



**RULES TARIFF  
FOR DRAYAGE CARRIER SERVICES**

**June 28, 2018**

# Rules Tariff for XPO's Drayage Carrier Services

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# Rules Tariff for XPO's Drayage Carrier Services

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## **INTRODUCTION**

### **Application of Tariff; Conflicts with Agreements:**

This Rules Tariff applies to all shipments tendered for transportation by XPO Logistics Drayage, LLC, an indirect subsidiary of XPO Logistics, Inc. and a licensed motor carrier (referred to in this Tariff as "Carrier" or "we" or "us" or "our"). In the event of any direct inconsistency between the terms and conditions set forth in this Tariff and in a written agreement signed by our authorized representative, the terms and conditions in the written agreement will prevail. If the terms of the written agreement and the terms of this Tariff are not inconsistent (for instance, the written agreement does not address an issue addressed by the provisions of this Tariff), the terms of this Tariff shall apply in addition to the terms in the written agreement.

### **Changes to this Tariff:**

This Tariff may be changed from time to time without notice, although we will generally endeavor to provide 30 days prior notice of any change. Customers are advised that the terms, conditions, limitations and charges set forth in this Tariff in effect on the shipment tender date shall apply. The current version of this Tariff may be obtained from our website at [www.xpo.com/business-terms](http://www.xpo.com/business-terms).

### **Terminology:**

As used in this Tariff, "Customer" refers to the person or entity contracting to engage our services with respect to a shipment as well as any other person or entity having an interest in the cargo, including the shipper, consignee, consignor, any third party logistics provider, ocean carrier, transportation broker, intermodal marketing company, and the beneficial owner. "UFC" refers to the Uniform Freight Classification.

## **EFFECTIVE DATE**

July 1, 2018. This Rules Tariff supersedes all prior tariffs issued previously by us.

## **LINE-HAUL RATES AND PAYMENT**

### **Application of Rates:**

Intermodal trucking line-haul charges generally represent standard rates for round-trip (load empty) TOFC/COFC moves on FAK stay-with loads. Charges for miscellaneous services, often called accessorials, are not included in our line-haul rates. All additional charges are the responsibility of Customer paying the line-haul charges. To be valid and enforceable, an authorized Carrier representative must confirm, in writing, any mutually agreed upon exceptions to the terms, conditions, accessorial or other charges described in this Tariff

### **Payment Terms:**

No COD. All invoices are due and payable within twenty-one (21) days. A finance and collection charge of 5% will be added to any invoices not paid within twenty-one (21) days after the invoice date. An additional fee equal to the greater of (1) one-third of total amount due or (2) the actual costs incurred will be added to any invoices that must be turned over to a collection agency, attorney, or other outside party for recovery.

### **No Offsets:**

**THE REDUCTION OR OFFSET OF AMOUNTS DUE TO CARRIER FOR CARGO CLAIMS, PER DIEM EQUIPMENT, STORAGE OR OTHER CHARGES, INVOICE DISPUTES OR ANY OTHER AMOUNT ALLEGED TO BE DUE FROM CARRIER IS NOT PERMITTED UNLESS AUTHORIZED IN WRITING BY CARRIER BEFORE SUCH OFFSET OR REDUCTION IS MADE.**

**Intermediaries:**

Freight forwarders, intermodal marketing companies, property brokers, third-party logistics companies, and other intermediaries are considered to be agents of the beneficial owner of cargo transported. Carrier may bill such intermediaries as a convenience to the shipper but will retain recourse to the shipper and/or consignee for nonpayment of fees. Any intermediary that bills or collects on behalf of a third party freight charges that are due to Carrier shall receive such payment in constructive trust to the extent such charges are due and owed to Carrier.

**Fuel Surcharge:**

Our line-haul rates are subject to a fuel surcharge. The following fuel surcharge matrix is based on the DOE's National Average Diesel Fuel Index by PADD published by the Energy Information Administration every Monday. The index is available on the internet at [www.eia.doe.gov](http://www.eia.doe.gov). Revisions to this surcharge will occur the day after the DOE posts its weekly fuel index.

Fuel Surcharge			Fuel Surcharge		
\$3.400 or	\$3.449	25.00%	\$4.250	\$4.299	33.50%
\$3.450	\$3.499	25.50%	\$4.300	\$4.349	34.00%
\$3.500	\$3.549	26.00%	\$4.350	\$4.399	34.50%
\$3.550	\$3.599	26.50%	\$4.400	\$4.449	35.00%
\$3.600	\$3.649	27.00%	\$4.450	\$4.499	35.50%
\$3.650	\$3.699	27.50%	\$4.500	\$4.549	36.00%
\$3.700	\$3.749	28.00%	\$4.550	\$4.599	36.50%
\$3.750	\$3.799	28.50%	\$4.600	\$4.649	37.00%
\$3.800	\$3.849	29.00%	\$4.650	\$4.699	37.50%
\$3.850	\$3.899	29.50%	\$4.700	\$4.749	38.00%
\$3.900	\$3.949	30.00%	\$4.750	\$4.799	38.50%
\$3.950	\$3.999	30.50%	\$4.800	\$4.849	39.00%
\$4.000	\$4.049	31.00%	\$4.850	\$4.899	39.50%
\$4.050	\$4.099	31.50%	\$4.900	\$4.949	40.00%
\$4.100	\$4.149	32.00%	\$4.950	\$4.999	40.50%
\$4.150	\$4.199	32.50%	\$5.000	\$5.049	41.00%
\$4.200	\$4.249	33.00%			

The same formula will be used for prices above \$5.049.

- PADD 1A:** New England Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
- PADD 1B:** Central Atlantic Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania
- PADD 1C:** Lower Atlantic Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia
- PADD 2:** Midwest Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Oklahoma, Tennessee, Wisconsin
- PADD 3:** Gulf Coast Alabama, Arkansas, Louisiana, Mississippi, New Mexico, Texas
- PADD 4:** Rocky Mountain Colorado, Idaho, Montana, Utah, and Wyoming
- PADD 5:** West Coast Alaska, Arizona, Hawaii, Nevada, Washington, Oregon

**Special Rate Quotations:**

A special rate quotation ("SPQ") is required to evidence any special line-haul rates that we may issue due to volume, special services, special equipment or origins or destinations not covered by existing rates. If an SPQ is needed, please contact the applicable regional pricing center at the email address below. If an SPQ applies to a shipment, the SPQ number must be stated on the prenote.

[SARtrkpri@xpo.com](mailto:SARtrkpri@xpo.com) South Atlantic region  
[CENtrkpri@xpo.com](mailto:CENtrkpri@xpo.com) Gulf region and Chicago and West Coast  
[NERtrkpri@xpo.com](mailto:NERtrkpri@xpo.com) Northeast region

**Overcharges and Undercharges:**

Customer should promptly notify us of any invoice disputes. Under federal law, if we allege undercharges or Customer alleges overcharges, duplicate payment, overcollection or other invoice disputes, we and Customer each must give notice of such claims or unidentified payments within 180 days of receipt of the invoice or payment declination and must file a civil action or arbitration proceeding within eighteen (18) months of delivery or tender of delivery of the shipments involved. The processing, investigation and disposition of overcharge, unidentified payment, duplicate payment, or overcollection claims shall be governed by federal regulations 49 C.F.R. Part 378 (or any successor regulation).

**Mileage:**

All mileage will be calculated using PC Miler, practical route, current version in effect at the time of shipment.

**SHIPPING INSTRUCTIONS****Prenote:**

All prenotes must state the line-haul rate and fuel surcharge to be considered valid. Customer must submit notification by 3:00 pm, local time, the day before the shipment is expected to be picked up or delivered. Any accessorial services requested (such as driver load, unload, count, stop-offs) and any pre-approved miscellaneous charges that differ from those in this Tariff should be stated on the prenote. Prenotes may be provided to us by e-mail, facsimile, electronic data interchange or other mutually agreed-upon means. We reserve the right to decline any shipment for any reason.

**Additional Data in Prenote:**

The prenote should also include the following information: (1) Name of Customer; (2) Telephone number of Customer's office providing the shipping instructions; (3) any SPQ number applicable to the shipment; (4) STCC number of the commodity; (5) Commodity description; (6) Container identification number (e.g., PACU 480001), including any equipment substitution number, if applicable; (7) Container length and height; (8) Shipment weight in pounds; (9) Service required (i.e., ramp to consignee, consignor to ramp, pier to ramp, ramp to pier); (10) Shipment origin and contact numbers; (11) Shipment destination and contact numbers; (12) Any special routing or handling instructions (such as reefer temperature, fumigation, stop-off locations); and (13) Overdimensional size (if applicable).

**Commodity Descriptions:**

With heightened focus on transportation security, Customers must provide more detailed and accurate descriptions of commodities. Descriptions such as "FAK (Freight All Kinds)," "SLAC (Customer Load and Count)," chemicals, household goods, sporting goods and consolidated cargo are no longer acceptable. Those descriptions are too vague and do not specifically describe a commodity. Customer should avoid use of vague catchall phrases and industry jargon. An example of an improved description may be "golf clubs" and "golf balls" instead of "sporting goods"; or "television sets" instead of "electronics." Failing to provide accurate and detailed descriptions may result in transportation delays, additional accessorial and related costs and other adverse consequences.

**Substituted Service:**

For its operating convenience, XPO reserves the right to hire other qualified carriers as subcontractors to provide all or part of a given movement. XPO agrees to perform the services at the applicable Customer rates when substituted services are provided and will cause the substituted

carrier to comply with all terms, conditions, duties and obligations owed to the shipper under this Rules Tariff or any applicable bill of lading and/or Customer contract.

### **COMMODITY RESTRICTIONS AND REQUIREMENTS**

#### **Hazardous Materials:**

Any container or trailer loaded with materials deemed to be hazardous requires the services of a driver with special hazardous materials endorsements. Customer must comply with applicable federal regulations, including 49 C.F.R. Parts 100 to 185, when tendering hazardous materials. Among other requirements, Customer must provide a legible bill of lading with proper hazardous materials information, including the shipper's certificate containing all required information such as the emergency response number and information, and must affix any required placards before or at the time that the shipment is tendered to us for transportation. The additional charge for handling containers/trailers containing hazardous materials is \$125.00 plus out-of-route mileage.

Failure to disclose the presence of hazardous materials or to comply with these requirements will relieve us of any liability for loss or damage directly or indirectly caused to or by the hazardous materials. Any hazardous materials found to have been misdeclared may be warehoused at Customer's risk and expense or destroyed without compensation. In addition to all other charges that may apply to that shipment and without limiting other remedies available to us, we may assess an administrative charge, as liquidated damages not as a penalty, of (a) \$2,000 for any shipment of hazardous materials that is not declared as containing hazardous materials or (b) \$500 if declared as containing hazardous materials but not shipped, placarded and documented as required by applicable regulations.

#### **Restricted and Prohibited Commodities:**

The rail transportation providers prohibit and restrict the transportation of certain commodities through their rail networks. We generally do not accept shipments containing commodities prohibited by the rail transportation providers and require an SPQ for any commodities restricted by the rail transportation providers. In addition to commodities restricted or prohibited by the rail transportation providers, we do not accept shipments containing the following commodities (and our rates cannot be used for such commodities) and Customer agrees not to tender any of the following commodities for transportation by us: (1) animals, fish, or fowl, trophies, stuffed or mounted or research cadavers; (2) asbestos products as described in item 6400 of UFC; (3) asbestos insulation as described in items 53170, 53210, and 53350 of UFC; (4) asbestos, scrap as described in item 6600 of UFC; (6) blown aluminum scrap pieces; (7) carbon black; (8) cigar, cigarettes, snuff and manufactured tobacco products; (9) coal or coke; (10) explosives as described in Classes A and B in Tariff BOE 6000 Series; (11) green, green salted, pickled or dry hides, pelts or skins (not dressed or tanned only); (12) hazardous waste; (13) iron oxide slurry residue for extraction of iron; (14) lime sludge or waste; (15) liquid corrosive materials, in excess of 25% of total weight; (16) livestock; (17) metal coils (unless the coils range from 1/8 inch to 1.0 inch in width and are reeled in a package, packaged in cardboard or paper with each reel not weighing more than 250 pounds); (18) missiles, rockets, guided; guidance systems or electronic guidance control apparatus; or mobile missile guidance control systems, missile or launching apparatus and related equipment; (19) motor vehicles, freight or passenger, or combination of freight and passenger; (20) radioactive materials (as described in Item UFC 6000-A); (21) sodium compounds (as covered by STCC 28-123 of STCC Tariff 6001-K); (22) scrap engine parts; and (23) steamrollers or other heavy road equipment.

**MISCELLANEOUS AND ACCESSORIAL CHARGES**

Type of Accessorial Charge	Amount of Charges and Description
<b>Appointment Cancellation</b>	<b>\$100 per occurrence.</b> Applies when Customer cancels appointment without rebooking.
<b>Bob Tail</b>	<b>\$1.75 per mile \$75.00 minimum</b> Applies if unloaded power unit travels to another location to be available to move a shipment.
<b>Chains &amp; Binders</b>	<b>\$100</b> Some exceptions may apply, check with Terminal Manager for specifics.
<b>Chassis Fee / Day</b>	<b>\$30 per calendar day</b>
<b>Congestion</b>	<b>\$100/shipment</b> Some exceptions may apply, check with Terminal Manager for Specifics.
<b>Customs Inspections</b>	<b>\$150</b> for a stop at authorized a CES location.
<b>Driver Assist and/or Count</b>	<b>\$100 per hour</b> No free time and no minimum time period. Paid in 15 minute increments. Only available if requested in advance.
<b>Driver/Power Unit Free Time</b>	<b>Customer Facilities:</b> Live load/unload, <b>1 hour free</b> ; drop location, <b>30 minutes free.</b> Free time begins when container/trailer is available for loading or unloading and ends when the container/trailer is released after loading or unloading. If appointment is first-come, first-served, free time begins when the trailer/container arrives at customer's facility, or when the facility opens for business, whichever is later.  <b>Rail or marine terminals/yards, and Customs Facilities: 30 minutes free.</b> For marine pick-ups/deliveries, free time begins when the power unit arrives at the harbor terminal and ends when the power unit exits the harbor terminal.
<b>Driver/Power Unit Detention</b>	<b>\$100 per hour.</b> No minimum. Paid in 15 minute increments.
<b>Dry Run</b>	<b>100% of applicable drayage rate</b>
<b>Dunnage Removal/Cleaning</b>	<b>On site \$75 / Off-site \$150</b> for general sweep out and dunnage removal Additional fees may be assessed for other services, such as washouts, disposal, steam cleaning, reefer services and dunnage transportation to another location.
<b>Expedited Delivery</b>	<b>\$75 for local / \$175 for OTR (greater than 300 miles)</b> Applies when Customer requests delivery on same day as DoA notification.
<b>Flips</b>	<b>\$50</b> plus terminal operator charges at actual cost and applicable driver detention.  Applies when Container must be flipped from one Chassis to another.
<b>Harbor Terminations</b>	Los Angeles Harbor: <b>\$75 per trailer</b> from UPLA, UPLATC, UPICTF, BNSFLA <b>\$100 per trailer</b> from UP City of Industry or San Bernadine Oakland: <b>\$60 per trailer</b> Portland: <b>\$60 per trailer</b>
<b>Haz. Mat.</b>	<b>\$150 per shipment + any out of route miles</b>
<b>Layover</b>	<b>Weekday \$250 / weekend \$475 per night</b>
<b>Lumper</b>	<b>\$25 plus Lumper cost</b> We reserve the right to engage helpers at Customer's expense to assist the driver in loading or unloading the shipment when any of the following conditions apply: (1) the piece count exceeds 1,000 pieces, (2) the individual pieces weigh more than 70 pounds, (3) the total shipment weight exceeds 45,000 pounds or (4) sorting of cargo is required, in addition to loading or unloading

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<b>No Rail Billing</b>	<b>\$60 per hour</b> Billed in 15 minute increments. Applies when driver must wait because rail billing for the shipment has not been provided to railroad by the time the shipment arrives at the rail ramp.
<b>Out-of-Route</b>	<b>\$1.50 per mile plus fuel surcharge</b>
<b>Overweight/ Overload Fines</b>	<b>\$100 Cost of fine + any other associated cost</b>
<b>Overweight Permit / Liquor Fee</b>	<b>\$125 per state. Illinois \$300</b>
<b>Pre-Pull</b>	<b>\$100 (flat) NFK (\$165+fsc), DET, NWK, PHL &amp; ROH (\$150+fsc), DAL (\$207+fsc)</b>
<b>Rail, CY or other Third Party Yard</b>	<b>Actual cost assessed by storage facility plus 2% administrative fee.</b>
<b>Redelivery/ Reconsignment</b>	<b>1<sup>st</sup> stop rate \$150 + any out of route miles.</b>
<b>Refused Delivery</b>	<b>100% of Drayage rate</b>
<b>Scale</b>	<b>\$50 per weigh (\$100 for weighing both light and heavy weights of a trailer) + out of route miles; \$75 per weigh in Seattle/Tacoma</b>
<b>Shipment Cancellation</b>	<b>\$50 for shipment cancellation</b> with less than 24 hours notice. Dry run charges may apply if the shipment has already been dispatched or the empty
<b>Shipment Changes</b>	<b>\$25 for each approved change in the origin or destination</b> After the driver has been dispatched, any changes to the origin or destination stated on the prenote must be approved by us. We will endeavor to comply with the requested change in circumstances where it
<b>Shipments Requiring Protection from Heat or Cold; Refrigerated Equipment</b>	<b>\$150 per shipment</b> Need for temperature protection should be noted in advance. We are not liable for any loss, damage or destruction to cargo requiring protection from heat or cold caused by failure of the temperature controlled equipment or protective services or for any maintenance, inspection, refueling, or other protective services involving such equipment.
<b>Split Container/Chassis Fee</b>	<b>\$85 per container or chassis</b> Applies when pick up or termination of chassis/container to a location other than the shipment delivery location is required. Some exceptions may apply, check with Terminal Manager for specifics.
<b>Stop Offs – Multiple Stops per (1) customer order</b>	<b>1<sup>st</sup> stop: \$75 Any subsequent stop: \$125</b> Customer, not the Carrier, is responsible for packaging, loading, blocking and bracing each partial load within the trailer so that safe transit can be achieved to the next stop. At the next stop, it is Customer's responsibility to
<b>Tarping</b>	<b>\$100 per shipment</b> requiring placement of a tarp on and off the shipment.

**Tri-axle Fee** Check with Terminal Manager.

**Yard Storage at  
Carrier's Terminal** **\$50 per day per loaded trailer** (dry equipment); **\$75 per day for reefers.**  
**\$200 per reefer in Oakland** (1st chargeable date - day after drop date.)



**Additional Terms:**

Upon notice or presentation of accessorial charges from us via facsimile, email, EDI or other acceptable method, Customer must approve or confirm receipt of such accessorial charge and communicate such approval/confirmation to us within two (2) days. Accessorial charges are cumulative, and assessment of one accessorial charge will not preclude assessment of other applicable accessorial charges incurred for the same shipment or circumstance. If accessorial services not listed in the table above are necessary, the charges for such services will be established by Carrier and Customer at the time such services are necessary. The term "trailer" also refers to containers and chassis. If Customer knows that a shipment will require accessorial services, Customer should notify us of the type of accessorial service(s) required at the time Customer tenders the shipment in the shipping instructions. Customer will also notify us of any caustic or toxic commodities contained in a shipment (if not otherwise hazardous materials requiring notation on the shipping documents) in advance to allow for the taking of appropriate precautions by personnel doing the transportation and related services.

**EQUIPMENT DETENTION****Definitions:**

- Detention Charges – All storage, per diem, and/or demurrage charges related to usage of private, rail-controlled, or steamship-controlled intermodal containers, trailers and/or chassis.
- Day of Availability ("DoA") – The earliest date an empty or loaded intermodal unit is fully available at a rail ramp, ocean pier or shipper/consignee to be picked up, delivered or returned. Equipment must have all releases satisfied and must be mounted and prepared on a road-worthy chassis if at a mounted facility or must have a road-worthy chassis available if at a grounded facility.
- Customer Notification – The date Customer submits a written request to us for movement of a loaded or empty intermodal unit from a rail ramp, ocean pier or shipper/consignee facility.
- Dray Rate – Line haul trucking charge, excluding accessorial charges or fuel surcharges.
- Business Day – Any weekday, excluding weekends and holidays.

**Liability for Charges:** We will not accept liability for Detention Charges if such charges are not due solely to our negligence, including per diem charges that begin accruing after the date an intermodal unit is dropped at a shipper/consignee location. Customer's liability for Detention Charges ends on the second (2<sup>nd</sup>) business day following the receipt of DoA notification, unless we are unable to return the unit to the port, ramp or other facility due to force majeure conditions or the acts or omissions of Customer, the equipment owner or other third party.

Accepted methods of DoA notification are limited to:

- 
- <https://draycustomer.xpo.com>.
  - Email sent to [namtrksvc@xpo.com](mailto:namtrksvc@xpo.com), Email must clearly identify equipment available.
  - Fax sent to 704-571-5441. Fax must clearly identify equipment available.

**Drop Yards:** In order to reduce or eliminate storage charges at a rail ramp or ocean pier, we may shuttle a loaded intermodal unit to an offsite drop yard. Additional charges are usually billed for such moves. If such a shuttle is done for Customer's convenience or benefit, we will accept no liability for Detention Charges that may accrue while the intermodal unit is at the drop yard.

**Return Moves:** Volume imbalance may result in a bobtail charge to terminate empty or loaded equipment that is accruing Detention Charges, if no return move is immediately available when the tractor drops the equipment. Customer may avoid such bobtail charges by notifying us in writing of Customer's agreement to pay for all Detention Charges incurred as a result of forgoing the bobtail move. Such charges do not apply to "live load/unload" moves.

**Appointments:** We will not accept liability for any Detention Charges resulting from rescheduled appointments, unless the appointment was rescheduled due to our fault (e.g., not due to force majeure conditions or acts or omissions of any Customer or any other third party). When due to our fault, we will accept liability for no more than forty-eight (48) hours of Detention Charges resulting from a rescheduled appointment.

**Detention Billed to XPO:** We will charge Equipment Detention to Customer based on below fee schedule. Customer will be invoiced within thirty (30) days after the later of (a) return of the equipment to its rightful owner or (b) the receipt of the per diem invoice from the equipment owner.

<b>Equipment</b>	<b>Free Time</b>	<b>Tier 1 Days</b>	<b>Tier 1 Fee</b>	<b>Tier 2 Fee</b>
Dry container	3 Days	3 Days	\$150/Day	\$250/Day
Reefer container	2 Days	2 Days	\$425/Day	\$500/Day
All other Equipment types	2 Days	2 Days	\$150/Day	\$250/Day

**Detention Billed Directly to Customer:** Detention Charges are often billed directly to the Customer or third party instead of us. Customer may then invoice us for the portion of the Detention Charges for which we are liable. Customer may not invoice us for Detention Charges for any amount that is higher than Customer’s obligation to the equipment owner. Customer may not “short pay” freight charges or deduct charges from freight bills, unless authorized to do so, in writing, prior to the deduction. We will not accept invoices without proper backup documentation or invoices that are received more than 30 days after equipment termination. We reserve the right to dispute the charges within 30 days of receipt of the proper documentation and invoice. If Customer response to any such dispute is not received within 30 days, it will be presumed that the dispute has been accepted and the invoice voided.

**Calculation of Detention Charges:** Equipment owners typically charge escalating daily rates for equipment Detention Charges. For example, domestic per diem rates may be as low as \$15 on the first day after free time elapses, but then gradually increase to \$100 per day or more a week later. When Detention Charges are billed directly to Customer and then invoiced back to us for the portion of the Detention for which we are liable, we will only pay the “Average Daily Rate” (not the escalated rate). For example, suppose an equipment owner submits to Customer a \$145 bill for Detention Charges, which includes \$15/day for the first 3 days after free time expires, and another \$50/day for 2 subsequent days. The “Average Daily Rate” equals \$29/day, calculated over 5 days of usage after free time expired. If we are liable for only two days of Detention Charges, we will compensate Customer for \$58 of the total bill. XPO charges an 18% administration fee per invoice on steamship line per diem that is billed to and paid by XPO on behalf of your account.

**LIABILITY FOR CARGO LOSS AND DAMAGE**

**General Standard:**

We will assume liability for cargo loss and damage in accordance with the provisions of 49 U.S.C. 14706, subject to a limitation of liability of \$100,000 per trailer or container as well as the other provisions of this section. Our liability for loss or damage to the shipment will not begin until the shipment is in our actual possession (as evidenced by a signed bill of lading or interchange receipt). Shipments will not be accepted unless released to a maximum value of \$100,000 as stated herein. Our liability for any claims for loss, damage or delay to any shipment moving on a motor carrier bill of lading between points in the United States, shall be governed and determined exclusively by the provisions of 49 U.S.C. §14706 and the claim filing regulations of the Federal Motor Carrier Safety Administration at 49 C.F.R. Part 370, which regulations shall govern Customer’s and our respective rights, duties and obligation as to the filing and processing of freight loss, damage and delay claims.

**Carmack Liability:**

On domestic shipments that originate in the United States, Customer may, at its option, select the full liability provisions set forth in 49 U.S.C. Section 14706, without a cap on liability or minimum claim amount ("Carmack liability").

If full value Carmack liability under 49 U.S.C. Section 14706 is not selected, the \$100,000 cap and other provisions of this Tariff that vary from Carmack liability will apply.

If Customer wishes to obtain a higher loss or damage limit, Customer has the following two options:

1. The Customer may obtain insurance.
2. The Customer may obtain coverage under the terms of 49 U.S.C. § 14706.

49 U.S.C. Section 14706 provides for full-value liability and other liability terms for us and Customer. In order for a shipment to be subject to the terms of 49 U.S.C. Section 14706, Customer may request an increase in our cargo liability by submitting a written request for a higher released valuation by stating Customer's desired Released Valuation and paying an additional charge equal to 0.05% of the difference between the desired Released Valuation and \$100,000

Carmack Liability protection is not available for Shipments moving under FAK rates. **ANY SHIPPER TENDERING A SHIPMENT FOR TRANSPORTATION WITHOUT COMPLYING WITH ALL OF THESE PROCEDURES WILL BE SUBJECT TO THE CARRIER'S CARTAGE LIMITED LIABILITY TERMS.**

Carmack liability coverage is not available for any shipments that originate outside the borders of the United States of America.

**Defenses to Liability:**

We will not be liable for the following: (1) damage to cargo or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the cargo (unless we were engaged to provide such services); (2) inherent vice or defect in the cargo transported, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, deterioration of perishable products, or damages caused by heat or cold; (3) force majeure events; (4) an act or default of any Customer, consignor, consignee or beneficial owner; or (5) shipments stopped and held in transit at Customer's request.

**Limitations on Cargo Liability:**

Our liability for any cargo loss or damage will not exceed \$100,000.00. All line-haul rates are conditioned upon such limitation of liability. This limitation will apply whether or not the released value is stated on the bill of lading. Customer may request an increase in legal liability by submitting a written request for a higher released value, and paying an additional fee depending on the desired released value. Due to the administrative costs, we will not process or pay cargo claims for less than \$250.

**Time Limits:**

As a condition precedent to recovery, claims for loss or damage to cargo must be filed in writing with us within nine (9) months from the delivery date, or the scheduled date of delivery for lost shipments, or in the absence of a scheduled delivery date, the filing period shall begin after a reasonable time has elapsed for delivery. A civil suit or arbitration proceeding for cargo claims must be commenced against us within two (2) years and one day from the date that we give Customer written notice that we are disallowing the claim or any part of it, although Customer may request an increase in legal liability by submitting a written request for a higher Release Value and paying an additional charge.

**Immediate Notice of Cargo Loss or Damage:**

Customer will use reasonable efforts to provide immediate notice of cargo loss or damage upon discovery to allow us to inspect the loss and damage and determine its cause and to prevent reuse of damaged intermodal containers or trailers.

**Documentation of Cargo Claims:**

Cargo claims should include the following information: (1) a demand for payment of a specified dollar amount accompanied by documentation to verify the amount of the demand such as certified copies of repair invoices or actual product costs; (2) information to identify the shipment such as container/trailer number, date of shipment, origin and destination of the shipment, shipper's, consignee's and notify party's names, and bill of lading number; (3) legible copies of shipping instructions, the delivery receipt and other shipping documents, including but not limited to the original bill of lading, shipper's invoice, shipper's packing list, delivery receipt with driver count and seal numbers, and paid customs entry form; (4) the applicable salvage amount; (5) legible copies of the loading and unloading tally denoting contents and quantities of each of the packages involved in the shipment and seal record (particularly for shortage claims); (6) supporting documentation detailing the nature of the damage or loss (such as photographs); and (7) any import declaration (if applicable).

**Determination of Damages; Exclusion of Certain Damages:**

The measure of damages for loss of or physical damage to the cargo shall be the lower of the actual value of the lost or damaged commodity at origin or at destination, reduced by a reasonable amount for salvage. We will be liable for the reasonable costs of Customer to mitigate its damages. WE SHALL NOT BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT RELATE TO LOSS, DAMAGE OR DELAY TO A SHIPMENT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF MARKET OR BUSINESS OPPORTUNITY, SENTIMENTAL VALUE, ITEMS OF EXTRAORDINARY VALUE OR THE LIKE), UNLESS CUSTOMER HAS INFORMED US IN WRITTEN OR ELECTRONIC FORM, PRIOR TO OR WHEN TENDERING THE SHIPMENT TO US, OF THE POTENTIAL NATURE AND TYPE OF SUCH DAMAGES, AND WE SPECIFICALLY AGREE IN WRITTEN OR ELECTRONIC FORM TO ACCEPT RESPONSIBILITY FOR SUCH DAMAGES. IN NO EVENT SHALL WE BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR PUNITIVE OR EXEMPLARY DAMAGES THAT RELATE TO LOSS, DAMAGE OR DELAY TO A SHIPMENT.

**Sealed Shipment:**

If Customer loads and seals the cargo within the trailer or container and the seal is intact upon delivery, we will not be liable for shortages or any damage to the cargo except when proximately caused by our independent action. We will also not be liable if (1) the seal is broken at the direction and under the supervision of an agent of a governmental authority, or (2) trailers or containers are preloaded and the adequacy of loading or count of such trailer or container cannot be practically determined by our representative. If a seal is broken for an inspection by an agent of a governmental authority, we will request that the governmental authority reseal the trailer or container and/or make appropriate notation on the freight documentation form. We may break the seal on a trailer or container if, upon our determination, it becomes reasonably necessary to do so to inspect, reposition, or protect the cargo or the equipment or to comply with federal, state, municipal, or provincial laws. The consignee of a shipment may not refuse delivery of a shipment solely because the seal on a trailer or container is broken.

**Mitigation of Damages; Salvage:**

Customer must cause the consignee to accept delivery of a shipment and is not entitled to abandon any shipment to us. The consignee has a duty to mitigate damages by accepting damaged cargo unless it is of no value and without salvage value. The obligation to mitigate damages also includes replacing damaged cartons and packaging, relabeling freight and undertaking other repairs and replacement of packaging. Customer will have the right to determine, in its reasonable discretion, to repair, repack, salvage, or scrap damaged cargo. If Customer does not elect to salvage cargo,

any claim for cargo loss or damage shall nevertheless be reduced by a reasonable salvage allowance. If Customer elects to salvage cargo, Customer shall notify us to return the cargo to Customer or allow us to dispose of the cargo. Any amounts received in salvage, whether accomplished by us or Customer, will reduce the amount of the cargo claim. Customer may condition salvage upon the removal of all identifying marks or labels or the cargo being permanently marked as "damaged" or with a similar notation. If we are retained by Customer to return the damaged cargo for repair, salvage, or scrapping, Customer agrees to pay our standard line-haul rates or other mutually agreed to rate, without prejudice to Customer's right to recover such freight charges as damages. Damaged cargo will not be scrapped unless repair and/or salvage are not feasible. If we salvage the cargo, we may bill a reasonable charge for doing so against salvage receipts.

**Mexico Cargo:**

We do not accept legal liability for cargo loss or damage to shipments while moving throughout Mexico.

**TRANSPORTATION DELAYS**

We will provide transportation with reasonable dispatch and will use commercially reasonable efforts to meet all reasonable pick-up and delivery appointments. However, we do not guarantee adherence to any particular transit or appointment schedule and are not liable for delay, interruption or other failure to transport any shipment by any particular appointment time. We are not liable for alternative transportation costs, other direct expenses or consequential, special, indirect or exemplary damages arising out of any delay to shipments unless Customer has informed us in written or electronic form, prior to or when tendering the shipment to us, of the potential nature and type of such delay-related damages, and we specifically agree in written or electronic form to accept responsibility for such damages. Customer notations on a delivery receipt or bill of lading signed by a driver does not constitute adequate notification and/or acceptance of such special damages.

**STORAGE AND WAREHOUSEMAN LIABILITY****Storage Charges:**

Loads stored at our facilities will be charged \$25.00 per day.

**Limitation of Liability for Stored Cargo:**

When acting as a warehouseman, we will comply with the standard of care applicable to warehousemen in the state in which we are providing such services. Our liability for any cargo loss, shortage or damage occurring during storage by us will not exceed (1) \$100,000.00 per trailer or container when storage is provided as a part of our transportation services (e.g., we store the loaded container at our facility after removing it from the rail ramp before delivering it to the consignee); (2) \$5,000 per trailer or container if the consignee refuses cargo tendered by us or if we are unable to deliver the cargo because of fault or mistake of Customer or the consignee, or if Customer advises and instructs us to stop movement of the cargo and to hold it in transit or otherwise prevents normal delivery of the cargo, or (3) such higher limitation of liability if Customer has obtained higher limits of liability in accordance with the procedures in the section above "Carmack Liability" and the storage is provided as a part of our transportation services.

**Refused Shipments; Warehouseman Liability:**

If the consignee refuses cargo tendered by us or if we are unable to deliver the cargo because of fault or mistake of Customer or the consignee, or if Customer advises and instructs us to stop movement of the cargo and to hold it in transit or otherwise prevents normal delivery of the cargo, our liability thereafter immediately shall be that of a warehouseman. We will (a) attempt to give Customer notice as soon as possible if the foregoing occurs, (b) place the cargo in public storage, if available, unless we receive contrary disposition instructions from Customer within twenty-four (24) hours, and (c) if disposition instructions are not given by Customer within ten (10) days of our initial notification to Customer, we may offer the cargo for public sale. In the case of perishable cargo, we may dispose of the cargo at a time and in a manner we deem appropriate. Customer will be responsible for storage

and other reasonable costs we incur in acting as a warehouseman. To the extent any sale or disposal revenues exceed the storage and other costs that we incur as a warehouseman, we will remit the balance to Customer. If Customer gives us timely disposition instructions, we will use any commercially reasonable steps to abide with such instructions. Customer will pay our costs and any line-haul transportation charges for redelivery as described below.

### **SHIPMENT WEIGHTS AND SIZES**

#### **Our Rights Re: Overweight Shipments:**

We have the right (but not the obligation) to (1) have any loaded container or trailer weighed to determine if it conforms with safe handling rules and applicable federal, provincial, state and municipal laws and (2) to hold and transload all or a portion of the cargo to another trailer or container if we become aware that the trailer or container is overweight. Customer is responsible for all associated costs, including, without limitation, the cost of transloading, using and moving the trailer and container and any resulting storage charges. In states that issue permits for overweight shipments, Customer must reimburse us for the actual cost of the permit.

#### **Weight Information from Customer:**

We will not knowingly violate weight restrictions under federal, state or municipal laws. Customer must provide advance notification of overweight shipments. Customer warrants that we may rely on Customer's documentation as to the amount of weight associated with a loaded container or trailer. In determining the weight, Customer will take into consideration the tare weights of the container and chassis or trailer, the position of the vehicle tandems (if sliding) prior to loading and the weight distribution of the cargo (including any blocking or bracing).

#### **Handling of Overweight Shipments:**

If an overweight problem is determined after pick up and before reaching the origin terminal, we will return the shipment to the consignor for correction if permitted. If the shipment cannot be returned, Customer will arrange for correction of the overweight condition at Customer's expense. If an overweight problem is determined after arrival at the destination rail terminal and before reaching the consignee, the shipment will be delivered to the consignee if permitted. If the shipment cannot be delivered, Customer will arrange for correction of the overweight condition at Customer's expense. Customer is responsible for all charges associated with the pick up or delivery as originally arranged, as well as all additional costs or charges arising out of the overweight condition, including but not limited to storage, detention and redelivery charges.

#### **Oversize Equipment:**

Due to the variety of road restrictions within our operating area, equipment over 96 inches wide and over 45 feet long may in some circumstances be considered illegal to be operated on certain roads. Customer is responsible (and will reimburse us) for any fines, expenses, violations, delays, costs and accidents resulting from any equipment considered overwidth or overlength in violation of restrictions under federal, state, provincial or municipal laws. We may incur out-of-route mileage (for which Customer will be responsible) to avoid violating equipment size laws.

### **FORCE MAJEURE**

We will be excused for any failure to perform our services due to any cause beyond our reasonable control, including without limitation: fire; explosions, strikes, work stoppages, labor strife, riot, war, acts of the public enemy; acts of God, including floods, hurricanes, tornadoes, earthquakes, unusually severe weather, and natural disasters; acts of terrorism; local or national disruptions to transportation networks or operations; road closures; material equipment repairs; fuel shortages; governmental regulations; embargo; quarantine; or governmental request or requisition for national defense. We will use commercially reasonable efforts to continue our performance to the extent not affected by the force majeure event.

**SHIPPER OBLIGATIONS**

Customer or its shipper is responsible to count and record all contents of shipments moved under this Tariff and to apply a protective seal to the loaded equipment, unless Customer has arranged before dispatch for us to provide these services. Customer will or will cause the consignor to load, block, brace and secure all cargo to prevent shifting as appropriate for the selected mode of transportation. Customer will not tender any hazardous materials and waste, high value shipments (+\$100,000 in value), oversize or overweight shipments or commodities requiring protection from heat or cold, unless such shipments have been properly identified and Customer has made the necessary prior arrangements with us. Although we will inspect any empty containers or trailers before delivery to Customer, Customer will also inspect all empty containers and trailers tendered for loading and reject any equipment that is not in apparent suitable condition to protect and preserve the cargo during transportation and notify us of any rejected equipment. Customer will and will cause its consignors or consignees not to lose, damage or misuse tractors, trailers, containers, chassis or other equipment and will pay for any loss or damage resulting from Customer's or its consignors or consignee's possession or use of such equipment.

**ARBITRATION:**

Any and all disputes not resolved between XPO and Customer will be resolved at binding arbitration, before a recognized arbitration board to be jointly selected by Customer and XPO. The arbitration shall be held within thirty (30) days of notification from Customer to us of the need for arbitration. The arbitration will be conducted in a location mutually agreed to by XPO and Customer. Each party will bear its own costs of the arbitration and costs of arbitration board will be equally split.

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Please contact the XPO Contracts Administrator (contracts@xpo.com)  
to answer questions regarding this Tariff.

***We appreciate your business.***