

TERMS AND CONDITIONS

PART A

I. Application

The following provisions shall apply to the transportation of all goods by Carrier whether or not licensed under the Motor Vehicle Transport Act, 1987 or under provincial statutes or U.S.A legislation.

II. Bill of Lading

1. A Bill of Lading shall be completed as provided herein for each shipment.
2. On each article covered by the Bill of Lading, there shall be plainly marked thereon by the consignor, the name of the consignee and the destination thereof. This requirement does not apply in cases where the shipment is from one consignor to one consignee and constitutes a truckload shipment.
3. The Bill of Lading shall be signed in full (not initialed), by the consignor and by the carrier as an acceptance of all terms and conditions contained therein.
4. At the option of the carrier a waybill may be prepared by the carrier and the waybill shall bear the same number or other positive means of identification as the original Bill of Lading. Under no circumstances shall the waybill replace the original Bill of Lading.

III. Uniform Conditions of Carriage

1. Liability of Carrier

The carrier of the goods herein described is liable for any loss of or damage to goods accepted by the carrier or the carrier's agent except as hereinafter provided.

2. Liability of Originating and Delivering Carriers

Where a shipment is accepted for carriage by more than one carrier, the carrier who issues the bill of lading (hereinafter called the originating carrier) and the carrier who assumes responsibility for delivery to the consignee (hereinafter called the delivering carrier), in addition to any other liability hereunder, are liable for any loss of or damage to the goods while they are in the custody of any other carrier to whom the goods are delivered and from which liability the other carrier is not relieved.

3. Recovery from Connecting Carriers

- (i) The originating carrier or the delivering carrier, as the case may be, is entitled to recover from any other carrier to whom the goods are delivered the amount that the originating carrier or delivering carrier, as the case may be, is required to pay for the loss of or damage to the goods while they were in the custody of such other carrier.
- (ii) If there is concealed damage and the goods were interlined between carriers so that it is not clear as to who had custody of the goods when they were damaged, the originating carrier or the delivering carrier, as the case may be, is entitled to recover from each of the interlined carriers an amount prorated on the basis of each carrier's revenue for carriage of the damaged goods.

4. Remedy by Consignor or Consignee

Nothing in Article 2 or 3 deprives a consignor or consignee of any rights the consignor or consignee may have against any carrier.

5. Exceptions from Liability

The carrier shall not be liable for loss, damage or delay to any of the goods described in the bill of lading caused by an act of God, the Queen's or public enemies, riots, strikes, a defect in the goods, an act or default of the consignor, owner or consignee, authority of law, quarantine or difference in weights of grain, seed or other commodities caused by natural shrinkage.

6. Delay

No carrier is bound to carry goods by any particular public truck or in time for any particular market or otherwise than with due dispatch, unless by agreement that is specifically endorsed on the bill of lading and signed by the parties.

7. Routing by Carrier

If the carrier forwards the goods by a conveyance that is not a public truck, the liability of the carrier is the same as though the entire carriage were by public truck.

8. Stoppage in Transit

If goods are stopped and held in transit at the request of the party entitled to so request, the goods are held at the risk of that party.

9. Valuation

Subject to Article 10, the amount of any loss or damage for which the carrier is liable, whether or not the loss or damage results from negligence, shall be the lesser of,

- (i) the value of the goods at the place and time of shipment, including the freight and other charges if paid, and
- (ii) \$4.41 per kilogram computed on the total weight of the shipment.

10. Declared Value

If the consignor has declared a value of the goods on the face of the contract of carriage, the amount of any loss or damage for which the carrier is liable shall not exceed the declared value.

11. Consignor's Risk

- (i) If it is agreed that the goods are carried at the risk of the consignor, such agreement covers only such risks as are necessarily incidental to the carriage and the agreement does not relieve the carrier from liability for any loss or damage or delay that results from the negligence of the carrier or the carrier's agents or employees.
- (ii) The burden of proving absence of negligence shall be on the carrier.

12. Notice of Claim

- (i) No carrier is liable for loss, damage or delay to any goods carried under the bill of lading unless notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the originating carrier or the delivering carrier within sixty days after delivery of the goods or, in the case of failure to make delivery, within nine months from the date of shipment.
- (ii) The final statement of the claim must be filed within nine months from the date of shipment, together with a copy of the paid freight bill.

13. Articles of Extraordinary Value

- (i) No carrier is bound to carry any documents, specie or articles of extraordinary value unless by a special agreement to do so.
- (ii) If such goods are carried without a special agreement and the nature of the goods is not disclosed on the bill of lading, the carrier shall not be liable for any loss or damage in excess of the maximum liability stipulated in Article 9.

14. Freight Charges

- (i) If required by the carrier, the freight and all other lawful charges accruing on the goods shall be paid before delivery.
- (ii) If upon inspection it is ascertained that the goods shipped are not those described in the bill of lading, the freight charges must be paid upon the goods actually shipped with any additional charges lawfully payable thereon.
- (iii) If a consignor does not indicate that a shipment is to move prepaid, or does not indicate how the shipment is to move, it will automatically move on a collect basis.

15. Dangerous Goods

Every person, whether as principal or agent, shipping dangerous goods without previous full disclosure to the carrier as required by law, shall indemnify the carrier against all loss, damage or delay caused by the failure to disclose and such goods may be warehoused at the consignor's risk and expense.

16. Undelivered Goods

- (i) If, through no fault of the carrier, the goods cannot be delivered, the carrier shall immediately give notice to the consignor and consignee that delivery cannot be made and shall request disposal instructions.
- (ii) Pending receipt of disposal instructions,
 - A. the goods may be stored in the warehouse of the carrier, subject to a reasonable charge for storage, or
 - B. if the carrier has notified the consignor of this intention, the goods may be removed to and stored in a public or licensed warehouse at the expense of the consignor, without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

17. Return of Goods

If a notice has been given by the carrier pursuant to paragraph (i) of Article 16, and no disposal instructions have been received within ten days from the date of such notice, the carrier may return to the consignor, at the consignor's expense, all undelivered shipments for which such notice has been given.

18. Alterations

Subject to Article 19, any limitation on the carrier's liability on the bill of lading and any alteration to the bill of lading shall be signed or initialed by the consignor and the originating carrier or their agents and unless signed and initialed shall be without effect.

19. Weights

- (i) It shall be the responsibility of the consignor to show correct shipping weights of the shipment on the bill of lading.
- (ii) If the actual weight of the shipment does not agree with the weight shown on the bill of lading, the weight shown on the bill of lading may be corrected by the carrier.

20. C.O.D. Shipments

- (i) A carrier shall not deliver a C.O.D. shipment unless payment is received in full.
- (ii) The charge for collecting and remitting the amount of C.O.D. bills for C.O.D. shipments must be collected from the consignee unless the consignor has instructed otherwise on the bill of lading.
- (iii) A carrier shall remit all C.O.D. moneys to the consignor, or person designated by the consignor, within fifteen days after collection.
- (iv) A carrier shall keep all C.O.D. moneys in a trust fund or account separate from the other revenues and funds of the carrier's business.
- (v) A carrier shall include the charges for collecting and remitting money paid by consignees as a separate item in the schedule of rates.

PART B - Additional Terms

1. The consignor (the "Customer") and the consignee are jointly and severally liable for freight. The Customer shall pay to the carrier in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off.
2. Despite the acceptance by the carrier of instructions to collect freight, duties, charges or other expenses from the consignee or any other person the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such consignee or other person when due.
3. All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies due either in respect of such goods or for any particular or general balance or other monies due from the Customer or the Sender, consignee or owner to the carrier. If any monies due the carrier are not paid within one calendar month after notice has been given to the person from whom the monies are due that such goods are being detained, they may be sold by auction or otherwise at the sole discretion of the carrier and at the expense of such person, and the net proceeds applied in or towards satisfaction of such indebtedness and the carrier will not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the carrier be relieved from the liability merely because the goods have been sold.
4. The carrier shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations as is customary in the trade.
5. The carrier is authorized (but shall be under no obligation whatsoever) to open package(s) for inspection at all times.
6. In any claim based on damage to the goods the carrier shall be allowed to inspect the goods, the shipping container(s) and packing material. The carrier shall not be liable for damages if the right of inspection is not given.
7. The liability of the carrier shall be the lesser of:
 - (a) \$4.41 per kilo (\$2 per pound) multiplied by the number of pound or fraction thereof, of each piece(s) of shipment which may have been lost, damaged or destroyed;
 - (b) the declared value for carriage;
 - (c) the actual value of such piece(s) at the place or origin including the freight and other charges if paid;
 - (d) the minimum liability as set out in the laws of the province of Canada or the laws of the United States of America that are found to be of compulsory application to this contract of carriage.
8. In no event (including but not limited to fundamental breach of contract, breach of fundamental term of a contract and the negligence or gross negligence of the carrier whether arising from mis-delivery, failure to deliver or delay in delivery) shall the carrier be liable, whether at the suit of the party or parties contracting directly with the carrier, or at the suit of any third party and whether in contract or in tort, for indirect or consequential damage or for damages for the loss of sue or for the loss of earnings or profit.
9. The right to damages against the carrier shall be extinguished if an action is not brought within two years, calculated from the date of arrival of the goods at the destination or, in the case of non delivery, from the date on which the goods were shipped. Compulsory legislation may be applicable and this clause will be modified to comply.
10. The parties enter into this Agreement pursuant to 49 U.S.C. §14101(b)(1) and expressly waive, to the extent permitted by law, all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent that they conflict with this Agreement.
11. These Conditions shall be governed by the laws of the province of Canada where the goods originate where compulsorily applicable. In all other cases, including carriage from the U.S.A., by accepting the services provided under these Conditions, the Customer irrevocably attorns to the exclusive jurisdiction of the Province of Ontario and to the exclusive laws of Ontario.