



# **Model Truckload Motor Carrier/Shipper Agreement with Commentaries**

## **GENERAL INSTRUCTIONS FOR COMPLETION OF MODEL TRUCKLOAD MOTOR CARRIER / SHIPPER AGREEMENT WITH COMMENTARIES**

American Trucking Associations, Inc. (“ATA”) and the National Industrial Transportation League (“NIT League”) are pleased to provide the attached Model Truckload Motor Carrier/Shipper Agreement with Commentaries (“Model Agreement”) for use by motor carriers and shippers in structuring their contractual relationship. The Model Agreement is intended to serve as a starting point for negotiations and its use is purely **voluntary**.

Contracting parties may choose to use individual sections of the Model Agreement or the Model Agreement in its entirety for negotiation purposes. Provisions relating to rates, charges, and associated topics are left blank and must be individually negotiated. Likewise, provisions regarding limitation of liability and level of carrier insurance are left blank and should be completed via negotiation. The Model Agreement is designed to increase efficiency in negotiations, reduce transaction costs, and assist the parties in fairly allocating the risks and rewards of freight transportation. The Antitrust Division of the United States Department of Justice issued to ATA what is known as a “business review letter” recognizing that a Model Agreement will not likely reduce competition and stating that the Department had no present intention of challenging distribution or use of a Model Agreement.

### **Commentaries**

The Model Agreement must be tailored, via the negotiation process, to reflect the precise contractual relationship desired by the parties. To better understand the model provisions presented and their effect, Commentaries to certain sections are included in the Model Agreement. The Commentaries include background information and sometimes provide alternative language that can be used in the section discussed. The Commentaries are not intended to be a part of the completed contract and, as discussed below, should be deleted before the parties finalize their individual agreement.

### **Using the Model Agreement**

Parties should be careful to begin their negotiation process with the single, official version of the Model Agreement that is readily available on both the ATA and NIT League websites at [www.truckline.com](http://www.truckline.com) and [www.nitl.org](http://www.nitl.org). The cover page of the Model Agreement, which contains the ATA and NIT League logos and the copyright mark of the two organizations, is not intended to be a part of any negotiated final agreement and should be deleted from the parties’ final contract.

Each section of the Model Agreement should be carefully reviewed to determine whether the parties wish to utilize it and whether modifications to reflect the parties’ intent are needed. All blank spaces in Model Agreement sections that are used should be

completed with the agreed upon information. The Commentaries are not intended to be part of any final agreement and must be eliminated from individual contracts.

Individual motor carriers and shippers may not offer an altered version of the Model Agreement as the ATA/NIT League Model Agreement. Presentation of an altered Model Agreement as the ATA/NIT League Model violates copyright and trademark rights of those organizations and could be construed to constitute fraud.

### **Warning**

Because, as discussed above, the Model Agreement is formatted to readily allow alteration, parties must be vigilant to ensure that they are negotiating from the official ATA/NIT League Model Agreement. See above for website locations where the official Model Agreement may be found.

## MOTOR CARRIER/SHIPPER AGREEMENT

THIS MOTOR CARRIER/SHIPPER AGREEMENT (this "Agreement"), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a(n) \_\_\_\_\_ corporation, ("Shipper"), and \_\_\_\_\_ a(n) \_\_\_\_\_ corporation ("Carrier"). Shipper and Carrier are sometimes individually referred to herein as a "Party" and together as the "Parties."

WHEREAS, Shipper desires to hire Carrier to perform motor carrier transportation service for Shipper in accordance with the terms and subject to the conditions of this Agreement; and

WHEREAS, Carrier desires to perform motor carrier transportation service for Shipper in accordance with the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual agreements and provisions hereinafter set forth, the Parties hereby mutually agree as follows:

1. Term. This Agreement shall remain in full force and effect for a \_\_\_\_ year period beginning on the date first written above and continuing thereafter on a year-to-year basis. Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party, unless otherwise specified in this Agreement.

### COMMENTARY

The 30-day termination provision is subject to exception if otherwise agreed to by the parties. Some carriers and shippers may make major monetary investments and operation changes, including stationing personnel on the other's premises to meet specific requirements. In such instances, the 30-day period may not be fair and equitable in protecting the interests of the parties and should be modified. For longer term contracts, it may be beneficial to add a section dealing with termination of this Agreement if unexpected or unusual circumstances arise that change the expectations of the parties. This clause provides for an "evergreen" contract (i.e. one that continues indefinitely unless the parties take action to terminate it). An alternative form would be to establish an expiration date that ends the agreement unless the parties take action to extend its term. The evergreen option is commonly used, but in some instances, such as very long-term or complex contracts, a fixed expiration date may be useful.

2. Scope of Agreement. Carrier is a motor carrier under 49 U.S.C. 13102(12), is duly registered with the Department of Transportation pursuant to 49 U.S.C. 13902 and 13905 with a Motor Carrier Safety Rating of "\_\_\_\_\_", and will provide lawful and responsible transportation service to Shipper under contract. Shipper will tender Carrier freight for transportation. The scope of the service contemplated by the Parties is set forth in Appendix A. Carrier shall be an independent contractor of Shipper. As between the Parties, Carrier shall have the sole and exclusive responsibility for the costs and over the manner in which its employees and/or independent contractors perform the transportation service, including the equipment provided.

## COMMENTARY

This clause establishes the authority the carrier has to provide service, its safety rating, and its willingness to provide lawful and responsible service under contract. It also establishes that a shipper will utilize the carrier's service without interfering with the relationship between the carrier and its employees or independent contractors.

Under Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, *et seq.*, entities formerly categorized as common and contract carriers no longer exist and all carriers are simply identified as *motor carriers*, which may provide service under contract. It is no longer necessary for a motor carrier to have a permit as a contract carrier.

It is not necessary for shippers to identify a specific number of loads or lading to be tendered to carriers to meet the "*series of shipments*" as this requirement under previous law was abolished.

However, since the parties may have to make specific financial outlays or predicate operational changes based on the scope of the service contemplated, including, but not limited to, acquisition of additional or new types of equipment, or engagement of additional operations personnel, it would behoove the parties to set forth the scope of the operations in realistic terms in Appendix A. This may include establishing meaningful obligations regarding volume of traffic, equipment requirements, and other matters, and possible penalties for non-performance.

### 3. Rates, Charges, and Payment Terms.

- (a) Shipper shall pay Carrier, within \_\_\_\_\_ days of the shipment date shown on the invoice, the amounts calculated in accordance with the schedule of rates and charges attached hereto as Appendix B, including any written supplements thereto, and as otherwise set forth in this Agreement. No offsets may be taken against invoiced charges. Carrier shall apply Shipper's payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Carrier may assess a service charge of \_\_\_\_% per month (or the highest lawful rate, if less) for any delayed payments.
  
- (b) On billings to third parties, Shipper, as the contracting party with Carrier, will be responsible for all freight and related charges for transportation under this Agreement. As an accommodation to Shipper, Carrier shall bill a third party upon notice on the freight documentation the Parties utilize, but Shipper agrees to guarantee payment and stand as primary debtor. Carrier shall: (i) advise Shipper if third party payment is not made within thirty (30) days of billing; (ii) assign to Shipper any rights Carrier may have to collect freight charges from the third party; and (iii) cooperate with Shipper in any collection proceeding instituted by Shipper, with the understanding that Carrier will be reimbursed reasonable expenses of so doing. Shipper will pay the third party freight bill within thirty (30) days of the assignment provided above.

- (c) If Shipper does not pay the invoiced amounts, Carrier must commence civil action or final and binding arbitration proceedings to recover such invoiced amounts within eighteen (18) months of delivery or tender of delivery of the shipments involved. If Carrier alleges undercharges, or Shipper alleges overcharges, duplicate payment, or overcollection, notice of such claims or unidentified payments must be given within 180 days of receipt of the invoice and a civil action or arbitration proceeding must be filed within eighteen (18) months of delivery or tender of delivery of the shipments involved. The processing, investigation, and disposition of overcharge, unidentified payment, duplicate payment, or overcollection claims shall be governed by present federal regulations codified at 49 C.F.R. Part 378.

#### **COMMENTARY**

Payment within a reasonable period of time, without a unilateral offset, is necessary to ensure that a carrier achieves a level of cash flow sufficient to meet its contractual obligations. In determining the payment period, shipper and carrier should consider, among other things, the working capital needs of carrier and the marketplace in which shipper competes. A requirement for payment of freight charges within a specific period is without effect if there is no penalty for non-compliance. Carriers and shippers also may want to consider an incentive discount for early payment of charges.

The time limits for bringing a civil action or final and binding arbitration proceeding concerning overcharges, undercharges, etc. are consistent with current statutory provisions and would ensure uniformity between all contractual parties.

The reference to and use of the procedures embraced in 49 C.F.R. Part 378 for handling overcharges, etc. allows the parties to utilize a known and generally accepted process.

4. Freight Documentation. The Uniform Freight Documentation form set forth as Appendix D may be utilized by the Parties. The terms and conditions of this Agreement shall prevail over those appearing on that form or any other form(s) used by the Parties for the delivery of freight. Any form(s) used by the Parties shall only be used for the purpose of documenting the pick-up and delivery of freight. Either Party, at its option, may supply any document required by or referenced in this Agreement in either paper or electronic form (including, but not limited to, an electronically imaged, faxed, photocopied, or online posted version), and any such version shall be sufficient for all purposes under this Agreement. Unless specifically agreed to by the Parties, any joint movement involving another transportation entity to or from a point outside the U.S. shall not be considered as moving on a "through" bill of lading. Carrier agrees not to subcontract, broker, interline, or to use "substituted services" by rail or motor carrier without the specific approval of Shipper. If for any reason this is done without permission, Carrier shall be liable to Shipper for any cargo loss, damage, or injury to the same extent as if Carrier performed the service.

### COMMENTARY

The variety of bills of lading currently being used in the industry has increased and, because of different provisions, makes it difficult, if not impossible, for parties to understand what obligations are being undertaken on any given shipment. Further, there frequently are conflicts between bills of lading and contract terms. Since the intent of the contract is to spell out the terms and conditions of the parties' endeavor in a single document, the freight document should essentially serve as a receipt.

The increase in intermodal and international movements raises issues regarding the applicability of the Carmack Amendment and foreign laws and judicial processes. The "through" bill of lading provision is intended to limit the contract's applicability to the domestic portion of an international movement by the carrier to avoid such issues. Carrier and shipper can specifically provide for "through" movements if they so desire.

Carrier and shipper contract for the services set forth in the agreement. If substituted services through third parties are used without approval of shipper, carrier is made liable to shipper for cargo loss, damage, or injury to the same extent as if carrier performed the service. However, if substitute services are part of the overall transportation solution and agreed to in advance, carrier and shipper can specifically provide that each carrier in the transportation chain shall bear its portion of the risk as set forth in such agreed upon solution.

5. Insurance. Carrier shall maintain during the term of this Agreement (a) workers' compensation insurance on all employees, as required by applicable state law, (b) automobile and property damage liability insurance with limits of liability of not less than \$\_\_\_\_\_ per occurrence, (c) cargo insurance to cover damage to or loss of cargo in the amount of \$\_\_\_\_\_ per occurrence, and (d) general liability insurance with limits of liability of not less than \$\_\_\_\_\_ per occurrence. The required insurance shall cover the entire geographic scope in which the Carrier will operate under this Agreement and, as applicable, be "Broad Form." Upon request, Carrier will furnish Shipper with a certificate of insurance from a reputable insurance company evidencing such insurance. Carrier will request that its insurance company provide 30 days' advance notice to Shipper prior to cancellation of such insurance. Neither Party waives any right to subrogation it or its insurers may have arising out of service provided pursuant to this Agreement. Notwithstanding the foregoing, if Carrier meets all applicable federal requirements, Carrier may self-insure. Upon request, Carrier shall furnish Shipper with proof of self-insurance.

### COMMENTARY

The minimum insurance amounts required pursuant to 49 U.S.C. 13906 must be met.

The provision requiring carriers to request that notice of cancellation be sent to shippers 30 days prior to the cancellation of the required insurance will protect shippers.

Waivers of subrogation are precluded to prevent either party from avoiding the consequences of their own negligence or acts. In addition, a waiver of subrogation could possibly cause a loss of any insurance coverage.

If a carrier does not maintain "Broad Form" coverage, the parties should negotiate different terms.

6. Refused Shipment-Warehouseman Liability. If the consignee refuses the lading tendered by Carrier or if Carrier is unable to deliver the lading because of fault or mistake of Shipper or the consignee, or if Shipper advises and instructs Carrier to stop movement of the lading and to hold it in transit, Carrier's liability thereafter immediately shall be that of a warehouseman. The procedures which Carrier agrees to and will take as a warehouseman involve the use of ordinary care to keep the lading in a safe or suitable place or to store the lading properly. Carrier shall (a) attempt to give Shipper notice as soon as possible if the foregoing occurs, (b) place the lading in public storage, if available, unless Carrier receives contrary disposition instructions from Shipper within twenty-four (24) hours, and (c) if disposition instructions are not given by Shipper within ten (10) days of Carrier's initial notification to Shipper, Carrier may offer the lading for public sale. In the case of perishable lading, Carrier may dispose of the lading at a time and in a manner Carrier deems appropriate. Shipper will be responsible for storage costs and reasonable costs Carrier incurs in acting as a warehouseman. To the extent any sale or disposal revenues exceed the storage costs and the costs Carrier incurs as a warehouseman, Carrier shall remit the balance to Shipper. If Shipper gives Carrier timely disposition instructions, Carrier shall use any commercially reasonable steps to abide with such instructions. Shipper will pay Carrier's costs and any additional transportation costs Carrier incurs in doing so.

#### COMMENTARY

The procedures for handling freight as a warehouseman are normally covered by the bill of lading or state statutes in the absence of a private agreement. Since freight movements normally involve multiple states, procedures have been set forth to eliminate such variances and clearly allow the parties to know what will occur and the liabilities involved.

7. Cargo Liability.
  - (a) Carrier shall be liable to Shipper for loss or damage to lading occurring while it is in Carrier's possession, except to the extent such loss or damage is caused by an act of God or a public enemy, a public authority, an act of Shipper, or the inherent vice or nature of the lading. Carrier's possession of lading under this Agreement shall begin when Carrier has executed the freight documentation form for such lading and shall terminate upon the lading being tendered for delivery to Shipper's consignee.

[NOTE: The Parties should select either Option A or Option B. Option A provides for the statutory Carmack standard to apply. Under this option, Carrier generally is liable for the actual loss or injury to the cargo. Option B limits Carrier's monetary liability for cargo damage to the amount of cargo insurance maintained by Carrier under this Agreement.]

[Option A]

- (b) Carrier's liability for cargo loss and damage will be as described in the provisions of 49 U.S.C. 14706. The Parties may agree to released value rates, in Appendix B to this Agreement, that limit Carrier's liability to a specified amount.

[Option B]

- (b) Carrier's monetary liability will be limited to the amount of cargo insurance provided in Section 5 above. If Shipper asserts that the value of lading on a particular shipment shall exceed this amount, Carrier shall be advised twenty-four (24) hours before the time of tendering a load. Carrier may refuse the load or secure additional cargo insurance in the amount of liability Shipper claims, the cost of which shall be invoiced to Shipper as part of freight charges. Shipper also shall note any separately agreed value on the freight documentation form referenced in Section 4 above. If the freight Shipper tenders consistently exceeds the amount of cargo insurance provided in Section 5 above, the Parties shall agree in writing to an alternate cargo insurance amount, which will be reflected in freight charges otherwise assessed.
- (c) Claims for loss or damage to lading must be filed in writing by Shipper within nine (9) months from date of delivery, or scheduled date of delivery for lost lading, or in the absence of a scheduled delivery date, the filing period shall begin after a reasonable time has elapsed for delivery, and a civil suit or arbitration proceeding shall be commenced by Shipper within two (2) years from the date Carrier gives Shipper written notice Carrier is disallowing the claim or any part of it. Claims will be filed and resolved in accordance with federal regulations codified at 49 C.F.R. Part 370.
- (d) The measure of damages for loss of or physical damage to the cargo shall be the invoice value of the lading, or in the absence of an invoice, wholesale destination value. Carrier also shall be liable for the reasonable costs of the Shipper to mitigate its damages.
- (e) In no event shall Carrier be liable to Shipper or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless Shipper has informed Carrier in written or electronic form, prior to or when tendering a shipment or series of shipments to Carrier, of the potential nature and type of such damages, and Carrier specifically agrees in written or electronic form to accept responsibility for such damages. In no event shall Carrier be liable to

Shipper or anyone else for punitive or exemplary damages that relate to loss, damage or delay to a shipment.

### **COMMENTARY**

Carrier and shipper may select either Option A or Option B to address the liability of carrier to shipper for cargo loss, damage, and delay claims. Under Option A, the parties also should refer to Appendix B, Section 1, and its Commentary for protection of carrier from liability for “high value” commodities that exceed the parties’ expectations at the time they entered into the Agreement.

Option A incorporates the standard under existing Federal law (49 USC 14706), also known as the Carmack Amendment. Federal law provides that, in the absence of an agreement to the contrary, a carrier assumes full liability, without limit, for the actual loss or injury to property the carrier handles, subject to several well-established exceptions. Federal law also permits a carrier to limit its liability to a reasonable value established by written agreement with the shipper. If the carrier and shipper desire to limit the carrier’s liability, they should declare that the rates in Appendix B are released value rates that limit the carrier’s liability to \$\_\_\_\_\_. Carrier is responsible for damages that exceed its insurance coverage, unless carrier and shipper otherwise have agreed to released liability rates that limit carrier’s liability to a lesser amount.

Option B limits carrier’s monetary liability for cargo damage to the amount of cargo insurance maintained by carrier under this Agreement, unless a greater value is noted and accepted, in which case shipper would be assessed additional cargo insurance costs.

Limitation periods are consistent with acceptable and common periods within current industry practices.

Claim handling is to be made under the procedures codified in 49 C.F.R. Part 370, which procedures generally are acceptable to shippers and carriers.

The measure of damages may be negotiated, as necessary, to address factors specific to the shipper and carrier. Incidental, special and consequential damages ordinarily are recoverable by a shipper only if the carrier knows, or has reason to know, of the likelihood of such damages. This provision modifies that standard by providing that incidental, special and consequential damages are not recoverable by shipper unless carrier specifically agrees in writing to accept responsibility for such damages. The most common form of such damages are lost profits, overtime, and downtime. This provision adopts a formal process for shipper to notify carrier of the potential for these damages to occur, and for carrier to accept responsibility for such damages. The parties may need to modify these procedures to better address circumstances peculiar to their business procedures. Punitive and exemplary damages are rarely, if ever, recoverable under Federal law and are precluded by this provision.

8. Sealed Shipment. If Shipper loads and seals the lading in or on the trailer and Carrier does not have the opportunity to count the lading being loaded and the seal is intact upon delivery, Carrier shall be absolved from any liability for shortages or any damage to the lading except when proximately caused by independent action of Carrier. Such absolution of liability will also occur if (i) the seal is broken at the direction and under the supervision of an agent of a body politic, or (ii) trailers are preloaded and the adequacy of loading or count of such trailer is not practical by a representative of Carrier. Carrier agrees that if a seal is broken and an inspection made by an agent of a body politic, its operator or other representative will take all reasonable steps to secure the count, safety, and integrity of the lading. These steps will include requesting that the body politic reseal the trailer and/or make appropriate notation on the freight documentation form. Carrier may break the seal on a trailer if, upon Carrier's determination or that of its operator or other representative, it becomes reasonably necessary to do so to inspect, reposition, or protect the lading or Carrier's equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations. Shipper's consignee may not refuse delivery of a shipment solely because the seal on a trailer is broken.

#### **COMMENTARY**

"Shipper load and count" shipments are increasingly prevalent in carrier operations, and it is essential that the parties agree on the handling of such shipments.

The first provision essentially sets forth the black letter law governing such shipments.

With current concerns over homeland security, it is anticipated that there will be more inspections of loads in transit by security personnel. Such inspections should not default the protection of SL&C shipments afforded to carriers. Carriers and shippers are encouraged to have federal, state, and local authorities adopt resealing programs to protect the status of loads. In the absence thereof, shipper and carrier should agree on the mechanics of documenting a security inspection.

Specific mention is made that the break of seal in and of itself does not constitute a right of refusal by a consignee. This reflects the current status of the law which is often overlooked by consignees.

9. Salvage. Shipper will have the right reasonably to determine to repair, repackage, salvage, or scrap damaged lading. If Shipper elects to salvage lading, Shipper shall notify Carrier to return the lading to Shipper or allow Carrier to dispose of the lading. If salvage is sought, at least two independent bids shall be obtained, and the highest bid accepted. Any monies received in salvage, whether accomplished by Carrier or Shipper, will be credited, if applicable, against any amount Carrier may otherwise be responsible for in terms of the damages. Shipper may condition salvage upon the removal of all identifying marks or labels or the lading being permanently marked as "*damaged*" or with a similar notation. If Carrier is retained by Shipper to return the damaged lading for repair, salvage, or scrapping, Shipper agrees to pay Carrier freight charges otherwise

provided in this Agreement, or at a negotiated rate to be reduced to writing, without prejudice to recovery of such freight charges as damages. Damaged lading will not be scrapped unless repair and/or salvage is not feasible. If Carrier salvages the lading, Carrier may bill a reasonable charge for doing so against salvage receipts.

#### **COMMENTARY**

This clause attempts to define the respective rights and procedures in a fair, clear, and brief manner.

#### 10. **Indemnification**

- (a) Carrier shall defend, indemnify, and hold Shipper and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Carrier or its employees or agents, or (ii) Carrier's or its employees' or agents' violation of applicable laws or regulations.
- (b) Shipper shall defend, indemnify, and hold Carrier and its employees and agents harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) caused by and resulting from (i) the negligence or intentional misconduct of Shipper, its employees, or agents, or (ii) Shipper's or its employees' or agents' violation of applicable laws or regulations.
- (c) In the event such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) are caused by the joint and concurrent negligence of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses (including, without limitation, reasonable legal fees) shall be borne by each Party in proportion to its degree of fault.
- (d) In no event shall either Party be liable to the other under this Section 10 to the extent damages are incidental, consequential, special, punitive, or exemplary. Any indemnified party under this Section 10 shall promptly tender the defense of any claim to the indemnifying Party. Carrier's liability for cargo damage shall be governed by Section 7 above.

[NOTE: Each carrier needs to check with its insurer or its insurance policy to determine whether it is covered for contractual indemnification.]

#### **COMMENTARY**

Indemnification should be given on a mutual basis. "Negligence" is noted as a causation factor in lieu of "sole" or "gross" negligence as many accidents or incidents in the transportation industry may involve, in part, a combination of shipper, carrier, and third party negligence. Further, "gross" negligence is difficult to define and inappropriately excuses some negligence. Many states will not allow indemnification against one's own negligence and a party should not be required to do so.

In the case of joint and concurrent negligence, the parties will share damages in proportion to their respective degree of fault.

Incidental, consequential, special, punitive, and exemplary damages are excluded in this Section as such damages could possibly be substantial and beyond the contemplation or understanding of the parties in establishing freight charges and undertaking service requirements. To the extent the parties are willing to accept such liability, the circumstances of doing so should be by separate, specific agreement.

Since the indemnifying party has the duty to defend, the party seeking indemnification is obligated to tender defense of any claim on a timely basis to the indemnifying party so that an adequate defense may be prepared.

11. Hazardous Materials. Shipper shall identify any loads that contain Hazardous Materials, as defined in the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*, as amended, and the regulations of the U.S. Department of Transportation made thereunder, at least 24 hours in advance of tendering to Carrier. Not less than 12 hours prior to the scheduled pick-up time, Carrier shall either: (i) decline such load, or (ii) accept such load on terms and conditions identified by Carrier in such acceptance, which terms may include market rates and the pass through of any associated costs to Shipper. If Carrier accepts such load, Carrier represents and warrants that it is fully qualified and authorized to transport Hazardous Materials in the United States. Carrier and Shipper certify that they are familiar with U.S. laws and regulations applicable to transportation of Hazardous Materials and that they will comply with all such laws and regulations. Carrier further certifies that its employees, including drivers, have been trained and instructed in the proper method of transporting Hazardous Materials. Upon Carrier request, Shipper will provide a copy of the Material Safety Data Sheet for the Hazardous Materials.

#### **COMMENTARY**

If the service carrier will provided includes the regular transportation of hazardous materials, the parties may want to consider substituting the following clause in Section 11.

Hazardous Materials. Carrier acknowledges that the services to be performed under this Agreement include the transportation of Hazardous Materials, as defined in the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*, as amended, and the regulations of the U.S. Department of Transportation made thereunder. Carrier represents and warrants that it is fully qualified and authorized to transport Hazardous Materials in the United States. Carrier and Shipper certify that they are familiar with U.S. laws and regulations applicable to

transportation of Hazardous Materials and that they will comply with all such laws and regulations. Carrier further certifies that its employees, including drivers, have been trained and instructed in the proper method of transporting Hazardous Materials. Upon Carrier request, Shipper will provide a copy of the Material Safety Data Sheet for the Hazardous Materials.

12. Legal Restraint or Force Majeure. In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the running of all periods of time mentioned herein and the performance of all obligations required herein shall be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. Carrier shall be permitted an extension period equal to the period of suspension to complete shipments adversely affected by the suspension. No liability shall be incurred by either Party for damages resulting from such suspensions.

**COMMENTARY**

This clause is commonly accepted in current shipper-carrier contracts and is important to include because of homeland security measures now being taken in response to terrorism threats.

13. Business and Employment Opportunity. Shipper agrees to notify Carrier twenty-four (24) hours before tendering any load that would subject Carrier to regulation under any non-discrimination laws, rules, orders, and regulations of governmental authorities, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, and the rules and regulations promulgated thereunder, the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Act of 1974. If Carrier accepts such a load, the Parties agree to comply with any applicable non-discrimination laws, rules, orders, and regulations.

**COMMENTARY**

This clause, apart from any social justice considerations, will satisfy certain contracting requirements imposed on carriers and shippers hauling government freight or otherwise doing business with the government.

14. Notices. Any notice required or permitted to be given under this Agreement, unless otherwise indicated, shall be deemed sufficiently given if it is delivered by hand or sent by prepaid mail, registered or certified, return receipt requested, by a nationally recognized overnight courier, or facsimile transmission (with confirming copy sent first

class mail) if sent to the address or fax number and to the attention of the individual noted in the signatory provision hereof.

15. Captions. The captions set forth in this Agreement are for convenience only and shall not be considered a part of this Agreement nor affect in any way the meaning of the terms and provisions hereof.
16. Successors and Assigns; Other Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by either Party without the written consent of the other Party, except to any wholly-owned subsidiary of such Party and, except in the case of Carrier, an assignment in connection with the sale of substantially all of the assets of Carrier or merger by Carrier with or into another entity.

#### **COMMENTARY**

Two exceptions to written consent are set forth to reflect more common occurrences in the marketplace.

17. Entire Agreement. This Agreement and the attached Appendices constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed, or implied, with respect to the subject matter hereof.
18. Amendments. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.
19. Severability. Any term or provision of this Agreement that is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.
20. Waiver. No waiver of any right, power, or privilege hereunder shall be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.
21. Counterparts. This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
22. Governing Law. The Parties desire that the provisions of this Agreement will have precedence over any federal or state provisions governing or dealing with the specific provisions of this Agreement. The Parties agree that pursuant to 49 U.S.C. § 14101(b)(1) they expressly waive any and all rights and remedies under the Interstate Commerce

Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated thereunder, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, et seq. (the "Acts") that are inconsistent with the provisions of this Agreement. No Party shall challenge any provision of this Agreement on the ground that any such provision or provisions violates the waived rights and remedies under the Acts. To the extent no conflicts exist with this Agreement or federal law, the law of the State indicated in the Shipper's address in the signatory provision hereof shall apply.

#### **COMMENTARY**

To make the Agreement as inclusive of the parties' positions as possible, the provision gives the terms of the contract precedence over any federal or state provisions and a specific waiver is set forth in accordance with 49 U.S.C. § 14101(b)(1). In some instances the law of the State of the shipper's domicile may be unfavorable. Thus, it could be advisable for a specific State to be identified.

23. Dispute Resolution. The Parties agree that this Agreement is being entered into in good faith and that if a dispute arises in its application or interpretation that:
- (a) They shall attempt to resolve said dispute between themselves or upon mutual agreement by the intervention of an experienced mediator and upon the terms and cost allocation agreed upon.
  - (b) If a dispute is not resolved voluntarily, good faith considerations shall be given to submitting the dispute to final and binding arbitration under the Commercial Rules of the American Arbitration Association before a single arbitrator at a point mutually agreed upon or if no point is agreed upon at the offices of the Association which is approximately equal distance from the headquarters of the Parties. The award of the arbitrator may be enforced in any court of competent jurisdiction.
  - (c) If arbitration is not agreed to, or if the dispute involves a remedy not otherwise available in arbitration such as, but not limited to, injunctions, criminal penalties, or certain equitable relief, civil action may be pursued subject to the following: (i) jury trials are waived by the Parties; (ii) service by certified mail to the persons specified as being entitled to notice under this Agreement and to the address shown shall constitute valid and binding service of process; and (iii) jurisdictional issues as to state or federal jurisdiction and forum non-conveniens are not waived.
  - (d) Any disputes which arise on movements to, from, or within Mexico and/or Canada which cannot be resolved between Carrier and Shipper shall be resolved by final and binding arbitration as provided in Section 23(b) above.

#### **COMMENTARY**

This clause attempts to provide for the most effective, least costly, and undisruptive manner possible to resolve disputes.

If the parties cannot settle a dispute between themselves, voluntary mediation is invited, recognizing that mediation can only be successful if the parties approach it voluntarily.

Final and binding arbitration also is offered as a voluntary alternative dispute resolution technique, except in the case of disputes involving international movements, where it is made mandatory. Arbitration of any disputes which arise on movements to, from, or within Mexico and/or Canada will eliminate the need to deal with the multiple laws, rules, and regulations related to judicial and administrative proceedings in the two foreign countries, including enforcement proceedings.

If arbitration is not agreed to or, in some instances, if a specific remedy is sought and not available under arbitration, civil action may be pursued. Jury trials are waived, a simplified service of process procedure is provided, and jurisdictional issues are not waived.

24. Confidentiality. The Parties shall keep in confidence and not disclose to any third party (a) the terms of this Agreement, and (b) any confidential or proprietary information either learns about the other Party, such as, but not limited to, the rates, value, origin, destination, or consignee of any shipment made hereunder. The Parties may disclose such terms and information to the extent required by law, to obtain financing, to substitute service providers to the extent necessary to provide such substitute service, or to auditors retained for the purpose of assessing the accuracy of freight bills.
25. No Use of Name. Neither Party may use the other's name, trademarks, or trade names, or those of its subsidiaries or affiliates, in any manner, especially advertising, without the other's expressed written consent, which may be withheld in such Party's sole discretion.
26. Compliance with Laws and Regulations. The Parties shall at all times comply with all applicable federal, state, municipal, and provincial laws, rules, and regulations including, but not limited to, the federal and state safety regulations. To the extent this Agreement or any services provided hereunder shall conflict with such laws, rules, and regulations, this Agreement and the services provided hereunder shall be modified to comply with such laws, rules, and regulations, and the Parties shall not be deemed in breach of this Agreement or suffer any liability or penalty for compliance with such laws, rules, and regulations. In the event Carrier, through no fault of its own, is delayed or removed from service by or because of an inspection by any body politic, Carrier shall not be deemed in breach of this Agreement, nor shall it suffer any liability or penalty under the terms of this Agreement.
27. Commentaries. Under no circumstances shall any of the commentaries to this Agreement be considered a part hereof.

**\*Remainder of Page Intentionally Left Blank\***

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by a duly authorized officer effective as of the date first above written.

**CARRIER**

**SHIPPER**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**INFORMATION FOR NOTICES**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

**COMMENTARY**

The signatories must have the authority to make the promises contain in this Agreement. This authority may come from the office or position held by the signatory or a specific grant of authority given to the signatory by the company's board of directors.

**SCOPE OF SERVICE**

**COMMENTARY**

The service terms contained in a motor carrier/shipper agreement will vary substantially depending on the types of services being provided and the particular circumstances of the carrier-shipper relationship. Service terms should include as much detail as possible so that each party understands its rights and obligations. The following are some of the issues that should be considered when drafting service terms:

- ? description of commodities to be handled
- ? types and specifications of equipment to be used in performing the transportation services;
- ? minimum and/or maximum number of loads to be tendered;
- ? loading and unloading services to be performed, if any;
- ? geographic scope of service;
- ? responsibility for engaging border brokers if deliveries will not be made to points in Mexico and/or Canada;
- ? special requirements and restrictions if hazardous waste and/or materials will be transported;
- ? safety requirements;
- ? technology requirements for transmitting information and documents electronically;
- ? procedures for reporting delayed shipments;
- ? on time delivery standards;
- ? billing procedures and payment methods;
- ? procedures for performance reviews;
- ? procedures for tender of freight;
- ? specific pick-up and delivery requirements;
- ? procedures for authorizing a return or reconsignment;
- ? delivery confirmation requirements;
- ? on site offices;
- ? security;
- ? trailer spotting; and
- ? tracking and tracing requirements.

The accessorial and miscellaneous charges in Appendix B may need to be modified depending on the specific service terms agreed upon.

**FREIGHT CHARGES**  
**ACCESSORIAL and MISCELLANEOUS CHARGES**

1. Basic Freight Charges. The Parties agree that Carrier shall be paid for its transportation services in accordance with the attached price list, which can only be changed by the written agreement of the Parties. The attached price list applies only to the commodities identified in this Agreement and assumes that Shipper will tender and Carrier will transport only those commodities. If no commodities are specifically identified in this Agreement or if Shipper tenders commodities other than those identified in this Agreement, Shipper shall notify Carrier at least twenty-four (24) hours before the time of tendering a load that has a value exceeding \$\_\_\_\_\_, and Carrier shall have the right to refuse any such load.

**COMMENTARY**

A shipper and carrier may, or may not, specifically identify the commodities to which the Agreement applies. Typically, however, a carrier quotes rates to a shipper based on an understanding that specific commodities are being transported and the general value of those commodities. This provision protects a carrier in the event a shipper tenders a different commodity with a much higher value than the parties understood when they entered into the Agreement, by requiring the shipper to notify the carrier in advance of any "high value" shipments. The parties should insert a dollar amount that reasonably estimates the full actual value of the highest value commodity that shipper expects to tender under this Agreement. Protection against "high value" shipments is not necessary if the parties use "released value" rates, which are described in the Commentary to Section 7(b), or select Option B in Section 7, which limits carrier's monetary liability for cargo damage to the amount of cargo insurance maintained by carrier.

2. Mileage Computation. If any payment is specifically based on a mileage basis, mileage will be determined by the practical mileage route determined by the following software\_\_\_\_\_. New versions of this software will not automatically be adopted under this Agreement, and must be specifically agreed to by the Parties in writing.

If governmental restrictions prescribe specific routes to be used or avoided because of the size and/or weight of the shipment, the nature of the lading being transported, or there exist unusual road conditions, Shipper will pay the additional mileage required to complete delivery. If freight charges are not described on a mileage basis, the following mileage charge may be assessed by Carrier for excess mileage: \$ \_\_\_\_\_ per mile.

**COMMENTARY**

Payment on the basis of practical mileage routes is provided because these routes allow for more expedited movement of freight to meet the increasing demands of shippers for scheduled pickups and deliveries, just-in-time movements, and the safe use of more responsive equipment. From a public relationship standpoint, carrier and shipper also should desire to direct traffic over routes more practical and safe for truck traffic.

3. Fuel Surcharge. Freight charges will be subject to a fuel surcharge which will be billed as a separate charge on freight bills. The charge will be adjusted up or down each Monday by the cost per mile adjustment listed on the matrix attached as Appendix C.

**COMMENTARY**

In ordinary situations, carriers are expected to recover their costs through their transportation rates. The fluctuating price of fuel, however, can add significant costs to carriers. A fuel surcharge is the most common option to address volatile fuel prices during periods of high fluctuation in fuel prices. If the shipper agrees to assume this risk, it also may be appropriate for the shipper to request a fuel rebate if fuel prices fall below a specified level. In lieu of fuel surcharges and rebates, the parties may elect to rely upon the 30-day contract termination provision of the Agreement. Appendix C contains examples of fuel surcharge and rebate programs.

4. Applicability to Commercial Zone.

- (a) If rates are based on zip codes as a territorial description, they shall include the geographical area encompassed by the zip code destinations of the United States Postal Service.
- (b) If rates are specified to a particularly stated origin and/or destination, they shall not include or apply the commercial zone of the points.

If rates are intended to include commercial zones, the Parties initial and agree that the commercial zone will be determined as set forth in 49 C.F.R. Part 372. Carrier \_\_\_\_ Shipper \_\_\_\_

5. Payments. All payments, whether involving a domestic or international shipment shall be made in U.S. currency and at U.S. rate of exchange.

6. Congestion Security and Insurance Surcharge. Recognizing that certain geographical areas of operations involve extreme congestion or delays for homeland security hindering efficient and economical operations, Shipper agrees to pay the following congestion charges which will be listed as a separate line item on freight bills Carrier submits.

- (a) \$ \_\_\_\_\_ for each shipment originating from or destined to (i) New York City, New York; Long Island, New York, and (ii) the commercial zone of each, including all areas within the zip codes ranging from 10001 through 11999.
- (b) \$ \_\_\_\_\_ for each shipment originating from or destined to Los Angeles, California and its commercial zones and zip codes ranging from \_\_\_\_\_ to \_\_\_\_\_.
- (c) All export, import, or coastwise shipments which Carrier picks up and/or delivers direct from or to an ocean going vessel or barges shall be subject to a charge of \$ \_\_\_\_\_ and shown as a separate charge on the freight bill.
- (d) All shipments which move through an entry point to Canada and/or Mexico shall be subject to a charge of \$ \_\_\_\_\_ and shown as a separate charge on the freight bill.

- (e) If the insurance cost of Carrier's auto liability insurance and/or cargo liability insurance increases by more than \_\_\_\_\_% at any time during the term of this Agreement, Shipper agrees that Carrier may bill Shipper the following as a separate surcharge on the following basis: \_\_\_\_\_
- 
- 

#### **COMMENTARY**

Ground traffic congestion in some regions may render uniform national pricing inappropriate. This can be addressed by negotiating separate rates for congested areas, or by assessing a congestion surcharge. Section 6(a)-(d) is an example of how to implement a congestion surcharge.

Insurance costs ordinarily will be factored into the negotiated transportation rate. Occasionally, however, insurance premiums may spike unexpectedly and it is desirable to protect carrier against this loss. In this circumstance, it may be desirable to assess an insurance surcharge. An insurance surcharge typically should not be necessary in contracts with a term of one year or less. Even then, the parties may choose to rely upon the 30-day termination provision to protect carrier. Section 6(e) is an example of how to implement an insurance surcharge.

7. Detention of Trailer With Tractor. Upon Carrier's offering of a trailer with tractor for loading or unloading, Shipper or Shipper's consignee, as the case may be, shall be allowed, without charge, \_\_\_\_\_ hours to complete such loading or unloading and release the equipment for dispatch. If Shipper or Shipper's consignee fails to complete the loading or unloading and release the equipment for dispatch within the \_\_\_\_\_hour period, Shipper shall pay Carrier a detention charge of \$\_\_\_\_ per hour for each hour or fraction thereof in excess of the \_\_\_\_\_-hour period, up to a maximum of \$\_\_\_\_ per twenty-four hour period following the expiration of the \_\_\_\_\_-hour period. Shipper shall use the trailer with tractor for the sole purpose of loading and/or unloading the lading within the scope of this Agreement.

#### **COMMENTARY**

Responsible carriers and shippers have recognized that (i) efficient and economical motor carriage is predicated on freight moving over the highways, and (ii) operators are demanding that excessive delays at the docks be resolved. Reasonable detention charges are necessary to encourage efficient loading and unloading practices. The detention period should be determined based on the specific circumstances of the shipper-carrier relationship.

8. Detention of Trailer Without Tractor. Upon Carrier's offering of a trailer without a tractor for loading or unloading, Shipper or Shipper's consignee, as the case may be, shall be allowed \_\_\_\_\_ hours to complete such loading or unloading. If Shipper fails to tender the trailer to Carrier, either loaded and ready for dispatch on behalf of Shipper or unloaded and ready for dispatch by Carrier as it desires within the \_\_\_\_\_ hour period, Shipper agrees to pay Carrier a detention charge of \$\_\_\_\_ per hour for each hour or fraction thereof in excess of the \_\_\_\_\_ hour period, up to a maximum of \$\_\_\_\_ per twenty-four hour period following the expiration of the \_\_\_\_\_ hour period. Shipper shall use the trailer without a tractor for the sole purpose of loading and/or unloading the lading within the scope of this Agreement.

### COMMENTARY

The trailers of carriers must be used in the transportation of freight and not as storage vehicles if transportation pricing and costs are to be reasonable. This provision will encourage the correct use of trailer equipment.

9. Tractor Ordered and Not Used. If Shipper requests that a tractor with operator be made available and cancels its request, Shipper shall pay Carrier a charge of \$\_\_\_ per mile for each mile the tractor and driver traveled to be available for Shipper before Carrier was notified, if at all, plus \$\_\_\_ per hour until the tractor is re-dispatched, up to an aggregate maximum of \$\_\_\_. If a tractor and operator are not used within \_\_\_ hours of the time they are made available to Shipper, Carrier shall have the right to re-assign its tractor and operator and collect the charges set forth above. In no event shall Shipper use such tractor and operator for a period greater than \_\_\_\_\_, without the written authorization of Carrier.
10. Determination of Detention Period. For purposes of determining the number of hours and/or days that a tractor, trailer, or operator is detained by Shipper or Shipper's consignee for loading or unloading, Carrier may use, in its reasonable discretion, any reliable method of determining the date and time that a tractor, trailer, or operator is offered for loading or unloading including, without limitation, a signed bill of lading or delivery receipt, Qualcomm report, satellite communication, or on-board tracking device. Holidays and weekends shall be counted in determining the length of any detention period.

### COMMENTARY

If they desire, the parties may agree on a single method of determining the detention time period. They also may exclude holidays and/or weekends in determining the length of any detention period.

11. Reconsignment. If Shipper reconsigns or otherwise changes the destination of a shipment prior to delivery, the applicable rate shall be the rate that would be applied had Carrier been originally directed to deliver the shipment to the new destination via the location where the shipment was located at the time it was reconsigned, plus a reconsignment charge equal to the greater of \$ \_\_\_\_\_ or \$ \_\_\_\_\_ per additional mile required by virtue of the reconsignment. If a shipment is reconsigned or otherwise assigned a new destination at the time of delivery, the applicable rate shall be the rate that would apply to a new shipment from the point of delivery to the new destination, and Carrier shall bill for the reconsigned shipment as though it were two separate deliveries.
12. In-Transit Stop-Off / Drop Charges. A single shipment may be stopped at the direction of Shipper for partial loading or partial unloading; provided, however, that in the event of any in-transit stop at the direction of Shipper or Shipper's consignee, Shipper shall pay Carrier, in addition to other freight charges due (a) \$ \_\_\_\_\_ per mile required to be deviated from the most practical route otherwise to be traversed from origin to destination and (b) \$ \_\_\_\_\_ per hour or fraction thereof which is taken per partial loading or unloading, with a total minimum charge of \$ \_\_\_\_.
13. Tracking and Tracing. Carrier, to the best of its capabilities, shall make available in-transit load position and related load delivery status and tracing information. For information provided by Carrier in response to Shipper's inquiry by telephone, e-mail, or other method requiring personal

contact and response, Shipper shall pay an amount equal to \$ \_\_\_\_\_ per usage, after \_\_\_\_\_ uses per load.

**COMMENTARY**

While the responsible carrier will be tracking loads to help meet shipper requirements, forwarding such information upon individual request involves a cost to the carrier that may not be substantial on an occasional, individual inquiry basis, but can be substantial in the aggregate. Costs for multiple inquires generally are not contemplated in the pricing of service. Thus, a reasonable charge for excessive use of the service, which is by choice, appears appropriate. The parties may agree that the provisions of this Section shall not apply if a load is delayed beyond an agreed upon time.

14. C.O.D. Shipments. Carrier shall accept shipments with C.O.D. charges to collect if Shipper advises Carrier of the need for such service at the time of offering a load and checks the applicable box on the freight document the Parties have agreed to use. Carrier shall only accept money orders or certified checks from consignees unless Shipper otherwise indicates acceptance of an uncertified check. Carrier shall remit to Shipper the collection within fifteen (15) days of delivery. Shipper will pay Carrier a \$ \_\_\_\_\_ collection charge for each collection shipment.

**COMMENTARY**

"Cash" has been eliminated as acceptable payment due to concern for the safety of the operator who might be on the road with substantial sums of money.

15. Loading and Unloading. If the services Carrier agrees to perform under this Agreement include loading and unloading, Carrier only shall be responsible for loading and unloading to the extent such services can be physically performed without mechanical assistance.

If Shipper or Shipper's consignee requires the use of a lumper (third-party loader or unloader), Shipper will be responsible for the payment of such lumping or guarantee the payment of any actual charges Carrier may incur and pay Carrier an administrative fee of \$ \_\_\_\_.

If any loading and/or unloading is done by an operator of Carrier beyond the tailgate, including sorting or stacking or similar service, Carrier will be paid \$ \_\_\_\_\_ per hour or fraction thereof for such service, with a minimum charge of \$ \_\_\_\_.

**COMMENTARY**

Operators of carrier equipment are generally not trained or physically qualified to perform loading and unloading services, and such services curtail the number of hours they can lawfully and safely drive. Shipper personnel and/or lumpers should be primarily responsible for these functions. To the extent operators are involved in loading and unloading or the carrier is involved in utilizing a lumper at a shipper's or consignee's direction, there should be some reasonable payment or reimbursement to the carrier.

16. Billing Weight. If freight charges are to be assessed in whole or part on billing weights, such weights shall be based on scale weight except that uniform or standard weights may be billed at average weight subject to verification by Carrier. Weight shall include protective materials used by Shipper in preparing the lading for shipment.

17. Exclusive Use of Vehicle. If the freight Shipper tenders does not fill the capacity of the trailer Carrier furnishes and additional freight of another shipper may be hauled without jeopardizing the integrity of the freight Shipper tendered, Carrier may utilize such additional freight unless Shipper indicates that exclusive use of the vehicle is desired. Carrier may assess a \$\_\_\_\_\_ charge if Shipper requests exclusive use of the trailer.
18. Permits. Carrier shall secure any permits for any over-dimensional or overweight load and Shipper agrees that Carrier may bill Shipper the actual cost of any permits or those costs for the use of any required escort vehicles. If the over-dimensional or overweight movement requires the payment of tolls over normal truckload tolls, Shipper shall absorb the difference in charges.
19. Redelivery Charges. If a delivery cannot be accomplished through no fault of Carrier, Carrier shall notify Shipper and request redelivery instruction from Shipper, and if redelivery is made, the following charges may be assessed to Shipper:
- |     |                          |          |
|-----|--------------------------|----------|
| (a) | Same day redelivery      | \$ _____ |
| (b) | Overnight detention      | \$ _____ |
| (c) | Operator per diem charge | \$ _____ |
| (d) | Redelivery charge        | \$ _____ |
- If delivery cannot be accomplished within \_\_\_ hours, Carrier shall assume the role of a warehouseman as to such lading.
20. Trailer Pools. If Shipper desires to have trailers stationed at a facility for convenience in loading and unloading, the Parties will negotiate in good faith on the number of vehicles to be assigned and Shipper agrees that if a trailer is not used in transportation for Shipper, without fault of Carrier, for a period in excess of \_\_\_\_\_ days, Shipper will pay Carrier \$ \_\_\_\_\_ per day until usage occurs.
21. Forwarding and Documentation Services. On any international or coastal intermodal service, Shipper shall be responsible for any costs involved in forwarding and documentation services.
22. Split Pickups on Shipper Premises. If Carrier is required to make pickups at two or more sites on a premises, an additional charge of \$ \_\_\_\_\_ per pickup, exclusive of the initial pickup will be assessed to Shipper.
23. Proof of Delivery. If a copy of a signed bill of lading, or other document, is required as a prerequisite to payment of freight charges, Carrier will provide same subject to a charge of \$ \_\_\_\_\_ per occurrence.

#### **COMMENTARY**

Because a signed bill of lading or other document is not normally a prerequisite to payment of freight charges, carriers providing this service to meet a particular shipper's requirement should be paid a nominal sum to cover the cost of the service.

24. Movements Under Certain or Special Bonds or Special Permits. If Shipper tenders a shipment moving under a Custom Bond, Carrier shall charge Shipper \$ \_\_\_\_\_. If a body politic requires a bond or special permit, Carrier will assess the cost of such bond or permit to Shipper.

25. Tarping. If Shipper requests or requires tarping of a load, Carrier will charge Shipper as follows:

- |     |                       |          |
|-----|-----------------------|----------|
| (a) | 480 – 965 sq. ft.     | \$ _____ |
| (b) | 966 – 1440 sq. ft.    | \$ _____ |
| (c) | 1441 and over sq. ft. | \$ _____ |

**FUEL SURCHARGE PROGRAM**

The fuel surcharge shall be determined by reference to (i) the U.S. Department of Energy ("DOE") diesel fuel price (i) national average, or (ii) regional PAD average from which the shipment originates if the price per gallon of diesel fuel in such regional PAD is more than \$0.05 higher than the national average. Shipper will pay a fuel surcharge of \$\_\_\_\_ per mile for each \$\_\_\_\_ per gallon increase above a base of \$\_\_\_\_ per gallon.

Therefore, the following schedule will apply:

<u>DOE Price</u>	<u>Surcharge</u>	<u>DOE Price</u>	<u>Surcharge</u>
Up to ____	None	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile

The same formula will be used should the index reach or exceed \$\_\_\_\_. Adjustments will be made each Monday based upon the weekly DOE price .

**COMMENTARY**

In ordinary situations, carriers are expected to recover their costs through their transportation rates. The fluctuating price of fuel, however, can add significant costs to carriers. A fuel surcharge is the most common option to address volatile fuel prices during periods of high fluctuation in fuel prices. If the shipper agrees to assume this risk, it also may be appropriate for the shipper to request a fuel rebate if fuel prices fall below a specified level. In lieu of fuel surcharges and rebates, the parties may elect to rely upon the 30-day contract termination provision of this Agreement. The following fuel rebate program could be utilized in connection with the fuel surcharge program above.

Carrier will pay a fuel rebate of \$\_\_\_\_ per mile for each \$\_\_\_\_ per gallon decrease below a base of \$\_\_\_\_ per gallon. Therefore, the following schedule will apply:

<u>DOE Price</u>	<u>Surcharge</u>	<u>DOE Price</u>	<u>Rebate</u>
Down to ____	None	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile
____ to ____	____ /mile	____ to ____	____ /mile

The same formula will be used should the index reach or exceed \$\_\_\_\_ and reach or fall below \$\_\_\_\_. Adjustments will be made each Monday based upon the weekly DOE price .

## **APPENDIX D**

**[Parties may attach the following Uniform Freight Documentation as Appendix D  
or substitute their preferred freight documentation]**

(To be Printed on White Paper)

# UNIFORM FREIGHT DOCUMENTATION

**ORIGINAL – NOT NEGOTIABLE**

Carrier's Pro No. \_\_\_\_\_  
Shipper's Bill of Lading No. \_\_\_\_\_  
Consignee's Reference/PO No. \_\_\_\_\_  
Carrier's Code (SCAC) \_\_\_\_\_

Name of Carrier \_\_\_\_\_



RECEIVED, subject to individually determined rates and contract terms that have been agreed upon in writing between the carrier and shipper:


From: \_\_\_\_\_ Date: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, which said carrier agrees to carry to destination.

Consigned to \_\_\_\_\_  
On Collect on Delivery Shipments, the letters "COD" must appear before consignee's name

Destination Street \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Delivering Carrier \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Additional Shipment Information \_\_\_\_\_

Collect on Delivery \$ _____	C.O.D. charges Shipper 
Street _____ City _____ State _____	To be paid by Consignee 

Hdlg. Units No. Type	Packages No. Type	 HM	Kind of Package, Destination of Articles, Special Marks and Exceptions (Subject to correction)	Weight (Subj to Correction)	Class or Rate Ref. (For Info. Only)	Cube (Options)


 Mark "X" to designate Hazardous Materials as defined in DOT Regulations.

**NOTE (1)** Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows:

"The agreed or declared value of the property is specifically stated by the shipper to be not exceeding \_\_\_\_\_ per \_\_\_\_\_."

**NOTE (2) Liability Limitation for loss or damage on this shipment may be applicable. See 49 U.S.C. § 14706(c)(1)(A) and (B).**

**NOTE (3)** Commodities requiring special or additional care or attention in handling or stowing must be so marked and packaged as to ensure safe transportation with ordinary care.

**Freight charges are  
PREPAID  
Unless marked collect.  
CHECK BOX  
IF COLLECT **

Notify if problem enroute or at delivery \_\_\_\_\_ (for information purposes only).  
Name Fax No.

Tele No.

Send freight bill to \_\_\_\_\_  
Company Name City Street State Zip

Shipper \_\_\_\_\_ Carrier \_\_\_\_\_  
Per \_\_\_\_\_ Per \_\_\_\_\_ Date \_\_\_\_\_

## HAZARDOUS MATERIAL CERTIFICATION

Shipper Certification	Carrier Certification
This is to certify that the above named materials are properly classified, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the DOT. Per: _____ Date: _____	Carrier acknowledges receipt of packages and required placards. Carrier certifies emergency response information was made available and/or carrier has the DOT emergency response guidebook or equivalent document in the vehicle. Per _____ Date _____ Package Nos. _____

### **COMMENTARY**

Because the contract and/or appendices cover the terms and conditions normally covered in a bill of lading, the freight documentation essentially becomes a "receipt". Parties may desire to continue to use established bill of lading forms, but should be aware that such forms will not affect their contractual relationship.