



TERMS AND CONDITIONS FOR INTERMODAL TRANSPORTATION SERVICE

XPO intermodal transportation services are offered through XPO Intermodal Solutions, Inc. d/b/a XPO Logistics (“XPO”).

Unless otherwise agreed in a written agreement signed by an authorized representative of XPO, the terms, conditions, limitations, procedures, deadlines, charges and services included in these Terms and Conditions for Intermodal Transportation Service in effect on the date of shipment will apply to intermodal transportation services obtained through XPO’s intermodal operations. These Terms and Conditions may be changed from time to time without notice. Shippers should obtain the version of these Terms and Conditions in effect on the date of shipment tender.

The current version of these Terms and Conditions for Intermodal Transportation Service may be obtained on the XPO intermodal web pages at www.xpo.com

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1. INTRODUCTION AND GENERAL PROVISIONS

1.1. INTRODUCTION

XPO Intermodal Solutions, Inc. d/b/a XPO Logistics (formerly known as Pacer Transportation Solutions, Inc. and Pacer Global Logistics, Inc.) (“XPO” or “we” “our” or “us”), an Ohio corporation and a wholly-owned indirect subsidiary of XPO Logistics, Inc., arranges for intermodal transportation of freight by motor carriers and rail transportation providers as an intermodal marketing company and an interstate motor property broker registered with the Federal Motor Carrier Safety Administration. We are not a motor or rail carrier and are not a freight forwarder. Any law relating to common carriers, contract carriers or freight forwarders does not apply to the services that XPO offers. “Intermodal” transportation means transportation using both rail and highway transportation through rail and motor transportation providers.

1.2. APPLICATION OF THESE INTERMODAL TERMS

All transportation, warehouse, transloading, storage, customs brokerage or handling services by one or more of the following distinct corporate entities: Bounce Logistics, Inc., XPO Global Forwarding, Inc. (formerly known as Concert Group Logistics, Inc. d/b/a XPO Global Logistics), XPO Express, Inc., XPO Ocean World Lines, Inc. (formerly known as Ocean World Lines, Inc.), XPO Stacktrain, LLC (formerly known as Pacer Stacktrain, LLC and Pacer Stacktrain, Inc.), XPO Cartage, Inc. (formerly known as Pacer Cartage, Inc.), XPO Distribution Services, Inc. (formerly known as Pacer Distribution Services, Inc.), XPO Customs Clearance Solutions, Inc. (formerly known as RF International, Ltd.), XPO Air Charter, LLC, XPO Dedicated, LLC, XPO Logistics Canada Inc., XPO Logistics, LLC, XPO NLM, Inc., and any other companies owned or affiliated with any of the listed entities (collectively and individually, the “Company”) are governed by the Company’s Standard Customer Terms and Conditions (the “Customer Conditions”). The Customer Conditions can be found at www.xpo.com, or by emailing stc@xpo.com.

The Customer Conditions include and incorporate by reference these Terms and Conditions for Intermodal Transportation Service (which are referred to as these “Intermodal Terms”) with respect to intermodal transportation arranged by the Company. These Intermodal Terms are intended to establish, explain and supplement the terms and conditions under which we will arrange for intermodal transportation services. Unless otherwise agreed to in a written agreement signed by our authorized representative, these Intermodal Terms apply to all shipments tendered for intermodal transportation by us. Any terms and conditions in any transportation agreement signed by authorized representatives of the Company and the customer(s) covered by such agreement will prevail over any inconsistent provisions of the Customer Conditions and these Intermodal Terms.

1.3. TERMS USED IN THESE INTERMODAL TERMS

In these Intermodal Terms, “customer” refers to the person or entity contracting to engage our services with respect to a shipment; and “you” and “your” refers to our customer as well as any other person or entity having an interest in the freight, including the consignee, consignor, supplier, a third party logistics provider and the beneficial owner of the freight. The term “transportation provider” refers to any entity that we engage to provide or arrange for transportation, including rail carriers, motor carriers, drayage providers, rail transportation providers (such as CSX Intermodal and XPO Stacktrain), intermodal equipment providers, freight brokers and other transportation intermediaries.

1.4. RIGHT TO CHANGE THESE INTERMODAL TERMS

While we will endeavor to provide advance notice of changes, we reserve the right to change these Intermodal Terms from time to time without notice. The terms, conditions, limitations, charges and services of these Intermodal Terms in effect on the date that the shipment is tendered for transportation will apply. Our customers and other users of our transportation services should obtain the version of these Intermodal Terms in effect on the date of shipment tender. It can be accessed on the XPO website at www.xpo.com.

1.5. APPLICATION OF INTERMODAL CIRCULARS OF RAIL TRANSPORTATION PROVIDERS

We arrange for rail transportation through contracts with North American rail transportation providers. These contracts are supplemented by the rail transportation provider's published intermodal circulars, tariffs, directories, agreements, rules and other publications in effect at the time of shipment (each an "Intermodal Circular").

All intermodal shipments transported by the Company are subject to the Intermodal Circular of the rail transportation provider providing the rail transportation. In their Intermodal Circulars, the rail transportation providers impose certain requirements, limitations and restrictions on shipments transported on their rail networks, including requirements relating to blocking and bracing, restrictions on certain types of cargo, limitations of liability, required data in shipping information, charges for failures to comply with requirements, and other matters.

You should obtain and be familiar with the Intermodal Circulars. Failing to comply with the Intermodal Circulars will result in penalties; additional charges and costs; shipping delays; liability for equipment, cargo, other property and personal injury; indemnification obligations; and other consequences discussed in these Intermodal Terms.

If you are not sure which Intermodal Circular would apply, you should contact your customer solutions team.

The following is a list of the Intermodal Circulars of significant rail transportation providers operating in North America. Please note that the Intermodal Circulars listed below may cross-reference other circulars, tariffs, directories, agreements, rules, publications and industry documents, each of which will also be considered included in the term "Intermodal Circular" as used in these Intermodal Terms. This list is accurate as of the time of publication of these Intermodal Terms but is subject to change to reflect changes in the listed publications made at the discretion of the rail transportation provider. Please check the latest issue of the rail transportation provider's Intermodal Circular for current information.

<u>Rail Transportation Provider</u>	<u>Internet Address</u>	<u>Intermodal Rules Circular</u>
Burlington Northern Santa Fe	http://www.bnsf.com/customers/pdf/intermodal-r-and-pg.pdf	Rules & Policies Guide
Canadian National	http://www.cn.ca/en/customer-centre/guidelines/equipment-guidelines/loading-rules-instructions	CN 6800 and 9100 (and Others)
Canadian Pacific	http://www.cpr.ca/en/customer-resources/pricing-and-tariffs	CP's Guide to Products and Services (Tariff 1) Intermodal Supplement Services (Tariff 3)
CSX Intermodal	http://www.intermodal.com/index.cfm/channel-partners/customer-tools/plan/service-directories/	Service Directory No. 1
Ferromex	http://www.ferromex.com.mx/herramientas-eng/condiciones-de-carta-de-transporte.jsp	Waybill Conditions
Florida East Coast	https://www.fecrwy.com/intermodal-customers/intermodal-directory	Intermodal Directory
Kansas City Southern	http://www.kcsouthern.com/en-us/Services/Documents/2012/Freight%20Loss%20and%20Damage/KCS Intermodal Guide rev 01122012.pdf	Intermodal Guide
Kansas City Southern Mexico, S.A. de C.V. ("KCSM")	http://www.kcsouthern.com/en-us/Services/Documents/2011/Pricing%20and%20Tariffs/10-24-11RulesTariffPublicationsatKCSMEng.pdf	Rules Publication KCSM
Norfolk Southern	http://www.nscorp.com/content/dam/nscorp/ship/shipping-tools/intermodal_rules_circular.pdf	Rules Circular #2
XPO Stacktrain	http://dn.xpo.com/Portals/0/Brochureware/StacktrainIncRules.pdf	Rules and Procedures Section of the XPO Stacktrain Information Directory
Union Pacific	http://www.uprr.com/customers/intermodal/mita.shtml	Master Intermodal Transportation Agreement (Union Pacific Exempt Circular MITA-2-A Governing Rules Circular)

1.6. NOTIFICATION OF OTHER INVOLVED PARTIES

By tendering freight to us, you represent and warrant that you will notify all persons or entities involved in the transportation, including the consignee, beneficial cargo owner, consignor, and other third parties, such as freight forwarders, freight brokers, third-party logistics providers, intermodal marketing companies and insurers, that these Terms and Conditions (or any different terms set forth in a written agreement signed by our authorized representative) and the Intermodal Circulars apply to intermodal transportation provided through us. Also in tendering freight to us to arrange for transportation, all such persons and entities will be conclusively presumed to

have agreed to the provisions of these Terms and Conditions (except to the extent of any different terms and conditions that we have agreed to in writing) and the Intermodal Circulars.

1.7. EFFECT OF BILLS OF LADING AND OTHER DOCUMENTS ACCOMPANYING THE SHIPMENT

Any documents tendered with a shipment, such as a uniform bill of lading, motor carrier bill of lading or shipper bill of lading, even if signed by us, will serve solely as a receipt indicating transfer of the shipment (but will not constitute our or our transportation provider's verification of the nature, condition, number or volume of the shipment's contents). Any such documents that identify the Company as the carrier will not change our relationship with or obligations to you or the nature of our role in arranging for transportation services as an intermodal marketing company and as a transportation broker.

The terms of any such documents will be subordinate to the provisions of these Terms and Conditions and any written agreement signed by our customer and us. Any change or notation made on the shipping instructions, bill of lading or other receipt or document that is in any way inconsistent with the provisions of these Terms and Conditions and any applicable written agreement that we have signed will be considered as a notation made for the private benefit and information of the consignor or consignee and will not be binding on us.

2. RATES AND CHARGES

2.1. RATE QUOTES

2.1.1 Obtaining an Intermodal Rate Quote

Once we have approved a customer for credit, the customer may obtain a rate quote by one of the following methods:

- (a) Request a rate via e-mail at: intermodalrates@xpo.com
- (b) Contact your sales representative who will note the relevant information and forward to our Pricing Department for a rate quote.

Please note that, in order to be a valid rate offer from us, the offer must be in writing and must be made by an authorized representative of our Pricing Department

2.1.2 Information Needed for Rate Quote

The following information is required in order for us to issue a rate quote:

- (a) Name of the shipper and consignee, including the "bill to" party;
- (b) Origin and destination of shipment (please provide zip codes);
- (c) The commodity being shipped;
- (d) The equipment size and type required;
- (e) The service being requested (door to door, door to ramp, ramp to door, ramp to ramp, etc.);
- (f) Any additional services required (extended free time, lumper, driver unload, etc.); and
- (g) Target rate request.

We issue rate quotes to a particular customer, referred to as the "bill to" name, and differentiate rate quotes by the relevant shipment specifics, such as type of commodity, equipment size, origin/destination and other information required under this Section. The rate quote will not apply to other "bill to" names or shipment types.

Our customer must specify the "bill to" name and shipment specifics at the time the request for transportation services is placed in order to be eligible for transportation under the active rate issued for that "bill to" name and shipment type.

2.1.3 **Issuance of Rate Quote**

As a general rule, an XPO rate quote will be issued for an initial 30-day term. Unless otherwise stated in writing, the quote is subject to increase after the initial 30-day period. However, if no shipments are moved under the quoted rate within 30 days, we reserve the right to cancel the rate.

2.1.4 **Notification of Changes to Rates and Charges**

We reserves the right to change rates and charges without notice unless a written agreement to the contrary has been made. It is our practice to provide customers with a minimum advance notice of five (5) days prior to an increase in rates and charges.

2.1.5 **Confidentiality of Rate Quotes**

All rate quotes that we issue are confidential. Our customer is not permitted to disclose or make available our rate quotes to persons or entities other than its employees and agents who need to know the rate quotes to perform their transportation-related obligations. During the time that our rate quote remains outstanding and in effect, neither we nor the customer should disclose to persons or entities outside our respective organizations any confidential information obtained from the other party in connection with the issuance of a rate quote, including the rate levels, expected volume of traffic and origins and destinations. These confidentiality restrictions will not apply to information that is generally available to the public, that is independently developed by a party without use of the other party's information, that was known to a party before disclosure by the other party, or that is obtained from another source without violation of any confidentiality obligations.

2.2. **NO INTERMEDIATE POINT**

Rates are from the origin to destination stated. Rates cannot be applied to or from intermediate points on the route from the stated origin to destination. Rates cannot be used in connection with stopping a shipment in transit at intermediate points for partial loading or unloading.

2.3. **RESTRICTIONS ON RATES**

Rates are valid only for the specific customer and shipment type (i.e., commodity, origin/destination and equipment size/type) quoted. You are not allowed to substitute different shipment types at the quoted rate level without our written authorization. In addition, the rates only cover the services described in the rate quote. Additional charges may apply for services requested/performed in addition to those services included in the initial quote. Some of these services are described in Section 2.5 of these Terms and Conditions.

2.4. **CONSEQUENCES OF MISAPPLICATION OF RATES OR MISDECLARED SHIPMENTS**

If it is determined that the commodities actually shipped via XPO are not those described in the shipping instructions, the customer must pay the transportation rates and all per diem and other charges based upon the commodities actually shipped. Misdeclared shipments also include shipments tendered for movement under a rate quote that does not apply to that shipment and empty containers tendered for movement as loaded. In addition to all other charges that may apply to that shipment or are assessed against it, and without limiting other remedies available to it, we may assess and the customer will pay a \$1,000 administrative charge for each misdeclared shipment and any additional charges or penalties assessed by the underlying transportation providers in connection with the misdeclared shipment. Shipments of hazardous materials, restricted commodities or prohibited commodities that are not declared as such are subject to greater misdeclaration charges assessed by us and the underlying transportation providers. If misdeclarations continue, we reserve the right to cancel the customer's rate quotes and refuse to provide service.

2.5. **STANDARD ACCESSORIAL MATRIX**

In addition to the linehaul rates, the transportation services are subject to the following charges for additional services. Such accessorial charges are direct costs paid by us on behalf of our customers to compensate for any additional costs not anticipated and not accounted for in our door-to-door base rate.

The intermodal accessorial matrices below apply to accessorial services incurred in connection with intermodal transportation. We will endeavor to provide you with an e-mail on or before the driver free time has expired,

advising of a shipment that maybe delayed at either the shipper or consignee and where probable driver-related charges will likely be incurred and invoiced.

We will endeavor to provide you with e-mail notifying you of a container that is being held at either the shipping or receiving facility beyond the allowable free time. There will only be one email sent to our primary customer contact regarding equipment held after the allowable free time. You should use this notification to expedite the release of the container from the facility in question. You are expected to know when the container is finally released and to anticipate an invoice from us for the equipment per diem.

Unless otherwise agreed to by us in a written agreement signed by our authorized representative; we will not be required to provide notice of any accessorial charges. We may provide notice of these charges by facsimile, EDI, e-mail, telephone or by website posting. We may agree with you to provide such notice by another method. The customer will be responsible for the following accessorial charges to the extent incurred, whether or not we provide any notice of them.

53' INTERMODAL ACCESSORIAL CHARGES

Type of Service	Standard Charges and Fees	General Description of Circumstances When Charge is Assessed
Pool Set-up/ Tear-down/ Adjustment	\$2.50 per mile all miles, \$350 minimum per container	The shipper or consignee requires additional empty equipment or the movement thereof resulting in a "bobtail" move. This charge will apply to new pool creation and/or pool size adjustments.
Equipment ordered Not used	\$350 Charge + \$2 per mile	No charge will apply to loads canceled six (6) hours prior to scheduled pickup. This charge will also apply to Dry Run scenarios.
Origin Per Diem	Available for Loading + 1 day free..... then days 1-3 at \$150 per day and days 4-9 at \$200 per day and days 10+ at \$300 per day	Customer must notify us when the container is loaded and ready for pick-up. Charges will accrue at the stated per day rate until the load departs from the facility. Any fraction of days will be charged as a full day. Sundays occurring within the allotted free time are also free.
Destination Per Diem	Day of Delivery + 2 days free..... then days 1-3 at \$150 per day and days 4-9 at \$200 per day and days 10+ at \$300 per day	Customer must notify us when the container is empty. Until such notification is received from customer, charges will accrue at the stated rates. Any fraction of days will be charged as a full day. Sundays occurring within the allotted free time are also free.
Storage (rail or yard)	Available to Deliver + 1 Day free..... Days 1-3 at \$175 per day and Days 4+ at \$300 per day	<u>At delivery:</u> Free time from the day of notification plus one day. Additional storage may also be assessed if the container is missing documentation and is stored for more than 2 days. Additional time shall be billed at the stated rates per day (or fraction thereof).
Misdeclared Charge	\$3,000 plus all charges assessed by underlying railroads	Customer moves hazardous, restricted or prohibited commodities as a general freight commodity. Customer must provide accurate commodity descriptions to us on their paperwork.
Misuse Charge	\$400 Charge + applicable per diem charges as stated above	Equipment spotted at customer location by us but used by another carrier with no XPO revenue or other unauthorized use of our equipment.
Re-consignment	\$150 Charge + \$2 per mile (dray) plus recalculated transportation charges (rail)	Diversion (rail) or re-consignment (dray) to be provided by XPO must be arranged and agreed to in writing in advance, and is subject to the diversion or re-consignment charge
Driver Detention	1 hour free then \$35 per 15 minute increments	Driver is detained past allotted free time. If driver is late for scheduled appointment time, the free time starts when the container is placed into the loading/unloading dock.
Driver Layover	\$750 flat charge	A driver is required to layover at the point of loading or unloading.

Type of Service	Standard Charges and Fees	General Description of Circumstances When Charge is Assessed
Lumper	\$25 + cost paid to driver	Additional help hired to load/unload trailer. Driver detention may also apply.
Driver Labor (Assist, Load, Unload, Clean)	\$150 per hour (driver does all work) \$100 per hour (driver assists) plus driver detention	Labor involved for driver to assist with loading and/or unloading of container. Charge may also apply if driver is required to restack freight due to load shift. Driver detention may also apply.
Driver Wash-out	\$150 per hour + cost of wash out	Driver to wash out or clean out of the container due to consignee not adequately making the container reusable for the next customer to load.
Stop Off Charge	1st stop \$125 + \$2 per mile 2nd stop \$250 + \$2 per mile 3rd stop \$375 + \$2 per mile	Our standard rate includes one pick up (@ origin) and one delivery (@ destination). If a customer requests additional stops at either origin or destination, we will invoice for the additional stops as stated. Note that the 1st stop charge is the 1st extra stop requested.
Redelivery	\$150 Charge + \$2 per mile (dray) plus Storage & Per Diem charges	When a shipment is tendered for delivery and through no fault of the carrier, such delivery cannot be accomplished. Charge applies to each redelivery attempt.
Cross border Setout	Charges incurred by us plus 10% administrative fee	Setout charge relates to cross border steel wheeled shipments where customs officials require a container to be removed from the train.
Customs Paperwork Delay	Applicable storage and per diem charges	Storage and/or per diem charges apply to loads held or delayed due to missing, delayed or insufficient paperwork. Applies at origin, in transit and / or at destination.
Excess Mileage Route	\$2 per mile	When the practical route is closed due to construction, road closure, weather or similar conditions.
Overweight	\$500 Charge plus applicable dray charges plus Driver labor	Load exceeds D.O.T. vehicle weight limits by axle and/or by gross weight.
Scale Charge	\$75 + \$2 per mile for out of route miles	Driver required to scale the container.
Scale Light & Heavy	\$150 + \$2 per mile for out of route miles	Customer requests the driver to scale the container before and after loading.
Misc. Charges	Charges incurred by us plus 10% administrative fee	Misc. charges (charges not identified above) will be determined at time of occurrence.

20' - 40' - 45' INTERMODAL ACCESSORIAL CHARGES

Type of Service	XPO Standard Charges and Fees	XPO General Description of Circumstances When Charge is Assessed
Pool Set-up/Tear-down/Adjustment	\$2.50 per mile, all miles, \$350 minimum per container + fuel	The shipper or consignee requires additional empty equipment or the movement thereof resulting in a "bobtail" move. This charge will apply to new pool creation and/or pool size adjustments.
Equipment ordered Not used	\$350 charge + \$2 per mile	No charge will apply to loads canceled twenty-four (24) hours prior to scheduled pickup. This charge will also apply to Dry Run scenarios.
Origin & Destination Chassis Rental	Live: 1 Calendar Day Drop: Day of Drop + 2 Calendar Daysthen at \$50 per day	Customer must notify XPO when the container is loaded and ready for pick-up. Charges will accrue at the stated per day rate until load departs from the facility. Any fraction of days will be charged as a full day.
Origin Per Diem	Available for Loading + 3 calendar days then at \$100 per day	Customer must notify XPO when the container is loaded and ready for pick-up. Charges will accrue at the stated per day rate until load departs from the facility. Any fraction of days will be charged as a full day.

Destination Per Diem	Day of Delivery + 3 calendar days then at \$100 per day	Customer must notify XPO when the container is empty. Until such notification is received from customer, charges will accrue at the stated rates. Any fraction of days will be charged as a full day.
Storage (rail or yard)	Available to Deliver + 1 day then days 1-3 at \$175 per day and days 4+ at \$300 per day	<u>At delivery: Free time from the day of notification plus one day. Loads "notified" after 5:00pm are deemed to be available the next day. Additional storage may also be assessed if the container is missing documentation and is stored for more than 2 days. Additional time shall be billed at the stated rates per day (or fraction thereof).</u> <u>Exception: On all Southbound FAK shipments ramping interior Mexico, our standard terms and conditions for rail storage is day of notification + 5 calendar days including weekends and holidays. Days beyond free time will be billed days 1 - 5 at \$75.00 per day and days 6+ at \$150.00 per day.</u>
Mis-declared Charge	\$3,000 plus all charges assessed by underlying railroads	Customer moves hazardous, restricted or prohibited commodities as a general freight commodity. Customer must provide accurate commodity descriptions to XPO on their paperwork.
Misuse Charge	\$400 Charge + applicable per diem charges as stated	Equipment spotted at customer location by XPO but used by another carrier with no XPO revenue or other unauthorized use of XPO equipment.
Diversion after Delivery	\$150 Charge + \$2 per mile (dray)	Diversion occurs after attempted delivery to original consignee. This must be arranged and agreed to in writing in advance, and is subject to the diversion or re-consignment charge.
Driver Detention	1 hour free then \$35 per 15 minute increments	Driver is detained past allotted free time. If driver is late for scheduled appointment time, the free time starts when the Container is placed into the loading/unloading dock but if there is congestion or delays that prevent the Container from being placed on the dock, free time will begin when the Container enters the consignor's or consignee's facility.
Driver Layover	\$750 flat charge	A driver is required to layover at the point of loading or unloading.
Lumper	\$25 + cost paid to driver	Additional help hired to load/unload trailer. Driver detention may also apply.
Driver Labor (Assist, Load, Unload, Clean)	\$150 per hour (driver does all work)...\$100 per hour (driver assists).... plus driver detention	Labor involved for driver to assist with loading and/or unloading of container. Charge may also apply if driver is required to restack freight due to load shift. Driver detention may also apply.
Driver Wash-out	\$150 per hour + cost of wash out	Driver to wash out or clean out the container due to consignee not adequately making the container reusable for the next customer to load.
Stop Off Charge	1st stop \$125 + \$2 per mile 2nd stop \$250 + \$2 per mile 3rd stop \$375 + \$2 per mile	The standard XPO rate includes one pick up (@ origin) and one delivery (@ destination). If a customer requests additional stops at either origin or destination, XPO will invoice for the additional stops as stated. Note that the 1st stop charge is the 1st extra stop requested.
Redelivery	\$150 Charge + \$2 per mile (dray) plus Storage & Per Diem charges	When a shipment is tendered for delivery and through no fault of the carrier, such delivery cannot be accomplished. Charge applies to each redelivery attempt.
Cross border Setout	Charges incurred by XPO plus 10% administrative fee	Setout charge relates to cross border steel wheeled shipments where customs officials require a container to be removed from the train.
Customs Paperwork Delay	Applicable storage and per diem charges	Storage and/or per diem charges apply to loads held or delayed due to missing, delayed or insufficient paperwork. Applies at origin, in transit and/or at destination.
Excess Mileage Route	\$2 per mile	When the practical route is closed due to construction, road closure, weather or similar conditions.

Overweight	\$500 Charge plus applicable dray charges plus Driver labor	Load exceeds D.O.T. vehicle weight limits by axle and/or by gross weight.
Scale Charge	\$75 + \$2 per mile for out of route miles	Driver required to scale the container.
Scale Light & Heavy	\$150 + \$2 per mile for out of route miles	Customer requests the driver to scale the container before and after loading.
Misc. Charges	Charges incurred by XPO plus 10% administrative fee	Misc. charges (charges not identified above) will be determined at time of occurrence.

2.6. INTERMODAL FUEL SURCHARGE

Unless we have agreed otherwise in a written agreement signed by our authorized representative, we assess a fuel surcharge on transportation rates (as well as accessorial charges for stop-offs, reconsignments, redeliveries, equipment ordered not used and other charges involving actual tractor or train movement or mileage) based on the following matrix.

This fuel surcharge matrix is based on the DOE's National Average Diesel Fuel Index published by the Energy Information Administration every Monday. Revisions to this surcharge will occur the day after the DOE posts its weekly fuel index. The index is available on the Internet at www.eia.doe.gov.

The fuel surcharge will increase in 0.5% increments for every \$0.04 increase in the DOE index should it exceed the table below. Fuel surcharges are shown as a separate line item on our invoice.

DOE Fuel Index \$/gallon	Fuel Surcharge
\$0.000 - \$1.059	0.00%
\$1.060 - \$1.099	1.00%
\$1.100 - \$1.139	1.50%
\$1.140 - \$1.179	2.00%
\$1.180 - \$1.219	2.50%
\$1.220 - \$1.259	3.00%
\$1.260 - \$1.299	3.50%
\$1.300 - \$1.339	4.00%
\$1.340 - \$1.379	4.50%
\$1.380 - \$1.419	5.00%
\$1.420 - \$1.459	5.50%
\$1.460 - \$1.499	6.00%
\$1.500 - \$1.539	6.50%
\$1.540 - \$1.579	7.00%
\$1.580 - \$1.619	7.50%
\$1.620 - \$1.659	8.00%
\$1.660 - \$1.699	8.50%
\$1.700 - \$1.739	9.00%
\$1.740 - \$1.779	9.50%
\$1.780 - \$1.819	10.00%
\$1.820 - \$1.859	10.50%
\$1.860 - \$1.899	11.00%
\$1.900 - \$1.939	11.50%
\$1.940 - \$1.979	12.00%
\$1.980 - \$2.019	12.50%
\$2.020 - \$2.059	13.00%
\$2.060 - \$2.099	13.50%
\$2.100 - \$2.139	14.00%
\$2.140 - \$2.179	14.50%
\$2.180 - \$2.219	15.00%
\$2.220 - \$2.259	15.50%
\$2.260 - \$2.299	16.00%
\$2.300 - \$2.339	16.50%
\$2.340 - \$2.379	17.00%

DOE Fuel Index \$/gallon	Fuel Surcharge
\$2.380 - \$2.419	17.50%
\$2.420 - \$2.459	18.00%
\$2.460 - \$2.499	18.50%
\$2.500 - \$2.539	19.00%
\$2.540 - \$2.579	19.50%
\$2.580 - \$2.619	20.00%
\$2.620 - \$2.659	20.50%
\$2.660 - \$2.699	21.00%
\$2.700 - \$2.739	21.50%
\$2.740 - \$2.779	22.00%
\$2.780 - \$2.819	22.50%
\$2.820 - \$2.859	23.00%
\$2.860 - \$2.899	23.50%
\$2.900 - \$2.939	24.00%
\$2.940 - \$2.979	24.50%
\$2.980 - \$3.019	25.00%
\$3.020 - \$3.059	25.50%
\$3.060 - \$3.099	26.00%
\$3.100 - \$3.139	26.50%
\$3.140 - \$3.179	27.00%
\$3.180 - \$3.219	27.50%
\$3.220 - \$3.259	28.00%
\$3.260 - \$3.299	28.50%
\$3.300 - \$3.339	29.00%
\$3.340 - \$3.379	29.50%
\$3.380 - \$3.419	30.00%
\$3.420 - \$3.459	30.50%
\$3.460 - \$3.499	31.00%
\$3.500 - \$3.539	31.50%
\$3.540 - \$3.579	32.00%
\$3.580 - \$3.619	32.50%
\$3.620 - \$3.659	33.00%
\$3.660 - \$3.699	33.50%
\$3.700 - \$3.739	34.00%

DOE Fuel Index \$/gallon	Fuel Surcharge
\$3.740 - \$3.779	34.50%
\$3.780 - \$3.819	35.00%
\$3.820 - \$3.859	35.50%
\$3.860 - \$3.899	36.00%
\$3.900 - \$3.939	36.50%
\$3.940 - \$3.979	37.00%
\$3.980 - \$4.019	37.50%
\$4.020 - \$4.059	38.00%
\$4.060 - \$4.099	38.50%
\$4.100 - \$4.139	39.00%
\$4.140 - \$4.179	39.50%
\$4.180 - \$4.219	40.00%
\$4.220 - \$4.259	40.50%
\$4.260 - \$4.299	41.00%
\$4.300 - \$4.339	41.50%
\$4.340 - \$4.379	42.00%
\$4.380 - \$4.419	42.50%
\$4.420 - \$4.459	43.00%
\$4.460 - \$4.499	43.50%
\$4.500 - \$4.539	44.00%
\$4.540 - \$4.579	44.50%
\$4.580 - \$4.619	45.00%
\$4.620 - \$4.659	45.50%
\$4.660 - \$4.699	46.00%
\$4.700 - \$4.739	46.50%
\$4.740 - \$4.779	47.00%
\$4.780 - \$4.819	47.50%
\$4.820 - \$4.859	48.00%
\$4.860 - \$4.899	48.50%
\$4.900 - \$4.939	49.00%
\$4.940 - \$4.979	49.50%
\$4.980 - \$5.019	50.00%
\$5.020 - \$5.059	50.50%
\$5.060 - \$5.099	51.00%

3. CREDIT AND COLLECTIONS

3.1. PRE-PAID SHIPMENTS

Customers that (a) choose to pay in advance of their shipments, (b) are required to pay in advance because we have not had the opportunity to review their credit information for the establishment of open credit terms or (c) have not

established credit privileges due to credit worthiness issues must submit their payment via lockbox submission or wire transfer. (Note: The amount quoted for a pre-paid delivery may not include all of the accessorials necessary for moving the load. Please see Section 2.5 for a listing of our standard accessorial charges. Additional dollars may be due after the initial payment is made.)

3.2. CREDIT APPLICATION

Any new customer must obtain our credit approval before we will arrange for transportation. The following information must be submitted to our Credit Department:

- (a) A completed credit application signed by an owner (in the case of a sole proprietor or partnership) or an authorized officer (in the case of a legal corporation or limited liability corporation) of the prospective customer.
- (b) "Bill To" information, including physical address, phone number, e-mail, and contact name of the customer.

3.3. UPDATING OF CREDIT INFORMATION

We may update our customers' credit information from time to time using available public information. In addition to public data, we may request that our customers provide additional financial data to demonstrate the customer's creditworthiness. If you tender freight to us for transportation services, you will be deemed to have consented to our use of financial data about you to verify your creditworthiness.

3.4. REVOCATION OF CREDIT

We reserve the right to revoke credit or to reduce a customer's credit limit due to a change in credit worthiness, pay history or similar considerations.

3.5. PAYMENT TERMS / FINANCE CHARGE

Unless we have agreed otherwise in a written agreement signed by our authorized representative and subject to our credit approval, payment will be due within seven (7) days of invoice date. If an invoice is not paid on or before the due date, such invoice will be subject to a late charge from the date payable until payment in full at 2.0% per month, or such lesser amount as may represent the maximum rate permitted by applicable law. If we are required to utilize the services of a collection agency or attorneys to collect any amounts due, the customer will be responsible for reasonable collection costs, attorney fees, court costs and other reasonable expenses incurred in collecting amounts owed.

3.6. INVOICE PROCESS

We will send the customer the invoice for linehaul charges plus fuel surcharge upon delivery of the freight. We will send all other charges via separate invoice. We will invoice via EDI (for high volume customers) or via printed invoice mailed to customer. Our invoice will include key dates and reference numbers.

3.7. OFFSET PROHIBITED

A customer may not withhold payment as a setoff because of a dispute or claim with the Company or its underlying transportation providers, including claims for overcharge, duplicate payment or other invoice-related disputes or claims for loss, damage or delay of freight or equipment.

3.8. CREDIT HOLD

We will place an account on credit hold if satisfactory arrangements are not made on past due balances.

3.9. DISPUTE PROCEDURE FOR INVOICES

Customers must notify us in writing of any dispute regarding our invoice, whether regarding linehaul rates, accessorial charges, fuel surcharge or other amounts, within sixty (60) days of the date of the invoice. If the customer

fails to timely notify us of the dispute, our original invoice will be deemed to be final, and the customer will be deemed to have accepted such invoice in full and to have waived any and all claims or defenses to paying such invoice. Disputes must be accompanied by reasonably detailed supporting documentation to facilitate efficient resolution. We will work with its customers to resolve invoice disputes promptly. If we fail to respond to a documented invoice dispute within sixty (60) days of the customer's notice, the dispute will automatically be deemed to be resolved in favor of the customer. As a condition precedent to collecting such a claim, customers must initiate an arbitration or lawsuit for overcharges, duplicate payment, overcollection or other invoice-related dispute within eighteen (18) months of delivery or tender of delivery of the shipments involved.

4. TRANSIT TIMES; DELIVERY APPOINTMENTS; NO TRANSIT OR EQUIPMENT GUARANTEES

4.1. TRANSIT TIME CALCULATION AND EXPECTATIONS

When using a rate quotation, we quote the fastest possible transit in the lane. We assume the shipment will be loaded at the consignor's location early enough in the day to allow for the driver to ingate the container at origin rail ramp prior to same day train cutoff. In addition we use historical data to effectively understand the actual ramp to ramp train service (railroad schedules used as reference only). Our quoted transit time in the lane assumes delivery to the consignee one business day after the train is expected to arrive.

4.2. XPO's MONITORING OF SHIPMENTS

We monitor the progress of your shipments using our automated systems and data from the transportation providers. The data that we endeavor to collect from the transportation providers includes verification that the shipment has been picked-up, estimated arrival time, information about delays affecting the shipment and automated rail carrier car location messages. Using this information, we track the shipments and make this information available to you through our track and trace systems available through our website. This information will not prevent or alleviate delays but should enable to you to better plan for the arrival of your shipment.

Web access to tracing information can be requested by contacting your customer service representative. Obtaining access to our track and trace systems requires that you apply for a password and user identification code and agree to maintain the confidentiality of such codes and comply with other website terms and conditions. It may require up to two business days for these codes to be issued.

4.3. NO LIABILITY FOR TRANSIT DELAYS

We will use commercially reasonable efforts to obtain on-time performance from the underlying transportation providers; however, unless otherwise agreed to by us in writing before the time of shipment, the Company and the underlying transportation providers do not guarantee adherence to any particular transit schedule and will not be liable for failure to transport any shipment by any particular schedule or in time for any particular market or appointment. We can assist you in working to improve substandard performance by any underlying transportation provider. Improving on-time performance may require a change in the transportation provider and may affect the rates assessed for transportation services.

4.4. NO EQUIPMENT AVAILABILITY GUARANTEES

Unless otherwise agreed to in a writing signed by our authorized representative, neither we nor the underlying transportation providers guarantee that we will have containers, chassis, or power units available for any particular shipment.

4.5. ESTABLISHING A DELIVERY APPOINTMENT

We will set delivery appointments depending on the type of delivery as follows:

- (a) **Live Unload:** Our standard operating procedure is to contact the consignee 48 hours prior to train arrival at the destination ramp to establish the delivery appointment. We will request a specific day and time. If the time slot is not available, another time the same day will be requested. If the delivery

day requested is not available, we will request alternative dates. Note that delaying a delivery may result in accessorial charges being invoiced to the customer.

- (b) Drop Locations: Our standard operating procedure is to deliver the shipment to the consignee on the day after the train arrives at destination ramp. No appointment will be requested from the consignee.

4.6. CUSTOMER'S REQUIREMENT TO PROVIDE NOTICE WHEN EQUIPMENT IS EMPTY

You must contact us via EDI (if you are a high volume customer) or via e-mail and provide the date and time of complete unloading of our equipment. If you tell us a date and time that is earlier than the date and time that you provide the notice, we will use the date and time that we received the notice to represent the empty date. For instance, if you tell us on Wednesday, June 12 at 5:00 pm that the equipment was made empty on Monday, June 10 at 12:00 pm, we will use Wednesday, June 12 at 5:00 pm as the empty date and time.

4.7. PER DIEM NOTIFICATION

We will endeavor to send the customer's main contact an E-Mail advising of a container that is being held at either the shipping or receiving facility beyond the allowable free time. Whether or not this notice is provided, you will be responsible for equipment per diem charges for equipment held beyond free time.

5. RESPONSIBILITIES OF USERS OF TRANSPORTATION SERVICE

5.1. SHIPPING INSTRUCTIONS

You must provide accurate, proper and complete shipping instructions in a form acceptable to us and accurately identify the commodities being shipped. To prevent errors and delays, these instructions must be provided in writing, such as through an EDI, facsimile or e-mail transmission, to us. Your customer solutions team can provide you with information regarding our shipping instruction requirements. The Company and the underlying transportation providers will rely on the information that you provide and its accuracy and completeness. All shipping instructions should include the following information:

- (a) Name of the Customer (i.e., the entity to be invoiced);
- (b) Telephone number of Customer's office providing the shipping instructions;
- (c) Commodity description (and STCC code if available); Please see Section 5.4.1 for more information on the specificity required in commodity descriptions.
- (d) Container identification number (e.g., APLU 480001);
- (e) Lading weight (weights should be exact, not estimates);
- (f) Name, address and contact numbers (telephone and facsimile) of the origin location;
- (g) Name, address and contact numbers (telephone and facsimile) of the destination location;
- (h) Immediate Transportation ("IT") Number or Transportation or Exportation Number (if in bond);
- (i) Any special routing or handling instructions if such special routing and handling has been pre-approved; and
- (j) Seal number on the equipment (if available).

Additional information required for shipments containing hazardous material is set forth in Section 5.6.2.

5.2. REQUIRED ADVANCE NOTICE OF LOAD TENDERS

You should assure that we receive your load tender via EDI (if you are a high volume customer) or via e-mail prior to 12:00 noon Eastern on the business day prior to the requested loading day. We will endeavor to respond to Customer within 2 hours of receiving your load tender.

5.3. CANCELLATION, CORRECTIONS AND OTHER CHANGES TO ORIGINAL SHIPPING INFORMATION

5.3.1 General

Cancellations, corrections or other changes to previously submitted shipping instructions must be submitted to us by facsimile or e-mail transmission to your customer solutions team. You should also call your customer solutions team by telephone to notify them of the need to change or correct the shipping instructions. Such telephone and facsimile/e-mail notice of corrections or cancellations is required regardless of the methodology (whether EDI, e-mail, facsimile or other method) used to submit the original shipping instructions.

The facsimile or e-mail notice must clearly indicate the intention to either cancel the shipment or correct the original instructions. Sending a new set of shipping instructions without notifying us that it is a correction or change to an existing order will result in a duplicate shipment because we will believe the revised shipping instructions to be a new order. Corrections must specify the original and corrected shipping instructions. We reserves the right to assess an administration and handling charge for each correction or cancellation.

5.3.2 Cancellations

You may cancel a shipment any time before the motor carrier is dispatched for pick-up. You should submit the cancellation request sufficiently in advance to allow us to notify the motor carrier of the cancellation before the driver is dispatched to the origin location. Your customer solutions team can help you determine the amount of advance notice needed to cancel a shipment. If the cancellation request is not timely submitted, we will nevertheless use commercially reasonable efforts to accommodate the cancellation request.

5.3.3 Corrections to Shipping Information other than Origin, Destination or Notify Party

Corrections to data included in previously submitted shipping instructions other than changes to the origin or destination information can be made at any time before the shipment is delivered to its final destination. Please see Section 5.3.1 above for more information about correcting shipping instructions.

5.3.4 Corrections to Origin

A request to change the origin must be received sufficiently in advance to allow us to inform the motor carrier before dispatch to the original origin. Your customer solutions team can help you determine the amount of advance notice needed to correct the origin of a shipment. After the carrier has been arrived at the origin point, additional charges will apply to travel to a different origin point.

5.3.5 Corrections to Ramp Destination – Intermodal Shipments

After an intermodal shipment has been loaded on the train, changes to the ramp destination will not be possible. If the change in destination is not made before the intermodal shipment has been loaded on a train, the shipment will move on the route required by the shipping instructions originally submitted by you, and you must submit shipping instructions for movement from the ramp destination originally specified to the desired destination. Our customer support team can provide assistance in arranging transportation from the original destination to the corrected destination.

5.3.6 Corrections to Final Destination

A request to change the final destination for intermodal shipments must be received sufficiently in advance to allow us to inform the dray carrier before dispatch to the destination ramp. Your customer solutions team can help you determine the amount of advance notice needed to correct the final destination of a shipment. If the shipment has already been delivered to the original destination, you will be responsible for the transportation charges to the original destination as well as transportation charges from the original destination to the changed final destination. If the destination is changed while the carrier is in transit, out of route mileage and other charges will apply.

5.3.7 Expenses Associated with Changed or Cancelled Instructions and Limitation on our Liability

In any event, we will not be liable if its attempts to cancel a shipment or implement corrections are unsuccessful. The customer will be responsible for applicable freight rates, surcharges and accessorial charges associated with these movements and for any administration and handling charge assessed by us or the underlying transportation providers in connection with cancellation of or changes in shipment movement information.

5.4. COMMODITY DESCRIPTIONS

5.4.1 Need for Specific Commodity Descriptions

You must provide more detailed and accurate descriptions of commodities due to the heightened focus on transportation security. Descriptions such as “FAK (Freight All Kinds),” “SLAC (Shippers 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. You should avoid use of vague catch-all 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 delays at the origin pick-up or rail point, additional accessorial and related costs and other adverse consequences.

5.4.2 No Liability for Misdeclared or Misdemeaned Freight

In any case where we or the underlying transportation provider reasonably determine you have misdeclared or misdescribed freight, neither we nor the underlying transportation providers will have any liability for any loss or damage to that freight that in any way results, directly or indirectly, from such misdeclaration or misdescription or that could have been avoided had such freight been accurately and completely declared or described in accordance with these Terms and Conditions. Such shipments will also be subject to the provisions of Section 2.4 and other provisions of these Terms and Conditions.

5.5. CROSS BORDER SHIPMENTS

Special rules and requirements apply to shipments that must cross the borders between the United States and Canada or Mexico. Additional time should be allowed for us and our transportation providers to process shipping information on cross-border shipments. The rail transportation providers assess additional charges for shipments that do not comply with Customs requirements or that must be set-off from the train in transit due to inspection, paperwork or other Customs-related issues. It is your responsibility to become aware of and comply with applicable customs and import, export and transportation laws, rules, practices and regulations of the governmental authorities of the countries involved in a shipment; to complete all required documentation; and to apply and pay for all licenses, permits or authorities required by governmental authorities to conduct the business and transportation contemplated by you.

By tendering freight to us, customers will be conclusively presumed to agree to cooperate and to require the beneficial cargo owners, consignors and consignees to cooperate reasonably with each other, we and the underlying transportation providers in defending against claims or proceedings by governmental authorities alleging violations of customs, import, export, border crossing, transportation or related laws or regulations or breach of customs bond conditions. Such cooperation will include investigating the allegations; searching for and providing relevant shipping, customs and other documents; obtaining signatures for applicable customs and other documents; providing sworn affidavits relating to the movement of cargo and equipment and similar matters; and, if required, providing witnesses to testify at legal proceedings.

For intermodal shipments, we and the underlying rail transportation provider will hold shipments at the origin ramp or at intermediate ramps or may prevent the shipment from entering the terminal gate if customs information and other documentation are not provided at the time that the container or trailer arrives at the origin terminal. The customer will be responsible for all origin storage charges, equipment per diem use charges and other costs until complete and accurate documentation is received. You must meet any established deadlines for such documentation in order to meet the train cut-off time and be transported in accordance with the anticipated schedule. Your customer solutions team is available to provide information about documentation requirements, the responsibilities of the various entities involved in the transportation and applicable deadlines for shipment documentation.

There will be delays if the Customs agency in Mexico, Canada or the United States decides to inspect a shipment. The customer is responsible for all drayage, loading and unloading charges; customs brokerage costs; filing costs; and other costs associated with the government inspections or documentation requirements with respect to cross-border shipments.

For more information, you should review the applicable Intermodal Circulars (please see Section 1.5 for website addresses for such circulars) and contact your customer solutions team.

5.6. HAZARDOUS SHIPMENTS

5.6.1 Applicability of Federal Regulations

All shipments of hazardous materials and hazardous substances are subject to, and you must comply with, United States Department of Transportation (“DOT”) regulations, 49 CFR Parts 100 to 185, and the Transport Dangerous Goods Regulations/Canada and to any further restrictions found in the Bureau of Explosives’ Tariff No. BOE-6000 series, as in effect on the date of shipment. The BOE-6000 Series can be ordered through the following website: www.boepublications.com/6000q.

5.6.2 Shipping Information for Hazardous Materials

In tendering a shipment of hazardous materials to the Company, you must do all the following:

- (a) Provide accurate and complete shipping information for the hazardous materials as required by law, including a shipper’s certificate addressing the following:
 - i. Proper shipping name of the hazardous material as listed in 49 CFR §172.101 (Hazardous Materials Table), or any successor regulation, and any technical chemical name (if applicable);
 - ii. The primary hazard class to which the commodity is assigned and any subsidiary risk;
 - iii. The UN/NA number assigned to the material;
 - iv. The packing group code assigned (if applicable);
 - v. Reportable Quantity (if applicable);
 - vi. Emergency response telephone number as required by 49 CFR 172.602. This number must be manned 24 hours a day by a person who is knowledgeable about the materials being shipped and has comprehensive emergency response information or can immediately access a person who has this information. The emergency response information that must be available through such telephone number must include:
 1. proper shipping name of the material;
 2. immediate hazards to health;
 3. risk of fire or explosion;
 4. immediate precautions to take in case of an incident;
 5. methods of handling fires;
 6. methods for handling spills or leaks; and
 7. preliminary first-aid information.
 - vii. Emergency response information such as a materials data info sheet or emergency response guidebook; and
 - viii. Whether the commodity is a marine pollutant (if applicable).
- (b) Certify that the materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation in accordance with DOT regulations.
- (c) Affix to the trailer or container the proper placards identifying the type of hazardous material in the trailer or container.

Please note that a notation on a bill of lading is not sufficient to comply with the foregoing requirements.

We are not responsible for reviewing any shipping instructions provided by you, for classifying commodities to a hazardous materials class or for verifying whether the commodity is subject to any hazardous materials regulation or is properly classified. Information regarding hazardous materials can be obtained through the website of the Department of Transportation. If you have questions regarding our processes for hazardous materials shipments, you may contact your customer solutions team.

5.6.3 Consequences of Failure to Comply with Procedures

Failure to disclose to the Company the presence of hazardous materials or to comply strictly with the requirements for transporting hazardous materials will relieve the Company and its transportation providers of any liability for loss or damage directly or indirectly caused to or by the hazardous materials. The customer will be responsible for and will defend, indemnify and hold harmless the Company and the underlying transportation providers for any liabilities, costs and expenses arising out of your failure to properly declare the presence of hazardous materials or to

comply strictly with the requirements for transporting hazardous materials. Furthermore, any hazardous materials found to have been misdeclared may be warehoused at your risk and expense or destroyed without compensation. In addition to all other charges that may apply to that shipment, the customer will be responsible for any penalties or charges assessed by the underlying transportation provider arising out of your failure to comply with hazardous materials requirements. For instance, Union Pacific Railway Company may assess a charge of \$10,000 for any shipment of hazardous materials that is not declared as containing hazardous materials.

5.6.4 Surcharge for Hazardous Materials Shipments

We assess a surcharge on shipments of hazardous materials. The surcharge as of the date of these Intermodal Terms is \$280 per intermodal shipment containing hazardous materials. This surcharge is applied to each shipment governed by the Department of Transportation's hazardous materials regulations, 49 CFR Parts 100 to 185. All intermodal equipment types and sizes are subject to the surcharge. The per shipment hazardous materials surcharge will be assessed in addition to all applicable freight charges and will appear as a separate line item in invoices sent to customers.

5.7. RESTRICTED AND PROHIBITED COMMODITIES

5.7.1 General Information about Restricted and Prohibited Commodities

The rail transportation providers have specific rules regarding the type of freight that they will carry as well as the additional documentation necessary for shipping of these restricted or prohibited commodities. These rules are specified in detail in the Intermodal Circulars.

Any commodity that is prohibited by the rail carriers for transportation is also prohibited for intermodal transportation arranged by us. Prohibited commodities include hazardous wastes, garbage, explosives, metal coils, scrap metal or parts and sodium compounds or other commodities that would reasonably be expected to contaminate or otherwise render the trailer or container unsuitable for future shipments.

Any commodity that is classified as "restricted" by the rail carriers is also considered "restricted" for intermodal transportation arranged by us and subject to special procedures in order to be eligible for transportation. Restricted commodities include bulk commodities, rolled paper, household goods, metal banding, dense metal items, rubber shavings, tire fabric, over-dimension loads, currency, postage stamps and mail. Other commodities such as freight that could be considered to pose a safety or health issue, is easily perishable, is considered to be of extraordinary value, or needs temperature protective services may also be subject to limitations or special requirements. Before tendering any such freight for transportation, you must make prior arrangements with us. If you are unsure as to whether or not your commodity has special requirements for shipment, please contact either your sales or pricing representative or the Director of Loss Prevention. We will be glad to coordinate your special needs with the underlying transportation providers.

5.7.2 Consequences of Tendering Prohibited or Restricted Commodities in Violation of these Intermodal Terms

Failure to disclose to us the presence of restricted commodities or to comply strictly with the requirements for transporting restricted commodities will relieve us and the transportation provider of any liability for loss or damage directly or indirectly caused to or by the restricted commodities. Likewise, we and the underlying transportation providers are not liable for loss or damage directly or indirectly arising out of your tendering prohibited commodities to us or for any loss or damage to any prohibited commodities or to any restricted commodities tendered without strict compliance with the procedures set forth in these Intermodal Terms. The customer will be responsible for and will defend, indemnify and hold harmless the Company and the underlying transportation providers for any liabilities, costs and expenses arising out of your (a) tendering of any prohibited commodity for transportation, (b) failure to properly declare any restricted commodity or (c) failure to comply strictly with the requirements for transporting restricted commodities. In addition to the special rate applicable to any restricted commodity and all other charges that apply to that shipment and costs to repair, restore and decontaminate any container or chassis used to transport any restricted or prohibited commodity, the customer will be responsible for any penalties or charges assessed by the underlying transportation provider. For instance, CSX Intermodal assesses a charge of \$6,000 for any shipment shipped in violation of its rules regarding restricted and prohibited commodities.

5.8. REFRIGERATED AND TEMPERATURE CONTROLLED SHIPMENTS

Upon a customer's prior written request, we will arrange for transportation of shipments requiring protection from heat or cold at a special rate for such transportation services. Such services are subject to the limitations of liability and other terms established by the underlying transportation provider. We will not be liable for the performance, condition, inspection, refueling or return of the temperature-controlled equipment or for commodities shipped using temperature-controlled equipment or devices (such as thermal blankets or cargo quilts) in any event, whether or not the shipping instructions or bill of lading note that the shipment requires protection from heat or cold.

5.9. LOADING, BLOCKING AND BRACING REQUIREMENTS

5.9.1 Applicable Standards

Unless arrangements are made for the transportation provider to provide loading, blocking and bracing services at the time of the customer's request for pricing or before the freight is tendered for shipment, the customer will be responsible for causing all freight to be loaded, blocked and braced in accordance with industry standards for the intended mode of transportation.

For intermodal transportation, all shipments must be loaded, blocked and braced in accordance with Association of American Railroad standards. You are also responsible for complying with the Intermodal Safe Container Act. You should also ensure that commodities are wrapped with waterproof materials to prevent wet damage to the freight in transit.

The Intermodal Loading Guide for Products in Closed Trailers or Containers and various other publications of the AAR provide guidance on appropriate loading, blocking and bracing techniques. For a complete listing of Damage Prevention and Loading Services publications, contact Railinc at 919-651-5000 or www.railinc.com or contact the AAR:

The Association of American Railroads
50 F Street NW
Washington, DC 20001-1564
(202) 639-2100

Our loss prevention department or sales representative can provide you with the loading standards of the underlying transportation provider.

5.9.2 Acceptance of Container Not a Waiver

The transportation providers have the right to reject any shipment that does not comply with these requirements. Acceptance of a sealed container for transportation does not constitute a waiver of your liability or of our or the transportation provider's right to seek indemnity from you for noncompliance with your loading obligations or to exercise other rights and remedies. Nor does it cause us or the transportation provider to be responsible for any loss or liability related to such shipment. The presence during loading or participation by an employee or agent of any transportation provider will not in any way change or lessen your responsibility to properly and adequately package, load, unload, secure, block and brace the freight within the container or trailer.

5.9.3 Weight of Lading; Gross & Axle Overweight Conditions

The weight of the freight should be evenly distributed in the container or trailer, and the freight should be restrained adequately to prevent it from exerting excessive pressures against doors, walls, or ends of the containers that might cause their failure. The loaded weight must not exceed the limit set forth in the equipment manufacturer's plates. The weight of the lading may not exceed following specified weights for the length of container set forth in the following chart:

Nominal Length (ft.)	Maximum Gross Weight (lbs.) (Lading Plus Tare)
53'	42,500
45'	43,000
40'	43,500
20'	37,000

The total weight of the trailer on stanchion must not exceed 65,000 lbs. In loading heavy or concentrated weight commodities, no more than 25,000 pounds may be distributed over any 10 linear feet within the container. On freight with small supporting bases, no more than 3,500 pounds may be concentrated on a floor area of less than 25 square inches (minimum dimension 3.1 inches by 8 inches), with such areas no closer than 35 inches to one another.

You are responsible for complying with the Intermodal Safe Container Act and all applicable state and local requirements regarding shipment weights, including foregoing and applicable weight limitations per axle.

Keep in mind that for intermodal shipments, the placement of the axles on the chassis used for the delivery of the container from the destination rail terminal to the final destination may differ from the axle placement on the chassis used for pick-up from the consignor to the origin rail terminal. Such differences must be taken into consideration when loading the container.

Neither we nor the underlying transportation provider will be responsible for any weight violation. The customer will be responsible for all costs arising out of the overweight condition of the equipment, including fines or penalties charged by a governmental authority, repair of damaged equipment, storage, redelivery charges, loss or damage to freight, and adjustment and transload services.

Forklifts or other equipment, when loaded or empty, should not exceed the floor rating of the container or trailer being loaded. In many cases, the floor rating may be found on the door of the container or trailer.

5.9.4 Consequences of Improper Loading

Loads that shift in transit because they were not properly prepared for shipment will be reloaded, resecured or adjusted in the equipment or transloaded into other equipment, at our customer’s expense. We will work with the underlying transportation provider and our customer in an effort to minimize the expense and delay due to such adjustment or transloading of the freight, and upon your request, will facilitate communications with the underlying transportation providers to provide the customer (and its consignor) with information and guidance so that it will be able to properly prepare future shipments. If a load shift occurs during transportation and it is determined that improper or insufficient loading, blocking and bracing proximately caused the load shift, we and the underlying transportation providers may hold our customer liable for all expenses and charges arising from the load shift, including the repair of damaged equipment, loss or damage to freight, fines, penalties and adjustment and transload services. We reserve the right to stop the transportation of the shipment until payment for such expenses and charges is received.

If a transportation provider is cited and fined for noncompliance with highway weight laws, that transportation provider will have the right to recover incurred costs from the parties that caused the container or trailer to be overloaded or improperly loaded.

5.10. SHIPPER’S RESPONSIBILITY TO COUNT AND SEAL THE TRAILER OR CONTAINER

5.10.1 Shipper Load and Count

All loads are considered shipper load and count and consignee unload unless arrangements are made at the time of the request for pricing or before the freight is tendered for shipment. The consignor is responsible for supplying and applying seals, and the consignee should break all seals. A consignee’s failure to use a specialized stamp or form as a delivery receipt for a shipment will not invalidate any other form of delivery receipt obtained by the underlying transportation provider. Furthermore, a consignor’s or consignee’s failure to record the seal number of a shipment will not render us or the underlying transportation provider liable for shortage in that shipment.

5.10.2 **Sealed Shipments**

Ordinarily, the underlying transportation providers will not accept liability for shortages unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider. The underlying transportation providers will require that shortage claims be supported by seal records and actual loading and unloading records. Even in connection with shipments for which the driver performed the freight count, if the seal was intact upon delivery, any shortage claim is likely to be declined unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider.

As a result, all shipments that you tender to us must be sealed. We recommend our shippers use C-TPAT and ISO 17712-type seals. If your routing instructions require one or more stops for unloading or loading, it is your obligation to re-seal the shipment after any unloading or loading stops.

By tendering the shipment to us for transportation, you agree that the transportation provider may break the seal on a trailer or container if it determines that it is reasonably necessary to do so to inspect, reposition, or protect the cargo or the transportation equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations.

The consignee may not refuse delivery of a shipment solely because the seal on the container or trailer is broken. Any refusal to accept delivery will be subject to the provisions of Section 7.5.2.

Ordinarily, the underlying transportation providers will not accept liability for rejected freight due to missing or broken seals unless there is physical evidence of product tampering, even for food grade loads. The underlying transportation providers will require that contamination claims be supported by appropriate quality inspections outlining the full actual loss. In the absence of any other evidence, a seal breach will not create a presumption of loss to or contamination of the cargo.

5.11. **INSPECTION OF EQUIPMENT**

All empty equipment provided for loading should be inspected prior to loading to ensure that it is in suitable condition to protect and preserve the freight during transit. This inspection, at a minimum, should include closing the doors and inspecting for any light that would indicate that the unit structure is compromised. You should promptly notify us of any rejected equipment. If an investigation reveals that defects in equipment could reasonably have been discovered prior to loading, any claim for loss or damage will be declined.

5.12. **USE OF EQUIPMENT**

If we arrange for containers or trailers to be dropped at a location for your convenience and left unattended by the motor transportation provider, you will be responsible for any loss or damage to the equipment occurring during or as a result of the possession or use of the equipment by you or your consignees or consignor or their agents or employees.

6. LIABILITIES

6.1. **FORCE MAJEURE**

The Company and the transportation providers will be excused from performing obligations to you if the Company or the transportation provider is prevented or delayed by force majeure conditions beyond our or its reasonable control, including fire or explosions; lockouts, strikes, slowdowns, labor shortages or disturbances; acts of God, including floods, hurricanes, tornadoes, earthquakes, unusually severe weather and natural disasters; war, insurrection, terrorism or riots; acts of the public enemy; acts of governmental authority; embargo; congestion or service issues affecting the transportation providers; and epidemics or quarantine restrictions.

6.2. **LIABILITY FOR FREIGHT LOSS, DAMAGE OR DELAY**

6.2.1 **XPO's Liability**

We will be liable for loss or damage to freight to the extent that it is proved that our negligence or willful misconduct in arranging for transportation of the freight was the proximate cause of the freight loss or damage and then only to

the extent, on a comparative basis, that the loss or damage was caused by our negligence or willful misconduct. Liability under 49 U.S.C 14706 (the Carmack Amendment) does not apply to us.

Unless we have expressly agreed otherwise in a written agreement signed by our authorized representative, we are not liable for any freight loss or damage caused by the services of the underlying transportation provider or arising out of the negligence or intentional misconduct of the underlying rail or motor transportation provider. The negligence or intentional misconduct of the transportation provider will not be imputed to us.

In no event will our total liability for freight loss or damage exceed \$100,000.00 per container or trailer unless a higher limitation is agreed to in writing signed by our authorized representative before the time of shipping. Our liability will not extend beyond \$100,000.00 per container or trailer unless special arrangements are made in writing before the time of shipping. All freight claims will be paid in United States dollars.

Freight claims under \$500.00 will not be entertained.

Our maximum liability for freight loss or damage will not exceed the liability of the party tendering the freight for transportation. We also will be entitled to any lower limitations of liability applicable to the shipment, including limitations under an ocean bill of lading.

6.2.2 **Underlying Transportation Provider Liability**

The underlying transportation providers will be liable for loss or damage to freight to the extent provided under the terms of and subject to the procedures set forth in these Intermodal Terms, the applicable Intermodal Circular or the contract between us and the transportation provider, or if not covered in these Intermodal Terms, the applicable Intermodal Circular or such contract, under federal transportation law.

Unless we or the motor carrier have expressly agreed otherwise in a written agreement signed by an authorized representative, the liability of any motor carrier engaged by us for loss or damage to freight will be limited to \$100,000.00 per container or trailer.

The following chart shows the limitations of liability established by the U.S. and Canadian rail transportation providers in effect as of the date of these Intermodal Terms. These limitations of liability are subject to change without notice. If you would like information regarding the Intermodal Circulars of the major rail transportation providers, you can review the Intermodal Circulars at the website addresses listed in Section 1.5. You may also contact your customer solutions team or loss prevention representative.

<u>Rail Transportation Provider</u>	<u>Limitation of Liability</u>	<u>Freight Claim Minimum</u>
Burlington Northern Santa Fe	\$200,000 per container or trailer (\$100,000 for tank containers)	\$500
Canadian National	\$250,000 with additional limits depending on the type of traffic, i.e., domestic traffic for US cargo, domestic traffic for Canadian cargo, or international traffic	\$500
Canadian Pacific	\$2 per pound or \$50,000, whichever is less.	\$500
CSX Intermodal	\$250,000 per trailer or container; \$500 per package for US inland loss or damage to international shipments where the shipper has released the shipment under an intermodal or ocean bill of lading; \$100,000 per shipment for domestic high value consumer electronic shipments unless shipper participates in a specified theft deterrent program	\$250
Florida East Coast	\$250,000 per trailer/container load	None stated
Kansas City Southern	\$200,000 per TOFC or COFC unit	\$500
Kansas City Southern de México, S.A. de C.V.	Except as otherwise agreed upon in writing with KCSM, and where all of the conditions required by KCSM for a greater liability have been met, pursuant to the second paragraph of Article 52 of the Railroad Service Regulatory Law (<i>Ley Reglamentaria del Servicio</i>	No minimum claim, but a deductible applies, 10% of

	<i>Ferroviano</i>), the liability of KCSM for loss of or damage to the freight shall be limited to an amount equivalent to 15 (fifteen) days' general minimum wage in the Federal District per metric ton, or the proportional amount in case of shipments of lesser weight, pertaining to the specific weight of the loss or damage to the freight.	shortage claims, 5% of other claims, subject to a \$500 minimum deductible
Norfolk Southern	\$250,000 per shipment	\$250
XPO Stacktrain	\$250,000 per trailer or container/\$100,000 per trailer or container containing consumer electronics/ \$25,000 per trailer or container for freight loss or damage occurring in Mexico	\$250
Union Pacific	\$250,000 per Intermodal Unit (\$100,000 for domestic shipments of consumer electronics unless certain procedures are met); \$10,000 per package	\$250

6.2.3 Defenses to Liability for Freight Loss or Damage

Neither we nor the underlying transportation providers will be liable for the following: (1) damage to freight or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the freight; (2) inherent vice or defect in the freight 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 as described in Section 6.1; (4) an act, omission or default of any customer, shipper, consignor, consignee, beneficial owner or other third party logistics provider; (5) shipments stopped and held in transit at your request; or (6) loss or damage of freight that violates any federal, state or local law, ordinance or regulation or that has been loaded in a container or trailer so that the combined weight of the chassis, container or trailer and the freight exceed 65,000 pounds.

6.2.4 Liability outside the USA and Canada

Freight loss and damage occurring while in the possession of underlying transportation providers in Mexico are subject to Mexican law and the rules and policies of the Mexican carriers, which differ substantially from the law, rules and policies applicable in the United States. We are not liable and U.S. or Canadian underlying transportation providers generally provide that they are not liable for freight loss or damage that occurs while the freight is in the possession of an international or domestic carrier in Mexico. Furthermore, we do not assume any liability for, and our insurance coverage does not extend to cover, shipments outside the United States or Canada. While we will use commercially reasonable efforts to facilitate the filing of your freight claims with the underlying Mexican carriers, it has been our experience that freight loss or damage claims in Mexico are subject to substantial delays and irregular processing. We encourage you to work with your insurance providers to insure that you have adequate coverage for freight moving outside the United States and Canada.

6.3. LIABILITY FOR PERSONAL INJURY OR PROPERTY DAMAGE

The Company is not liable for any injury (including death) to persons or damage to property, including loading docks, facilities or other property, that arises out of the negligence, willful misconduct or other acts or omissions of the transportation providers or others in the course of the transportation services that we arrange at your request. The Company is only liable for personal injury or property damage to the extent that it is proved that the Company's negligence or willful misconduct in arranging for transportation of the freight was the proximate cause of the personal injury or property damage and then only to the extent, on a comparative basis, that the injury or damage was caused by the Company's negligence or willful misconduct.

7. FREIGHT CLAIM PROCESSING

7.1. XPO'S ASSISTANCE WITH FREIGHT CLAIMS PROCESSING

We will use commercially reasonable efforts to assist and cooperate with our customer to investigate and process any freight loss or damage claims against the underlying transportation providers and any claim for damage to our customer's property occurring in the course of the transportation services rendered to such customer. We will

encourage the underlying transportation providers to pay, settle or disallow all claims within 120 days of filing and to provide an explanation for any declined claim. If the claim is not processed and disposed of within 120 days after receipt, we will provide our customer with status updates upon request. We reserve the right to assess an administrative charge for our assistance to the customer in handling freight claims.

7.2. NOTIFICATION OF DAMAGES

If a shipment arrives with visible or obvious damage or loss of cargo, the customer must notify us promptly (in no event later than the time limit established in the applicable Intermodal Circular) in writing advising us of the nature and extent of the loss or damage. Prompt notification is required to enable us to comply with its underlying agreements with the transportation providers, to allow the removal of damaged trailers and containers from further use until repairs can be made, and to permit us and the transportation providers to inspect the shipment. The transportation providers may consider you to have waived and released the claim if there is a failure to provide this prompt notification. The customer will (or will cause its consignee to) preserve and make available to our or the transportation provider's inspectors all damaged cargo, all cargo received in good condition and all packaging, blocking, bracing and security devices to assist the inspectors in determining the cause of the damage or loss. Failure to inspect damaged cargo for whatever reason will not change the burden of proof or your obligation to mitigate damages nor will it be considered an admission of liability by the Company or the transportation provider.

During normal business hours, please call our freight claims services department to advise of the loss, damage, shortage or other exceptions at 800-837-7584. After normal business hours, you should call your customer solutions team at 800-837-7584, press #4, or dial your customer solutions team's toll free number direct. You may also select ext. 23498 to reach the evening manager. You may also notify us by e-mail at claims@xpo.com.

7.3. TIME LIMITS ON FREIGHT CLAIMS

Generally, the transportation providers require that freight claims be submitted to them in writing no later than nine months (180 days from the date the consignee is notified of the loss in the case of KCSM) after the date of delivery or in the case of a lost shipment, nine months after the expected delivery date (180 days from the date the consignee is notified of the loss in the case of KCSM). Motor transportation providers generally require that you initiate lawsuits on freight claims within two years after any portion of the claim is disallowed. Through the Intermodal Circulars, the rail transportation providers impose different time limits for initiating lawsuits on a freight claim, ranging from six months after disallowance to eighteen months after delivery. The transportation providers will not pay freight claims that do not meet these time limits.

Should our customer wish for us to seek recovery for freight loss or damage from the underlying transportation provider or believe that we are directly liable for a freight claim, as a condition precedent to recovery, the customer must submit the claim to our freight claims department within seven months of date of delivery or in the case of a lost shipment, within seven months of the expected delivery date. The claim should include the information set forth below. If the freight claim is not timely filed, we and the underlying transportation providers may consider your failure to timely file the claim as a release by you of us and the underlying transportation providers from responsibility to pay that freight claim, and your claim may be declined. After expiration of these time periods, you may proceed by filing the written claim directly with the applicable transportation provider, but we have no responsibility for the timeliness of the filing or the payment or processing of that claim.

Should our customer believe that we are directly liable for a freight claim that has not been resolved, as a condition precedent to recovery, the customer must institute an arbitration proceeding against us to recover on a claim for damage or loss of freight transported within five (5) months from the date of the original written disallowance of the claim or any portion of it from us or the underlying transportation provider. The same time limit will apply to any lawsuit brought by the customer. If the suit or arbitration on a freight claim is not timely initiated, we will consider your failure to timely file the claim as a release of us by you from responsibility for that freight claim, and we will not be liable for and will not process or pay that claim.

We have these time limits due to the deadlines imposed on us by the underlying transportation providers discussed above. Our time limits are intended to allow us time to resubmit your claims with the underlying transportation provider within the deadlines imposed by the Intermodal Circulars or our agreements with the transportation providers.

7.4. COMPUTATION OF DAMAGES

Our liability for loss, damage or shortage of freight will not exceed the actual loss or damage to the freight minus the salvage value of the freight, subject to the \$100,000.00 per vehicle limit and other applicable limitations. Amounts for which we are not liable include loss of or damage to any goods not identified in the transportation documents, loss of or damage to any dunnage, freight charges, attorneys' fees and brokerage fees, fines, import duties or other charges on shipments intended for export.

The Company will not, under any circumstances, be liable to any customer, supplier, consignor, consignee, beneficial owner, third party logistics provider or any other party for consequential, special or indirect damages, lost profits, lost savings, punitive damages, losses due to fluctuations in the freight's market value, exemplary damages or attorney's fees or interest relating in any way to services performed or arranged by us, or to loss, damage or delay of freight, regardless of whether we were aware of or reasonably or otherwise could have foreseen any such damages.

In any legal proceedings with respect to a freight claim, you must prove, among other matters and at a minimum, that (1) the freight was in good condition, properly prepared for transportation, appropriately packaged, loaded, blocked and braced in accordance with industry standards (which for intermodal shipments are the AAR guidelines) or as specifically approved by the underlying transportation provider, within the vehicle at the time the shipment was tendered by you to the underlying transportation provider; (2) the freight arrived at destination in a damaged or diminished condition; and (3) the amount of damages due for the freight claim can be specified.

7.5. MITIGATION OF LOSS/UNCLAIMED OR REFUSED FREIGHT

7.5.1 Duty to Mitigate

It is important to remember that according to general claims practices, it is the consignee's obligation to mitigate any losses. Therefore, the consignee should accept damaged freight, and if the consignee is unable to salvage the freight, the freight should be made available to the underlying transportation provider for salvage. If the consignee is unable or unwilling to assist in mitigating the loss, we will notify our customer of the refusal and follow our customer's direction regarding the freight, including shipping it to a location designated by our customer for further handling. Costs associated with complying with our customer's direction will be billed to the customer.

7.5.2 Consequences of Failing to Accept Freight

If for any reason whatsoever, the consignee refuses the freight or the customer refuses to give timely direction about the disposal of freight rejected by the consignee, we may, without further notice or demand, place the freight in storage at the risk and expense of the freight and our customer. Such stored freight will be subject to a lien in favor of us for any charges. By tendering freight to us to arrange for transportation, you will be conclusively presumed to have granted such a lien to us. We may exercise the foregoing rights at any time after 48 hours have elapsed since notification of the arrival and availability of the freight at destination or of the consignee's rejection of the freight.

Alternatively, we or the underlying transportation provider may sell the freight to the highest bidder in a public or private sale. Before such a sale of nonperishable freight is made, we will first give written notice to our customer that the freight has been refused or unclaimed and that it will be subject to sale if disposition is not arranged for within three (3) business days. Further failure or refusal to claim or dispose of the freight within this time period will constitute a waiver by you of all right, title and interest in and to the freight and all rights, claims, notices and defenses with respect to the freight to the maximum extent permitted by applicable law.

If the receiver of perishable freight fails or refuses to accept it promptly, we or the underlying transportation provider may, in a public or private sale, sell the freight to the best advantage to prevent deterioration. Where the procedures provided for in the two preceding paragraphs are not possible, we may sell the freight as authorized by law.

We will be entitled to recover from our customer, and/or from the proceeds of a sale or disposal of the freight, all costs incurred as a result of the customer's or the consignee's failure to accept delivery of the freight or to provide direction about disposal of rejected freight, including all storage fees, equipment use charges and costs of disposal.

7.5.3 Salvage Obligation

You are required to use all reasonable and good faith efforts to mitigate your damages from any freight loss or damage. These efforts will include salvaging the goods in a commercially reasonable manner and repackaging and relabeling the freight. If you prevent or refuse to sell or allow the sale of damaged freight, we may deduct our reasonable estimate of the salvage value of the damaged freight from the amount of the claim against the transportation provider and us. In that case, you will be bound by the reasonable salvage deduction determined by us. Furthermore, we may recover from our customer and/or from the proceeds of a sale of the freight (or deduct from the claim) all costs incurred as a result of the customer's or the consignee's rejection and the customer's failure to provide direction or to sell or permit the sale of the freight, including all storage fees and costs of disposal. Notwithstanding the foregoing, if the freight is offered to us for salvage, we are entitled to, but are not required to, undertake salvage efforts. If we, in our discretion, determine that we will not undertake salvage efforts, we in no way waive our right to assert our claim that you failed to mitigate damages by your failure to take efforts to salvage the freight.

7.6. CLAIM ASSIGNMENT

We are not liable for freight loss or damage to any person or entity other than our customer and will not process a freight claim brought by any person or entity other than our customer. If a customer wishes to assign a claim to the beneficial owner of the freight or other interested party, the customer must execute and deliver to us an assignment of rights in a form acceptable to us that assigns all of the customer's rights in the freight claim to the other party.

7.7. CLAIM FILING

Freight Claims should be submitted to:

XPO Logistics
Loss Prevention Services
6805 Perimeter Drive
Dublin, OH 43016-0035

When submitting a claim, the following items must be included. Failure to provide all of the following information within the time limit set forth in Section 7.3 may be considered a waiver and release of the claim by the transportation provider:

- (a) A demand for payment of a specified dollar amount determined in accordance with these Intermodal Terms. This demand should include documentation to verify the amount of the demand such as certified copies of repair invoices or actual product costs. If the freight has not been invoiced to the consignee or the invoice does not show the price or value, or the freight has not been sold but transferred at bookkeeping values only or has been shipped on consignment or approval or is otherwise involved in an inventory or stock to stock transfer, the demand should include documentation and certification of the actual value of the freight;
- (b) Information to identify the shipment such as unit number, date of shipment, origin and destination of the shipment, shipper's, consignee's and notify party's names, and bill of lading number;
- (c) Legible copies of shipping instructions, the delivery receipt and other shipping documents;
- (d) Applicable salvage allowance;
- (e) Legible copies of the loading and unloading tally denoting contents and quantities of each of the cartons, crates, boxes, pallets or shipping units involved in the shipment and seal record (particularly for shortage claims);
- (f) Supporting documentation detailing the nature of the damage or loss (such as photographs supporting the method of bracing, or actual damage to equipment), proof-of delivery, reports, and receiving records. Note that photographs should show the loaded container (with the equipment number visible) at the time the damage or loss was noted, as well as the condition of the equipment that is believed to have caused the damage or loss and the damaged goods themselves. Photos only of damaged goods after they have been unloaded from the container do not indicate how the goods were damaged.

- (g) Origin records or certification as to the condition and quantity of freight at the time received from the destination transportation provider;
- (h) Shipper import declaration (if applicable); and
- (i) Evidence that the shipment was properly loaded, blocked, braced and secured for the selected mode of transportation.

Since documents, photographs and other information sent by facsimile are often illegible or may not be available in an electronic format suitable for e-mail, we recommend that you send freight claims by mail, expedited delivery (such as FedEx) or personal delivery. Providing legible and complete documentation will expedite the processing of the claim.

8. ARBITRATION

8.1. DISPUTES SUBJECT TO ARBITRATION

Except as provided in this Section 8.1, any dispute involving the provisions of these Intermodal Terms or their interpretation or arising out of the transportation services arranged by us will be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The only circumstances in which a dispute will not be subject to the provisions of this Section are (a) when we seek equitable relief to enforce any provision of these Intermodal Terms or other written agreement with the customer, (b) where a party has been made a party to a judicial proceeding and the other party is an appropriate additional party to such proceeding, or (c) where the parties have agreed otherwise in a written agreement signed by us and the customer.

8.2. ARBITRATION PANEL

Disputes will be decided by a panel of three arbitrators with knowledge and experience in the cargo transportation industry, although the parties to the dispute may agree to use only one mutually acceptable arbitrator. In selecting an arbitration panel, each party will select one arbitrator, and the two arbitrators will jointly select the third. The sole right of the arbitrator(s) will be to enforce or interpret the provisions of these Intermodal Terms and any applicable agreements between the parties, and not to expand the rights or obligations of the parties beyond their express terms.

8.3. ARBITRATION PROCEDURES AND COSTS

Unless otherwise agreed to in writing by the parties, any such dispute will be (a) brought within one (1) year of the event giving rise to the dispute (except in the case of disputes involving cargo loss or damage, in which case the time limit is set forth in Section 7.3); (b) heard by the arbitrators, if applicable, within sixty (60) days of their selection; (c) decided within thirty (30) days after all evidence and legal arguments have been presented to the arbitrators, if applicable; (d) decided under Ohio and federal transportation law; and (e) held in Dublin, Ohio or other location agreed to by the parties to the dispute. The arbitrator will have the authority to award costs, such as pre-award interest, post-award interest, expert fees and attorneys' fees as deemed equitable considering the circumstances, the outcome of the arbitration and the conduct of the parties. Subject to the arbitrators' authority to award costs, each party will bear the costs of the arbitrator selected by such party and will equally share the cost of the third arbitrator (or the single arbitrator, if applicable). Any arbitration award will be final and binding on the parties. Judgment on the award may be entered in any court of competent jurisdiction.

8.4. CONFIDENTIALITY OF ARBITRATION

All aspects of the arbitration will be treated as confidential. Neither the parties to the arbitration nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with applicable law, court order, regulatory requirements, governmental inquiry, listing standards or similar requirements. Before making any such disclosure, a party will give written notice to all other parties and will afford such parties a reasonable opportunity to protect their interests. In no event will such disclosure to comply with such requirements be deemed to waive the confidential nature of the disclosed information.

9. GENERAL PROVISIONS

9.1. SEVERABILITY

If a court of competent jurisdiction finds that any provision of these Intermodal Terms is invalid or unenforceable, such provision will be ineffective as to such jurisdiction, without invalidating the remaining provisions of these Intermodal Terms or affecting the validity or enforceability of such provision in any other jurisdiction. Furthermore, if such provision could be more narrowly drawn so as not to be invalid or unenforceable in such jurisdiction, it will be so narrowly drawn as to such jurisdiction, without invalidating the remaining provisions of these Intermodal Terms or affecting the validity or enforceability of such provision or any other provision in any other jurisdiction.

9.2. WAIVER

Our failure to enforce strictly any provision of these Intermodal Terms will not be construed to be a waiver of that provision or as excusing future performance in accordance with the provisions of these Intermodal Terms.

9.3. CUMULATIVE REMEDIES

All remedies hereunder are cumulative, are in addition to any other remedies provided for by law or in equity, and, to the extent permitted by law, may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. Without limiting the generality of the foregoing, our assessment or collection of an administrative charge or other fee set forth in these Intermodal Terms will not affect or limit our right to exercise any other right and remedy.

9.4. AMENDMENTS TO THESE INTERMODAL TERMS

We may change or replace these Intermodal Terms from time to time without advance notice by posting the revised Circular on our website. Customers are advised that the terms, conditions, charges and services on the date of tender of the shipment will apply and will have a continuing obligation to obtain and be aware of the version of these Intermodal Terms in effect on the date of tender. The current version of these Intermodal Terms may be obtained from your customer solutions team or from our website at www.xpo.com.

9.5. VARIATIONS FROM RULES

Other than changes to these Intermodal Terms by us, these Intermodal Terms may be amended, modified, waived, or varied only through a written agreement signed by a duly authorized representative of XPO.

9.6. INTERPRETATION

Specific provisions in these Intermodal Terms take precedence over general provisions. The use in these Intermodal Terms of the term “including” means in every instance “including, but not limited to.” The headings in these Intermodal Terms are for convenience of reference only and will not govern or affect the interpretation of any of the provisions of these Intermodal Terms. Terms used in the plural will include the singular and vice versa.

9.7. GOVERNING LAW

Except as otherwise agreed by us in a writing signed by its authorized representative, any dispute arising in connection with the transportation and other services provided by the Company will be governed by and interpreted in accordance with federal transportation laws, rules and regulations and to the extent not in preempted, the laws of the State of Ohio, without giving effect to any choice or conflict of law rules.