

# CSX TRANSPORTATION

## PRIVATE PRICE LIST & CONTRACT GENERAL TERMS AND CONDITIONS

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### NOTICE

THESE TERMS ARE APPLICABLE TO  
CONFIDENTIAL RAIL TRANSPORTATION  
CONTRACTS PURSUANT  
TO 49 U.S.C. § 10709

***Confidential Information***



Published: \_\_\_\_\_

## **GENERAL TERMS AND CONDITIONS**

### **1. Application**

These General Terms and Conditions (the "Terms") are applicable to any rail transportation service requested pursuant to a private non-public price quoted by CSXT that is made available to a potential customer ("Industry") by CSXT for immediate use but not yet incorporated into a contract (an "Open Price Authority"). These Terms, together with a Uniform Straight Bill of Lading or similar shipping instruction (collectively, the "Shipment Instruction") and the price and terms of the applicable Open Price Authority, upon acceptance by Industry, constitute a contract between Industry and CSXT for the single shipment of freight over CSXT's rail network described in the Shipment Instruction (the "Contract"). By tendering or causing the tender of a shipment of freight with a Shipment Instruction referencing an Open Price Authority, Industry accepts and agrees to the provisions of the Contract as to that shipment. CSXT may terminate this Contract and the Open Price Authority upon notice to Industry.

### **2. Transportation Particulars**

CSXT agrees to provide rail contract carriage transportation service with reasonable dispatch over its rail network pursuant to Carrier determined routes for Industry at the rates and subject to the additional terms and conditions set forth in the Contract. Prices are Limited Liability Prices and are based on the limited liability terms set forth in the Section 14, Damage Claims below. If full value liability for the commodity is desired, Customer must satisfy the requirements of Section 7.1 of Publication CSXT 8100 and obtain a full value freight rate.

Industry represents and warrants to Carrier that, as of the time of tender of the Commodity for transportation, Industry is the owner of the Commodity or that Industry has been duly authorized for or on behalf of the owner of the Commodity to arrange for the transportation of the Commodity, including without limitation, the authority to agree to the provisions of this Contract limiting CSXT's liability for any loss, damage or delay to the Commodity and/or any indemnifications and/or releases included in or incorporated into this Contract. Industry agrees to release, indemnify and hold Carrier harmless for any and all claims, demands, judgments, causes of action, settlements and/or attorney's fees resulting from Industry's breach of the warranty in this paragraph. Industry shall not settle any claim, demand or cause of action without the prior written consent of Carrier, which consent shall not be unreasonably withheld.

### **3. Description and Inspection**

Prior to each tender of freight, Industry or its agent shall provide the originating carrier with a Shipment Instruction. The description of commodity(s) on the Shipment Instruction shall conform to the Standard Transportation Commodity Code (STCC) and show the appropriate STCC Number(s). When different prices are provided for the same commodity(s) according to the type of packing or package, the type of packing or package must be shown. Carrier(s) reserve the right to inspect shipments to determine applicable prices. When the commodity(s) are found to be incorrectly described, freight charges will be collected according to the proper description and pursuant to the applicable agreement, publication or other document. If the Open Price Authority included a reference number, Industry will add the following to each Shipment Instruction: "Subject to Contract CSXT" followed by that reference number.

### **4. Shipping Limitations**

The name of only one consignor, one origin, one consignee and one destination shall appear on a Shipment Instruction.

## **5. Loading and Unloading**

Industry and its agents shall be responsible for the loading and unloading of cars in accordance with these Terms, including all terms, conditions, all appropriate AAR commodity loading publications, and all applicable governmental, industry and Carrier policies.

## **6. Car Supply**

If a rail carrier is to furnish cars, such carrier will do so on a non-guaranteed basis subject to availability and distribution considerations. If Industry is to furnish cars, Industry will obtain any necessary OT-57 authority. Carrier(s) will not be liable for, and Industry shall hold Carrier(s) harmless against, mileage, per diem or other charges in connection with the use of Industry furnished cars. , including any costs incurred pursuant to regulations promulgated pursuant to the Surface Transportation Board's proceeding in Docket EP 768, except to the extent provided otherwise in the Workbook.

## **7. Incorporation of Documents; Conflict in Terms and Conditions**

These Terms incorporate the provisions of the Open Price Authority, the Uniform Straight Bill of Lading, as well as CSXT's tariffs, publications, applicable statutes and regulations, AAR and other industry standards, requirements and procedures, (including, without limitation, the Bureau of Explosives BOE 6000-series, Directory of Hazardous Materials Shipping Description (Issued by RAILINC), Official Railroad Station List OPSL 6000-series, Official Railway Equipment Register RER-series, Standard Transportation Commodity Code STCC 6001-series, Uniform Freight Classification UFC 6000-series, and Publication CSXT 8100), that would apply if these Terms did not exist, as of the date of shipment tender. The other provisions of first the Open Price Authority and then these Terms control in case of any conflict. The Shipment Instruction is solely for the purpose of describing the transportation being ordered, and any additional or conflicting terms contained therein are void and have no effect. To the extent any of the foregoing may be specifically listed or referenced in these Terms, the listing or reference shall include all changes, additions, and replacements of the listed or referenced items in effect at the relevant time in these Terms. Any purchase orders and any acknowledgements or other preprinted forms or related documentation issued by either of the parties pursuant to the services are issued solely for administrative purposes, and all terms, conditions, and obligations contained therein or on such other forms or documentation shall be deemed to have no effect with respect to the provision of the Services described herein.

## **8. Participating Carriers**

Industry acknowledges that it may not be party to, and may not have access to, any Agreements for the divisions of rates or revenues associated with this Contract. Participating Carriers other than CSXT acknowledge that they may not be party to, and may not have access to, any amendments adding rates they do not participate in or the Workbook associated with this Contract. Such Participating Carriers should reference their respective Rate/Revenue Agreements for particulars. Each of the participating Carriers is solely responsible for its portion of the subject transportation.

## **9. Payment of Charges – Extension of Credit**

Payment of all rates and charges that may accrue and become due from Industry to CSXT in connection with this Contract shall be made within the timeframes set forth in, and subject to the finance charges, late charges, and other provisions of Section 6 of Publication CSXT 8100, , except as may otherwise be set forth in a credit agreement between the parties. Information regarding the establishment of credit with CSXT and arrangements for electronic payment of rates and charges is available among those same provisions. If Industry fails to pay all rates and charges as required by this paragraph, CSXT may, without limitation, cancel or suspend its performance under, or terminate this Contract. Industry may not set off or withhold any payment due under this Contract in any dispute with any Carrier.

## **10. Switching Absorption**

Except as may be otherwise provided in the Workbook, CSXT will absorb the switch charge, or a portion thereof, of the railroad serving the actual loading point at Origin and/or the actual unloading point at Destination as may be provided in Section 4 of Publication CSXT 8100. Movements to or from such points will be automatically deleted from this Contract, if the associated switch service is terminated. CSXT may pass through increases in any intermediate switch rate included in the transportation provided.

## **11. Fuel Index Rate Adjustment**

When the monthly average price per gallon of highway diesel fuel (as determined below, the "HDF Average Price") equals or exceeds 200.0 cents, CSXT will apply a mileage-based fuel index rate adjustment to the linehaul rates and charges provided for in this Contract. The fuel index rate adjustment will be applied to each shipment with a Shipment Instruction dated on or after the first day of the second calendar month following the calendar month of a given HDF Average Price determination.

The "HDF Average Price" for a month will be the average price for that month of U.S. No. 2 Diesel Retail Sales by All Sellers, as determined and published by the U.S. Department of Energy, Energy Information Administration ("DOE-EIA"). That average price will, in calculating the HDF Average Price, be rounded to the nearest 1/10<sup>th</sup> of a cent applying conventional rounding principles. The fuel adjustment will be 1 cent per mile per railcar for every 4 cents per gallon, or portion thereof, by which the HDF Average Price for the calendar month two months prior to the calendar month of shipment exceeds 199.9 cents.

The DOE-EIA publication referenced above can currently be found at [www.eia.doe.gov](http://www.eia.doe.gov). On the home page select "Petroleum;" under "Prices" select "Weekly Retail Gasoline and Diesel Prices;" for the "Area" select "U. S.;" for the "Period" select "Monthly" then refer to the data on the line entitled "Diesel (On-Highway)." Monthly data is normally published Wednesday after the last Monday of a given month. If DOE-EIA ceases publication of the above information, CSXT will employ a suitable substitute source of price or measure.

The mileage to be applied in calculating the fuel index rate adjustment will be based on rail miles between origin, interchange(s) and destination, and can be found through [www.csx.com](http://www.csx.com). On the home page select "Customers;" select "Tools;" then select "Rail Mileage Look-Up" and follow the instructions provided. Registration will be required to use the ShipCSX functions.

## **12. ADDITIONAL Terms**

**This section has been intentionally left blank.**

## **13. Damage Claims**

Claims for loss, damage or delay for Shipments tendered pursuant to this Contract shall be governed by the provisions of Section 7 of Publication CSXT 8100.

## **14. Agent**

For purposes of this Contract, any third party performing any obligation of Industry or a Carrier is considered to be such party's agent. Industry acknowledges and agrees that it shall be responsible for any charges or damages incurred or caused by its agents in connection with this Contract. For the avoidance of doubt, no Carrier is an agent of any other Carrier.

## **15. Confidentiality**

The provisions of this Contract are considered confidential and may not be disclosed to a third party without the consent of the other party(s) except: (a) as required by statute, regulation or valid court order, (b) to a parent, affiliate or subsidiary company or (c) to an auditing firm or legal counsel that are bound by confidentiality provisions no less protective than those in this Section 15. In addition to the foregoing exceptions, any party may also disclose to any and all persons who have a legitimate purpose in reviewing the tax treatment and tax structure of the Contract all materials of any kind (including opinions or other tax analyses) that are provided to the disclosing party relating to such tax treatment and tax structure. If this paragraph is breached, then this Contract may be terminated by any non-disclosing party upon notice to the other party(s). This Section 15 shall survive the expiration or termination of this Contract for a period of two (2) years.

## **16. Force Majeure**

A party shall be excused from its performance if and to the extent it's performance is wholly or partially prevented or delayed by the following natural or deemed force majeure conditions: Act of God; authority of law; pandemic or other public health emergency; weather impediments; fire; flood; ice; washout; explosion; labor disputes; embargo; war; insurrection; threatened or actual act of terrorism; legal intervention; regulations or orders of Governmental Authority; derailment; or other like causes beyond its control. A downturn in the economy is not a force majeure condition. The Term shall not be extended due to the force majeure condition. The party claiming force majeure' shall notify all other parties as soon as practical upon the beginning and ending of the force majeure condition.

## **17. Miscellaneous**

- Carrier(s) may, subject to any required regulatory approval, discontinue service on, or abandon the rail line that services any Origin or Destination during the Term. Such discontinuance or abandonment shall result in the automatic deletion of the applicable Origin or Destination from this Contract at no liability to Carrier(s) as of the date of such discontinuance or abandonment.
- If the rail line serving an Origin or Destination is sold or leased by Carrier(s) to a new operator, this Contract will continue, but only if the Contract is assumed by the new operator.
- Unless restricted, shipments reaching destination but not unloaded (for reasons other than the Carriers' errors), may, at Carrier's discretion, be returned to the original shipping point via the reverse route at the same price and conditions, unless a lower price exists for such return shipments.
- Rates and prices in this Contract or any other rate authority may not be used to make a combination of rates or prices that lower the through prices in this Contract. Industry acknowledges that interchange locations for such transportation shall be determined by generally established routing protocols except as otherwise agreed to by the parties in writing.
- Except as otherwise noted, ancillary charges contained in Publication CSXT 8100 as of the date of shipment tender shall apply.
- Notwithstanding anything to the contrary herein, no party shall have any liability, including pursuant to any Damage Claim, for indirect, special, consequential or punitive damages.
- The waiver of any provision in this Contract must be in writing. Failure to enforce any provision is not a waiver.

- When proportional rates in this Contract are used to construct through rates beyond the geographic scope of this publication on a through Shipment Instruction, the proportional rates set forth in this Contract will be assessed and billed separately from any other portions of the resulting combination rate.
- Claims for overpayment of charges must be in writing and received by Carrier no later than one year after delivery or tender of delivery of shipment. Any lawsuit for overpayment of charges must be filed within two years after delivery or tender of delivery of shipment. Any claim or lawsuit not filed within the periods set forth in the preceding sentence or under thirty-five dollars (\$35) per Shipment Instruction is waived by Industry.
- This Contract may not be assigned without the written consent of the parties. Notwithstanding the foregoing, this Contract will automatically inure to the successors by merger, consolidation or sale of substantially all of the assets of the parties.
- Industry and Carrier(s) agree that there are no intended third party beneficiaries to this Contract.
- Paragraph titles are for the convenience of the parties and are not substantive in nature.
- This Contract is the result of the mutual negotiation of the parties and shall not be construed against any of them as the drafter. Industry represents and warrants to Carrier that, as of the time of tender of the Commodity for transportation, Industry will be the owner or be duly authorized to arrange for the transportation of the Commodity, including without limitation, the authority to agree to the terms and provisions of this Contract and any limitation of liability and/or indemnification included in or incorporated into this Contract.
- All notices between the parties must be in writing and sent to the parties by First Class U.S. Mail, express carrier or electronic mail. If to Carrier, notices should be sent to the Director, Commercial Administration, 500 Water Street - J865, Jacksonville, FL 32202 or [CSXTMktgSvcs@csx.com](mailto:CSXTMktgSvcs@csx.com). If to Industry, notices should be sent to the [ ] at [ ].
- Prices or rates are stated and payable in U.S. currency unless shipment is wholly within Canada, in which case prices or rates are stated in Canadian currency.

## **18. Entire Understanding**

This Contract shall be construed (except for matters referring to or traditionally governed by or construed under federal laws, regulations, or case law) according to the laws of the State of Florida without regard to its conflict of laws rules, and has been duly approved by authorized representatives of the parties.

**[END OF DOCUMENT]**