immunities, limitations of liability, privileges and conditions granted or provided to Carrier under this document as a third party beneficiary. The aggregate of the amounts recoverable from Carrier, its subcontractors, servants and agents shall in no event exceed Carrier's liability limit as provided by these Contract-For-Carriage Terms.

## 5. DESCRIPTION, COMPLIANCE AND INSPECTION OF CARGO, CLIENT WARRANTIES:

**5.1** Carrier's acceptance of Cargo is a receipt only for the external condition of the Cargo.

**5.2** Client warrants the description, marks, center of gravity, numbers, quantities and weight of the Cargo are accurately and completely disclosed and the Cargo complies with regulations of relevant public authorities. Client warrants the accuracy of any drawings, technical data, measurements, or other information provided by or on behalf of Client. Client warrants the Cargo has suitable lashing points accessible, is suitably packed for transport and is free of hazardous materials. Client warrants the Cargo has no latent weight imbalance or other latent irregularity or attribute except as noted by Client to Carrier in writing and in advance of Carriage.

**5.3** Client has the exclusive obligation to ensure, and hereby warrants, the Cargo and Client are compliant with all relevant authorities and are legally eligible for Carriage in all respects under all relevant governing laws and regulations.

**5.4** Without obligation to do so, Carrier shall have unrestricted liberty to inspect the packaging and contents of the Cargo and to inquire and verify the accuracy or sufficiency of information provided and to seek assurances. Any discrepancies may result in shipment delay, cancellation and/or additional charges assessed by Carrier. Carrier may, without any obligation to do so, disclose and report any and all regulatory non-compliance to authorities.

**5.5** Client warrants Client shall either: (a) declare the Cargo's actual value for carriage liability as provided at Clause 6.4; (b) request Carrier include the Cargo under its insurance policy for actual value; or (c) arrange for independent insurance coverage for the Cargo's actual value under insuring terms naming Carrier as an additional insured and policy beneficiary.

## 6. CARRIER LIABILITY:

**6.1** Unless Client declares a higher value for liability as per Clause 6.4, any liability of Carrier for loss or damage to Cargo shall be limited to a maximum of USD 250,000 (two-hundred and fifty thousand United States dollars) and any liability of Carrier for financial loss other than loss or damage to Cargo shall be limited to an absolute maximum of USD 1,000 (one-thousand United States dollars). The foregoing liability limitations shall apply per Carriage of Cargo, per occurrence, or per accepted “Proposal for Project Cargo Services” or other quotation, whichever is least and however founded.

**6.2** In any and all events, nothing in this document shall constitute a surrender of any liability immunity or limitation inuring to Carrier's benefit under any applicable law, even if resulting in a liability of Carrier less than the otherwise applicable maximum contractual liability hereunder.

**6.3** For purposes of Carrier's liability, when it cannot be ascertained at what stage of Carriage the loss or damage occurred, it shall be presumed to have occurred during periods of bailment, where and to the fullest extent permissible under applicable law, so that any liability of Carrier shall be subject to affirmative proof of negligence.

**6.4** Client may avoid the liability limitation hereunder by unequivocally declaring the value of the Cargo for liability purposes to Carrier in writing prior to Carriage and paying Carrier an ad valorem freight rate. Such declared value shall only be binding upon Carrier to the extent also memorialized and indicated within any accepted “Proposal for Project Cargo Services” or other quotation form extended by Carrier. Carrier's knowledge of the value of the Cargo and/or Client's declaration of the value of the Cargo to Carrier in regular course or for any other purpose shall not constitute a declared value of the Cargo to Carrier for liability purposes.

**6.5** In no event shall Carrier be liable for special, incidental or consequential damages, lost profits or revenues or loss of merchantability, even if Carrier had notice or knowledge that such may occur.

**6.6** In no event shall Carrier's aggregate liability exceed the actual value of any loss or damage or the replacement value of the Cargo adversely affected, whichever is lower.

**6.7** Carrier does not guarantee commencement date of Carriage nor delivery of the Cargo at destination at any particular time or to meet any particular market or use. Carrier shall have no liability for any direct or consequential damages arising from delay or failure to notify Client as to the actual arrival and/or delivery date of the Cargo. In the event Carrier is nevertheless for any reason found liable for delay, Carrier's liability shall in all circumstances be limited pursuant to Clause 6.1.

**6.8** Notwithstanding anything herein to the contrary, Carrier shall have no liability for loss, damage, delay or failure arising from or attributable to: (a) circumstances of inherent defect, quality or vice of the Cargo; (b) defective or insufficient packing, lashing, or crating not performed by Carrier and not reasonably fit to withstand the ordinary rigors of contemplated transportation; (c) insufficiency or inadequacy of marks on or description of Cargo; (d) any act or omission of Client, its agent or representative; (e) legal restrictions and/or actions or inactions of public authorities including but not limited to any hours-of-service restrictions and/or any delay or refusal of public authority to grant requisite permit and any delay or refusal of law enforcement to provide requisite escort and/or inspection; (f) any force majeure event, to include but not be limited to, weather event, natural disasters, strikes or lockouts or stoppage/restraint of labor from whatever cause, delay or failure in requisite bridge engineering analysis; (g) civil unrest, acts of war or armed conflicts and acts or threatened acts of public enemies, terrorists, pirates, hijackers or assaulting thieves; (h) latent defects or Cargo attributes not discoverable by reasonable diligence of Carrier or its subcontractors, servants or agents.

Client shall indemnify Carrier of any advances, claims, costs, expenses, charges and/or liabilities incurred by Carrier as a result of (a)-(g) above and standby charges shall apply to delays caused therefrom.

**6.9** Client shall defend and indemnify Carrier of any liability to any third party(ies), however arising, to the extent exceeding the liability assumed by Carrier under these Contract-For-Carriage Terms.

## 7. METHOD AND ROUTE OF TRANSPORTATION

Without notice to Client, Carrier has liberty and discretion to consolidate the Cargo with other cargoes or substitute the method, means, route, mode and procedure to accomplish the Carriage.

## 8. CLIENT LIABILITY FOR EQUIPMENT

**8.1** Client shall assume full responsibility for and shall indemnify Carrier against any loss of or damage to equipment provided by Carrier or its subcontractors, servants, or agents which loss or damage occurs: (a) while in the possession or control of Client, its agents or vendors; or (b) in the course of Carriage to the extent attributable to a defect or vice of the Cargo. Client shall indemnify and hold Carrier harmless from and against any loss of or damage to property of other persons or injuries to other persons caused by equipment or the Cargo during handling by, or while in the possession or control of, Client, its agents or any independent vendors engaged by or on behalf of Client.

## 9. PLANS, DESIGNS, DRAWINGS AND FABRICATED COMPONENTS

**9.1** Any equipment and/or materials fabricated by Carrier, and/or any plans, designs or drawings created and/or engineered by Carrier, are intended strictly for the limited and exclusive purpose of Carriage by Carrier. Carrier disclaims all implied warranties for such equipment, materials, plans, designs and drawings including but not limited to those of a fitness for a particular purpose, and merchantability, whether otherwise arising by law, custom, usage, trade practice, course of dealing or course of performance. Client shall indemnify Carrier of consequences for the use of such equipment, materials, plans, designs or drawings by any party other than Carrier (including claims for property damage, personal injury and/or death), whether or not Carrier consented to such use by another party.

**9.2** Carrier shall retain ownership of all intellectual property rights in any equipment and/or materials fabricated by Carrier in the course of performing the Carriage, and/or any plans, designs or drawings created and/or engineered by Carrier in the course of performing the Carriage.

## 10. DELIVERY

**10.1** Carrier's responsibilities terminate at time of delivery. The Cargo shall be deemed delivered when upon arrival at destination in accordance with the accepted “Proposal For Project Cargo Services” or other quotation extended by Carrier, or when the Cargo has been delivered to any authority or other party to which, pursuant to the law or regulation applicable at the place of delivery, the Cargo must be delivered or surrendered, or such other place at which Carrier is entitled to call upon Client or consignee to take delivery. Carrier has no obligation for loading and/or unloading the Cargo unless specifically provided in the accepted “Proposal For Project Cargo Services” or other quotation form extended by Carrier. If Carrier undertakes to unload the Cargo because of failure or neglect on the part of Client or another to unload the Cargo, Client shall indemnify Carrier of any and all advances, claims, costs, expenses, charges and/or liabilities incurred by Carrier as a result of unloading the Cargo.

**10.2** In the event Client is unable or unwilling to take delivery of the Cargo, Carrier shall be entitled to store and unload the Cargo at the sole risk and cost of Client and Carrier's liability shall cease upon Carrier's tender/delivery of the Cargo to the designated delivery location or substitute location. Client shall in such instance indemnify Carrier of all costs of storage and unloading.

**10.3** If at any time the Carriage is or is likely to be affected by any hindrance or risk of any kind (including the condition of the Cargo) not arising from any fault or neglect of Carrier, its subcontractors or agents, Carrier may: abandon the Carriage of the Cargo and, where reasonably practicable, place or unload the Cargo or any portion of the Cargo at Client's disposal at any place that Carrier may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of Carrier in respect of such Cargo shall cease. In such event, Carrier shall be entitled to full charges and fees as if Carrier had made delivery and Client shall indemnify Carrier of any additional costs arising therefrom.

## 11. CHARGES AND EXPENSES TO CLIENT

**11.1** All charges shall be paid without offset. Charges are fully earned on Carrier's receipt of Cargo. In the event of cancellation by Client, Client shall be liable for the greater of: (a) 80% of the quoted Carriage total; and (b) hours expended, charged to client at Carrier's market rates (including, but not limited to, mobilization labor and engineering hours), in addition to any and all costs and/or fees incurred by Carrier and/or committed by Carrier to Subcontractors and third parties. Unless otherwise agreed in writing, payment to Carrier is due upon Client's receipt of invoice. Quoted pricing assumes maximum 10-hour work day (Mon-Fri 7AM-5PM, excluding federal holidays), outside of which additional overtime applies.

**11.2** Quoted pricing is exclusive of: (a) standby charges for delays not exclusively attributable to the fault of Carrier, which shall be billed to client at standby rates; and (b) third-party charges, which shall be billed to Client at a rate of cost plus 15%. Third-party charges include, but are not limited to, route improvement charges including tree trimming charges as well as charges of licensing agencies, utility companies, crane operators, bucket and boom truck operators, packers, bridge engineers, police escorts, pilot and escort cars and others engaged by Carrier to effect the Carriage. Client is forewarned that standby charges and third-party charges cannot be accurately forecasted in advance and may substantially increase total cost of Carriage. Any estimates of standby and/or third-party charges are non-binding and subject to change.

**11.3** Client shall reimburse and indemnify Carrier for any duties, taxes, demurrage, detention, charges, liabilities or other expenses whatsoever in connection with the Cargo or arising from any breach of warranty by Client or from any cause or reason not exclusively attributable to a liability of Carrier.

**11.4** Notwithstanding the acceptance by Carrier of instructions to collect charges or other expenses relating to the Carriage from any specific person, Client shall remain responsible for such monies on receipt of evidence of demand and the absence of payment for whatever reason. Shipper, consignee and bill-to parties are jointly and severally liable for all charges and expenses related to the Carriage and Client warrants its authority to so bind such parties. Charges may be reversed to the responsible parties in the event payment is not made by the original bill-to party.

**11.5** In any dispute involving monies owed to Carrier, the Carrier shall be entitled to all costs of collection, including reasonable attorney's fees and a late payment fee of 1.5% (one-and-one-half percent) per month or 18% (eighteen percent) per year of the balance due, or the highest rate permitted by applicable law.

## 12. LIEN

**12.1** Carrier shall have a lien on any and all of the Cargo for all advances, claims, costs, freight charges, duties, surcharges, general average expenses, salvage expenses, taxes, demurrage and/or any money due and payable to Carrier and/or any affiliate of Carrier by Client, including any lien and/or collection-related costs, whether or not related to the Cargo. The lien on the Cargo shall survive delivery of the Cargo. Carrier may sell the Cargo privately or by public auction without notice to Client. If upon sale of the Cargo the proceeds fail to satisfy the amount due Carrier, together with the cost and expenses incurred, Carrier and/or its interested affiliate(s) shall be entitled to recover any difference from Client.

**12.2** If the Cargo is unclaimed for 30 days from date placed at the disposal of Client, or whenever in Carrier's judgment the Cargo will become deteriorated, decayed or worthless, Carrier may, at its discretion abandon, or otherwise dispose of the Cargo solely at the risk and expense of Client.

## 13. NOTICE OF CLAIM, TIME FOR SUIT, AND ATTORNEYS' FEES

**13.1** Unless Client provides written notice to Carrier of the general nature of any loss or damage to the Cargo at the time Carrier delivers the Cargo, such delivery by Carrier is prima facie evidence of Carrier's delivery of the Cargo in good order and condition.

**13.2** Carrier shall be discharged of all liability unless written claim is made against Carrier within nine months from the date the Cargo was delivered, or in the event of non-delivery, from the date the Cargo should have reasonably been delivered. In the event of any claim for overcharge, such mandatory time for written claim against Carrier shall be 30 days from the date of Carrier's invoice.

**13.3** Carrier shall be discharged of all liability unless suit is brought against Carrier within two years and one day from the date Carrier disallowed the claim or any part of the claim.

**13.4** In the event of any suit against Carrier, each party shall bear its own legal fees, costs and expenses provided that nothing in this section 13.4 shall prejudice Carrier's rights under section 11.5.

**14. DISPUTE RESOLUTION (JURY TRIAL WAIVER); LAW AND JURISDICTION (CARMACK WAIVER)**  
Carrier and Client hereby knowingly, irrevocably and unconditionally waive their right to a jury trial. Disputes arising out of the Carriage will be determined under Texas and United States law exclusively in the courts of Harris County, Texas. If applicable, and for good and sufficient consideration acknowledged hereby, Client expressly waives pursuant to 49 U.S.C. § 14101 the venue provisions of 49 U.S.C. § 14706(d) and any successor statute(s) to the extent inconsistent with Harris County, Texas.