



DEFENSE AND INDEMNIFICATION AGREEMENT

This is a DEFENSE AND INDEMNIFICATION AGREEMENT (“Agreement”) by and between Master Solutions, Inc. d/b/a TransMaster Trailers, with its principal offices located at 20 Wolfs Bridge Road, Carlisle, PA 17013 (hereinafter referred to as “MSI-TMT” and/or “Indemnitee”), and a manufacturer and/or supplier (hereinafter referred to as “Vendor” and/or “Indemnifier”), collectively referred to as “the Parties.”

For the purposes of this Agreement, the Parties shall include their Affiliates. The term “Affiliate” shall mean any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with the Party.

WHEREAS, MSI-TMT and its Affiliates manufacture various types of heavy haul specialized trailers, trailer chassis and chassis components;

WHEREAS, Vendor is a manufacturer and/or supplier for the purchase of goods by MSI-TMT from Vendor;

WHEREAS, MSI-TMT seeks protection against any personal liability, claim, suit, action, expense, judgment, fine, penalty, settlement, loss, damage, including reasonable attorney fees, and any other cost or other obligation of any kind or amount whatsoever, that may result from use of goods sold to MSI-TMT by Vendor; and

WHEREAS, Vendor seeks to minimize any hardship MSI-TMT might suffer as the result of any personal liability, claim, suit, action, expense, judgment, fine, penalty, settlement, loss, damage, including reasonable attorney fees, and any other cost or obligation of any kind or amount whatsoever that may result from MSI-TMTs’ purchase and use of Vendor’s goods.

- 1. Incorporation.** This Agreement and the terms and conditions set forth herein are made a part of and incorporated by reference in; (a) any manufacturing and/or supply agreement by and between MSI-TMT and a manufacturer and/or supplier (Vendor); and (b) any and all purchase orders issued by and between MSI-TMT and accepted by manufacturer and/or supplier (Vendor).
- 2. Shipment of Goods.** Any shipment of supplies, goods or process of manufacturing by Vendor to or for MSI-TMT shall be deemed acceptance of all terms and conditions contained herein by Vendor.
- 3. Material Inducement.** This Agreement and the terms and conditions set forth herein are a material inducement for MSI-TMT to enter into the applicable business relationship and transaction(s) with Vendor, MSI-TMT has relied on this Agreement and the terms and conditions set forth herein to enter into the applicable business relationship and transaction(s) with Vendor, and MSI-TMT will continue to rely on this Agreement and the terms and conditions set forth herein in its dealings with Vendor.
- 4. Adequate Consideration.** This Agreement and the terms and conditions set forth herein are an integral part of the consideration for the purchase of goods and/or services from supplier. Vendor acknowledges and agrees that: (a) the amounts paid by MSI-TMT to Vendor for goods and/or services comprises consideration not only for the goods and/or services, but also for this Agreement and the terms and conditions set forth herein; and (b) the amounts paid by MSI-TMT to Vendor for the goods and/or services and the terms and conditions set forth herein are fair, reasonable, adequate and sufficient.
- 5. Warranty.** Vendor warrants and represents that the goods and/or services Vendor supplies to MSI-TMT; (a) do not infringe upon any third-party patent or misappropriate any third-party confidential or trade secret information (“warranty of non-infringement”); (b) are free from any design or manufacturing defect; (c) are merchantable; (d) meet or exceed performance specifications promoted by Vendor and/or specified by MSI-TMT; and (e) are fit for the intended purposes.
- 6. Defend and Indemnify.** Vendor shall defend, indemnify, and hold harmless, at Vendor’s own cost and expense, MSI-TMT and its affiliates, distributors, program sponsors, customers, and end users, as well as the officers, directors, agents, and employees of all of the foregoing, and the successors and assigns of each of the

foregoing (individually and/or collectively the "Indemnitees") from and against any claim, suit, investigation, causes of actions, judgments, damages, losses, penalties, fines, costs, disbursements, expenses, including reasonable attorneys' fees and also including suits, losses, any claim, asserted, alleged, demanded, claimed, recovered or otherwise incurred or sustained by any of the Indemnitees as a result of or in connection with any of MSI-TMTs' Indemnitees importation, use, purchase, distribution, promotion, offer for sale or sale of goods or services purchased from Vendor, and including, without limitation, suits, losses, any claim, judgment, fine, penalty, costs, disbursements, investigation and expenses that allege: (a) personal injury; (b) death; (c) property damage; (d) infringement of any third-party's patent, copyright, trade secrets, trademark, trade dress, or other intellectual property right; (e) product liability; and/or (f) violations of any federal, state or local laws, rules, ordinances, or regulations including but not limited to those concerning product safety labeling, packaging, weight, quality, and/or consumer protection (individually and/or collectively "Claim" or "any Claim").

7. Exclusions. Vendor shall have no obligation under this Agreement to the extent that a Claim is for:

- a. Trademark infringement for use of a trademark selected by MSI-TMT and/or its customer;
- b. Patent infringement arising out of Vendor's manufacture of goods in accordance with the exact specification other than performance requirements provided by MSI-TMT to Vendor unless infringement could have been avoided by the use of a non-infringing method or process, or part or component, in the manufacture of goods;
- c. Design defect arising from the manufacture of goods in accordance with the exact specifications provided by MSI-TMT to Vendor.

8. Duty to Defend. Vendor, at its sole cost and expense, even if any such allegation of liability is groundless, false, and/or fraudulent, shall assume the defense of any Claim upon written notice from the applicable Indemnitees in accordance with the provisions set forth below:

- a. MSI-TMT and any of the applicable Indemnitees shall give prompt written notice of any Claim to Vendor. The failure of MSI-TMT and any of the applicable Indemnitees to promptly give written notice of any Claim to Vendor shall not excuse Vendor from any of its obligations under this Agreement except to the extent that Vendor can demonstrate an actual loss or prejudice as a result of such failure.
- b. MSI-TMT and any of the applicable Indemnitees shall, subject to the terms of this Agreement, tender the defense and/or settlement of any Claim to Vendor.
- c. Vendor shall take all steps necessary in the defense and/or settlement of any Claim.
- d. Vendor shall select counsel reasonably acceptable to MSI-TMT and the applicable Indemnitees to conduct defense and/or settlement of any Claim.
- e. Vendor shall keep MSI-TMT and applicable Indemnitees fully informed concerning the defense and/or settlement of any Claim.
- f. Vendor shall reasonably consider and address MSI-TMT and/or MSI-TMTs' counsel input concerning the defense and/or settlement of any Claim.
- g. To the extent that any action by Vendor or its counsel in the conduct of the defense and/or settlement of any Claim will affect any of the applicable Indemnitees, such action shall require the written consent of MSI-TMT and the applicable Indemnitees.
- h. Vendor and its counsel shall provide copies of any substantive communications, documents, submissions, filings, pleadings, discovery, or the like concerning the defense and/or settlement of any Claim to MSI-TMT and the applicable Indemnitees.
- i. Vendor shall not consent to a settlement of, or entry of any judgment arising from, any Claim without the prior written consent of the applicable Indemnitees: (i) if such settlement of judgment

will impose any obligation, liability or restriction on MSI-TMT or the applicable Indemnitees; or (ii) if such settlement or judgment will have any effect on the right to import, export, use, purchase, distribute, promote, offer for sale or sell any goods by MSI-TMT or the applicable Indemnitees.

- j. MSI-TMT and the applicable Indemnitees shall reasonably cooperate at Vendor's cost and expense in the defense and/or settlement of any Claim.
- k. MSI-TMT and the applicable Indemnitees shall be entitled to participate in the defense and/or settlement of any Claim with its/their own counsel at their own expense.

9. Take Over of Defense. MSI-TMT and/or the applicable Indemnitees may take over the defense and/or settlement of any Claim at any time if in the sole discretion of MSI-TMT and/or the applicable Indemnitees Vendor has not competently or adequately defended any Claim. In the event that MSI-TMT and/or the applicable Indemnitees intend to take over the defense and/or settlement of any Claim in accordance with this Section, they shall give written notice to Vendor. In the event that MSI-TMT and/or the applicable Indemnitees take over the defense and/or settlement of any claim in accordance with this Section, Vendor's obligation to indemnify and hold harmless MSI-TMT and the applicable Indemnitees shall continue as provided for in this Agreement and Vendor shall pay and/or reimburse MSI-TMT and the applicable Indemnitees for all costs and expenses incurred in the conduct of the defense and/or settlement of any Claim, including, but not limited to, reasonable attorneys' fees.

10. Independent Terms. Vendor's agreement to defend, indemnify and hold harmless Indemnitees under the terms above is: (a) independent of and in addition to Vendor's agreement to procure insurance as may be required; and (b) independent of and in addition to all other rights and recoveries available to Indemnitees, whether in law or equity. Vendor's insurer's position regarding insurance coverage for Indemnitees, as an additional insured, does not in any way modify or limit Vendor's agreement or obligation to defend, indemnify and hold harmless Indemnitees as required by the terms above.

11. Confidentiality. During the course of this Agreement, it may be necessary for MSI-TMT and/or Indemnitees to share proprietary and/or confidential information, including trade secrets, industry knowledge, and other confidential information to Vendor in order for Vendor to indemnify MSI-TMT and/or other Indemnitees. Vendor will not share any of this proprietary or confidential information at any time. Vendor also will not use any of this proprietary or confidential information for its benefit. This section remains in full force and effect even after termination of this Agreement by its natural termination or the early termination by MSI-TMT or applicable Indemnitees. Vendor recognizes and agrees that nothing contained in this Agreement shall be construed as granting it any intellectual or other property rights, by license or otherwise, to any proprietary or confidential information, or to any invention or any patent, copyright, trademark or other intellectual property right that has issued or that may issue, based on such proprietary or confidential information.

12. Mandatory Disclosure. Vendor shall not be liable to MSI-TMT for the disclosure of proprietary or confidential information that it is obligated to be disclosed by law, rule, statute or order of a court of competent jurisdiction; provided, however, that if Vendor is so required to disclose proprietary or confidential Information, to the extent required by law or regulation, Vendor shall provide MSI-TMT prompt advance written notice before such disclosure and: (a) seek a protective order or other appropriate remedy from the proper authority; or (b) afford MSI-TMT an opportunity to seek a protective order or other appropriate remedy from the proper authority at MSI-TMTs' sole expense.

13. Intended Third-Party Beneficiary. Any Indemnitee not a party to this Agreement shall be considered a third-party beneficiary of this Agreement and the terms and conditions herein.

14. Notices. Any notice required or permitted by this Agreement shall be (a) in writing, (b) addressed to the principal office or principal place of business of the Party, and (b) delivered by one of the following means; (i) by personal delivery; (ii) by pre-paid, overnight package delivery or courier service; (iii) e-mail or fax (upon customary confirmation of receipt); or (iv) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid. Notice shall be deemed given on the day of delivery or the day of refusal of delivery.

15. **Headings.** The title, headings, and subheadings in this Agreement are included solely for convenience of reference and will not be considered part of, nor affect the interpretation of this Agreement.
16. **Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed and construed by the laws of the Commonwealth of Pennsylvania applicable to contracts and without giving effect to the principles of conflict of law provisions thereof.
17. **Disputes.** If any dispute arises under or in connection with this Agreement, the Parties shall make a good faith effort to resolve the dispute before taking any action. The Parties shall meet to discuss the dispute no later than (10) ten days after either Party gives written notice to the other party that such a dispute exists. Such meeting may be held telephonically if travel is impractical for either Party. At such meeting, a duly authorized representative of each Party having authority to resolve the dispute shall be in attendance. No action, suit or other proceeding may be commenced before the Parties have met pursuant to this Section.
18. **Jurisdiction and Dispute Resolution.** Any dispute arising under or in connection with this Agreement that is not resolved by the meeting prescribed by paragraph 17 above, shall be finally settled by arbitration in accordance with the arbitration rules of the American Arbitration Association modified as follows: the arbitration proceeding shall be expedited; no discovery of any kind shall be conducted in the arbitration; no direct examination or cross examination of witnesses shall be conducted in the arbitration; the arbitration proceeding shall take place in Cumberland County, Pennsylvania; the arbitration shall be conducted in the English language; the arbitration shall take place before a single arbitrator; the arbitration shall be decided upon written submissions of the Parties; the arbitrator shall be required to provide the Parties with a brief well-written statement in support of any decision or award; the Parties consent to the jurisdiction of the arbitrator; any decision and/or award by the arbitrator shall be final and binding upon the Parties; neither Party shall call upon a court of law or any other authority in an attempt to invalidate, amend or review the arbitral award; and, either Party may call upon a court of law or any other applicable authority to enforce any decision or award by the arbitrator.
19. **Costs and Fees of Enforcement.** In any action and/or arbitration by MSI-TMT or applicable Indemnitees to enforce the terms of this Agreement, if MSI-TMT or applicable Indemnitees prevail, they it/they shall be entitled to all costs and expenses of the action and/or arbitration, including, but not limited to attorney's fees.
20. **Successors and Assigns.** This Agreement and Vendor's obligations thereto shall be binding on Vendor's representatives, agents, successors and assigns.
21. **Severability.** If one or more provisions of this Agreement are held invalid or unenforceable by a court of competent jurisdiction pursuant to applicable law, such provision(s) will be deemed separate, distinct and independent, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
22. **Modification.** This Agreement may not be modified or amended without the express written consent of an authorized representative of MSI-TMT and Vendor.
23. **Waiver.** The failure or delay of MSI-TMT to enforce or exercise any right shall not be deemed a waiver of prior or subsequent rights.
24. **Binding Agreement.** Vendor acknowledges that it and/or its legal counsel fully understand this Agreement even though it is in the English language and the English language may not be familiar to them. Vendor acknowledges that it has had an opportunity to have this Agreement translated into a more familiar language. Vendor acknowledges that it and/or its counsel have had an opportunity to review this Agreement and that it and/or its counsel are fully aware of the contents of this Agreement and the legal effect of this Agreement.
25. **Sole Agreement.** The Agreement sets forth the complete, exclusive and final statement and understanding of Agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, proposals, representations, negotiations and discussions, whether written or oral, between the Parties regarding such subject matter.