

TERMS & CONDITIONS OF CARRIAGE

Except as otherwise agreed by Carrier and Shipper in a separate written agreement, the following terms and conditions of carriage apply.

1. The Carrier or the party in possession of any of the property described in this bill of lading shall be liable as at common law for any loss, damage or delay thereto, except as hereinafter provided. Carriers shall be liable for special, incidental and consequential damages for which they have actual or constructive notice.
2. No Carrier or party in possession of all or any portion of the property described in this bill of lading shall be liable for any loss of or damage to the said property or for any delay caused solely by an Act of God, the public enemy, the authority of law, or the act of default of the Shipper or owner. Further, no Carrier or party in possession of all or any portion of the said property shall be liable for any natural shrinkage of the property or loss caused solely by the inherent vice of the property. The Carrier or the party in possession shall have the burden of proving freedom from negligence and that one of the foregoing exceptions was the sole and proximate cause of the loss, damage or delay. The Carrier's liability shall not be subject to the rule of contributory or comparative negligence.
3. The Carrier shall be liable solely as a warehouseman for loss, damage or delay occurring after actual or attempted tender of the property for delivery at destination. When tender of delivery of the property to the party entitled to receive it has been made, but delivery has been refused, or if Carrier is unable to make delivery, Carrier's liability as a warehouseman will begin when Carrier has placed the property in a warehouse or storage facility under reasonable security. Except in the case of negligence of the Carrier or the party in possession, the Carrier or party in possession shall not be liable for loss, damage or delay which results when the property is stopped and held in transit upon request of the Shipper, owner, or party entitled to make such request.
4. Except in the case of negligence of the Carrier, no Carrier or party in possession of all or any of the property described in the bill of lading shall be liable for delay caused by highway obstruction, by fault or impassable highway, or by lack of capacity of any highway, bridge or ferry. The burden to prove freedom from such negligence is on the Carrier or party in possession.
5. Unless otherwise agreed, no Carrier is bound to transport said property by any particular schedule or vehicle or in time for any particular market, or in any manner other than with reasonable dispatch. Every Carrier shall have the right, in case of physical necessity, to forward the property by any Carrier or route between the point of shipment and the point of destination, without additional cost to Shipper or Consignee.
6. Claims for loss, damage or delay must be mailed within nine months of delivery or, in the case of failure to make delivery, within nine months after a reasonable time for delivery has elapsed. In no case shall said reasonable time be deemed to be less than 30 days from the scheduled or anticipated delivery date. Suits for loss, damage or delay shall be instituted against any Carrier no later than two years and one day from the day when written notice is received by the claimant from the Carrier that the Carrier has disallowed the claim or any part thereof. An offer of compromise shall not constitute a disallowance of any part of the claim unless the Carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and communications received from a Carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides a lawful reason for such disallowance and informs the claimant that the insurer is acting on behalf of the Carrier. Except as otherwise provided herein, where a lower value than the actual value of the said property has been stated in writing on the bill of lading by the Shipper or has been agreed upon in writing as the released value of the property, such lower value, plus freight charges if paid, shall be the maximum recoverable amount for loss, damage, or delay, whether or not such loss, damage, or delay occurs from negligence. When such loss, damage or delay is the result of Carrier's willful misconduct, gross negligence, material or fundamental breach, or conversion, said limitation of liability shall not apply, and Shipper shall be reimbursed for the actual value of the property, plus freight charges, if paid.
7. The Shipper or Consignee shall pay the freight and all other lawful charges accruing on said property according to the agreement of the parties. The Shipper shall be liable for the freight and all other applicable charges, except that if the Shipper stipulates, by signature, in the space provided for that purpose on the face of the bill of lading that the Carrier shall not make delivery without requiring payment of such charges, and the Carrier, contrary to such stipulation, makes delivery without requiring such payment, the Shipper shall not be liable for such charges. The Carrier may extend credit to the party responsible for payment of the freight charges, and Carriers may charge a commercially reasonable interest rate on freight bills which remain unpaid for more than 30 days from the date of presentment. There shall be no other penalty or loss of discount allowed for late payment. Shipper may offset unpaid freight charges against unpaid freight claims when said claims are outstanding for more than 90 days. Nothing herein shall limit the right of the Carrier to require at the time of shipment the prepayment or guaranty of the charges. If upon inspection it is ascertained that the articles shipped are not those described in the bill of lading, the freight charges must be paid upon the articles actually shipped.
8. Claims for loss, damage and delay shall be administered in accordance with Ex Parte No. 263, 340 I.C.C. 515, Feb. 24, 1972, including the I. C.C.'s interpretation thereof expressed in its Order served April 18, 1972, and 49 C.F.R. §1005, unless otherwise provided herein. In addition, claimant may recover its administrative expenses incurred in connection with said claims.
9. Claims for overcharges and undercharges shall be governed by the statute of limitations stated in 49 U.S.C. §14705, and administered in accordance with 49 C.F.R. §378, unless otherwise provided herein. Carrier shall pay the same rate of interest on overcharge claims as it applies on unpaid freight charges, if any. If a Shipper elects to submit a dispute over the original billing involving the applicability or reasonableness of the rate or charges to the Surface Transportation Board for resolution, the Shipper must contest the billing by mailing or faxing a protest to the Carrier within 180 days of the date it or its agent receives the original billing from the Carrier. Overcharges and undercharges resulting from typographical, mathematical, weight or clerical errors, or duplicate payments may be filed at any time within 18 months of delivery, and pursuant to 49 U.S.C. §14101(b), the parties hereby expressly waive any notification requirements that may be applicable under 49 U.S.C. §13710(a)(3) for such overcharges and undercharges. If a Carrier seeks to assess additional charges, it must mail or fax its billing within 180 days of the date on its original billing. Once protested, disputes may be submitted to the Surface Transportation Board for resolution. If not resolved by the STB within 18 months of the delivery date, an action at law must be instituted to preserve the right to collect the amounts sought. Nothing in this agreement or the law shall prohibit a Carrier from making a voluntary refund of an overcharge, or a shipper's voluntary payment of an undercharge, whether or not the original billing was contested within 180 days.
10. In the event that property has been refused by the Consignee, or Carrier is unable to deliver the property for any reason, Carrier shall immediately notify Shipper by telephone or other electronic communication system in accordance with the instructions for notification given on the face of the bill of lading. Said notice shall be confirmed in writing by Carrier, stating the time and date that free time shall expire and the storage charges to be applicable upon expiration of free time. Storage charges shall begin after 48 hours of Carrier's notification, exclusive of Saturdays, Sundays and business holidays declared by any of the parties hereto. Shipper shall give disposition instructions to Carrier within 48 hours of its receipt of notice of Carrier's inability to deliver. If disposition instructions are not received within said 48 hours, Carrier shall send a Second and final notice of on-hand freight, via facsimile transmission or EDI (Electric Data Interchange). If disposition instructions are not received within 48 hours of the second and final notice, Carrier may advertise in two newspapers of general circulation for two consecutive weeks that the goods on hand will be offered for sale at a general auction, stating the time and place of said sale. No later than 10 days prior to the auction sale, Carrier shall send a copy of the published auction notice to Shipper via facsimile transmission or EDI.
11. Where perishable property transported to the destination stated in this bill of lading is refused by Consignee or party entitled to receive it, or said Consignee or party entitled to receive the property fails to receive it promptly, the Carrier may, in its discretion, to prevent deterioration or further deterioration, sell the property to the best advantage at private or public sale; provided, that if there is sufficient time to notify the Consignor or owner of the refusal of the property or the failure to receive it and to request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold, including telephone or facsimile transmission.
12. The proceeds of any sale made under this Agreement shall be applied by the Carrier to the payment of freight, demurrage, storage, and any other lawful charges; to the expense of notice, advertisement, sale, and other necessary expense and to the expense of caring for and maintaining the property, if proper care of the property requires special expense. Should there be a balance remaining after all charges and expenses are paid, such balance shall be paid to the owner of the property sold hereunder.
13. Notice of loss or damage, when feasible, shall be given to Carrier on the delivery receipt by the Consignee. Concealed loss or damage shall be reported to the delivering Carrier within 15 working days unless the claimant explains why the loss or damage could not reasonably have been reported within 15 days. When notice has first been given to Carrier after 15 days, claimant shall offer proof that the loss or damage did not occur after delivery to Consignee, and Carrier shall resolve the claim in light of the said proof.
14. Carrier shall be liable for the number of shipping units or packages noted on the bill of lading, and shall deliver them in the same condition or unitized package as tendered at origin. If Carrier's driver is not able or is not given an opportunity to inspect the shipment and count the shipping units or packages prior to acceptance by the Carrier, the bill of lading must be noted SL & C (Shippers Load & Count). When less-than-truckload shipments are loaded and counted by the Shipper, such shipments will be inspected and counted by Carrier at its first breakbulk point and all discrepancies shall be reported immediately to Shipper.
15. No Carrier hereunder will carry or be liable in any way for any documents, coin money, or for any articles of extraordinary value unless a special written agreement is entered into by the parties and a stipulated value of the articles is endorsed on the bill of lading.
16. If transportation is arranged through a broker, Carrier designates broker as its agent for the collection of freight charges. When charges are paid to broker, Carrier agrees not to hold Shipper or Consignee liable for said charges.
17. It is agreed and understood that the "Shipper's Weight" set forth on this Bill of Lading is the weight upon which freight charges shall be calculated, if applicable, and this weight does not include the weight of any pallet, skid or packaging materials which is not an integral part of the product as usually shipped by Shipper. Carrier agrees that there shall not be a separate charge for the weight of any pallet, skid or other packaging materials, as well as any temporary blocking, flooring or lining, racks, standards, strips, stakes or similar bracing, dunnage or supports.
18. Carrier agrees not to rely upon the Shipper's Weight set forth on this Bill of Lading as being the actual gross weight of the shipment because the listed weight may not include the weight of any pallets, skids or other packaging or bracing materials. Carrier agrees to be responsible for determining the actual weight of a shipment for all purposes, including for purposes of fulfilling Carrier's responsibility with regard to complying with any applicable federal, state or local overweight laws, rules, regulations and/or restrictions.
19. For freight charge purposes, Carrier agrees that all prepaid shipments shall be billed at a rate no higher than the rate that applies to Freight All Kinds (FAK) Class 60 of the National Motor Freight Classification (NMFC).
20. It is understood and agreed that this Bill of Lading incorporates by reference any terms or conditions set forth in the shipping order(s) issued by Shipper to Carrier in connection with this shipment.
21. If this Bill of Lading is prepared by Shipper, the National Motor Freight Classification (NMFC) designation set forth on this Bill of Lading, if applicable, is based upon Shippers custom and practice. Shipper makes no representation that the NMFC designation is consistent with any or all codes contained in the current edition of the NMFC or supplements thereto. If there is any discrepancy in this Bill of Lading between the freight description and the NMFC designation, the freight description will control.